

General Terms and Conditions

All agreements for the supply of products and services by Mill City Concrete and Masonry, Inc. (“we” or “us”) to customer (“you”) are subject to the following Terms and Conditions:

1. The project identified in your Estimate, and any Change Order (defined below), is subject to these Terms and Conditions. We reserve the right to modify these Terms and Conditions, in our sole discretion, at any time and agree to provide you with written notice of any changes that occur during the pendency of your project. These Terms and Conditions are binding on you as well as your heirs, assigns, executors, trustees, and agents.
2. Estimates are valid for thirty (30) days from the date of the Estimate (“Offer Period”) and must be returned with a **non-refundable** signing deposit (which will be credited and applied to the down payment required pursuant to Section 4) to secure our availability. The signing deposit required is \$500.00 for estimates under \$10,000, and \$1,000.00 for projects estimated at \$10,000 or more. If we have not received your signed Estimate along with the signing deposit within the Offer Period, we may, in our sole discretion, require a new estimate for your project which may include different pricing or terms. We reserve the right to withdraw our Estimate prior to your acceptance. Estimates may only be accepted by returning a signed copy to us. Pricing in the Estimate is binding upon return of a signed copy to us but may be increased or decreased via Change Order as provided for in Section 5.
3. You agree to pay all taxes levied against us related to the project and such taxes will be included in your invoice(s).
4. The start of our work is contingent upon receipt of a down payment from you equal to one-half of the total amount identified on the Estimate. The signing deposit will be applied to the down payment. Your down payment will be applied to your invoice(s) on the project and is deemed fully earned, and therefore not refundable, once we commence work on the project. In the event you cancel the project after we commence work, you agree that we may keep your down payment as liquidated damages.
5. Any deviation, alteration, modification or change in the scope of work identified in the Estimate (“Change Order”) must be made in writing and may cause the pricing in the Estimate to increase or decrease. For purposes of this section, electronic communications (including email and text message) constitute a writing and will constitute a Change Order when acknowledged by both parties.
6. Upon acceptance of the Estimate by you, you agree to grant us access to the worksite in order to complete your project. You understand and acknowledge that your failure to grant us access as requested by us may delay the completion of your project. You agree that your unreasonable interference with our access to the worksite constitutes a default by you. For purposes of this section, unreasonable interference means but is not limited to, denying multiple requests for access to the worksite and failing to make arrangements for us to access the worksite at a previously agreed upon time. You are solely responsible for site safety, which includes removing keeping the worksite free from dirt and debris (not naturally occurring or caused by our services). We reserve the right to refuse service if we feel the worksite is unsafe or presents an unreasonable risk to satisfactory completion of the project and you will be responsible for our labor and material costs.
7. Title and risk of loss to any products we sell you shall pass from us to you once such product is delivered to you. You are responsible for all products, materials, and equipment delivered to you for the project, and we reserve the right to charge you for any product, materials or equipment that is damaged or taken from the project without our permission or approval. You are responsible for inspecting all products, materials, and equipment delivered to you for the project. You must notify

us of any damage, defect or nonconformity in the products, materials, and/or equipment prior to installation or use. Failure to so notify us shall constitute acceptance of, and waiver of any pre-installation claims with respect to materials and/or equipment.

