

## **GENERAL TERMS AND CONDITIONS FOR THE SALE OF GOODS AND SERVICES**

### **1. APPLICABILITY.**

These Standard Terms and Conditions (these "**Terms**") shall apply to all Products and services ("**Services**") provided by Eastern Vault Company, Inc. and any of its subsidiaries or affiliates, including without limitation Dellinger Precast, Inc. (collectively, "**Seller**") and may be changed from time to time at Seller's sole discretion. As used herein, the term "**Products**" shall mean an item or items offered for sale by Seller, and services associated therewith. These Terms and any written quotation, confirmation of sale, or invoice issued by Seller comprise the entire agreement between Seller and its Customers, and supersede all prior or contemporaneous communications, understandings, agreements, negotiations, representations and warranties. As used herein, the term "Customer or Customers" shall mean a person, organization, or entity that purchases Products from Seller. These Terms prevail over any of Customer's general terms and conditions of purchase regardless of whether or when Customer has submitted its purchase order or such terms. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Products covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

### **2. PRICE AND PAYMENT.**

The Customer shall purchase the Products and Services from Seller at the price (the "**Price**") quoted to the Customer; provided, however that Seller may increase the Price in the event of an increase in Seller's costs to produce the Products. Unless otherwise stated in these Terms or any quote provided by Seller, prices quoted shall be good for a period of thirty days. Prices are based upon estimated quantities. If quantities vary more than ten percent (10%) from estimated quantities, Prices are subject to adjustment by Seller corresponding with any resulting increase in Seller's costs. All funds paid to Customer from a third party, for the Products or any portion of the Products sold to Customer hereunder shall be deemed in trust for the payment of all Products, and such funds shall not become the property of Customer nor may any portion of such funds be used by Customer for any purpose, until full payment is made for all Products sold by Seller to Customer hereunder. Unless otherwise set forth in a writing signed by both Seller and Customer, payment terms are net 30 days from date of purchase, unless otherwise stated or agreed upon with customer or sooner as may be required by applicable law. Late payments shall accrue a finance charge of one and one-half percent (1½%) per month or the highest rate allowable by law, whichever is less. Seller shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, arising out of Customer's failure to make all payments due in a timely manner. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Products and performance of any Services if the Customer fails to pay any amounts when due hereunder. The Customer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

### **3. TAXES.**

Unless specifically set forth in a writing signed by Seller, the Price does not include applicable taxes; Customer is responsible for payment of all taxes and duties of any nature whatsoever, including any local, state and federal taxes, except for any taxes based on Seller's income. Customer agrees to indemnify and hold Seller harmless from any and all costs and expenses associated with any levy or attempted levy of any such taxes on Seller.

### **4. SUSPENSION; TERMINATION.**

In addition to any other remedies available to Seller, Seller may suspend or terminate any order for Products with immediate effect upon written notice to Customer, if Customer: (i) fails to pay any amount when due for Products (or any other agreement Customer has with Seller); (ii) has not otherwise performed or complied with any of these Terms (or complied with the terms of any other agreement Customer has with Seller); (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors; or (iv) exhibits other adverse credit conditions that are unsatisfactory to Seller, as determined by Seller in its sole discretion.

### **5. SHIPMENT; DELIVERY CONDITIONS.**

(a) Unless otherwise agreed in a writing signed by Seller, all Products purchased by Customer shall be FOB Seller's plant sourcing the Product. Whether FOB Seller's plant or FOB Destination, the Customer shall take delivery of the Products within a reasonable period of time after Seller's notice that the Products have been delivered or made available for pickup and the Customer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Products. If FOB Destination, (i) Products shall be delivered using Seller's standard methods for packaging and shipping such Products, (ii) Seller shall not be liable for any delays, loss, or damage in transit, and (iii) the Customer agrees to provide suitable roadways or approaches to points of delivery. Seller reserves the right to cease deliveries if Seller concludes, in its sole opinion, that the roadways or approaches are unsatisfactory. Products will be delivered/made available for pickup within a reasonable time after the receipt of Customer's purchase order, subject to availability of finished Products. In the event Customer orders delivery beyond curb line, Customer assumes, to the maximum extent allowed by law, liability for damages to sidewalks, driveways or other property, and / or loss and expense incurred as a result of such deliveries. Prices quoted are based on prompt unloading of trucks, and in case of repeated delays in unloading, deliveries may be discontinued until conditions are corrected. Delays of more than 60 minutes are subject to an additional charge. If for any reason the Customer fails to accept delivery of any of the Products on the date fixed pursuant to Seller's notice that the Products are available for pickup or, as applicable, have been delivered, or if Seller is unable to deliver the Products on the agreed upon date because the Customer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the

