

General Service Agreement (GSA)

TCC Materials • Amcon Concrete Products • Borgert Products • Roberts Concrete Products, Inc.

“Customer” agrees to do business with Twin City Concrete Products Co., doing business as TCC Materials, and its affiliated companies (collectively referred to as “TCC”) pursuant to this General Services Agreement (GSA). Customer anticipates entering into further agreements whereby TCC will provide/sell to Customer certain materials, products, and services where the Customer has a contract with a third party to provide certain labor, materials products and services; Customer also agrees in advance to the following GSA Terms and Conditions of Sale for all such projects:

GSA Term: This GSA is effective retroactive as of January 1st in the current year and will remain in effect for ten years or until amended or cancelled in writing by TCC with notification to Customer or replaced with the next year’s GSA.

GSA Services: Materials, products and services provided by TCC to Customer include, but are not limited to: packaged mortar and concrete, concrete related materials, spec blended construction products, bagged goods, concrete masonry units, segmental retaining wall units, mastic and liquid products.

GSA Contracts: This GSA shall be considered part of all written price quotations, price sheets, contractor pricing agreements, specific project agreements, and any other agreements between TCC and Customer, including TCC’s policies and procedures, during the Term of this GSA; to the extent the terms of the price quotations, price sheets, contractor pricing agreements, specific project agreements, and any other agreements or contracts between TCC and Customer (“Contracts”), including TCC’s policies and procedures, conflict with the terms of this GSA, the terms of this GSA take precedence.

All sales made by TCC are subject to the terms and conditions set out in this GSA. Should Customer receive material, product or services pursuant to a specific quote or price sheet, Customer shall be deemed to have accepted the quote or price sheet as well as all of the terms and conditions of this GSA as stated herein; to the extent the terms of the quote conflicts with the terms of this GSA, the terms of this GSA take precedence.

1. Any Contract between TCC and Customer shall include in its entirety the terms of this GSA. The terms and conditions of this GSA shall govern and control as between this GSA and any other Contract or form. This GSA supersedes all previous communication, representations, or agreements, either oral or written, between the parties hereto. Any Contract between TCC and Customer shall not be affected or modified by Customer’s purchase order forms or other documents containing terms different from or in addition to those contained herein. Any modification, amendment or change to the terms of this GSA must be agreed to in writing, signed by both parties, specifically referring to this GSA and any other applicable Contract between TCC and Customer.
2. Warranties, Warnings, Remedies and Limitations:
 - (a) TCC warrants to Customer that, at the time of delivery, the goods sold will conform substantially to the description on the face of the specific quotation. If a substitution or “or equal” approval is included the Customer is fully responsible for obtaining all necessary approvals. TCC’s liability and Customer’s remedy under this warranty are limited at TCC’s discretion to 1) replacement of product ONLY which is shown to TCC’s reasonable satisfaction to have been non-conforming; or 2) a refund of the purchase price; or, 3) if not paid, to a credit in the amount of the purchase price. In no event shall TCC be responsible for incidental or consequential damages of any kind.
 - (b) TCC warrants to Customer that it will convey good title to the goods sold hereunder.
 - (c) It is the responsibility of the customer to make product and color choices and prepare a mock-up wall composed of the final products (masonry units and/ or mortar) and washing of wall prior to commencing construction. This sample will be maintained throughout construction project to reference back to with any color concerns.
 - (d) TCC shall not be responsible for, or pay, any charges or costs incurred for inspection, engineering or testing that may be requested by or on behalf of Customer.
 - (e) Sawing or grinding of concrete masonry units may result in the release of dust particles which could cause minor eye or nose irritation if proper protective equipment is not in place. The use of an approved respirator and tight-fitting goggles is recommended when sawing or grinding operations are in process. ACUTE: cause minor irritation of the eye or nose. CHRONIC: result in lung disease if exposed to excessive amounts for prolonged periods.
 - (f) Freshly mixed cement, mortars, grout or concrete may cause injuries, including burns, to skin and eyes. Avoid contact with skin and wash exposed areas with water.
 - (g) **THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE GIVEN AND ACCEPTED IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE UNIFORM COMMERCIAL CODE (“UCC”) WARRANTY OF MERCHANTABILITY AND THE UCC WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. THE REMEDIES OF CUSTOMER FOR ANY BREACH OF WARRANTY SHALL BE LIMITED TO THOSE PROVIDED HEREIN. NO AGREEMENT VARYING OR EXTENDING THE FOREGOING WARRANTIES, REMEDIES OR LIMITATIONS WILL BE BINDING UPON TCC UNLESS IN WRITING, SIGNED BY A DULY AUTHORIZED OFFICER OF TCC.**
3. Safe, hazard-free approaches for TCC vehicles at jobsite are to be provided by Customer. TCC is not liable for any damage incurred if Customer requests that TCC’s vehicles move past the curb line or right of way limits. Customer shall pay all fees and costs in repairing damages to the TCC’s vehicle and all damages and injuries to third parties or other property.
4. TCC is not responsible for strikes, lockouts, fires, accidents, and other causes, natural or otherwise, beyond its control which delay or cancel the delivery of masonry units and products.
5. TCC observes New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Eve Day, and Christmas Day as holidays, and plants are closed. Masonry units and products delivered on the above days will require an additional charge for the increased labor costs.
6. Specifications: Masonry units shipped under this quotation shall generally conform to the current American Society for Testing Materials (ASTM) Standard Specification C90 unless otherwise specified in writing by Customer.
7. All custom packaged products/custom color products not picked up after 30 days from production date will be invoiced and disposed of.