8. *Installation Warranties.* We represent and warrant that: (a) our installation work will be performed and completed in a good and workmanlike manner; (b) all installation materials and fixtures will be new unless otherwise specified in the Estimate, (c) all work will conform to applicable building codes and laws; (d) we will promptly correct any installation work not completed in accordance with the Estimate; (e) upon completion of the final inspection, and provided that you are not in default, we will assign to you all available manufacturer's warranties applicable to materials, fixtures or equipment installed as part of the project. Except as may be provided under applicable state law, we remain responsible for our warranties for one (1) year after final inspection of the work; provided however, that if you are in default of any obligation hereunder, we shall have no obligation or liability to you whatsoever for any representation or warranty hereunder. This warranty on labor does not apply to cost of any products, materials or equipment.
9. *Product Warranties.* You are solely responsible for determining the type and quantity of product to be purchased. We represent and warrant that any products sold to you by us will conform to published specifications and warranties covering such product(s) at the time of sale. Notwithstanding anything herein to the contrary, any products that are identified as scrap, refurbished, used, non-specification, off-specification, pilot, test, test-lot, sample, or developmental are given or sold to you "as is," and taken or purchased by you at your own risk and with no warranty whatsoever.
10. WE MAKE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, ARISING OUT OF LAW, CONTRACT, STATUTE, OR OTHER LEGAL THEORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY WITH RESPECT TO ANY PRODUCT OR AS TO THE QUALITY OR CORRESPONDENCE OF ANY DESCRIPTION OR SAMPLE, ALL OF WHICH ARE SPECIFICALLY EXCLUDED TO MAXIMUM EXTENT POSSIBLE.
11. WE DISCLAIM ANY REPRESENTATION OR WARRANTY FOR (A) MATERIALS, FIXTURES, OR EQUIPMENT SUPPLIED BY THIRD-PARTIES; (B) ANY WORK PERFORMED BY THIRD-PARTIES NOT DIRECTLY RETAINED BY US AS A SUBCONTRACTOR; (C) DELAYS, INJURY, OR DAMAGE CAUSED BY NATURAL DISASTER, THEFT, VANDALISM, MALICIOUS MISCHIEF, LABOR STRIKE, LABOR SHORTAGE, TRANSPORTATION DELAY, GOVERNMENTAL REGULATION OR OTHER ACTION IMPEDING THE PROJECT, ACTS OF GOD, OR ANY OTHER ACTS OR OMISSIONS OUTSIDE OF OUR CONTROL; (D) ANY ERRORS IN DESIGNS, BLUEPRINTS, RENDERINGS OR THE LIKE SUPPLIED BY YOU OR YOUR REPRESENTATIVES (INCLUDING ARCHITECTS, DESIGNERS, AND ENGINEERS).
12. YOU ARE SOLELY RESPONSIBLE FOR DETERMINING THE SAFETY AND FITNESS OF ALL PRODUCTS FOR YOUR PARTICULAR USE. YOU ASSUME ALL RISK AND LIABILITY WHATSOEVER RESULTING FROM THE USE OF PRODUCTS SOLD HEREUNDER, WHETHER USED SINGLY OR IN COMBINATION WITH OTHER SUBSTANCES. YOU AGREE TO INDEMNIFY US IN CONNECTION THEREWITH. YOU ACKNOWLEDGE THAT OUR LIABILITY FOR ANY CLAIM FOR LOSS OR DAMAGES OF ANY KIND OR NATURE DUE TO FAILURE TO DELIVER ANY PORTION OF PRODUCT OR RELATING TO YOUR PURCHASE, HANDLING OR USE OF PRODUCT, INCLUDING BUT NOT LIMITED TO BREACH OF WARRANTY, BREACH OF CONTRACT,

NEGLIGENT, OR OTHER THEORY OF LIABILITY OF ANY DESCRIPTION, SHALL NOT EXCEED THE PURCHASE PRICE OF THE PORTION OF PRODUCT IN RESPECT TO WHICH SUCH CLAIM IS MADE AND PROVED. IF YOUR CLAIM FOR LOSS OR DAMAGE RELATES OR PERTAINS TO INSTALLATION SERVICES, YOU ACKNOWLEDGE THAT OUR LIABILITY FOR ANY CLAIM OR LOSS OF ANY KIND OR NATURE, REGARDLESS OF THE LEGAL CLAIM OR THEORY, SHALL NOT EXCEED THE PRICE PAID TO US FOR SUCH INSTALLATION SERVICES, WHICH MAY OR MAY NOT BE THE PRICE STATED ON YOUR ESTIMATE.

