

Terms and Conditions

Soilworks, LLC

2450 South Gilbert Road, Suite 210, Chandler, Arizona 85286-1595 USA

I) TERMS AND CONDITIONS: - The following terms and conditions apply to the sale described by this invoice except to the extent superseded by the applicable written contract executed by Soilworks and Customer.

Buyer's execution of this order constitutes an offer to purchase. The sole manner of the acceptance of this order shall be by execution of a counterpart of this [order] by an authorized individual at the Seller's home office. The salesperson is not authorized to bind the company.

A) SOILWORKS COMMITMENTS TO CUSTOMER-

- 1) The products when shipped will meet Soilworks' Sales Specifications.
- 2) The products when shipped will be fit for the ordinary uses identified in Soilworks' current product literature.
- 3) Soilworks will convey good title to the products, free from any lawful security interest, lien or encumbrance.

B) CUSTOMER'S COMMITMENTS TO SOILWORKS - Customer acknowledges that it is responsible for the safe selection, unloading, handling, storage, use and disposal of products.

- 1) Customer warrants that it will:
 - (i) familiarize itself with the product information supplied by Soilworks at any time, including the MSDS for each product;
 - (ii) follow safe handling, use, selling, storage, transportation and disposal practices and ensure that all employees, contractors, agents and customers follow these practices, including such special practices as Customer's use of the products requires;
 - (iii) take the appropriate action to avoid spills or other dangers to persons, property or the environment.
 - (iv) indemnify Soilworks against any claim, loss, liability and expense (including reasonable attorney fees) on account of any damage to property or injury or death of persons (including Customer's employees) arising out of Customer's unloading, handling, storage, use, sale, or disposal of the products or the failure of Customer to comply with any of the obligations set forth in Section I.B;
 - (v) in any action against Soilworks for personal injury or death of Customer's employees, expressly waive, as to Soilworks, the exclusive defense under any Workers Compensation Act if the Customer failed to comply with any of the obligations set forth in Section I.B; and
 - (vi) comply with all federal, state, and local laws, rules and regulations concerning the transportation, storage, use, sale and disposal of products.
- 2) Customer warrants that it has used its own independent skill and expertise in connection with the selection and the use of the products and that it possesses skill and expertise in handling, storage, transportation, treatment, use and disposal of the products.
- 3) If Customer requests the use of any design, trademark, trade name or copyright, or if Soilworks makes special products for Customer, Customer agrees to indemnify Soilworks against any claim, loss, liability, and expense (including reasonable attorney fees) on account of the infringement or alleged infringement of any design, trademark, trade name, copyright or patent.
- 4) Customer will pay for the products on the terms described on the front of this invoice. Soilworks, or its assignee, may charge the maximum interest allowed by law on all overdue amounts. If payment is not made on time, or if Soilworks has reason to believe that Customer's financial responsibility is unsatisfactory, Soilworks may defer shipments, accelerate due dates on all amounts owed, and/or requires cash or other security. Customer agrees to pay all of Soilworks' collections cost (including reasonable attorney fees). Taxes may not be included in the prices quoted. Customer will pay all taxes and duties, except income taxes, that are increased or levied, now or in the future, in connection with the manufacture, sale, transportation or disposal of the product. If the transaction is subject to any such taxes, duties or any costs in connection therewith, whether imposed before or after payment of the invoice will be paid by Customer.

C) TITLE AND RISK OF LOSS - Title and risk of loss for all products sold by this invoice will pass to Customer upon delivery to the carrier at Soilworks' manufacturing facility.

D) TRANSPORTATION -

- 1) If Soilworks provides the transportation equipment or pays any of the freight charges, Soilworks will have the right to designate carriers and routings. When Customer is required to pay any freight charges, the charges will be those legally due and payable for the shipment.
- 2) Customer will unload and return all transportation equipment to carrier within the tariff or contract period free of charges. Soilworks may collect its standard charge for its equipment if held beyond Soilworks' allowable time.

- 3) If Soilworks' transportation equipment arrives at its destination in a damaged condition, Customer will immediately notify the carrier's agents and Soilworks. Customer is responsible for Soilworks' transportation equipment which is in its possession, and Customer will be liable to Soilworks for any damage or destruction thereto.

