

KUHLMAN CONCRETE, LLC QUOTATION AND SUPPLY CONTRACT TERMS AND CONDITIONS

APPLICABILITY. These Contract conditions apply to all quotations, proposals, sales, rentals or leases between the Customer identified on the reverse side hereof and Kuhlman Construction Products, Inc. and its subsidiaries and affiliates, hereinafter referred to as Kuhlman.

ACCEPTANCE. This offer is entire and not severable, is made subject to the conditions and provisions set forth on both sides hereof, and will expire unless accepted within 30 days from date hereof unless extended by Kuhlman. Kuhlman will not recognize any separate purchase order unless approved by Kuhlman's counsel at Customer's cost and unless the terms hereof are incorporated therein by reference. NO MODIFICATION SHALL BE EFFECTED BY KUHLMAN'S ACKNOWLEDGMENT OR ACCEPTANCE OF CUSTOMER'S PURCHASE ORDER FORMS CONTAINING TERMS OR CONDITIONS AT VARIANCE WITH THOSE SET FORTH HEREIN.

PRICES. Kuhlman is pleased to offer to sell or lease and then deliver to Customer the goods and services identified on the reverse side hereof, at the prices and quantities indicated, subject to the terms and conditions of this Contract as stated below and on the reverse side hereof. Unless otherwise indicated, the prices quoted apply only to shipments made to Customer within 30 days from quotation date. Unless otherwise specified, deliveries thereafter will be invoiced at the prices in effect at the time of shipment. Monthly concrete form rental/purchase prices are subject to adjustment during the rental term for the prevailing rental/purchase price in effect at the time of invoicing. Rentals on all items commence immediately upon the date of shipment and cease on date of return to Kuhlman's warehouse. All rentals shall be invoiced monthly. For the purpose of rentals, each week is presumed to have 7 days and each month 28 days, and prorations will be made on this basis. Rental Customers shall have the right to return leased equipment at any time, it being strictly understood and agreed that there shall be a minimum rental period of one month and all rentals shall be prorated after the expiration of the minimum period. Shipment of products cannot be extended beyond the original shipping date without Kuhlman's consent. All prices (except those for ready-mixed concrete) are FOB shipping point, unless otherwise noted. No order may be canceled or changed in whole or in part without the prior consent of Kuhlman.

TAXES. Unless a tax exemption certificate is sent to Kuhlman for each tax-exempt project, the Customer will be responsible for all applicable taxes, excise or other charges. At Kuhlman's option, any such taxes, excise or other charges may be added to the invoice or billing statement for such goods.

TERMS/FINANCE CHARGES. Kuhlman's discount and payment terms are 2%-10th Proximo/Net 30 days, except for water/sewer materials and some other building products which are billed at Net 30 days. All invoices are due and payable within 30 days of the date on the first Statement of Account on which charges appear. A Finance Charge of 1-1/2% per month (18% Annual Percentage Rate) will be charged upon all balances not paid within 30 days of first appearance on the Statement of Account. Deliveries may be suspended at Kuhlman's option at any time if balances remain outstanding beyond 30 days from the date on the first Statement of Account.

CREDIT. This Contract is subject to credit verification and approval by Kuhlman. If, in the sole judgment of Kuhlman, the financial responsibility of Customer shall at any time become impaired, Kuhlman may decline to make further deliveries under this Contract. All checks returned unpaid by Customer's bank will be assessed a Returned Check Fee which shall be paid by Customer. Said fee will be determined by Kuhlman, but in no event shall exceed \$50.00.

DEFAULT. Each shipment shall constitute a separate and independent transaction and Kuhlman may recover for each such shipment without reference to any other. If Customer is in default in the payment of any sum due, or with respect to any other of the terms or conditions of this Contract, Kuhlman may, at its option, defer further shipments hereunder until such default be remedied (in which event Kuhlman may elect to extend the Contract period for a time equal to that for which shipments were so deferred), or, in addition to any other legal remedy, Kuhlman may decline further performance of this Contract. In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Customer, or in the event of the appointment, with or without the Customer's consent, of an assignee for the benefit of creditors or of a receiver, then Kuhlman may cancel this Contract for default and hold Customer accountable for any additional costs or damages incurred. In the event Customer's account is turned over to an attorney or other agency for collection, Customer shall pay all reasonable attorneys' fees, collection expenses and court costs incurred by Kuhlman.

