

## **P. W. Gillibrand Company, Inc. Terms and Conditions of Sale**

The sale of materials, goods or services ("Goods") supplied by P.W. Gillibrand Company, Inc. and its subsidiaries and/or affiliates (PWG) are subject to these terms and conditions ("Agreement") regardless of other or additional terms or conditions that conflict with or contradict this Agreement in any purchase order, document or other communication ("Order"). Preprinted terms and conditions on any document of customer ("Customer") (for example: Order or confirmations) that are in conflict to this Agreement are specifically objected to and expressly rejected by PWG and PWG's failure to object to conflicting or additional terms will not change or add to the terms of this Agreement. All sales are final. By purchasing the Goods, Customer confirms that the terms and conditions apply to the Customer's purchase of the Goods, regardless of the form or terms of Customer's order. Goods cannot be returned without PWG's prior written approval.

**QUOTATIONS AND ORDERS:** All written quotations shall automatically expire on the expiration date listed on the quotation and are subject to withdrawal by notice within the period. Oral quotations shall expire in thirty (30) days. Any Order received by PWG is subject to credit approval and may be cancelled if the Customer's credit standing is not satisfactory to PWG.

**PRICES AND PAYMENT TERMS:** All prices quoted and/or published are net F.O.B. plant and unless otherwise stated, do not include freight or other destination charges such as demurrage or detention. Pricing of aggregate assumes normal residual moisture content, including free moisture in the case of washed Goods. Unless otherwise stated, prices do not include federal, state, municipal, local or other taxes, charges, levies or duties. PWG will bill as a separate invoice line and Customer agrees to reimburse/pay PWG for such applicable charges. Unless otherwise specified in the quotation, the terms of payment are net thirty (30) from date of invoice. If Customer fails to fulfill the terms of payment of any invoice or if the financial responsibility of Customer becomes impaired or unsatisfactory to PWG, PWG reserves the right to change terms of payment and/or defer or discontinue further shipments, until past due payments are made and satisfactory assurances of customer's credit standing are received.

**DELIVERY TERMS:** Estimates as to time of delivery are estimates based on conditions at the time of quotation and may not necessarily reflect shipments at time of order. Goods are shipped F.O.B. point of origin (plant). Title to and risk of loss shall pass upon PWG's delivery of Goods to carrier. If freight charges are added to the invoice, Goods shall be shipped "F.O.B. Origin Prepay and Add." PWG shall not be liable for any loss, damage or expense due to delays in shipment or delivery and Customer shall file claims for loss and damaged Goods with the transportation company. PWG will not overload any trucks or containers and shall not be liable for overweight charges or fines, minimum charges for light-loaded trucks or demurrage charges.

**UNLOADING RELEASE:** PWG is not responsible for damage inside curb or property line. Customer shall provide suitable roadways or approaches to points of delivery. In consideration of the delivery of materials to a place designated by Customer, Customer shall release, indemnify and hold harmless PWG and its agents and employees from all liability and claims for damage to sidewalks, driveways, curbs,

roadways, buildings, walls and vegetation or other property resulting from said delivery. Customer assumes full responsibility for damage to real and personal property.

**ACCEPTANCE OF GOODS:**All testing shall be performed at PWG's plant site(s) and Goods shall be accepted at the shipping plant. Upon Customer's receipt of shipment, Customer shall immediately inspect Goods. Failure to make a claim as to defective Goods within ten days of invoice date shall constitute an unqualified acceptance of such Goods and a waiver by Customer of all claims of any kind with respect thereto. PWG reserves the right to inspect allegedly defective material before final deposition of a claim is made. Goods may not be returned to PWG or disposed of by buyer except by prior permission of an authorized official of PWG.

**WARRANTY:** PWG warrants that Goods meet the published specifications at the time of shipment. Architectural material is subject to quarry variation. PWG HEREBY EXCLUDES ANY AND ALL WARRANTIES OF MERCHANTABILITY AND ANY AND ALL WARRANTIES OF FITNESS FOR ANY PURPOSE, AND ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED. In addition, PWG makes no warranty whatsoever with respect to whether any aggregate is innocuous or deleterious, contains non-reactive aggregate, or whether any of said Goods are in conformance with any plans, specifications, regulations, ordinances, statutes, or other standards applicable to Customer's job or said Goods as used by Customer. No person, agent, representative or dealer is authorized to give any warranties on behalf of PWG, nor to assume for PWG any other liability in connection with any of PWG's Goods. PWG shall not be liable under any circumstances for consequential or incidental damages. Liability shall be limited to the replacement of Goods only. To the extent permitted by law, Customer hereby agrees to indemnify, hold harmless and defend PWG from any and all claims, demands, liabilities, judgments, suits, damages, costs and expenses, including attorneys' fees, arising from, or alleged to arise from, personal injury, including death, and property damage, including loss of use thereof, due to the negligent act, error or omission of Customer, whether the act, error, omission, or negligence of PWG contributed thereto, including, but not limited to any claims arising from the handling of crystalline silica by the Customer heretofore or hereinafter sold by PWG to Customer whether used within or outside the normal scope of the Customer's business, and any claims of Customer's employees or employees of Customer's customers that any of them sustained bodily injury due to silicosis.

**HEALTH SAFETY AND ENVIRONMENTAL:** PWG shall make available to Customer its current MSDS concerning the Goods. Customer acknowledges that it is aware of the potential health risks associated with the improper handling, use, transport, storing and disposal of the Goods as well as the need for utilization of appropriate respiratory protection equipment. Customer further acknowledges that is knowledgeable concerning the proper and recommended practices necessary to safely handle, use, transport, store and dispose of the Goods. Customer further acknowledges and agrees to comply with all safety and health related governmental and/or industry rules, regulations, guidelines, and standards applicable to handling, use, transport, storing and disposal of Goods.

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