

# STANDARD TERMS AND CONDITIONS

1. **AGREEMENT.** Buyer ("Buyer") and Hydro Conduit, LLC d/b/a Rinker Materials Concrete Pipe Division ("Seller") acknowledge, understand and agree that the Buyer's Credit Application, if any, the Quotation, if any, the Order Acknowledgment (the "Acknowledgment"), if any, the specifications stated in the Acknowledgment (or the Quotation if there is no Acknowledgment) and these Standard Terms and Conditions (collectively, the "Agreement") shall collectively form the sole and entire agreement by, under and pursuant to which Buyer shall purchase from Seller, and Seller shall manufacture and sell to Buyer, the materials described in the Acknowledgment (or the Quotation if there is no Acknowledgment) (the "Materials"). This Agreement supersedes any and all prior or contemporaneous oral or written agreements between the parties regarding the same.

Any different or additional terms or conditions contained in Buyer's acceptance of the Quotation and/or the Acknowledgment, or any document or instrument constituting this Agreement, 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 and until any of the same are in writing and signed by Seller's and Buyer's authorized representatives. Notwithstanding any subsequent changes made to the Quotation or the Acknowledgment, these Standard Terms and Conditions (in the form originally referred to attached to the Quotation or the Acknowledgment, as the case maybe) shall continue in full and unvaried force and effect except to the extent modified by written agreement signed by Seller's and Buyer's authorized representatives.

Buyer's signature to the Quotation and/or the Acknowledgment, direction to manufacture, or acceptance of delivery of the Materials, shall be deemed an acceptance of these Standard Terms and Conditions. Seller may elect not to manufacture or deliver any Materials until Buyer returns a signed copy of the Quotation and/or the Acknowledgment.

2. **DELIVERY AND ACCEPTANCE.** Delivery of the Materials shall be made pursuant to a delivery schedule agreed to by Buyer and Seller. Seller shall not be deemed to have failed to comply with such schedule for any delay where such delay is caused by acts of God, acts of civil or military authority, epidemics, war, riot or any other reason or cause beyond Seller's control. In connection with any such delay, the agreed delivery date(s) shall be extended for a period equal to the duration of the delay.

Seller's responsibility for delivery shall cease FOB shipping point or, if Seller agrees to deliver FOB jobsite, at the curbside or street or frontage of the address of delivery. Seller reserves the right to charge Buyer at the applicable rate for any waiting time at the jobsite in excess of one (1) hour.

The type and quantity of Materials delivered and detailed on the delivery ticket must be inspected by Buyer at the time of delivery for compliance with the Agreement. 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.

Title and risk of loss of each of the Materials shall remain with Seller until delivery of such Materials to the delivery location specified in this Agreement. 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.

Standard Materials sold under this Agreement may be returned by Buyer for credit only with Seller's prior written consent and only if, in Seller's sole opinion, the Materials to be returned are in re-saleable condition. Seller will deduct from any such credit any and all restocking fees, loading and unloading costs and any costs of repair and delivery costs to and from Buyer's jobsite. Custom-designed and special Materials of other than normal and standard design regularly sold by Seller may not be returned. The Buyer will be liable to pay for any custom-designed or special Materials not taken by the Buyer.

3. **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 Buyer's guidance only, and Buyer agrees to rely solely on its own architects, engineers and other technical expert.

4. **PRICING AND PAYMENT.** Unless stated otherwise herein, prices for the Materials quoted are subject to material availability and shall remain firm for a period of thirty (30) days after the date of the Acknowledgment (or the Quotation if there is no Acknowledgment); thereafter, prices for the Materials 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 project specified in the Acknowledgment (or the Quotation if there is no Acknowledgment), are available only to the Buyer, and are only for the quantities stated the Acknowledgment (or the Quotation if there is no Acknowledgment).

Payment terms are net 10th prox., without retention or set-off. Seller will submit invoices to Buyer upon each delivery of Materials pursuant the Agreement. Buyer's obligation to pay Supplier will not be delayed or conditioned upon installation of the Materials furnished pursuant to the Agreement, Buyer's receipt of payment from any third-party, or any disputes between Buyer and the Owner.

Past due amounts will accrue interest at the rate of eighteen percent (18%) per annum or the maximum rate allowed by law, whichever is less. Should Buyer fail to pay when due any amount payable to Seller under the terms of this Agreement, after ten (10) days written notice without cure, Seller may: (a) make demand upon Buyer for assurances of payment, including but not limited to, requesting immediate payments of all amounts then due and owing to Seller under this Agreement; and/or requesting payment in advance of delivery of all future amounts to become due under this Agreement; (b) suspend future deliveries; (c) file a claim of lien and, if applicable, a claim on bond; (d) terminate this Agreement; or (e) take such other actions as Seller determines are necessary to secure its right to payment.