BUILDING MATERIAL DELIVERIES. Customer shall provide Kuhlman with reasonable and sufficient advance shipping instructions. Unless otherwise noted, the Customer agrees to pay in addition to the purchase price and/or rental charge listed on the reverse side hereof, all transportation charges from the shipping point to destination and, in the case of leased items, the return thereof. All goods shall be shipped FOB Kuhlman's dock or Kuhlman's supplier's dock. Title to purchased products and risk of loss shall transfer to Customer upon delivery of the goods by Kuhlman or Kuhlman's supplier to carrier. Customer agrees to bear the expense of any premium transportation charges/fuel surcharges unless otherwise agreed. Kuhlman may at its option add to the price of goods sold hereunder the amount of any increase in transportation charges for shipments to Customer, provided that such transportation charges are payable by Kuhlman hereunder. If a specific delivering carrier is required, Customer must designate such carrier in writing to Kuhlman prior to shipment, and any freight premium incurred over the most economical means of transportation will be for the Customer's account. For stock building materials delivered by Kuhlman, Kuhlman shall levy and collect a delivery charge consistent with its current rate schedule. All carriers shall be the agent of Customer and all arrangements for the return of leased items are the responsibility of Customer.

PLACE OF DELIVERY. When deliveries of products are made to places other than on paved streets, Customer must provide suitable hard-surfaced roadways or approaches permitting safe access of trucks to the point of delivery under their own power, as well as qualified flagmen to assist in required backing movements. Kuhlman reserves the right to refuse deliveries in the event such roadways are not provided or if Kuhlman's driver deems conditions, in his sole discretion, to be unsafe for delivery. If Customer orders deliveries beyond the curb line, Customer shall be responsible for removal of mud from truck wheels and tires, and Customer assumes all liability for damage to any and all property which occurs during such delivery and agrees to indemnify Kuhlman against all liability as a result thereof. Customer is to arrange for immediate unloading of materials with his own crew if Kuhlman does not perform same.

BUILDING MATERIAL HANDLING CHARGES. A 20% restocking charge will be assessed on all returned merchandise in undamaged, resalable condition. NON-STOCK OR SPECIAL ORDERS ARE NOT RETURNABLE. All returns must be approved by Kuhlman in advance and must be accompanied by the original invoice. If material is returned on Kuhlman's trucks, Kuhlman shall levy and collect a delivery charge based upon its current rate schedule.

