

STANDARD TERMS AND CONDITIONS

- PARTIES.** Buyer ("Buyer") acknowledges, understands and agrees that, by accepting this Quotation ("Quotation") it shall be bound by the Standard Terms and Conditions set forth herein and that said Standard Terms and Conditions shall be enforceable against Buyer by **Hydro Conduit Corporation d/b/a Rinker Materials Concrete Pipe Division** and all of its divisions, subsidiaries, affiliates, privies, assigns, associated or affiliated companies, corporations, partnerships, successors, and insurers ("Seller"). Buyer's Credit Application, if any, this Quotation including these Standard Terms and Conditions, and Seller's order confirmation, if any, shall form the sole agreement ("Agreement") under which Buyer shall purchase goods, materials and services ("Materials") from Seller, and acceptance of any purchase order from Buyer is hereby made expressly conditional upon Buyer's acceptance of the terms and conditions contained herein. **Any different or additional terms or conditions contained in Buyer's acceptance of this offer, whether by purchase order or otherwise, are hereby objected to by Seller and shall have no effect on, and not become part of, the terms and conditions of this Agreement. Additional terms, changes, and alleged subsequent agreements shall not be effective unless signed by Seller's authorized representative.**
- APPLICABILITY.** This Agreement is made between Buyer and Seller. All the terms and conditions herein are intended to and shall apply to all purchases of the Materials set forth in this Quotation.
- BUYER REPRESENTATIONS.** Buyer represents to Seller that, as of the date of this Agreement, it is solvent and that any financial information provided or attached, either as part of this Agreement or previously provided with Buyer's Credit Application, if any, accurately reflects the current financial condition of Buyer. If at any time Seller deems the financial condition of Buyer as unsatisfactory, Seller reserves the right to require payment in full in advance or other security satisfactory to Seller. Buyer further warrants and represents that it has authority to enter this Agreement and that any person signing this Agreement has been duly authorized to execute this Agreement for and on behalf of Buyer. Each representation and the information contained herein is material and given to induce the Seller to provide credit.
- TECHNICAL ASSISTANCE.** In no event shall Seller bear any responsibility for claims arising from technical advice or assistance provided to Buyer. Advice and assistance provided by Seller is for Buyers guidance only and Buyer agrees to rely solely on its own architects, engineers or other technical experts.
- LIMITED WARRANTY AND LIABILITY DISCLAIMER.** Seller warrants that the Materials sold under this Agreement meet solely the description and specifications for the same set forth in this Quotation, if any, and shall be free from defects in material and workmanship for a period of one (1) year from the date of delivery thereof. No other express warranties are made with respect to said Materials. Acceptance by Buyer of the Materials shall constitute confirmation by Buyer that the Materials meet the description and specifications, if any, set forth in this Quotation, if any. The foregoing warranty is subject to standard manufacturing and color variations, efflorescence, tolerances and classifications. Seller is not responsible for installation or defective conditions caused by installation. Buyer's exclusive remedy for breach of this warranty shall be to require Seller, at Seller's option, to refund the purchase price for the Materials sold hereunder, to repair or to replace any nonconforming Materials. Seller shall not be responsible for any removal or installation costs. **THE FOREGOING WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WRITTEN OR ORAL WARRANTIES OR CONTRACTUAL AGREEMENTS, WHETHER EXPRESS OR IMPLIED BY LAW OR OTHERWISE, INCLUDING THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR HABITABILITY.** Seller warrants that the use or sale of the Materials will not infringe on the claims of any United States patent covering the Materials, but Seller does not warrant against infringement by reason of the use of the Materials in combination with other materials, goods, or manufacturing processes.
- CLAIMS.** Buyer's exclusive procedure for commencing claims under this Agreement against Seller shall be as follows: Notice of claims against Seller for breach of warranty or for alleged short delivery of Materials must be given to Seller promptly upon discovery and must be supported in writing within seven (7) days after discovery to afford Seller an opportunity to investigate such claims promptly and mitigate any potential damages. Failure of Buyer to give such notice shall constitute a waiver by Buyer of its right to later make such a claim.
