



Terms and Conditions

Tiller Corporation, a Minnesota Corporation and its operating divisions, Barton Sand and Gravel Co. and Commercial Asphalt Co., are collectively herein referred to as "Tiller". Any quotation by Tiller is subject to these terms and conditions ("Terms and Conditions").

1. **Sole Agreement.** Except as otherwise specifically agreed in writing by Tiller, these terms and conditions, and any other documents of Tiller pertaining to this transaction ("Terms and Conditions"), contain the sole and exclusive terms and conditions which shall apply to the sale by Tiller to the buyer ("Customer") of the goods and/or services referenced in Tiller's quotation, proposal, order acknowledgement or Customer's purchase order. These Terms and Conditions supersede all prior oral or written representations, negotiations, understandings, agreements and promises with respect thereto. The sale of goods and/or services by Tiller is expressly conditioned on assent by Customer to these Terms and Conditions and any additional or different terms or provisions in documents provided by Customer relating to such sale shall not apply to such sale, are hereby objected to by Tiller and shall be of no force or effect. Customer's placement of a purchase order or acceptance of goods and/or services shall constitute Customer's acceptance of these Terms and Conditions. All orders are non-cancellable.
2. **Pricing and Payment.** Pricing presented on any quotation is valid for 10 days from the date of the quotation. The attached quote is only valid for the specified Products and services. Customer agrees to pay the retail list price if this quote is used to support work on another project. Terms of payment for any Products are as set forth in the quotation. If payment is received later than the due date set forth in the quotation, Tiller may, impose a service charge of 1 % per month (12% annual rate), or such lesser rate as may be permitted by law, from the due date until the date payment is received. Tiller reserves the right to modify payment terms or require different payment terms in its sole discretion.
3. **Product Availability and Delivery.** Unless otherwise stated, all Product is delivered FOB Tiller's pit/plant or other agreed upon location and is subject to Product availability at the time of requested delivery. In no event shall Tiller be liable for damages of any nature to the Customer due to the lack of Product availability. Tiller seeks to minimize wait times; however, Tiller is not liable for delays in loading and/or delays caused by plant breakdowns. Title to goods and risk of loss or damage shall pass to Customer on delivery.
4. **Excused performance:**
 - a. **Force Majeure.** Tiller's performance hereunder shall be excused without liability by reason of strikes, lockouts, labor disputes, material shortages, governmental regulations, governmental action, permitting issues, judicial order, public emergency, weather, fire, other Acts of God, inability to procure materials, failure of power, riots, war, terrorist act, and other causes beyond the reasonable control of Tiller ("Force Majeure"). In no event shall Tiller be liable for damages to the Customer due to delay for a Force Majeure event.
 - b. **Impracticability.** Tiller's performance hereunder shall be excused without liability if Tiller shuts down, temporarily or permanently, a plant or pit location, or if Tiller reasonably believes it is unable or it is impracticable, at Tiller's sole discretion, to make the Products in the quantities or specification required.
 - c. **Alternate Supply.** Under no circumstances shall Tiller be obligated to purchase or otherwise obtain Products for goods from any other person or entity.
 - d. **Inability of the Customer to Maintain Credit.** Tiller's performance hereunder shall be excused without liability if the Customer is unable to maintain an open line of credit with Tiller. Tiller, in its sole and exclusive judgement, may vary the amount of credit extended to the customer and/or rescind credit previously provided and the customer waives notice of any changes to the customer's credit limit.
5. **Carryover.** Prices valid for current operating season only unless otherwise stated. Carryover of prior year pricing subject to Tiller's written acceptance.
6. **Warranty.** Tiller's sole and exclusive warranty with regard to Products or services provided is that Products will conform to Tiller's specifications on delivery. Customer agrees that Tiller's quality management laboratory's results shall be determinative of achieving any specification results; results from third part laboratories are expressly disclaimed as determinative in all cases. Tiller does not warrant the Product for any particular purpose and in no case will Tiller be liable for failures due to Customer's care of the product, site conditions or improper installation or use.