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FORMING SYSTEM RENTALS. This Contract does not include wood of any kind (except that which is a part of a prefabricated panel or item), or the unloading, cleaning, assembly or erection of the items after delivery. It is understood and agreed by and between the parties hereto that title to all equipment on rental shall remain vested in Kuhlman or Kuhlman's supplier, and in the event Customer elects to purchase such equipment, title shall not pass to the Customer, but shall remain vested in Kuhlman or Kuhlman's supplier until the entire purchase price is paid. Customer agrees leased equipment will not be moved or transferred from one construction jobsite to another, nor shall any other person or entity be permitted to use the leased equipment for any purpose, without prior written consent of Kuhlman. Customer agrees not subject the equipment to abuse or misuse. All equipment rented by Customer shall, at the termination of this Contract, be returned to Kuhlman's warehouse in the same condition as when it left, reasonable depreciation through careful use excepted, and in the case of forming panels, cleaned, treated with a release agent and ready for use. Any equipment not returned shall be billed at the prevailing unit purchase price in effect at the time of such billing, and any equipment damaged by drilling, puncturing, bending, sawing, including drilling of holes through plywood faces, or by use other than careful use, shall be repaired and replacement made in such manner as in the sole discretion of Kuhlman is deemed necessary, and at the expense of the Customer, and Kuhlman shall have the right to collect from Customer such amounts as it has expended or incurred in such repair and replacement, the same as though such amounts were additional rental. In the event additional leased equipment other than that specifically covered by this Contract is requested to be shipped to the Customer, the additional leased equipment shall be subject to the same terms and conditions as are a part of this Contract. Customer shall have the option to purchase leased components pursuant to Kuhlman's standard purchase option by giving written notice to Kuhlman at the address shown on the reverse side of this form. Lessee shall carry insurance to the full insurable value of the equipment leased against loss by fire, theft, and other insurable hazards, for the benefit of Kuhlman, its successors and assigns. The Customer agrees to permit Kuhlman or its agents, during reasonable hours, to enter the premises of the Customer for the purpose of inspecting leased items, and further, to inspect any leased items being used at a construction site. In case of default of any installment of rent when due, or upon the breach of any other condition of this Contract, or if Kuhlman shall deem the equipment in jeopardy, or upon termination of the lease agreement as herein provided, the full amount of rent then unpaid hereunder shall become due and payable forthwith at the election of Kuhlman, and Kuhlman may, at its option without notice or demand and without legal process, take possession of such equipment wherever it may be located with all actions and substitutions, whereupon all rights of Customer in such equipment shall terminate absolutely, but Customer shall not be released from its obligation under this agreement until the full amount of rental unpaid, together with all other obligations to pay Kuhlman money under terms of this lease, have been paid in full. Customer hereby irrevocably authorizes any attorney or any court of record to appear for Kuhlman and confess judgment or obtain injunctive relief where such actions are permitted by law, against Customer for all unpaid rentals and other monies due hereunder, return of Kuhlman's property, plus all expenses incurred in enforcing the terms of this lease, without stay of execution, and Customer hereby waives and releases relief from any and all appraisal, stay or exemption laws then in force, and Customer agrees that Kuhlman's rights hereunder are cumulative and not alternative, and the waiver of any default on the part of Customer shall not be held to operate as a waiver of any subsequent default or defaults.

FORMING SYSTEM DRAWINGS. Any layout drawings for concrete forms furnished by Kuhlman to Customer are provided as a service to Customer to conceptually illustrate the assembly of Kuhlman's products only. Such layout drawings are not intended to be fully directive nor cover engineering details on Kuhlman's products, or equipment or materials not furnished by Kuhlman nor the interconnection therewith. Inasmuch as Kuhlman does not control jobsite assembly or procedures, grade or quality of materials or equipment supplied by others, it is the responsibility of Customer to integrate Kuhlman's drawings into composite drawings suitably complete for construction purposes consistent with safe practice and overall project objectives. Kuhlman shall not be responsible in the event of any deviations, changes or alterations to the recommended assembly details described in Kuhlman's layout drawings.

READY-MIXED CONCRETE DELIVERIES. It is the intent of Kuhlman to have ready-mixed concrete and related products arrive at Customer's site at the time and rate ordered by Customer; however, full cooperation of Customer and 24-hour advance notice are necessary to facilitate timely delivery. Kuhlman agrees to use its best ability and dispatch in meeting requested delivery schedules, but cannot guarantee same. Prices and quantities are based on the volume of concrete products in a set and unhardened state at the time of discharge from the delivery truck, as determined in accordance with provisions of current ASTM Specification C-94.