- LIMITATION OF LIABILITY.** Seller's liability on any claim for loss or damage arising out of the supplying of any Materials to Buyer, or their sale, operation or use, whether based on contract, warranty, tort (including negligence) or other grounds, shall not exceed the price of the Materials actually received from Buyer by Seller with regard to which such claim for loss or damage is made. In no event shall Seller be liable, whether as a result of breach of contract, warranty, tort (including negligence) or other grounds, for special, consequential, incidental, liquidated or penal damages including, but not limited to, loss of profits or revenue, loss of use of the Materials or any associated product, cost of capital, cost of substitute products, facilities, services, downtime costs, or claims of customers of the Buyer for such damages.
- INDEMNIFICATION BY BUYER.** To the fullest extent permitted by law, Buyer further agrees that, in specific consideration for receiving the express warranty granted by Seller in paragraph 5 above, it will indemnify and hold harmless Seller from and for any and all damages, including attorney's fees and costs, incurred by Seller in connection with any claim, demand, liability, or cause of action asserted against Seller for personal injuries, loss of life, property damages, or economic losses of Buyer or its employees, agents, representatives or any other person or entity; provided, however, that Buyer's duty hereunder shall not arise if such claims, demands or liability are caused by the willful misconduct of Seller.
- DELIVERY AND INDEMNIFICATION.** Seller's responsibility for delivery shall cease FOB shipping point or, if Seller agrees to deliver FOB delivery site, at the curbside or street or frontage of the address of delivery. If Buyer requires Seller to cross a curb line or enter upon private property to make delivery on site, Buyer shall be responsible to provide safe and adequate access and such delivery shall be at the risk of Buyer. Following delivery, Buyer shall be responsible for compliance with all governmental regulations and ordinances with regard to disposal, storage or placement of the same and shall indemnify and hold Seller harmless against all claims for personal injuries, including death, and any damage to private or public property arising from the delivery, storage, use, disposal or handling of said Materials. Unless otherwise specifically agreed, shipments will be made only during normal business hours, but not on Saturdays, Sundays, or holidays recognized by Seller or labor unions under contract with Seller. If Buyer is in default under this Agreement or any of its contracts or obligations with Seller, Seller may, at its sole option and without prejudice to any of its other remedies: (i) postpone further deliveries or shipments until such default is remedied; or (ii) terminate any and all obligations under any contract or obligation and refuse further performance without any liability to Buyer.
- DELIVERY SITE CONDITIONS.** Seller reserves the right to determine whether the site for delivery requested by Buyer is suitable for such delivery and Seller may refuse to deliver to a site if Seller is of the opinion that delivery would be unsuitable or unsafe. Buyer shall be responsible for all costs and damages incurred where, in the sole opinion of Seller, adequate access for delivery cannot be obtained. Where delivery of products is to an unattended site, Seller will not be liable for any loss or damage to products, property or for unsigned delivery tickets.
- DELAYS.** If Seller is unable to complete delivery of any part of an order, Buyer shall accept such part of the order as Seller is able to deliver and Buyer shall pay for the part delivered pro rata at the same rate as the whole of the order agreed to be sold and on the same terms of payment. In the event Seller shall be delayed in or prevented from the performance of any act required under this Agreement, or it shall become commercially unreasonable to perform, by reason of governmental allocations, priorities, restrictions or regulations now or hereafter in effect, storm, flood, fire, earthquake or other Acts of God, war, terrorism, riot, insurrection or other civil disturbance, strikes, lockouts or other labor disturbances, shortages or allocation of raw materials, power outages or any other contingencies beyond Seller's reasonable control whether of a similar or dissimilar nature to the foregoing, Seller shall not be liable to Buyer for any damages incurred by Buyer as a result of any such delay or failure to perform.
- QUANTITIES.** The type and quantity of Materials delivered and detailed on the delivery ticket must be checked by Buyer at the time of delivery for compliance with Buyer's order. Variations between actual quantities of Materials delivered and those shown on the delivery ticket must be noted on all copies of the delivery ticket signed by Buyer. Invoice charges will be based on the quantities shown on the delivery ticket. Any claim for alleged short delivery of Materials must be made in accordance with Section 6 above, otherwise it will be deemed accepted by Buyer. In the absence of any claim Buyer shall be liable to pay for the full quantity of the Materials listed on the delivery ticket.
- CREDIT, CONDITION PRECEDENT TO SELLER'S OBLIGATION TO PERFORM, PERSONAL GUARANTEE.** Any and all credit terms of payment must be set forth in this Agreement. In the absence of any such credit terms, all deliveries under this Agreement are 'Collect on Delivery' (C.O.D.) or 'Cash In Advance' (C.I.A.). Buyer agrees upon request to furnish Seller such additional information (including financial statements) as is deemed necessary in the opinion of Seller to determine Buyer's financial condition. Seller's obligation to perform under this Agreement is subject to the condition precedent that Seller does not notify Buyer that Seller's Credit Department has disapproved any credit terms of payment specified herein.