8. **Color Disclaimer:** The small amount of pigment in the mixes with less than 2% color can be greatly affected by raw cement color, field conditions, and type of masonry unit being laid. For best results, we recommend using/specifying colored mortars with 2% color or greater. By acceptance of products on the jobsite purchaser and/or architect have been duly advised that colored mortars, grouts, and concrete mixes with less than 2% pigment can produce inconsistent colors and that TCC Materials shall not be held accountable if such an inconsistency occurs due to the low percentage of color specified in the mix. Because of the difficulty in ascertaining and measuring damages hereunder, it is agreed that seller's liability to the buyer at no point for any particular project shall exceed the total purchase price of said product.
9. **Prompt notification of nonconformity:** Customer shall inspect the goods immediately upon arrival and shall within five days of delivery acceptance give written notice to TCC of any claim that the goods do not conform with the terms of the contract. If customer fails to give such notice, the goods shall be deemed to conform within the terms of the contract and the customer shall be bound to accept and pay for the goods in accordance with the terms of the contract.
10. **Prices quoted may escalate and are subject to increase to account for any actual increases in the cost to TCC of aggregate, cement, admixtures, fuel or other commodities from the date of this quotation to the date of delivery.** Prices are quoted by projected project volume. Additional units may be ordered but may be at a higher price. In the event of a change order or cancellation by customer, Customer shall pay TCC an amount equal to the stated purchase price for all units manufactured by TCC prior to receipt of the change order or cancellation and not accepted by the customer unless such change order or cancellation is received by TCC two weeks prior to scheduled manufacturing date.
11. If it becomes necessary for TCC to institute a surcharge due to commodity price increases, supply chain costs, or other costs or fees, the surcharge will be assessed as an add-on to the price of the masonry units and products.
12. TCC's Safety Data Sheet (SDS) is available to Customer on request. Customer is solely responsible for supplying, and shall supply, all relevant SDS information to its employees.
13. If a dispute arises between Customer and TCC regarding any labor, materials, products and services TCC provides to Customer, a dispute regarding this GSA, or a dispute regarding any Contract, TCC may elect at its sole option, and the customer will agree, to submit the dispute to arbitration under the Construction Industry Rules of the American Arbitration Association in Minneapolis, Minnesota. Under no circumstances may customer withhold from timely payment any amount in excess of the bona fide amount under dispute.
14. If TCC elects to bring legal action to collect any past due amount, to enforce any provisions of this GSA, or to enforce any provisions of any Contract, or, Customer shall pay all collection costs including, but not limited to, arbitration, mediation, court costs and reasonable attorney's fees. Customer further agrees to be subject to the jurisdiction and venue of the Dakota County District Court in Hastings, Minnesota.
15. **TCC is not responsible for securing loads of materials/merchandise on vehicles other than their own delivery vehicles. Customer shall, to the fullest extent permitted by applicable law, hold harmless, indemnify and defend TCC and its officers, directors, employees, insurers and subcontractors from and against any and all liability, claims, losses, costs and expenses arising out of or resulting from a) construction activities at the site, b) personal injuries resulting or arising out of construction activities at the site or c) liability or injuries resulting from securing loads in transit, Customer agrees to purchase insurance properly endorsed to cover this obligation to TCC, Customer's obligation to hold harmless, indemnify and defend TCC does not extend to any fault directly attributable to the actions of TCC.**
16. **Payment Terms:** SALES TAX is not included in the pricing and will be charged accordingly. Payment to Cemstone by Customer on its open credit accounts shall be made by the thirtieth (30th) day following each of Customer's orders and the resulting delivery of products and services by Cemstone. The Customer shall pay interest at a rate of 1.5% per month (an annual percentage rate of 18%) on the unpaid balances owed at the end of the previous billing cycle after subtracting any payments made and credits allowed during a billing cycle. The Customer shall pay a minimum fee of \$25.00 per credit transaction for failure to submit proper tax-exempt documentation prior to the start of the project.
 - a) Customers may pay via ACH debit and schedule payments on or before the due date. These transactions will be exempt from any processing fees.
 - b) If a customer, with an open line of credit, chooses to pay with a credit card after the invoices have been billed on Customer's account, a credit card processing fee of 2.45% will be added to the total of invoices being paid. Customers may choose Automatic Payment via credit card through the online bill pay system.
 - c) For C.O.D. orders processed by Cemstone Customer Service, the customer's credit card will be processed prior to the ticket being shipped and will be exempt from a credit card processing fee.
17. **ENERGY & FREIGHT SURCHARGE POLICY AND INDEX:** TCC uses the Midwest Diesel Fuel Price as listed on the US Department Energy website <https://www.eia.gov/petroleum/gasdiesel/> to determine the Energy & Freight Surcharge, per the table below. Energy Surcharge covers various expenses to manufacture products including variable energy charges, inbound raw material delivery expenses, etc. Freight Surcharge Rates are based on one-way, loaded delivery rates.