READY-MIXED CONCRETE QUALITY ASSURANCE. Kuhlman will provide technical assistance as is necessary and reasonable, including submittal of proposed mix designs. Additional testing shall be at expense of Customer. Concrete will meet current applicable ASTM Specifications and conform to approved mix designs, within the tolerances of current ASTM Specification ASTM C-94. Prior to unloading concrete, Customer shall inspect delivery tickets for conformity with order. Customer's signature hereto shall constitute acceptance of the concrete as specified. Kuhlman reserves the right to take test cylinders from the concrete as delivered. Kuhlman is not responsible for the slump, strength or quality of any concrete to which water or any other material has been added by Customer, his employees or agents, or at his request by Kuhlman, except for water required to increase the slump at the time of arrival to that provided for in the mix design. **EXCESS WATER REDUCES STRENGTH AND MAY CAUSE OTHER HARMFUL IMPACTS ON QUALITY AND PERFORMANCE.** If slow unloading threatens product quality or concrete accumulation in mixer drum, truck shall be returned to Kuhlman forthwith, and Customer shall be responsible for costs of removing concrete accumulation. If there are repeated delays in unloading, Kuhlman reserves the right to suspend deliveries until conditions are corrected. Sampling of concrete and testing for strength shall be in strict accordance with procedures described in the current ASTM Specification C-94. Conformance with strength requirements shall be determined on the basis of that Specification. Strength tests must be performed by a testing service whose facilities and competence to perform such tests have been inspected within the past three years, pursuant to ASTM E329, by a qualified national authority and any reported deficiencies corrected. Sampling must be done by a certified technician. Tests for slump and air content shall be made in accordance with procedures listed in the current ASTM Specification C-94. Any rejection of concrete on the basis of deviations in slump or air content from limits designated in the contract shall be at the time of delivery. Since Kuhlman has no control over the placing, curing or handling of concrete after unloading, Kuhlman cannot guarantee, and shall under no circumstances be held liable for, the finished work in which its concrete is used.

READY-MIXED CONCRETE WARNING. CONTACT BETWEEN FRESH CONCRETE PRODUCTS AND SKIN, EYES AND CLOTHING MAY CAUSE SKIN IRRITATION OR INJURY. WASH EXPOSED AREAS PROMPTLY WITH CLEAN WATER. SEEK PROMPT MEDICAL ATTENTION WHEN NECESSARY. CUSTOMER MUST OBSERVE ALL SAFETY INSTRUCTIONS WHICH ACCOMPANY KUHLMAN'S DELIVERY TICKET. CUSTOMER AGREES TO PROVIDE THIS WARNING TO ALL EMPLOYEES AND OTHER PERSONS WHO MAY COME INTO CONTACT WITH CONCRETE AND WILL INDEMNIFY KUHLMAN AGAINST ANY CLAIMS ARISING AS A RESULT OF ITS FAILURE TO DO SO.

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READY-MIXED CONCRETE ADDITIONAL CHARGES. Customer acknowledges that Kuhlman may levy and collect additional charges to compensate Kuhlman for additional costs for such items as winter heated concrete, chilled concrete, admixtures, special mixes, special aggregates, fibers, overtime deliveries, weekend and holiday deliveries, small or part loads, finish-up loads, excessive unloading time, orders canceled or postponed on the day of scheduled delivery (whether concrete has been batched or not), returned concrete (for all concrete sent back for any reason beyond Kuhlman's control), fuel surcharges, environmental fees, etc. Such charges shall be determined per Kuhlman's current rate schedule for such items. Said schedule will be determined by Kuhlman in its sole discretion.

MATERIAL SAFETY DATA SHEETS. Material Safety Data Sheets are available for all products upon request. If no request is made by Customer, Kuhlman will assume that Customer is in possession of all required MSDS's and similar materials.