- CREDIT.** Should Buyer's account be opened and approved with a credit amount, this amount, as amended from time to time, applies to the total purchases and can be exceeded at any given time only if approved by Seller's Credit Manager. Buyer acknowledges that Seller is relying upon the credit worthiness and financial ability of the guarantors, owner, or

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owners of Buyer, and Buyer, guarantors and such owner or owners shall be jointly and severally liable for all indebtedness of Buyer to Seller incurred under this Agreement.

- 15. PAYMENT.** Buyer shall make all payments due hereunder in United States currency and in accordance with the terms of this Agreement, without any right of setoff or retention and without regard to any agreement Buyer may have with other parties. If delivery is to be delayed either at the request of Buyer or through no fault of Seller past the delivery date specified in this Agreement, Buyer shall pay promptly in full for all Materials sold hereunder. If any payments are not received when due, Seller may, at its option, assess an additional charge equal to the lesser of eighteen percent (18%) per annum or the maximum rate permitted by law, for each thirty (30) day period of delay or part thereof to cover Seller's increased costs, or, in the alternative, upon notice to Buyer, cancel the portion of this Agreement which remains to be performed. If no due date is stated elsewhere in this Agreement, payment of all invoices is due by the 15th day of the month following invoicing. Until Seller has received full payment for the Materials sold under this Agreement Buyer shall not remove nor allow the removal of said Materials from the jobsite to which they were delivered, nor shall Buyer use or allow the use of any such Materials for any project other than the one for which they were purchased.
- 16. OFFSET AND/OR SETOFF.** Seller may exercise the right of set-off under this Agreement as to any sums owed by Seller and/or its affiliates under any other contract or agreement with Buyer and/or its affiliates.
- 17. PAST DUE ACCOUNTS.** Should Buyer fail to pay when due any amount payable to Seller under the terms of this Agreement or should Buyer's financial condition become impaired or unsatisfactory to Seller, in the Seller's sole opinion, Seller may, at its option, make demand upon Buyer for: (1) immediate payment of all amounts then due and owing to Seller under this Agreement; (2) payment in advance or at the time of delivery of all future amounts to become due under this Agreement, and or (3) such other assurances as Seller shall deem necessary to adequately assure Seller that Buyer will perform its obligations under this Agreement. Until Seller receives the same, Seller may suspend its performance of this Agreement, and if such assurances are not received from Buyer within a reasonable time not exceeding ten (10) days. Seller may, at its option, deem this Agreement to have been repudiated by Buyer. Buyer further agrees to pay Seller any and all collection fees, attorneys' fees, and court costs incurred by Seller in collecting any amounts due under this Agreement.
- 18. TAXES.** In the absence of an exemption or resale certificate acceptable to Seller and to the respective taxing authority, all federal, state and local taxes, assessments, fees, duties and charges levied by reason of this Agreement are in addition to the prices quoted in each applicable Quotation and shall be paid by Buyer.
- 19. TITLE & RISK OF LOSS.** Title and risk of loss to the Materials shall transfer to the Buyer FOB Shipping Point or upon payment, whichever occurs earlier, and Buyer hereby grants Seller a first priority security interest in all such Materials until such time as Seller is paid in full all amounts due under this Agreement. Buyer further agrees to execute any and all documents that may be required for Seller to perfect such security interest.
- 20. INSURANCE.** To the extent required by law, Seller will procure insurance coverage for itself and its employees or, if no such requirement exists, in an amount Seller deems appropriate. Notwithstanding any request in any bid documents, purchase order or any contract documents to the contrary, Seller will not provide a waiver of subrogation clause nor additional insured status for any party under any circumstances, nor shall Seller's insurance be primary and non-contributory.
- 21. MODIFICATION OF TERMS.** No employee or agents of Seller has the authority to make any statement, including restricting or modifying or otherwise concerning the existence or effect of any of these Standard Terms and Conditions or of any warranty or guarantee and no such employee or agent making any such statements shall be acting on behalf of or with the consent or agreement of Seller. These conditions may only be altered or varied in writing signed by a Seller Credit Manager, General Manager or Regional Manager and no other employee nor any other person has the authority to alter or vary any or all of these terms and conditions.
