

TERMS AND CONDITIONS OF SALE

V.10/09

PAYMENT: Florida Silica Sand Company ("FSS") requires customers to make payment arrangements in advance. Credit terms must be pre-approved and may be discontinued at the sole discretion of FSS. Payments are due at time of purchase or if on credit, within thirty (30) days of purchase. FSS reserves the right to assess a service charge of 1 1/2% per month on amounts not timely paid. All returned checks, including but not limited to NSF, Stopped Payment or Closed Account checks, are subject to a 5% or \$35 fee, whichever is greater. In the event FSS takes any action, with or without suit, to enforce these terms of sale, Customer shall be responsible for FSS' costs including its reasonable attorney's fees incurred through trial and any appeals. Exclusive jurisdiction for any legal action shall be a court of competent jurisdiction in Miami-Dade County, Florida.

FSS DISCLAIMER OF LIABILITY - PICKUP, TRANSIT, DELIVERY AND USE: Customer understands and acknowledges that it must make proper hauling arrangements if it decides to pick up any purchased materials. Likewise, Customer's selection and intended use of materials purchased from FSS is Customer's own decision. FSS provides no advice in this regard. FSS is not responsible for calculating coverages. All quantities ordered are the sole responsibility of Customer and any information provided by FSS is gratuitous, general in nature and not intended to be relied on by Customer. FSS provides no advice in this regard. It is unequivocally agreed and understood as follows: (1) that FSS is not an insurer; (2) that payments made pursuant to the instant transaction or transactions are based solely upon the value of the goods purchased herein and nothing else; and (3) that it is the intention and understanding of the parties that FSS and its agents assume no obligation, liability, or responsibility whatsoever for: (i) **any** claims, costs, liabilities, damages or expenses asserted against or incurred by Customer, or its agents, or; (ii) **any** cause or any liability which otherwise may result or arise: (a) because of injuries to persons or damages to property incurred in connection with or arising out of the pick up, transit, delivery, use or misuse of said materials, (b) by reason of negligence, mistake or misconduct on the part of FSS or its agents, (c) which otherwise may be asserted against FSS or its agents by virtue of FSS or its agents being a party to the instant transaction or transactions, or (d) any orders, contracts and agreements which are contingent upon or delayed because of circumstances beyond our control.

Customer understands and acknowledges that a) if Customer cancels any order, then Customer shall be responsible for payment of 20% of FSS' invoice if FSS has not yet ordered the materials or 100% of FSS' invoice if FSS has already ordered the materials; b) it shall advise FSS in writing at time of contracting with FSS of the location of any pipes, objects, structures, cables, lines, or the like which could be damaged by FSS personnel or its agents during delivery; and c) it is responsible for providing a hazardous free workplace for FSS with sufficient egress and ingress for delivery.

RETURNS/CLAIMS: No material may be returned to FSS without FSS's prior authorization that FSS may withhold in its sole discretion. If FSS agrees to accept returned materials, they must be returned within 90 days of the date the materials were received. With ALL returns, Customer will be responsible for a handling and restocking charge of 20% or \$15, whichever is greater. As to damaged or defective material or shortages, Customer must notify FSS upon Customer's pick up of the subject materials or upon receipt if FSS or a third party delivers materials to Customer. No claim by Customer shall be greater than the amount of the purchase price of the materials. FSS' liability in the case of unsuitable materials is limited strictly to the replacement thereof. FSS shall not be liable for consequential, incidental or special damages. This limitation of liability is expressly intended to apply to all types of claims, including but not limited to, claims for FSS's own negligence, mistake or misconduct.

NO WARRANTY: FSS MAKES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE. FSS CONVEYS ONLY WHATEVER WARRANTY IS PROVIDED TO FSS BY MANUFACTURER, AND NO OTHER WARRANTY.

AUTHORITY: The person signing on behalf of Customer has full authority to do so, has read and understood the foregoing terms and conditions, and is authorized to bind Customer.

ORDER/PO/REF #: _____

I authorize the following individuals, whose names are clearly printed and legible, to accept and sign for materials delivered to my jobsite.

I authorize Florida Silica Sand Company, or its agents, to deliver the purchased materials to the following address:

Street address City State Zip Code

I AGREE THAT PLACEMENT OF THE MATERIALS SHALL BE AT THE DELIVERY PERSON'S SOLE DISCRETION AND THAT I RELEASE, INDEMNIFY AND HOLD FLORIDA SILICA SAND COMPANY HARMLESS FROM ANY LIABILITY, LOSS, INJURY, THEFT, DAMAGE OR CLAIM RELATED TO THIS DELIVERY. I ACCEPT FULL RESPONSIBILITY FOR PAYMENT OF SUCH MATERIALS.

THE UNDERSIGNED AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF SALE LISTED ABOVE AND ACKNOWLEDGES INFORMATION PROVIDED IS ACCURATE.

Date _____

Signature _____

Printed Name _____