**OUTCAST CONCRETE PRODUCTS, LLC**

**TERMS AND CONDITIONS OF SALE**

Effective Date September 1, 2022

Seller is Outcast Concrete Products, LLC (Outcast)

Buyer is as shown in quotation and/or purchase order.

Buyer and Outcast agree to be bound by the following terms and conditions. These terms and conditions shall take precedence over terms and conditions in any agreement to buy from Outcast including purchase order agreements. These terms and conditions supersede communications including emails except to the extent a mutually executed purchase order specifically lists a section of this Terms and Conditions of Sale document and modifies the section.

1. **Product**: Outcast shall provide Product as listed in the quote or subsequent purchase order except that an approved submittal shall take precedence to the extent that Outcast is notified of modifications to the submittal prior to manufacture. Buyer shall be responsible for reviewing Outcast standard drawing and specifications and submittal documents to verify compliance with Project documents and specifications with regards to all acceptability of Product including but not limited to the quantity, sizes, and quality. If discrepancies and/or omissions exist between Outcast submittal documents, the Buyer is responsible for noting the discrepancies and/or omissions and notifying Outcast prior to manufacture by Outcast. Outcast will evaluate and reprice the purchase order for mutual agreement as necessary.
2. **Quote:** Price and delivery terms are valid for 30 days. Any obvious errors in the Outcast quote shall be considered non-binding and shall be noted by the Buyer and Outcast informed for repricing.
3. **Delivery Dates:** Dates provided by Outcast are estimates and non binding on Outcast.
4. **Definitions:**
	1. AHJ – Authority Having Jurisdiction
	2. Days – The word “days” shall mean Calendar Days unless otherwise specified.
5. **Buy America or Buy American**: Outcast will be bound to these terms only if specifically stated in the Outcast provided quote or in **BOLD AND CAPS** in the fully executed Purchase Order.
6. **Submittals**: Outcast shall provide Submittal information to Buyer. Buyer shall review the submittal information for completeness, accuracy, and compliance with contract documents and the intended use of the products prior to submitting to the engineer or AHJ for approval. Upon Buyer and Engineer or AHJ approval of Submittals, Buyer shall return copy of approved Submittals to Outcast prior to manufacture. If Outcast prepares Submittals at Buyer direction and then Buyer cancels the order, Buyer shall be responsible for the cost of the Submittal preparation by Outcast not to exceed 10% of the value of the Order. If the Submittals are modified by the Buyer, engineer, or AHJ, then Outcast must be notified of the modifications and if the modifications result in additional work for Outcast from the Quote or Purchase Order, then Outcast shall notify the Buyer of changes in pricing or delivery times.
7. **Manufacture**: Outcast to manufacture Product in compliance with the Quote or Purchase Order with the approved Submittal taking precedence over the Quote or Purchase Order.
8. **Delivery:** All Product deliveries shall be FOB plant. Buyer responsible to inspect materials upon receipt and notify Outcast on the delivery ticket at time of delivery of any defects or omissions. If Buyer does not mark the delivery ticket with any defects or omissions, then Buyer is accepting the Product. If quote or purchase order are silent, then the Product shall be item (FOB Plant) below:
	1. **Buyer pickup (FOB Plant):** Buyer shall provide adequate truck and arrive at Outcast Plant at mutually agreed time and date. Outcast shall set the Product on the truck as instructed by the Buyer or the Buyer’s driver. Buyer shall be responsible for all tie down and shall take ownership of the Product as soon as Buyer’s truck is loaded by Outcast. FOB Plant.
	2. **FOB Plant, Freight Allowed (FFA):** Buyer assumes ownership of Product from Outcast Plant. Outcast shall pay for trucking. Outcast shall load Product on to the truck and deliver to the project site as designated by Buyer and listed in the Purchase Order. If there are designated routes or gates for delivery, those shall be clearly indicated on the Purchase Order. Buyer responsible for grading and clearing of all access roads and trees and power lines for safe delivery with no mud and adequate room for truck turnaround and flat and safe location for unloading. Buyer shall unload all Product in one location (no stringing) within 20 minutes of Outcast truck arrival to project site. Buyer agrees to pay $2/minute for every minute beyond 20 minutes for completion of the complete truck offload.
	3. **FFA and set by Outcast (FFA and Set):** Same as FFA above except Outcast will set the structures with a boom truck on the delivery truck. The weight of the Product and the size of the boom truck on the delivery truck will limit where the Product can be set. If the Buyer wants the Product to be set in the final location, then the Buyer is responsible to make sure the ground is graded and compacted correctly and the truck can stay at least 2 feet away from the excavation and the boom truck will still not be too far away from the final location. If in the sole opinion of the Outcast driver the boom truck is not adequately sized for the weight and distance of the pick, then the boom truck driver shall offload the Product at a Buyer selected safe location on the Project site at no change in cost to the Buyer. Outcast will not be billed for any resetting of Product required by Buyer. Buyer shall have site or sites ready so that Outcast can unload all items on the truck within 40 minutes. Buyer agrees to pay $3/minute for every minute beyond the first 40 minutes for completion of the complete truck offload.