- 22. ASSIGNMENT.** Buyer shall not assign this Agreement or any interest herein without the prior written consent of Seller, and any attempted assignment, whether by operation of law or otherwise, shall be void without such prior written consent.
- 23. NOTICE.** Any notice required to be sent to Seller shall be in writing and sent by Certified Mail, postage prepaid, to the Seller office set forth on this Quotation, with a copy to Seller c/o Rinker Materials, P. O. Box 24636, West Palm Beach, FL 33416-4636.
- 24. SEVERABILITY.** If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated. The parties agree that each term and provision of this Agreement shall be construed according to its fair meaning and not strictly for or against any Party.
- 25. VENUE AND CHOICE OF LAW.** The parties hereto agree that venue for any action brought for the breach of or the enforcement of this Agreement will lie in the county where Seller chooses or where Materials were purchased. This Agreement shall be governed by and shall be construed in accordance with the laws of the State of Florida, without regard to its conflicts of law provisions. Any and all actions brought by Buyer under this Agreement shall be brought within one (1) year of the date of delivery of the Materials with respect to which the action relates. AS A MATERIAL INDUCEMENT TO SELLER TO ENTER INTO THIS AGREEMENT, BUYER WAIVES THE RIGHT TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT.
- 26. ENTIRE AGREEMENT.** This Agreement sets forth the sole and entire agreement between the parties with regard to the subject matter hereof and supersedes any and all prior or contemporaneous oral or written agreements between the parties regarding the same. No delivery of any Materials shall be made until Buyer returns a signed copy of this Agreement. Facsimiles, copies or other reproductions of this Agreement shall have the same effect as an original thereof.
- 27. WAIVER.** Seller may, in its sole discretion, permit Buyer to remedy any default under this Agreement without waiving the default so remedied or any other subsequent or prior default by Buyer. Buyer waives notice of default of this Agreement and waives presentment, demand, protest and notice of dishonor as to any instrument.
- 28. MISCELLANEOUS.** Buyer consents to Seller sending information to Buyer regarding Seller's products and prices at any time by fax to any fax number provided by Buyer, other electronic means or otherwise.
- 29. QUOTATION TERMS AND CONDITIONS.**
 - A. PRICES** Unless stated otherwise herein, prices for the Materials quoted are subject to material availability at the time of Quotation and shall remain firm for a period of thirty (30) days after the date of the Quotation; thereafter, prices for the Materials quoted are subject to change by Seller. Prices quoted are based on minimum truckload lots and are subject to increase should Buyer request delivery in lots smaller than truckload. Prices are applicable only to the job quoted, are available only to the Buyer specifically named herein, and are only for the quantities stated herein.
 - B. TESTS.** Seller reserves the right to levy an additional charge on Buyer for any tests not required by project plans and specifications provided by Buyer to Seller at the time of Quotation that Buyer may require to be performed on the Materials sold under this Agreement. Failure of Buyer to witness any tests shall be deemed a waiver by Buyer of its right to do so and of any right to require repetition of such tests, and Buyer shall be deemed to have accepted any such test results as sufficient to meet its specifications.
 - C. DELIVERY DATE.** In the absence of a specific delivery date on this Quotation, Seller will commence delivery of the Materials on a date and at a rate mutually agreed upon by both Seller and Buyer. Unless otherwise set forth herein, Buyer shall perform unloading of the Materials and any special fittings, both at its sole expense. Seller reserves the right to charge Buyer at the applicable rate for any waiting time at the jobsite in excess of one (1) hour.
 - D. RETURNS.** Standard Materials sold under this Agreement may be returned for credit only with Seller's prior written consent and only if, in Seller's sole opinion, the Materials to be returned are in resaleable condition. Seller will deduct from any such credit all loading and unloading costs, and any costs of repair and delivery costs to and from Buyer's jobsite that were paid by Seller. Custom-designed and special items of other than normal and standard design regularly sold by Seller cannot be returned.
 - E. ACCEPTANCE.** If Buyer does not accept this Quotation by an authorized signature on the Quotation form during the time period set forth in Section A above and Seller ships such Material upon Buyer's request, whether written or verbal, then Buyer's acceptance of such Materials shall operate as an acceptance of the prices and the Standard Terms and Conditions stated herein.