

## STANDARD TERMS AND CONDITIONS

1. **PARTIES.** By accepting the Job Quotation (“Quotation”) provided by Bakken Aggregates, LLC, Buyer acknowledges that the Quotation becomes a legally binding contract, and that Buyer shall be bound by the Standard Terms and Conditions set forth herein and that said Standard Terms and Conditions shall be enforceable against Buyer by BAKKEN AGGREGATES, LLC and all of its divisions, subsidiaries, affiliates, assigns, successors, and insurers (“Seller”). The Quotation, including these Standard Terms and Conditions, shall form the sole agreement (“Agreement”) under which Buyer shall purchase goods, materials, and services (“Materials”) from Seller. The Quotation shall become a binding contract upon the terms and conditions stated in this Quotation upon acceptance by Buyer by any expression of acceptance or commencement of performance, whichever comes first. Any terms and conditions proposed by Buyer in acknowledging or accepting Seller’s offer, or any alleged subsequent agreements, which are different from or in addition to the terms set forth in this Quotation shall not be binding upon Seller and shall be void and of no effect, except to the extent expressly accepted in writing by Seller’s authorized agent.
2. **BUYER REPRESENTATIONS.** Buyer represents to Seller that as of the date of this Agreement Buyer is solvent. If at any time Seller deems the financial condition of Buyer as unsatisfactory, Seller reserves the right to require payment in full in advance or other security satisfactory to Seller. Buyer further represents and warrants that it has authority to enter this Agreement and that any person signing this Agreement has been duly authorized to execute this Agreement for and on behalf of Buyer.
3. **LIMITED WARRANTY AND LIABILITY DISCLAIMER.** Seller warrants only that the Materials sold under this Agreement conform, at the time Seller furnishes the Materials to Buyer, to the applicable specifications for the specific project (as listed on the Quotation) for which the materials are furnished. No other express warranties are made with respect to said Materials. Acceptance by Buyer of the Materials shall constitute confirmation by Buyer that the Materials meet the project specifications. Seller is not responsible for any costs, liabilities, rework, damages, or other expenses that arise from or are in any way related to materials that are out-of-specification, rejected or deemed unsuitable (by Buyer, project owner, or otherwise) if any actual or alleged cause of such non-conformance is outside Seller’s control (i.e. improper installation, inadequate compaction, unsuitable weather conditions, temperature, failure to meet placement specifications). Buyer’s exclusive remedy for breach of this warranty shall be to require Seller, at Seller’s option, to refund the purchase price of such Materials, to repair or to replace any nonconforming Materials. Seller shall not be responsible for any removal or installation costs. **THE FOREGOING WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WRITTEN OR ORAL WARRANTIES, REPRESENTATIONS, GUARANTEES, PROMISES, DESCRIPTIONS OR CONTRACTUAL AGREEMENTS, WHETHER EXPRESS OR IMPLIED BY LAW OR OTHERWISE, INCLUDING THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY.**
4. **CLAIMS.** Buyer’s exclusive procedure for commencing claims under this Agreement against Seller shall be as follows: Notice of any claims or backcharges against Seller must be given to Seller promptly upon discovery and must be supported in writing within five (5) days after discovery to afford Seller an opportunity to investigate such claims promptly and mitigate any potential damages. Failure of Buyer to give such notice shall constitute a waiver by Buyer of its right to later make such a claim.
5. **LIMITATION OF LIABILITY.** Seller’s liability on any claim for loss or damage arising out of the supplying of any Materials to Buyer, whether based on contract, warranty, tort (including negligence) or other grounds, shall not exceed the **greater** of: 1) the price of the Materials actually received from Buyer by Seller with regard to which such claim for loss or damage is made, or 2) **\$50,000**. In no event shall Seller be liable, whether as a result of breach of contract, warranty, tort (including negligence) or other grounds, for special, consequential, incidental, liquidated, punitive or penal damages including, but not limited to, loss of profits or revenue, loss of use of the Materials or any associated product, cost of capital, cost of substitute products, facilities, services, downtime costs, or claims of customers of the Buyer for such damages.