US DOE Price	Energy Surcharge	Freight Surcharge				
		0-60 miles (per load)	61-90 mi (per load)	91-120 mi (per load)	121-150 mi (per load)	Over 150 mi - (per loaded mi)
\$3.50-\$3.74	\$1.00	\$ 30.00	\$ 55.00	\$ 70.00	\$ 90.00	\$ 0.65
\$3.75-\$3.99	\$1.50	\$ 35.00	\$ 60.00	\$ 75.00	\$ 95.00	\$ 0.70
\$4.00-\$4.49	\$2.00	\$ 40.00	\$ 65.00	\$ 85.00	\$ 105.00	\$ 0.80
\$4.50-\$4.99	\$3.00	\$ 45.00	\$ 70.00	\$ 95.00	\$ 120.00	\$ 0.90
\$5.00-\$5.49	\$4.00	\$ 50.00	\$ 75.00	\$ 105.00	\$ 135.00	\$ 1.00
\$5.50-\$5.99	\$5.00	\$ 55.00	\$ 80.00	\$ 115.00	\$ 150.00	\$ 1.10
\$6.00-\$6.49	\$6.00	\$ 60.00	\$ 90.00	\$ 125.00	\$ 165.00	\$ 1.20
\$6.50-\$7.00	\$7.00	\$ 65.00	\$ 100.00	\$ 135.00	\$ 180.00	\$ 1.30

18. **Purchase Order (PO):** All purchase orders either from Customer or from TCC purchasing goods or services from a vendor are subject to this GSA. If TCC is not the purchaser in the transaction, paragraphs 1 through 16 above shall apply regardless of any terms Customer might provide in Customer's purchase orders. If TCC is the purchaser under a TCC purchase order ("Purchase Order") to a vendor, the following terms and conditions apply to such transaction notwithstanding the vendor's terms and conditions: 1. The entity or seller (collectively, the "Vendor") selling goods or services to TCC hereby warrants that the purchased goods will strictly comply with the Purchase Order, 2. All items furnished by Vendor are guaranteed by Vendor against all defects which may develop, 3. Vendor warrants and guarantees to TCC that the title to the purchased goods shall be proper, and free from any security interest, lien, or other encumbrance, 4. The risk of loss or damage to the purchased items is retained by Vendor until delivery is made to the destination designated by TCC and taken by TCC, 5. The price set forth in the Purchase Order shall be firm and Vendor shall not make any adjustments to the price or charge any additional costs or fees without the express prior written consent of TCC, 6. Time is of the essence, 7. Vendor shall be fully responsible for the shipment and delivery of all goods set forth in the Purchase Order, and for their unloading, installation, erection, and start-up if indicated or customary, 8. Vendor is to pay all state, federal, municipal, and other taxes and assume all responsibility for collection and remittance of taxes, 9. To the fullest extent permitted by law, Vendor agrees to indemnify, defend, and hold harmless TCC, its affiliates and its subsidiaries, employees, members, and agents from and against all losses, claims, demands, liability for injuries or loss to persons or property, fines, expenses, including attorney's fees, or other damages, arising out of or resulting from (including transportation, delivery, loading or unloading of) the Purchase Order or the goods purchased by TCC, 10. Vendor, by its furnishing all or part of the goods ordered in TCC's Purchase Order, hereby assents to the terms and conditions set forth in TCC's Purchase Order and this paragraph 17 and no other terms or conditions shall apply unless expressly agreed to in writing by TCC.
19. TCC and Customer agree and consent to the use of electronic signatures solely for the purposes of executing the GSA or any related transactional document. Such electronic signature shall be deemed to have the same full and binding effect as a handwritten signature.

NOTE: The Energy & Freight Surcharge applies in addition to any other applicable service charges

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