E) EXCLUSION OF ALL OTHER WARRANTIES AND LIMITATION OF LIABILITY

- 1) The commitments in section I.A are Soilworks' sole warranties with respect to the products, and are made expressly in lieu of and exclude any implied warranties of merchantability and fitness for a particular purpose and all other express or implied representations and warranties provided by statute or common law.
- 2) Soilworks will not be liable to pay special, consequential, punitive, exemplary or incidental damages. Customer's exclusive remedy for claims (including but not limited to breach of warranty, negligence, and strict liability) is limited to Customer having the option of replacement or repayment of the purchase price paid for the products which are the subject of the claim.
- 3) Customer has the sole responsibility of performing, interpreting, and applying the requisite soil and compaction analyses described more fully in the instructional materials accompanying the products. Customer acknowledges that such analyses must be performed prior to using the products and are necessary to ensure the products work properly. Soilworks assumes no responsibility for performing these analyses and/or Customer's interpretation and application of such analyses. Soilworks also makes no representations regarding the results and/or accuracy of such analyses.
- 4) Soilworks may, at Customer's request and Soilworks' discretion, send a representative to assist in the mixture of the products, or more specifically, the dilution, and proper delivery of the dilution, of the products. Should this occur, Customer acknowledges that the Soilworks representative is appearing solely in this capacity as a matter of customer service and that the proper ratio for diluting the products, and the products' resulting effectiveness, is based on the analyses referenced in paragraph E.3, for which Customer is solely responsible. In sending a representative to assist in the mixture of the products, Soilworks does not assume any liability or obligations for applying the products and/or the existing conditions of the soil, surface, or subsurface upon which the products are applied, including, but not limited to, soil compaction. Customer acknowledges that Soilworks is not responsible for analyzing and/or preparing the surface and/or subsurface upon which the products are applied and that Customer assumes any and all responsibility for such analyses and/or preparation. Customer further acknowledges that any representations by a Soilworks representative assisting in the mixture of the products do not affect or in any way alter the limitations and exclusions set forth above. Customer agrees to waive any and all claims against Soilworks related to any site visits from a Soilworks representative.

F) NOTICE OF CLAIMS - All claims by Customer will be deemed waived unless made in writing to Soilworks within 30 days of when Customer learns or reasonably should have learned about the claim.

G) SEVERABILITY - If any provision of this invoice is held invalid, such invalidity will not affect other provisions or applications of this invoice.

H) ENTIRE AGREEMENT - This document constitutes the complete and exclusive agreement between Soilworks and Customers concerning the products sold by the invoice unless the parties have executed an applicable written contract. Any additional or different terms are objected to and will not be binding unless expressly agreed to by Soilworks in writing.

I) CHOICE OF LAW - This invoice will be governed by Arizona law without regard to the rules governing conflict of laws.

J) ASSIGNMENT - At Soilworks' option, any obligation under this invoice may be performed by Soilworks or any of its affiliates. Any deliveries made under this condition may be invoiced by such affiliate and will constitute performance of this invoice by Soilworks. Nothing hereunder is transferable or assignable by Customer without Soilworks' prior written consent.

II) SPECIAL CONDITIONS FOR CROSS BORDER SALES - The following special conditions will apply for cross-border sales:

A) BREAKAGE OR LOSS IN TRANSIT - In case of breakage or loss in transit, buyer shall have notation of same made on expense bill before paying freight. All claims must be made within 3 days after receipt of products at port of entry.

B) TITLE AND RISK OF LOSS - The legal title to the products specified in this invoice will pass to the Customer at the point at which risk of loss passes under current Incoterms, regardless of any contrary interpretation or any trade term which governs the transfer of risk of loss. In the case of overland deliveries to Canada and Mexico, anything contained in Incoterms to the contrary notwithstanding, when the terms delivered at Frontier ("DAF") is used, title and risk of loss to the products will be deemed to pass to the Customer outside the United States upon the products crossing the border of the United States and arriving in the territory of the nation where the products are destined, but prior to customers clearance at said nation.