6. **INDEMNIFICATION BY BUYER.** To the fullest extent permitted by law, Buyer further agrees that, in specific consideration for receiving the express warranty granted by Seller in the above paragraph titled “LIMITED WARRANTY AND LIABILITY DISCLAIMER”, Buyer will indemnify and hold harmless Seller from any and for any and all damages, including attorneys’ fees and costs, incurred by Seller in connection with any claim, demand, liability, or cause of action asserted against Seller for personal injuries, loss of life, property damages, or economic losses of Buyer or its employees, agents, representatives or any other person or entity in connection with any statutory, contractual or warranty breach, negligence, strict liability, or other tortious conduct by Seller.
7. **DELAYS.** In the event Seller shall be delayed in or prevented from the performance of any act required under this Agreement, or it shall become commercially unreasonable to perform, by reason of governmental allocations, priorities, restrictions or regulations now or hereafter in effect, storm, flood, fire, earthquake or other Acts of God, war, terrorism, riot, insurrection or other civil disturbance, strikes, lockouts or other labor disturbances, shortages or allocation of materials, labor, raw materials, fuel, power or production facilities, breakdown of equipment, transportation shortages, changes in market conditions or any other contingencies beyond Seller’s reasonable control whether of a similar or dissimilar nature to the foregoing, Seller shall not be liable to Buyer for any damages incurred by Buyer as a result of any such delay or failure to perform.
8. **QUANTITIES.** Buyer shall be liable to pay Seller for the quantities of all Materials ordered by Buyer, produced by Seller and made ready for Buyer’s use, regardless of whether such Materials are ultimately incorporated into the Project and paid for by the project owner.
9. **PAYMENT.** Buyer shall make all payments due hereunder in accordance with the terms of this Agreement, without any right of setoff or retention and without regard to any agreement Buyer may have with other parties, including the project owner. Buyer shall promptly pay in full for all Materials sold hereunder, by the **earlier** of: 1) thirty (30) days after receipt of Seller’s invoice, or 2) the payment deadlines established by the Prompt Payment Act of the State where the project is located. If any payments are not received when due, Seller may, at its option, assess an additional charge equal to the lesser of 18% per annum or the maximum rate permitted by law, for each thirty (30) day period of delay or part thereof to cover Seller’s increased costs, or in the alternative, upon notice to Buyer, cancel the portion of this Agreement which remains to be performed.
10. **PRICES.** Seller reserves the right to rescind the Quotation if Buyer does not tender a valid acceptance within three (3) working days after the date Seller submits the Quotation to Buyer. Prices for the materials quoted: 1) are subject to material availability; 2) once accepted by Buyer, shall remain firm until the date set forth on the first page of the Quotation or, if no such date is given, for a period of six (6) months after the date of the Quotation; thereafter, prices are subject to change by Seller; and 3) unless otherwise noted on the first page of the Quotation, do not include Saturday, Sunday, holiday, off-hour or overtime work, all of which are subject to additional charges. Prices are only applicable to the project quoted, are available only to the Buyer specifically named herein, and are only for the approximate quantities stated herein. Should the actual total quantity of any Material supplied by Seller deviate more than 15% from the approximate quantity listed on the Quotation for such item of Material, Seller reserves the right to adjust the price quoted herein for such item of Material.
11. **QUALITY CONTROL.** Buyer shall furnish and pay for its own quality control and process control testing. If requested by Seller, Buyer shall promptly furnish copies of all quality and process control test data and results, of both Buyer and the project owner, to Seller as they become available. Seller will in no way participate in nor be responsible or liable for any pay factor disincentives or reductions, whether assessed by the project owner or otherwise, as a result of quality control results, quality level analysis, or otherwise.

12. **SCHEDULING.** Within five (5) business days after execution of this Agreement, Buyer shall provide Seller with a schedule for the Project, which shall include tentative dates when Buyer anticipates the Materials under this Agreement will be supplied, along with anticipated daily quantities, production rates, and work hours. Thereafter, Buyer shall promptly notify Seller of any changes in the schedule. Seller will endeavor to schedule its crews and equipment to meet Buyer's schedule. However, due to the scheduling constraints of other projects, Buyer hereby acknowledges and agrees that Seller makes no guarantee that Seller will be able to commence the furnishing of Materials under this Contract on the date requested by Buyer. Seller is not liable for any costs, expenses, damages (including liquidated damages), delays, standby, down time, backcharges, penalties, or other charges that are assessed by Buyer, the project owner or otherwise, relating to delays, shutdowns, late starts, mechanical breakdowns, or any other scheduling issues.
