

CARVER MATERIALS – STANDARD TERMS & CONDITIONS OF SALE (AGGREGATES & STONE)

(Last Updated: August 5, 2025)

1. Parties; Scope; Incorporation by Reference

1.1 These Standard Terms & Conditions of Sale (“Terms”) govern all sales of aggregates, stone, rock, ballast, riprap, and related materials (“Goods”) by Carver Atlantic LLC, Carver Materials LLC, Carver Materials Canada Ltd., and any of their direct or indirect affiliates listed on a quotation, order acknowledgment, invoice, or delivery document (each, “Seller”) to the purchaser identified thereon (“Buyer”).

1.2 These Terms are incorporated by reference into any quotation, proposal, price sheet, sales confirmation, order acknowledgment, invoice, delivery ticket, or other agreement that references the URL where these Terms are posted (each, an “Order Document”). Issuing a purchase order, accepting a quotation, paying an invoice, or taking delivery constitutes acceptance of these Terms.

1.3 Order of precedence. If a Seller-signed Order Document expressly identifies a conflict and states that a specific term of that Order Document controls, it controls solely to that extent; otherwise, these Terms control over any conflicting or additional terms in a Buyer document, all of which are rejected.

1.4 Updates. Seller may update these Terms at any time by posting a revised version with a new “Last Updated” date. The version posted on the date Seller accepts Buyer’s order applies to that order; for program or release-based supply, the version in effect on the date of each release/PO applies.

2. Definitions; Incoterms; Affiliate Resale

2.1 Incoterms means Incoterms® 2020. If the Order Document does not specify an Incoterm, the default is FAS (named load port) for waterborne shipments and FCA (named point) for truck/rail.

2.2 US-Affiliate Downstream Resale. Seller may perform by having a U.S. affiliate purchase Goods from a Canadian affiliate and resell to Buyer (or vice-versa). These Terms apply to the entire transaction, regardless of which affiliate invoices, without altering Buyer’s obligations.

3. Quotations; Prices; Surcharges; Taxes; Currency; Fuel

3.1 Quotations are offers only when accepted in writing by Seller and otherwise expire on the earlier of their stated validity date or 30 days.

3.2 Prices exclude all taxes, duties, tariffs, customs, brokerage, environmental fees, port charges, demurrage, fuel or energy surcharges, security fees, or similar pass-throughs (collectively, “Pass-Through Charges”), all of which are Buyer’s responsibility.

3.3 Surcharges/Adjustments. Seller may increase price or add surcharges to reflect documented increases in Pass-Through Charges, fuel/energy, labor, or material costs, or changes in law/tariffs after the quotation date.

3.4 Fuel Surcharge. Seller may apply a fuel surcharge calculated under Seller’s then-current Fuel Surcharge Schedule posted on Seller’s website (or a successor schedule), which may reference government or industry indices.

3.5 Currency. Prices are in USD unless the Order Document specifies CAD.

3.6 Taxes & Import/Export. Buyer must provide valid exemption certificates; otherwise Seller will charge applicable GST/HST/QST/PST/VAT/sales/use taxes. Unless stated otherwise, Buyer is importer-of-record for cross-border shipments and responsible for customs clearance and all related costs.

4. Payment; Security Interest; No Setoff; Suspension

4.1 Payment Terms. Unless otherwise stated: 50% due within 30 days after stockpile/lab testing approval (if applicable) and 50% due within 5 days after completion of the draft survey (or, if no draft survey, within 10 days of delivery). Seller may require prepayment, a letter of credit, or other security at any time.

4.2 Late Charges; Costs. Past-due amounts accrue interest at the lesser of 2% per month or the maximum lawful rate, compounded monthly. Buyer will reimburse Seller's collection costs and attorneys' fees.

4.3 No Setoff/Recoupment. Buyer may not set off, withhold, or recoup any amounts.

4.4 Security Interest / PMSI. Until paid in full, Seller retains a purchase money security interest (UCC) / PMSI(PPSA) in the Goods and proceeds. Buyer authorizes Seller to file UCC/PPSA financing statements and related registrations/renewals. The security interest extends to commingled goods and identifiable proceeds to the fullest extent permitted by law.

4.5 Suspension/Acceleration. If Buyer is late or Seller reasonably believes Buyer is or may become insolvent, Seller may suspend shipments, require cash-in-advance, accelerate all amounts due, or terminate any Order Document, without liability.

5. Delivery; Title; Risk; Scheduling; Demurrage; Weight

5.1 Transfer of Risk/Title. Delivery, title, and risk of loss transfer per the Incoterm in the Order Document (default FAS or FCA). For FAS, risk transfers when Goods are placed alongside the vessel at the named port/terminal. For FCA, when handed to the first carrier at the named point.

5.2 Dates Are Estimates. Delivery dates are estimates only; time is not of the essence, and Seller is not liable for delay.