9. **Invoice:** Outcast has the right to invoice at the earlier of either the date of the portion of the Product delivery to the Buyer, or the originally scheduled date of delivery if delivery is delayed by the Buyer.
10. **Payment:** Buyer shall pay Outcast in full within 30 calendar days of invoice. Buyer shall not withhold any retention for any Product. If Buyer disputes a part of the invoice, then Buyer shall notify Outcast within 10 calendar days of the dispute in the invoice so that Outcast can make correction as appropriate. Buyer shall timely pay Outcast in full for all undisputed Product invoiced while expeditious and timely efforts are made to correct any errors with invoicing. Seller agrees to pay 2% per month interest and penalty beginning 31 calendar days of invoice. The Buyer agrees there is no “pay-when-paid” allowance applicable to the Outcast Product.
11. **Storage:** If Buyer does not accept Product on the agreed upon date, and Product is manufactured by Outcast, then Outcast will store material for 5% per month, payable every month by the Buyer, for the value of the Product if the Buyer fully pays the invoiced amount for the stored Product within 30 days. If Buyer does not pay the storage timely, then Outcast reserves the right to sell the Product
12. **Breach:** Buyer agrees that non-payment for the full amount due including the Outcast invoice, interest and penalties, and storage costs within 90 days constitutes a breach of contract by the Buyer. Full payment will be due immediately from Buyer to Outcast including invoice, storage, and interest. If payment is not fully received within 90 days, then Buyer agrees to reimburse Outcast for actual court and attorney fees incurred in any lawsuit or mechanics lien filing made by Outcast against the Buyer.
13. **Canceling of Order by Buyer:**
	1. Should the Buyer determine that the manufactured Product is no longer required by the Buyer, if the Product is a standard product of Outcast, then Outcast will not charge the Buyer if the Product has not been delivered to the Buyer. If the standard Product has been delivered to the Buyer and the Buyer seeks to return the Product, then the Buyer shall contact Outcast to agree on a return delivery time and date and the Buyer shall arrange for trucking and return the Product to Outcast. If the Product is in suitable condition as determined solely by Outcast, then Outcast will unload and accept the Product in writing and the Buyer shall be invoiced and shall pay for the original trucking to the Project if FFA plus a 30% restocking fee by Outcast for the unloading and return to inventory of the standard product.
	2. If the Buyer determines that a “special” or “custom” Product which is non-standard is no longer required by the Buyer, and the Product has been manufactured by Outcast and not delivered to the Buyer, then Buyer is still responsible for the payment for the Product and additionally Buyer agrees to pay a 25% surcharge for Outcast to destroy the Product. If the “special” or “custom” non-standard Product is delivered to the Buyer, then the Buyer shall keep the Product and pay Outcast the full invoice price for the Product.
14. **Watertightness:** Products are not guaranteed to be watertight or airtight unless specifically designated **IN BOLD AND IN CAPS**  in the fully executed Purchase Order. If Buyer is subjecting product to either infiltration, exfiltration, or air test, then Buyer shall include in Purchase Order this requirement. If Product is designated in the Purchase Order as Watertight or Airtight, Outcast is only responsible for the Product. The workmanship in the installation of the Product by the Buyer, including but not limited to the installation of the sealant, tape wrapping, and coating of the Product is the responsibility of the Buyer.
15. **Return Policy:** See “Canceling of Order by Buyer” above. Acceptance of returned materials is the sole decision and discretion of Outcast.
16. **Express Limited Warranty**: Outcast provides a limited Warranty to replacement value of the product for a period of one year from the date of receipt by Customer. Outcast warrants that the products provided to Buyer are free of manufacture defects. If products are found to be defective within the one year warranty period, then at Outcast’s sole discretion, product may be replaced with in kind product, or repaired by Outcast, or money refunded by Outcast for the cost of the product. This warranty shall supersede and replace any and all other warranties whether express or implied. Buyer agrees to waive any and all direct, indirect, consequential, or liquidated damages of any kind.
17. **Indemnity:** Buyer shall defend and indemnify Outcast to the fullest extent permitted by law for all Product and work provided by Outcast including but not limited to any active and/or passive negligent act or omission. This Buyer provided indemnity and defense obligation includes all Outcast incurred attorney and expert fees arising from any claim or lawsuit resulting from alleged loss or damage caused by Outcast. However, Buyer shall not be obligated to indemnify Outcast for the sole negligence or willful misconduct of Buyer or its employees. Buyer agrees to indemnify Outcast for any claim or lawsuit for more than the value of the purchase order.