TILLER HEREBY DISCLAIMS ALL OTHER WARRANTIES OR GUARANTEES WITH RESPECT TO THE PRODUCTS OR SERVICES, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF



MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. If any Product warranted hereunder proves defective or non-conforming at delivery, Tiller's sole liability and the Customer's sole remedy hereunder shall be for Tiller, to replace, at no cost to Customer, any such defective or non-conforming Product with a non-defective or conforming Product or credit Customer's account for all amounts paid with respect to the defective or non-conforming Product. In no case shall Tiller be responsible for installation or reconstruction costs, lost profit, delays or penalties incurred by Customer.

Any claims by Customer for defective or non-conforming product must be made within 5 business days of delivery unless due to the nature of the Product a claim must be made in a shorter period of time in order to preserve evidence of the Product's defect or non-conformance.

7. Limitation of Liability. NOTWITHSTANDING ANY PROVISION HEREIN TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR, AND EACH PARTY RELEASES THE OTHER FROM LIABILITY ATTRIBUTABLE TO, ANY SPECIAL, INDIRECT, LOST PROFIT, CONSEQUENTIAL, OR OTHER INCIDENTAL DAMAGES ARISING OUT OF THE PERFORMANCE OF THIS AGREEMENT, OR DEFAULT IN THE PERFORMANCE HEREOF, WHETHER BASED UPON CONTRACT, TORT (INCLUDING NEGLIGENCE, PRODUCT LIABILITY OR STRICT LIABILITY), OR WARRANTY. IN NO EVENT SHALL TILLER'S LIABILITY TO CUSTOMER OR ANY THIRD PARTY EXCEED THE AMOUNT PAID BY THE CUSTOMER FOR THE PRODUCT PURCHASED UNDER THIS QUOTE.
8. No Assignment. Customer may not assign this or any quote without the prior express written consent of Tiller.
9. Bankruptcy. If the Customer becomes insolvent or unable to pay debts as they mature, or makes an assignment for the benefit of creditors, or any proceedings are initiated by any party involved herein alleging that it is insolvent or unable to pay its debts as they mature or a petition is filed under any of the provisions of the United States Bankruptcy Code; also, if any proceedings any guarantor alleging that it is insolvent or unable to pay its debts as they mature or a petition is filed against it under any of the provisions of the United States Bankruptcy Code, and if said proceedings or petition are not discharged, dismissed, or otherwise terminated within sixty (60) days from commencement this quote shall be deemed cancelled by the Customer and Tiller's performance shall be excused without liability.
10. Credit. The pricing and terms of this quote are conditioned on the Customer's ability to maintain an open credit line with sufficient credit availability. If the customer's line of credit with Tiller is reduced, eliminated or the credit availability is insufficient, this quote shall be deemed cancelled by the Customer and Tiller's performance shall be excused without liability. In no case may a customer pull material upon a quote unless they have an open credit line with sufficient credit availability, and Customer explicitly waives any claims against Tiller, and Tiller's performance shall be excused without liability, if Customer does not maintain an open credit line with sufficient credit availability.
11. Entire Agreement. These terms and conditions, and any document attached hereto, constitute the entire agreement between Tiller and Customer. No variation of these terms and conditions will be binding upon Tiller unless agreed to in writing and signed by an officer of Tiller.
12. Governing Law. These terms and conditions shall be governed by and construed in accordance with the laws of Minnesota without regard to its conflicts of law provisions. Any controversy or claim arising out of or relating to any provisions of these Terms and Conditions will be finally and exclusively settled in the state or federal courts located in Hennepin County, Minnesota. The parties hereby consent to jurisdiction and venue in such courts. THE PARTIES SPECIFICALLY DISCLAIM APPLICATION OF THE UN CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS, 1980.