

Terms and Conditions

A. The Purchaser of the materials itemized on the reverse of this document agrees to accept and pay for materials pursuant to the terms and conditions hereof.

B. By accepting delivery of the materials itemized on this invoice, the Purchaser accepts ES&M's terms and conditions provided herein, and Purchaser waives all conflicting or additional terms contained in Purchaser's Purchase Order or other documents, including but not limited to, Purchaser's conflicting terms which expressly limits acceptance thereof to terms of Purchaser's conflicting document or Purchase Order, or contains an objection to any terms additional to or different from terms contained in Purchaser's document or Purchase Order.

D. The Purchaser agrees to make payment for all purchases at or before receiving the materials. If payment is not received by the time of delivery or receipt, the applicant will not be entitled to receive any payment or product discounts, if applicable. Customers set up to pay by invoice ("Invoice Customers") must pay all balances in full Net 15 days following the date of invoice. Unpaid balances will incur interest at the rate of 2.5% monthly thereafter until payment is made in full. The Purchaser hereby waives the benefit of any homestead exemption and agrees that in the event a balance remains unpaid as of the last day of the month in which payment was due, or 30 days after date of invoice for Invoice Customers, that the Purchaser will pay all costs and expenses incurred in the collection of said balance, including ES&M's actual attorneys' fees.

E. No materials may be returned for cash, credit, or exchange without ES&M's prior authorization. Authorized returns, in good condition, may be credited according to ES&M's return policy. In the event of a return, a restocking charge shall be incurred in accordance with said policy. Special or custom orders ("Special Orders") are non-refundable and noncancelable at the time of placement of the order. Special Orders must be paid with a 50% deposit at the time of placement of the order. ES&M cannot be responsible for delay in the manufacture and/or delivery of Special Orders. Purchaser bears the risk of all losses, damages, or claims of any kind relating to any delay in the manufacture or delivery associated with or related to any Special Order and holds ES&M's harmless from the same.

F. Purchaser shall have an agent on the jobsite/delivery site to receive all materials. The Purchaser authorizes deliveries to be made without signature by the Purchaser or the Purchaser's agent. In the event of the absence of an agent to receive deliveries, ES&M may, at its option, deliver the materials, and the Purchaser authorizes the delivery driver to sign the delivery ticket indicating the delivery, quantity, and condition of the materials delivered. Upon delivery, all delivered materials shall become the sole responsibility of the Purchaser. ES&M reserves the right to refuse delivery of materials for any reason in the event the delivery site is not suitable or accessible for delivery.

G. Purchaser agrees to indemnify and hold ES&M harmless from all damages, losses, claims, or liability of any kind, arising out of or related to the materials enumerated on the reverse hereof, or use thereof. Said indemnification includes but is not limited to ES&M's actual attorney's fees and costs.

H. Purchaser indemnifies and holds ES&M harmless from all losses, damages, or claims of any kind arising out of or in connection with materials placed in or upon Purchaser's vehicle or equipment, regardless of whether loaded by ES&M. Said indemnification includes but is not limited to ES&M's actual attorney's fees and costs.

I. ES&M is not responsible for the presence of efflorescence and discoloration or any other Aesthetic quality ("Aesthetic Conditions") after materials have been used and/or installed, and Purchaser indemnifies and holds ES&M harmless for all damages, losses, claims, or liabilities of any kind resulting from such Aesthetic Conditions.

J. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. In the event any action shall be necessary to enforce the terms of this invoice, the parties agree that said action shall be in a court of competent jurisdiction in Culpeper County, Virginia, or in the United States District Court for the Western District of Virginia (Charlottesville Division).

K. Purchaser assumes responsibility for obtaining accurate estimates of materials required to complete projects. Any estimate provided by ES&M is a speculative estimate based entirely upon unverified data provided by Purchaser and shall not be relied upon by Purchaser. Purchaser assumes sole responsibility for the quantity of material requested to complete any project. Purchaser releases ES&M from all liability regarding all claims, losses, damages, or liabilities arising from or related to estimates required for projects.

ES&M, in its sole discretion, reserves the right to refuse the return of any material for any reason.

A returned payment fee of thirty dollars (\$30) will apply for all returned, cancelled, or stopped payments.