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. Buyer 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.

5. **TAXES.** In the absence of an exemption or resale certificate reasonably 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 set forth in the Acknowledgment and shall be the sole responsibility of, and paid by, Buyer.

6. **LIMITED WARRANTY AND LIABILITY DISCLAIMER.** Seller warrants that the Materials sold under this Agreement shall conform to the specifications as described in the Acknowledgment (or the Quotation if there is no Acknowledgment) and shall be free from defects in manufacturing and workmanship provided Buyer provides written notice of any such non-conformance or defects to Seller within one (1) year from the date of delivery of the Materials. 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 defective or nonconforming Materials sold hereunder or to repair or to replace any defective or nonconforming Materials. Seller shall not be responsible for any removal or installation costs. THE FOREGOING WARRANTY IS IN LIEU OF AND EXCLUDES, AND SELLER HEREBY DISCLAIMS, AND BUYER HEREBY WAIVES, ALL OTHER WARRANTIES, WHETHER WRITTEN, VERBAL, EXPRESS OR IMPLIED, BY LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR HABITABILITY.

7. **LIMITATION OF LIABILITY.** Seller's liability on any claim for loss or damage arising from this Agreement, or the fabrication or sale of any of the Materials pursuant to this Agreement, 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 under this Agreement with regard to which such claim for loss or damage is made. Neither Seller nor Buyer will be liable to the other party, or any third party beneficiary, whether as a result of breach of contract, warranty, tort (including negligence and strict liability) or other grounds, for special, consequential, incidental, punitive (if allowed by law) or other indirect damages of any kind, including, but not limited to loss of data, loss of profits or revenue, loss of use of the Materials furnished by Seller pursuant to this Agreement or any associated product, cost of capital, cost of substitute products, facilities, services, downtime costs, or claims, or for liquidated damages (delay or otherwise) incurred by such party from any third party.

8. **INDEMNIFICATION.** To the fullest extent permitted by applicable law, each party (the "Indemnifying Party") agrees to indemnify, defend and hold harmless the other party and its affiliated companies along with its respective officers, directors, owners, employees and agents (collectively the "Indemnitees") from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including but not limited to reasonable attorney fees) of any person or entity, to the extent arising out of, any injury, death or destruction of property, but only to the extent caused by or arising from the negligent acts or omission of the Indemnify Party, it's employees, any subcontractor, supplier or person or entity over which it controls or exercise control over (collectively, "Claims"); provided, that the Indemnifying Party shall have no obligation to indemnify for any Claims to the extent caused by or arising from the gross negligence or willful misconduct of any Indemnitee and provided further that "Claims", for purposes hereof, shall not include damages, compensation or benefits payable under any insurance policies, workers' compensation acts, disability benefit acts, or other employees' benefit acts.

Seller shall indemnify, defend and hold harmless the Indemnitees from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including but not limited to reasonable attorney fees) to the extent arising from any claims made by third parties that the use or sale of the Materials infringes any United States patent covering the Materials. Provided, however, this paragraph will not apply in the event that the infringement results from use of the Materials in combination with other materials, goods, or manufacturing processes.

9. **ASSIGNMENT.** Neither party shall assign this Agreement or any interest herein without the prior written consent of the other party, and any attempted assignment, whether by operation of law or otherwise, shall be void without such prior written consent.

10. **NOTICE.** Any notice required to be sent to Seller shall be in writing and sent by Certified Mail, postage prepaid, to the Seller's office set forth on the Quotation and/or Acknowledgment, with a copy to Seller c/o Rinker Materials, 5 Concourse Parkway, Suite 1900, Atlanta, Georgia 30328, Attention: Legal Department. Any notice required to be sent to Buyer shall be in writing and sent by Certified Mail, postage prepaid, to the Buyer's office set forth on the Quotation and/or Acknowledgment.

11. **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.

12. **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 of the Project site described in the Acknowledgment (or the Quotation if there is no Acknowledgment). This Agreement shall be governed by and shall be construed in accordance with the laws of the state of the Project site described in the Acknowledgment (or the Quotation if there is no Acknowledgment), without regard to its conflicts of law provisions. AS A MATERIAL INDUCEMENT TO ENTER INTO THIS AGREEMENT, BOTH PARTIES WAIVE THE RIGHT TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT.

13. **WAIVER.** Failure or inability of either party to enforce any right hereunder shall not waive any right in respect to any other or future rights or occurrences