

Monumental Stone Works, Inc.
105 S. 3rd Street
P.O. Box 112
New Market, IN 47965
765-866-0658 (Office)
765-866-0719 (Fax)

Terms and Conditions of Sale:

Monumental Stone Works, Inc. (hereinafter called MSW) agrees to furnish to the contractor (hereinafter called the PURCHASER) the necessary cast stone materials ready to set for the above project as shown on the original drawings and specifications designated by **Exhibit "B"** of this contract and per shop drawings furnished by MSW and as approved by Architect of record, subject to the conditions hereinafter stipulated, and the approval of any and all cast stone samples. Said original drawings, specifications, and shop drawings, as far as the same relate to the materials under this contract, are made a part hereof, except where exceptions are mentioned in this contract.

This proposal does not include anchors, dowels, waterproofing, painting, damp proofing, special crating, or other exceptions herein noted on **Exhibit "A"** of this contract and does not include re-casting by MSW of any items that may become needed due to inaccuracies, in part or in whole, in the erection, building plans, drawings or specifications. Further, any and all engineering, engineering design and calculations are excluded unless otherwise expressly included in the proposal. Sales, use or any other tax may or may not be included in this agreement depending on the exempt status of the project. Any tax included will be specifically listed on page one in the "Bid Amount."

In consideration of the foregoing covenants and agreements to be performed by MSW, the PURCHASER agrees to pay to MSW, in current funds at New Market, Indiana the sum of:

1. MSW is to furnish the necessary cast stone, finished, numbered and ready for setting, in good workmanlike manner, according to shop drawings supplied by MSW and approved by the PURCHASER, Architect, or other responsible party. The PURCHASER is to promptly supply whatever full sized details, manufacturers shop drawings, job site information, etc., or explanations as may be necessary to delineate the plans and specifications in order to enable performance of the work as herein provided.
2. The PURCHASER agrees to supply MSW, within thirty (30) days from date of this agreement, a statement indicating the date that stone is to start being delivered, the rate at which it is to be delivered, as well as the sequence in which it is to be delivered. ANY DEVIATION FROM THE INFORMATION PROVIDED MAY RESULT IN DELAYS AND/OR ADDITIONAL COSTS.
3. MSW shall be responsible for the loading of all cast stone in a careful manner in the usual way in which cast stone is loaded, in whatever equipment it deems most suitable to insure safe arrival of the cast stone at its destination in an undamaged condition. The PURCHASER agrees to unload and inspect the delivered stone promptly, and in case of stone being found damaged, to provide photographs of the damaged stone, have the receiving freight agent and freight carrier's agent to countersign and make notation of the damaged stone number and mark on both the original freight receipt and on MSW's shipping list before stone is removed from the transportation equipment. UNLESS THIS PRODEDURE IS

FOLLOWED THE CAST STONE WILL BE CONSIDERED TO BE RECEIVED IN GOOD ORDER. The PURCHASER shall assume and pay all demurrage charges if the cast stone is not unloaded within one (1) hour of its arrival at destination. MSW shall not be held responsible for any losses or delays resulting from late-arrival, non-arrival of scheduled deliveries at job site due to events beyond its control.

4. THE PURCHASER AGREES TO IMMEDIATELY NOTIFY MSW of any stone which is defective due to faulty material or fabrication, or omitted in shipment, and allow MSW reasonable time to investigate such claim before any stone is repaired or replaced. No replacements or extras will be supplied unless the PURCHASER makes explicit authorization in writing. If the PURCHASER does any cutting that has been authorized in writing by MSW, and is properly chargeable to MSW, the charge to MSW for such cutting or replacing shall not exceed what it would cost MSW to make provisions for recasting or replacing the stone at New Market, Indiana, with freight added, plus not more than ten (10%) percent additional to such cost of repairing or replacing. Claims which are properly chargeable to MSW shall be itemized and submitted in writing no later than the 10th of the month following the date of authorized repair. ANY CLAIMS FOR REPAIRS WHICH DO NOT FOLLOW THE PROCEDURS SET FORTH IN THIS PARAGRAPH WILL BE DENIED CATEGORICALLY. MSW's liability is limited to replacement of its materials only.