**Any returns accepted will be issued as store credit only. Credits expire on December 31st of the same calendar year and will not carry over into the following year. Any expired credits are forfeited if unused by December 31st
NO EXCEPTIONS**

L. Purchaser acknowledges because of modern manufacturing processes, variation in color, shading, markings, or texture (collectively "Variations") is ordinary and expected in block, concrete or brick materials. Further, Purchaser acknowledges that natural stone products include imperfections, such as inclusions, stress fractures, and fissures (collectively "Conditions") and should be expected. Any such Variations or Conditions shall not be a basis for the return of materials, except upon express written authorization of ES&M. Purchaser indemnifies and holds ES&M harmless from any damages, claims, or losses resulting there from, including but not limited to, any claim brought by a third party. Said indemnification includes but is not limited to ES&M's actual attorney's fees and costs. No claims relating to Variations or Conditions including but not limited to size, color, texture, or warping will be considered after material has been utilized in construction processes. Use of any material is deemed to be an acceptance of material as a conforming good.

M. ALL WARRANTIES, EXPRESSED, IMPLIED, FOR FITNESS OF A PARTICULAR PURPOSE, OR OF FITNESS FOR ORDINARY PURPOSES FOR WHICH GOODS ARE SUITED ARE EXCLUDED. THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE DESCRIPTION OF THIS DOCUMENT.

N. Purchaser agrees to indemnify and hold ES&M harmless from all damages, claims, or losses, of any kind caused by ES&M or ES&M's equipment arising or resulting from or related to delivery, including but not limited to, damages to sidewalks, walkways, driveways, landscaping, turf, utility pedestals, and underground utility equipment. Said indemnification includes but is not limited to ES&M's actual attorney's fees and costs.

O. ES&M is not responsible or liable for any damage, claims, or loss to the materials enumerated on the reverse resulting from improper handling, storage, installation, or cleaning including but not limited to, damage that may be caused to material resulting from cleaning with pressure washer, solvents, or any other improper cleaning technique. No claims and/or back charges will be permitted for handling of damaged and/or defective material without the express written approval of ES&M, which written approval is in ES&M's sole discretion.

P. Purchaser grants a security interest in delivered materials to ES&M. Purchaser hereby appoints ES&M as its power of attorney for purposes of executing any documents to obtain or perfect ES&M's security interest in the delivered materials. Security interest shall be released upon full payment of the purchase price. As inducement to ES&M to sell and deliver materials, the Purchaser hereby expressly represents to ES&M that it is not, and will not either directly or indirectly, waive or release or surrender any mechanic's lien rights of ES&M. Purchaser agrees to cooperate with ES&M and provide such information as ES&M may require to protect its mechanic's lien rights. Upon request by ES&M, Purchaser shall be obligated to immediately furnish ES&M with the name and address of the mechanic's lien agent, all necessary legal descriptions, and other relevant information necessary for ES&M to protect its mechanic's lien rights and perfect the same. Purchaser agrees to pay for all costs, recording fees, actual attorney's fees, and all other expenses regarding or relating to ES&M's mechanic's lien rights relating in any way to the materials enumerated hereon.

Q. This Agreement constitutes the entire agreement between the parties hereto. Failure or delay of either party to enforce any provision of this invoice shall not operate as a waiver of the right to enforce such provisions or any other provision of this invoice. No waiver of any provision of this invoice shall act as a subsequent waiver of such provision. nor as a waiver of any other provision of this invoice.

R. ES&M is not liable for failure or delay in deliveries resulting from causes beyond ES&M's control, including, but not limited to, the failure of material supply, material quality, fuel shortage, failure of manufacturing facilities, failure to affect cover of a product, acts of God, strikes, lockouts, war, riot, governmental act, flood, fire, power outage, or any other event that is not caused by the negligence or misconduct of ES&M.

S. Any notice required by the Purchaser hereunder shall be in writing and delivered by certified mail, return receipt requested and postage prepaid, to ES&M at the address set forth on the reverse of this invoice, or at such other address as designated in writing by ES&M. The Purchaser may not assign this Agreement without the prior written consent of ES&M. In the event assignment is authorized, the invoice shall be binding upon successors and assigns of the Purchaser.

T. ES&M shall not be liable for any incidental or consequential damages of any kind arising from any theory including but not limited to breach of contract, breach of warranty, delay, negligence, or any other tort claim or cause of action of any kind. Purchaser agrees to indemnify and hold ES&M harmless for all damages, losses, claims, or liability of any kind arising out of or related to Purchaser's contracts or agreements for use of the materials, including ES&M's attorney's fees and all costs and expenses. In the event of any claim, damage, loss, or liability of ES&M, ES&M's liability shall not exceed the price of the material as reflected on this invoice on which the liability is based.