5.3 Vessels/Transport; Safe Berth. Buyer must nominate vessels, barges, railcars, or trucks that are safe, suitable, and lawful, and comply with terminal rules. No safe-berth warranty is made or implied. Any soundings/draft/condition data provided by Seller are non-binding and provided AS-IS.

5.4 Laytime/Demurrage/Port Charges. Buyer bears all laytime, demurrage, dispatch, standby, agency, and port/berth charges attributable to Buyer's nominations, equipment, or delays and will reimburse Seller on demand.

5.5 For the avoidance of doubt, Seller shall at no point be responsible for any demurrage costs incurred as a result of this agreement. Buyer shall, on a full indemnity basis, indemnify Seller for any costs incurred under this clause.

5.6 Weights/Quantity Determination. Quantities will be determined by independent draft survey, certified scale, or other mutually agreed method at the load point, which is conclusive absent manifest error. Standard industry allowances for moisture, swell, or segregation apply as set out below or in the Order Document.

6. Inspection; Acceptance; Claims; Exclusive Remedies

6.1 Pre-Shipment Inspection. Where practicable, Buyer may inspect the stockpile or samples at origin at Buyer's cost upon reasonable notice and subject to safety rules.

6.2 Acceptance Window. Buyer must inspect on delivery and notify Seller in writing of shortages or visible nonconformity within 5 business days of delivery (or 24 hours after first use, whichever occurs first). Use or processing constitutes acceptance.

6.3 Exclusive Remedies. For timely, substantiated claims, Seller may, at its option: (a) replace the nonconforming Goods; (b) issue a price credit/refund for the nonconforming portion; or (c) collect and refund the price paid for that portion. THESE ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES.

7. Product Nature; Specs; Testing; Allowances; Warranties

7.1 Natural Variation. Goods are natural products; gradation, color, density, moisture, and fines may vary.

7.2 Specifications. Any required specification (ASTM/CSA/owner/agency) must be expressly stated in the Order Document. Buyer is solely responsible for determining suitability for Buyer's end use, mix designs, blending, and compliance with project specifications.

7.3 Limited Spec Conformance Testing (If Stated). If the Order Document states that Goods must conform to a defined specification:

(a) Sampling and testing will be performed by a mutually acceptable independent laboratory using the specified test methods (ASTM/CSA or other stated methods).

(b) Acceptance Standard. Conformance is determined at load point against the stated specification, applying any tolerances stated in the Order Document.

(c) Costs. If the Goods conform, Buyer bears lab and related costs; if nonconforming, Seller bears reasonable testing costs for the nonconforming portion.

(d) Remedy. Seller's sole obligation is as in §6.3. No extended, consequential, or project-specific damages are available.

7.4 Moisture/Fines Allowances. Unless the Order Document expressly provides otherwise:

(a) Variations due to moisture and fines (including material passing No. 200 sieve) that are customary for the source and season are not a nonconformity and do not entitle Buyer to price or quantity adjustments.

(b) Where a moisture or fines range is specified in the Order Document, Goods are conforming if measured values are within that range at load point.

7.5 Samples & Gradation Curves. Any samples, gradation curves, or descriptions are illustrative and do not create a warranty or guarantee.

7.6 NO WARRANTIES. ALL GOODS ARE SOLD "AS-IS, WHERE-IS," WITH ALL FAULTS. SELLER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

8. Compliance; Handling; Safety

8.1 Buyer will handle, store, transport, and use Goods safely and in compliance with all laws, permits, and site rules. Safety Data Sheets (if applicable) will be provided on request.

8.2 Buyer is solely responsible for jobsite conditions, stormwater/erosion control, and environmental compliance after delivery per the Incoterm.

9. Indemnity; Insurance

9.1 Indemnity. To the fullest extent permitted by law, Buyer will indemnify, defend, and hold harmless Seller and its affiliates and their directors, officers, employees, and agents from and against any and all claims, losses, liabilities, penalties, fines, costs, and expenses (including attorneys' fees) arising out of or related to: (a) Buyer's transport, unloading, storage, handling, use, resale, or incorporation of the Goods; (b) Buyer's noncompliance with law or these Terms; or (c) personal injury, death, or property damage occurring after delivery per the Incoterm.

9.2 Insurance. Buyer will maintain, at its cost, during and for 2 years after the last delivery: CGL (per-occurrence and aggregate limits customary for the industry), auto, and, if applicable, marine or rail coverage, each with reputable insurers. At Seller's request, Buyer will name Seller as an additional insured and furnish certificates.

10. Force Majeure; Change in Law

10.1 Seller is not liable for any failure or delay due to events beyond its reasonable control, including natural disasters, strikes, labor shortages, breakdowns, accidents, war, terrorism, epidemics, governmental actions, roadway/rail/waterway closures, weather/tide/ice, or lack of transport/utilities.

10.2 Change in Law/Regulatory Events. If a change in law, tariff, duty, sanction, or regulatory requirement materially increases Seller's costs or prevents performance, Seller may adjust price, suspend, or terminate upon notice, without liability.