5. MSW shall not be held responsible for any loss, damage, detention or delay, caused by the Owner, the Architect, the PURCHASER or any other contractor or sub-contractor, upon the building, or delays because of transportation, fire, strikes, lockouts, or by any other cause beyond its control, or in any event for consequential damage. Nor shall MSW be held responsible for any losses or consequential damages arising from delays, impacts, inefficiencies or disruptions to the project as a result of late arrivals or non-arrivals of scheduled deliveries to be made by MSW to the job site, even if such late arrivals or non-arrivals are caused by MSW. If the materials involved in this contract are to be used in the construction of any project on which MSW is unable for any reason to protect its claim by filing and foreclosing a mechanic's or materials man's lien MSW shall not be required to furnish the materials herein agreed to unless a sufficient bond is furnished to MSW insuring payment for all material and labor supplied or to be supplied. THE PURCHASER SHALL PAY THE COST OF THE BOND.

6. The PURCHASER agrees to take the stone in the manner as mutually agreed upon, and if for any reason MSW is prevented by the PURCHASER from making shipments, or for any other reason the stone contracted for herein cannot be received at the destination, the PURCHASER agrees to pay for such stone fabricated upon a Bill of Sale being executed by MSW, less estimated freight, to be paid for in the same manner as herein provided, as if MSW had made shipment of such cast stone, and shall pay MSW the sum of twenty-five (\$0.25) cents per cubic foot per month, or part thereof, as storage for the stone for which Bill of Sale has been issued.

7. The agreed upon price herein stipulated is based upon the freight rate and surcharge in effect at the date of this proposal quotation, and in the event the freight rate, or surcharge, change prior to the completion of this contract, the amount of such increase or decrease, shall be added to or deducted from this price. Express freight charges, LTL loads, or extra loads necessary due to job site requirements to be paid by the PURCHASER.

8. Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitrator(s) shall award costs and fees, including attorney

fees, to the prevailing party. The arbitration shall be held in New Market, Indiana or the American Arbitration Association Regional Office closest to New Market, Indiana at the option of Monumental Stone Works, Inc.

9. If the financial responsibility of the PURCHASER is, at any time, unsatisfactory to MSW, MSW shall have the right to require the PURCHASER to supply satisfactory security for payments due, or payments that shall become due, or to require payment in full covering the balance of the stipulated price before proceeding with shipments, and in the event of suit, the PURCHASER agrees to pay full attorneys and/or collection fees, and court and/or arbitration costs.

10. MSW agrees to furnish a full, complete and absolute release of all liens, claims, or demands whatsoever against said PURCHASER for work done or material furnished under this contract at the time final payment is made, if so requested by PURCHASER.

11. No Verbal agreements or understandings shall be binding unless made in writing and signed by all the parties involved herein. This agreement is not binding unless fully executed by the PURCHASER, and approved by MSW. After such approval, this document shall constitute the formal contract and working agreement between the PURCHASER and MSW or their assigns. No other type of contract is approvable by MSW.

12. PROGRESS PAYMENTS FOR RAW MATERIALS, DRAFTING, CAST STONE, AND ANY OTHER APPLICABLE MATERIALS OR SUPPLIES SHALL BE MADE WITHIN 30 DAYS OF THE INVOICE IN THE FULL AMOUNT OF THE STONE RESERVED, SHIPPED OR STORED FOR THIS PROJECT. PURCHASER agrees MSW is a material supplier only and is not subject to the holding of a subcontractor retainer on material invoices. Past due payments will result in the cessation of shipments until account is made current and SHALL BEAR INTEREST at the rate of two (2%) per month, or twenty four (24%) per annum until paid. PAYMENTS HEREUNDER SHALL NOT BE CONTINGENT UPON THE COMPLETION OR ACCEPTANCE OF ANY WORK IN THE BUILDING NOR ON THE FINAL ACCEPTANCE OF THE BUILDING BY THE ARCHITECT OR OWNER. All extras are to be paid for according to the above terms of payment. The price or prices herein stipulated, and any Change Orders are not subject to specific or pro-rated charges, deductions or allowances whatsoever, nor, in any event for consequential damages. Any applicable sales, use, occupancy, excise, business or other tax, now or hereafter imposed by any Federal, State or Local Government, shall be added to the amount to be paid hereunder.