

## General Service Agreement (GSA)

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### TCC Materials • Akona Manufacturing LLC • Roberts Concrete Products • Amcon Concrete Products LLC

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“Customer” agrees to do business with TCC Materials and affiliated companies (“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 01 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 General Terms and Conditions of Sales 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 General Terms and Conditions of Sale under the terms 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 C90-11b (except paragraphs 7.1, 7.1.1, 7.2 and 7.3) unless otherwise specified in writing by Customer.
7. 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.
8. 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.
9. If it becomes necessary for TCC to institute a surcharge due to commodity price increases, the surcharge will be assessed as an add-on to the price of the masonry units and products.
10. 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.
11. 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.
12. 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 Ramsey County District Court in St. Paul, Minnesota.
13. **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.**
14. Returns of pallets, bags or concrete masonry units: TCC will only accept specific, pre-authorized products that have been properly palletized and properly secured for transit. All returned product(s) will be processed after inspection/approval of the returned product. TCC will not be held responsible for returns that are lost in transit and/or do not have proper tracking information. All customer job site returns must be pre-authorized and pre-determined. **Return shipping charges are the customer's responsibility.** TCC drivers will require a signature on the CREDIT REQUEST FORM at the time of pick up.
15. **Payment Terms:** SALES TAX is not included in the above pricing and will be charged accordingly unless customer has submitted a sales tax exempt form for each applicable project prior to delivery of the product. PAYMENT to us by Purchaser on its open credit accounts shall be made by the thirtieth (30<sup>th</sup>) day following each of Purchaser's orders and the resulting delivery of products and services by us. The Purchaser shall pay INTEREST at the 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.
16. **DIESEL FUEL SURCHARGE POLICY AND INDEX:** TCC Materials uses the Midwest Diesel Fuel Price as listed on the US Department Energy website <http://tonto.eia.doe.gov/oog/info/gdu/gasdiesel.asp> on the Monday nearest to the 15<sup>th</sup> day of the month to determine the Diesel Fuel Surcharge for the following month, per the table below.

US DOE Price on the Monday nearest the 15 <sup>th</sup>	Per Load Surcharge Applicable the Following	US DOE Price on the Monday nearest the 15 <sup>th</sup>	Per Load Surcharge Applicable the Following
Up to \$3.49	No Surcharge	\$4.00 - \$4.49	\$25.00
\$3.50 - \$3.74	\$15.00	\$4.50 - \$4.99	\$30.00
\$3.75 - \$3.99	\$20.00	\$5.00 and Above	\$35.00

NOTE: The Diesel Fuel Surcharge applies in addition to any other applicable service charges.

Version 1.0: Dec2016