Products shall pass to the Customer; (ii) the Products shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Products until the Customer picks them up, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

(b) Seller shall use reasonable efforts to meet any performance dates to render the Services specified by Seller, and any such dates shall be estimates only.

(c) With respect to the Services, the Customer shall (i) cooperate with Seller in all matters relating to the Services and provide such access to the Customer's premises, and such office accommodation and other facilities as may reasonably be requested by Seller, for the purposes of performing the Services; (ii) respond promptly to any Seller request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for Seller to perform Services in accordance with the requirements of this Agreement; (iii) provide such customer materials or information as Seller may request to carry out the Services in a timely manner and ensure that such customer materials or information are complete and accurate in all material respects; and (iv) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.

## **6. TITLE AND RISK OF LOSS.**

In the case of FOB plant sales, title and risk of loss passes to Customer at the time the Products are loaded into Customer's, or Customer's agents', vehicles, barges or other modes of transport; or, in the case of FOB Destination, upon delivery of the Products at Customer's location. As collateral security for the payment of the purchase price of the Products, the Customer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of the Customer in, to and under the Products, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Uniform Commercial Code of the State of incorporation of the applicable selling entity.

## **7. WARRANTY.**

Seller warrants that for a period of one (1) year from the delivery date (the "**Warranty Period**"), the Products will conform to the specifications provided to Seller prior to manufacture or shipment of the Products. Seller warrants to the Customer that it shall perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement. **EXCEPT FOR THE WARRANTY SET FORTH IN THIS SECTION 7, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE PRODUCTS OR SERVICES, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE**

**OF TRADE OR OTHERWISE.** Products manufactured by a third party ("**Third Party Product**") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Products. Third Party Products are not covered by this warranty. For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.** Seller shall not be liable for a breach of the warranty set forth in this Section 7 unless: (i) the Customer gives written notice of the defect, reasonably described, to Seller within thirty (30) days of the time when the Customer discovers or ought to have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Products and the Customer (if requested to do so by Seller) returns such Products to Seller's place of business at Seller's cost for the examination to take place there; and (iii) Seller reasonably verifies the Customer's claim that the Products/Services are defective. The Seller shall not be liable for a breach of the warranty set forth this Section 7 if: (i) the Customer makes any further use of such Products after giving such notice; (ii) the defect arises because the Customer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products; (iii) the Customer alters or repairs such Products without the prior written consent of Seller; or (iv) the Customer fails to pay any undisputed invoices when due. With respect to any Products that Seller determines breach the foregoing warranty, during the Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such Products (or the defective part) or (ii) credit or refund the price of such Products at the pro rata contract rate provided that, if Seller so requests, the Customer shall, at Seller's expense, return such Products to Seller. With respect to any Services subject to a claim under the warranty set forth herein, Seller shall, in its sole discretion, (i) repair or re-perform the applicable Services or (ii) credit or refund the price of such Services at the pro rata contract rate. **THE REMEDIES SET FORTH IN THIS SECTION 7 SHALL BE THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH HEREIN.**

#### **8. LIMITATION OF LIABILITY.**

**(A) IN NO EVENT SHALL SELLER BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

**(B) IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR**

**RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE PRODUCTS AND SERVICES THAT ARE THE SUBJECT OF THE APPLICABLE CLAIM OR \$50,000, WHICHEVER IS LESS.**

**9. CHANGE ORDER.**

Changes to the plans and specifications shall be made by written change order executed by both Seller and the Customer. Seller shall be entitled to an equitable price adjustment for such changes.