11. Limitation of Liability

11.1 NO CONSEQUENTIAL DAMAGES. UNDER NO CIRCUMSTANCES WILL SELLER BE LIABLE FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS, DELAY, OR LOSS OF USE.

11.2 CAP. SELLER'S TOTAL AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF OR RELATED TO AN ORDER WILL NOT EXCEED THE LESSER OF (A) USD \$20,000 (OR CAD EQUIVALENT) OR (B) THE PRICE PAID FOR THE SPECIFIC SHIPMENT AT ISSUE.

11.3 Short Limitations Period. Any claim must be brought within 12 months after the cause of action accrues.

11.4 These limits apply even if a remedy fails of its essential purpose.

12. Export/Import; Trade Controls; Anti-Corruption

12.1 Buyer will comply with all export, import, sanctions, and anti-boycott laws (including OFAC and similar Canadian measures). Buyer will not resell to embargoed or restricted end users or destinations.

12.2 Buyer will comply with applicable anti-corruption laws (including FCPA and CFPOA) and will not offer anything of value to improperly obtain or retain business.

13. Confidentiality; Publicity

13.1 Pricing and other non-public information exchanged with Seller are confidential. Buyer will not issue press releases or use Seller's names/logos without prior written consent.

14. Website Terms; Changes; Evidence

14.1 Buyer acknowledges these Terms are posted on Seller's website and may change over time.

14.2 Seller's electronic business records (including scale tickets, draft surveys, emails, and EDI) are prima facie evidence of quantity and delivery.

15. Assignment; Subcontracting

15.1 Buyer may not assign, delegate, or transfer any rights or obligations without Seller's prior written consent; any unauthorized assignment is void. Seller may assign or subcontract in whole or part.

16. Governing Law; Dispute Resolution; Arbitration; Class Waiver

16.1 Governing Law. These Terms and any dispute are governed by the laws of the State of New York, without regard to conflicts-of-law rules. The U.N. Convention on Contracts for the International Sale of Goods (CISG) does not apply. Notwithstanding the foregoing, issues of perfection and priority of security interests are governed by the UCC or PPSA, as applicable.

16.2 Mandatory Arbitration. Any dispute, controversy, or claim arising out of or relating to these Terms or an Order will be resolved by binding arbitration administered by the American Arbitration Association (AAA) under its Commercial Arbitration Rules. The seat/place of arbitration is New York, New York; the language is English; the tribunal will consist of one arbitrator with at least 10 years' experience in commercial sales or maritime/logistics (aggregates preferred). The award may be entered in any court of competent jurisdiction.

16.3 Interim Relief; Collections Carve-Out. Either party may seek interim or conservatory measures (including attachment or injunctive relief) from any court of competent jurisdiction. Seller may pursue actions limited to collection of undisputed invoice amounts in any such court without waiving arbitration for other issues.

16.4 Confidentiality. The arbitration and award are confidential except as required to enforce or challenge the award.

16.5 Class/Representative Waiver. NO CLASS ACTIONS OR CLASS ARBITRATIONS. The parties waive any right to participate in a class, collective, or representative proceeding.

16.6 Jury Trial Waiver. To the extent litigation occurs notwithstanding §16.2 or under §16.3, each party waives any right to a jury trial.

17. Default; Repossession; Return; Mitigation

17.1 Default. A default includes: failure to pay any amount when due; insolvency/assignment for creditors; appointment of a receiver; or material breach not cured within 10 days after notice.

17.2 Remedies. In addition to other rights, Seller may suspend, cancel any undelivered portion, reclaim or demand return of undelivered Goods, and enter Buyer's premises (or jobsite) at reasonable times to repossess Goods not yet incorporated into work, without breach of the peace, at Buyer's cost.

17.3 Mitigation. Seller may resell repossessed Goods in a commercially reasonable manner and credit net proceeds (less costs) against Buyer's obligations.

18. Notices; Electronic Signatures

18.1 Notices to Seller must be sent to:

Legal Department, 26 Corporate Circle, Albany, NY 12203 USA,

with a copy by email to Legal@carvercompanies.com (email is a courtesy copy unless otherwise expressly agreed).

Notices to Buyer go to the address on the Order Document.

18.2 The parties consent to conduct business by electronic means and to electronic signatures to the fullest extent permitted by law.

19. Severability; Waiver; Survival; Entire Agreement; No Backcharges

19.1 If any provision is found invalid or unenforceable, it will be narrowed to the minimum extent necessary; the remainder continues in full force.

19.2 No waiver is effective unless in a writing signed by the waiving party; a waiver on one occasion is not a waiver on another.

19.3 Survival. Sections 3-5, 6-12, and 16-19 survive expiration or termination.

19.4 These Terms and the applicable Order Document(s) are the entire agreement regarding the sale of Goods and supersede all prior or contemporaneous communications.

19.5 No Backcharges. Buyer has no right to backcharge Seller for labor, equipment, standby, or other costs unless pre-approved in a Seller-signed writing.