13. **MATERIALS SUPPLIED BY BUYER.** Any materials supplied by Buyer which are incorporated into the finished Materials (including without limitation base asphalt cement, recycled asphalt pavement, etc.) shall meet all applicable Project specifications. Seller is not liable for any consequences resulting in whole or in part from non-conforming or irregular materials or components supplied by Buyer.
14. **OFFSET AND/OR SETOFF.** 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.
15. **PAST DUE ACCOUNTS.** Should Buyer fail to pay when due any amount payable to Seller under the terms of this Agreement or should Buyer's financial condition become impaired or unsatisfactory to Seller, in the Seller's sole opinion, Seller may, at its option, make demand upon Buyer for: 1) immediate payment of all amounts then due and owing to Seller under this Agreement; 2) payment in advance of all future amounts to become due under this Agreement, and or 3) such other assurances as Seller shall deem necessary to adequately assure Seller that Buyer will perform its obligations under this Agreement. Until Seller receives the same, Seller may suspend its performance of this Agreement, and if such assurances are not received from Buyer within a reasonable time not exceeding ten (10) days, Seller may, at its option, deem this Agreement to have been repudiated by Buyer. Buyer further 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.
16. **TAXES.** In the absence of an exemption or resale certificate 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 quoted in this Quotation and shall be paid by Buyer. In the event Buyer provides Seller with an exemption or resale certificate, and the taxing authority as the result of audit or otherwise subsequently levies taxes on Seller for the Materials supplied pursuant to this Agreement, Buyer shall reimburse Seller for all such taxes levied, including any penalties and interest, within thirty (30) days of demand.
17. **TITLE & RISK OF LOSS.** Title and risk of loss to the Materials shall transfer to the Buyer upon the earlier of: 1) when the Materials are loaded into Buyer's trucks at the plant, or 2) when the Materials are tendered to Buyer.
18. **MODIFICATION OF TERMS.** No employee or agent of Seller has the authority to make any statement, including restricting or modifying or otherwise concerning the existence or effect of any of these Standard Terms and Conditions or of any warranty or guarantee and no such employee or agent making any such statements shall be acting on behalf of or with the consent or agreement of Seller. These conditions may only be altered or varied in writing signed by an officer of Seller and no other employee nor any other person has the authority to alter or vary any or all of these terms and conditions.
19. **ASSIGNMENT.** Buyer shall not assign this Agreement or any interest herein without the prior written consent of Seller, and any attempted assignment, whether by operation of law or otherwise, shall be void without such prior written consent.
20. **NOTICE.** Any notice required to be sent to Seller shall be in writing and sent by Certified Mail, postage prepaid, to the Seller, addressed as follows: Bakken Aggregates, LLC, Attention: General Counsel, 115 S. 48th Street, Tempe, AZ 85281.
21. **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 Buyer or Seller.
22. **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 Williams County, North Dakota. This Agreement shall be governed by and shall be construed in accordance with the laws of the State of North Dakota, without regard to any conflict of law provisions. Any and all actions brought by Buyer under this Agreement shall be brought within one year of the date the Materials are supplied with respect to which the action relates. **AS A MATERIAL INDUCEMENT TO SELLER TO ENTER INTO THIS AGREEMENT, BUYER WAIVES THE RIGHT TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT.**
23. **ENTIRE AGREEMENT.** This Agreement sets forth the sole and entire agreement between the parties with regard to the subject matter hereof and supersedes any and all prior or contemporaneous oral or written agreements between the parties regarding the same. Prior to mobilization, Seller will require Buyer to return a signed copy of this Agreement. Facsimiles, copies or other reproductions of this Agreement shall have the same effect as an original thereof.
24. **WAIVER.** Seller may, in its sole discretion, permit Buyer to remedy any default under this Agreement without waiving the default so remedied or any other subsequent or prior default by Buyer. Buyer waives notice of default of this Agreement and waives presentment, demand, protest and notice of dishonor as to any instrument.
25. **SURVIVAL OF OBLIGATIONS.** Any obligations and duties which by their nature extend beyond the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.