13. We are not responsible for, and any warranty hereunder shall not apply to (i) improper or inadequate site conditions which are not covered by our Estimate, (ii) inadequate product choice (including selection of products that may not be suitable for the unique environmental conditions of your property); (iii) exposure to environmental conditions beyond our control; (iv) differences in shade or color of products, including differences between samples and actual installments and differences in shades or colors between different batches of the same product; (v) unapproved modification or repair of any kind; (vi) acts or omissions of third-parties; nor (vii) cracking, warping, or soiling of product not directly caused by us.
14. Except as otherwise provided herein, or as may be provided in any applicable product warranty or otherwise under applicable law, any cause of action that you may have against us under this Agreement must be brought within six (6) months after such cause of action accrues.
15. Upon notice or threat of a warranty claim following completion of your project, we may, in our discretion, inspect the worksite and you agree to grant us access for that purpose. We will not charge you for any initial inspection we choose to perform.
16. We may occasionally provide technical assistance or advice with regard to the use, care and/or maintenance of products sold or installed by us. All such assistance or advice is provided to you free of charge and we assume no obligation or liability with respect to such assistance or advice.
17. We have and will maintain insurance coverage sufficient to protect us and you from claims of workers under the Workers' Compensation Act and other employee benefit acts. We have and will maintain insurance coverage sufficient to protect us and you from claims for damages to property (other than the work specified in the Estimate) which may arise out of or result from the project. We have and will maintain commercial general liability and (as applicable) professional liability coverage. You agree to notify your insurance carrier of the project prior to our start date and obtain additional or extended coverage(s) sufficient to protect us and you against the risk of loss associated with fire, natural disaster, theft, vandalism, and malicious mischief.
18. You acknowledge and understand that if we use subcontractors for your project, our ability to timely pay the subcontractors is conditioned upon your prompt payment of our invoices.
19. One-half of the estimate is due up front and the remainder is due upon completion. Invoices for completed work are due upon receipt. All invoices that remain unpaid after 30 days shall accrue interest at the lesser of 18% per annum (1.5% per month) or the maximum rate permitted by law.
20. In the event you default in any payment or other obligation to us, we may, in our sole discretion: (a) suspend our work on the project until you cure your default to our satisfaction, (b) refuse to apply for, or pull, any final permits, including certificates of occupancy, or schedule a final inspection with government official, necessary to complete your project, (c) terminate the project and commence proceedings against you to recover for any damages caused by your default. You acknowledge that we are not liable for any claims or damages that may result from our failure to complete your project due to your failure to pay our invoices when due.
21. In the event we take any action to recover amounts you owe to us, you agree to pay our costs of collection, including reasonable attorney's fees, contingency fees paid to third-party debt

collectors, legal fees and costs to file a mechanics liens, and any other cost or fee of any description or nature relating to our enforcement of any debt that you owe to us.

22. OUR WORK CONSTITUTES “IMPROVEMENT TO REAL PROPERTY” UNDER MINNESOTA LAW, AND MAY ENTITLE US TO A MECHANICS LIEN IN THE EVENT YOU FAIL TO PAY YOUR INVOICE(S) WHEN DUE. WE RESERVE THE RIGHT TO FILE A MECHANICS LIEN, WITHOUT FURTHER NOTICE, SHOULD YOU FAIL TO PAY YOUR INVOICE(S) WHEN DUE.
23. MECHANICS’ LIEN NOTICE: (A) ANY PERSON OR COMPANY SUPPLYING LABOR OR MATERIALS FOR THIS IMPROVEMENT TO YOUR PROPERTY MAY FILE A LIEN AGAINST YOUR PROPERTY IF THAT PERSON OR COMPANY IS NOT PAID FOR THE CONTRIBUTIONS. (B) UNDER MINNESOTA LAW, YOU HAVE THE RIGHT TO PAY PERSONS WHO SUPPLIED LABOR OR MATERIALS FOR THIS IMPROVEMENT DIRECTLY AND DEDUCT THIS AMOUNT FROM OUR CONTRACT PRICE, OR WITHHOLD THE AMOUNTS DUE THEM FROM US UNTIL 120 DAYS AFTER COMPLETION OF THE IMPROVEMENT UNLESS WE GIVE YOU A LIEN WAIVER SIGNED BY PERSONS WHO SUPPLIED ANY LABOR OR MATERIAL FOR THE IMPROVEMENT AND WHO GAVE YOU TIMELY NOTICE.
24. Our remedies for your default are cumulate and not exclusive. Our election of one particular remedy in the event of your default does not restrict or impair any other rights or remedies hereunder or at law, equity or otherwise. The election of any one or more remedies shall not constitute a waiver of any other remedy.
25. Our agreement, including these terms and conditions are governed by the laws of the State of Minnesota, without regard to conflict of law provisions. All claims pursuant to our agreement and these Terms and Conditions shall be venued in the conciliation court or district court for the State of Minnesota, Hennepin County. YOU AND WE EACH WAIVE THE RIGHT TO TRIAL BY JURY AND CONSENT TO TRIAL BEFORE A JUDGE OR OTHER COURT-APPOINTED MAGISTRATE.
26. Neither party may assign the rights or obligations hereunder without the prior written consent of the other party. This Agreement shall be binding upon, and inure to, the benefit of the parties hereto, their successors and assigns No waiver by any party of performance of any provision of this Agreement shall constitute or be implied as a waiver of such party's right to enforce such provision at any future time. In the event any term or provision is declared to be illegal or invalid by a court of competent jurisdiction, for any reason whatsoever, such illegality or invalidity shall not affect the balance of the terms and conditions of this Agreement, which terms and conditions shall remain binding and enforceable.

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Thank you for trusting us with your business.