**10. TIME.**

If Seller agrees to deliver Products, Seller shall make reasonable efforts to deliver the Products by the specified delivery date and shall provide notice to Customer of any expected delays in delivery. Seller is not responsible for failure to supply Products due to labor disputes, repairs to machinery, fire, flood, adverse weather conditions, inability to obtain transportation, fuel, electric power, or operating materials or machinery at reasonable cost; or by reason of any other cause beyond its control, including the inability to produce Products meeting any applicable specification or requirement. In the event any such contingency should occur, Seller reserves the right to determine the order of priority of delivering to its Customers.

**11. MODIFICATION.**

These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party, and no prior or current course of dealing between the parties, or any usage of trade or custom of the industry shall modify or supplement these Terms.

**12. NO WAIVER.**

No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller or authorized representative of Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**13. INDEMNITY.**

To the maximum extent permitted by applicable law, Customer shall defend, indemnify and hold Seller, its officers, employees, agents, insurers, sureties, and affiliates, harmless from any and all losses, damages, expenses (including attorneys' fees, court costs, and costs to seek indemnification), claims, suits, liabilities, fines and remedial or clean-up costs arising out of or in any way related to: (i) Customer's breach of these Terms or any of Seller's written quotation, confirmation of sale, or invoice; (ii) any act or omission by or on behalf of Customer, its employees, and agents; or (iii) the negligent or alleged wrongful installation of the Products.

**14. APPLICABLE LAW.**

The supplying of Products by Seller and the rights, duties, obligations and remedies of Seller and Customer shall be governed by or construed in accordance with the laws of the state of Seller's plant sourcing the Products.

#### **15. COMPLIANCE WITH LAW.**

The Customer shall comply with all applicable laws, regulations and ordinances. The Customer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. The Customer shall comply with all export and import laws of all countries involved in the sale of the Products under this Agreement or any resale of the Products by the Customer. The Customer assumes all responsibility for shipments of Products requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Products.

#### **16. CONFIDENTIAL INFORMATION.**

All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to the Customer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, the Customer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to the Customer at the time of disclosure; or (c) rightfully obtained by the Customer on a non-confidential basis from a third party.

#### **17. FORCE MAJEURE.**

The Seller shall not be liable or responsible to the Customer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

#### **18. ASSIGNMENT.**

The Customer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves the Customer of any of its obligations under this Agreement.

## **19. RELATIONSHIP OF THE PARTIES.**

The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

## **20. NO THIRD PARTY BENEFICIARIES.**

This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

## **21. SEVERABILITY.**

If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

## **22. SAFETY DATA SHEETS.**

For a copy of Safety Data Sheets or label information, please contact Seller at the phone number or address set forth on the written quotation, confirmation of sale, or invoice. Customer agrees to draw to the attention of any persons handling or using the Products or having access to the Products while in Customer's possession or to whom Customer sells the Products or any part thereof any warning, information or suggestions which are contained or referred to in the Safety Data sheets or label information, or any other literature or packaging relating to the Products.

## **23. MANDATORY BINDING ARBITRATION.**

**ALL CLAIMS OR CONTROVERSIES ARISING OUT OF OR RELATED TO THE PURCHASE OF PRODUCTS OR SERVICES OF SELLER, SHALL BE SUBMITTED TO AND RESOLVED BY BINDING ARBITRATION BY A SINGLE ARBITRATOR IN THE COUNTY AND STATE OF SELLER'S SOURCE PLANT PRODUCING THE PRODUCT OR SERVICES. THE AMERICAN ARBITRATION ASSOCIATION ("AAA") SHALL CONDUCT THE ARBITRATION AND THE COSTS OF THE ARBITRATION SHALL BE BORNE EQUALLY BY THE PARTIES. NOTWITHSTANDING ANY LANGUAGE TO THE CONTRARY CONTAINED IN ANY QUOTATION, CONFIRMATION OF SALE, OR INVOICE, THE PARTIES AGREE: THAT THE UNDERLYING AWARD MAY BE APPEALED PURSUANT TO THE AAA'S OPTIONAL APPELLATE ARBITRATION RULES ("APPELLATE RULES"); THAT THE UNDERLYING AWARD RENDERED BY THE ARBITRATOR SHALL, AT A MINIMUM, BE A REASONED AWARD; AND THAT THE UNDERLYING AWARD SHALL NOT BE CONSIDERED FINAL UNTIL AFTER THE TIME FOR FILING THE NOTICE OF APPEAL PURSUANT TO THE APPELLATE RULES HAS EXPIRED.**