WARRANTY. Customer must read and comply fully with all manufacturer's product, application, installation, MSDS, and warranty information. MSDS information shall be made available to all persons handling or coming into contact with Kuhlman's materials. Only manufacturer's warranties or guarantees apply on items purchased by Customer from Kuhlman. Kuhlman warrants that rental equipment will be free from defects in material and workmanship at the time of delivery, and in the case of custom-designed formwork, will possess the characteristics contained in the approved design drawings. Kuhlman does not warrant or guarantee products for a particular application. Warranties will not apply to any item which has been subjected to misuse, neglect or accident. KUHLMAN MAKES NO EXPRESS WARRANTIES; THERE ARE NO IMPLIED WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE OF ANY SHIPMENT AND THERE IS NO IMPLIED WARRANTY OF MERCHANTABILITY; AND CUSTOMER ASSUMES ALL RISK AND LIABILITY FOR ALL DIRECT OR INDIRECT, CONSEQUENTIAL OR INCONSEQUENTIAL LOSS, DAMAGE OR INJURY TO PERSON OR PROPERTY, WHETHER THAT OF CUSTOMER OR ANY THIRD PARTY, RESULTING FROM THE USE OR HANDLING OF THE GOODS, BY CUSTOMER OR ANY THIRD PARTY, UNDER ANY CIRCUMSTANCES. Customer's sole remedy for defective goods shall be replacement of such defective goods at Kuhlman's FOB point. Charges for correcting defects will not be allowed, nor can items returned for credit be accepted, unless authorized in advance by Kuhlman and upon Kuhlman's terms.

DELAYS. Kuhlman shall not be liable for any failure or delay in manufacture, shipment or delivery of products resulting from any cause beyond Kuhlman's control, including, but not limited to, delays caused by the Customer in approving transaction details or drawings, acts of God, fires, floods, wars, sabotage, accidents, labor disputes or shortages, plant shut down, equipment failure, power failure, water supply failure, adverse weather conditions, voluntary or involuntary compliance with any law, order, rule or regulation of government agency or authority, or inability to obtain goods (including power and fuel), equipment or transportation. Shipping dates are approximate and are based on factory conditions at the time of quotation. Kuhlman shall not be liable for failure or delay in performance due to prior sale of products.

CLAIMS/LIMITATION OF DAMAGES. No claim of any kind whether as to goods delivered or for nondelivery of goods, including claims of shortages or improper or defective materials, and whether arising in tort or contract shall be greater in amount than the purchase price or lease rate of the goods in respect of which such damages are claimed; and the failure to give written notice of claims within fifteen (15) days from the date of delivery, or the date fixed for delivery, as the case may be, shall constitute a waiver by Customer of all claims in respect of such goods. IN NO EVENT SHALL KUHLMAN BE LIABLE FOR SPECIAL, DIRECT, INDIRECT OR CONSEQUENTIAL DAMAGES AND KUHLMAN'S LIABILITY, WHETHER FOR NEGLIGENCE OR OTHERWISE, SHALL BE LIMITED TO THE REPLACEMENT OF DEFECTIVE GOODS AND IN NO EVENT SHALL EXCEED THE PURCHASE PRICE OR LEASE RATE OF THE GOODS IN RESPECT OF WHICH DAMAGES ARE CLAIMED. Customer shall and warrants that it will comply with all federal, state and local laws, regulations, ordinances and rules including, but not limited to, all environmental laws, safety regulations, ordinances and use and maintenance rules in its use, storage or disposal of the goods. Customer shall indemnify Kuhlman for any costs incurred by Kuhlman for claims of any third party arising from Customer's use, storage or disposal of the goods or the failure by Customer to carry out any of its obligations hereunder. Customer shall pay all damages for any injury or death sustained by any person or persons and for all damage to property growing out of any act or deed, or any omission to act, of the Customer or any subcontractor or any servant, agent or employee of the Customer and to indemnify, save and keep Kuhlman harmless against all liabilities, judgments, costs, damages and expenses which may in anyway come against Kuhlman for or on account of injury received or death sustained by any person or persons and for all damage to property caused by any act or deed, or any omission to act, of the Customer or any subcontractor, or any servant, agent or employee of the Customer in the performance of work with the goods specified herein or any of them, or in which such items are used, except where such liability results from the negligence of Kuhlman or its servants, agents or employees.

MODIFICATIONS. This Contract constitutes the entire agreement between the parties and there are no understandings, representations or warranties of any kind, express or implied, not expressly set forth herein. No modification of this Contract shall be of any force or effect unless such modification is in writing and signed by the party to be bound thereby; AND NO MODIFICATION SHALL BE EFFECTED BY THE ACKNOWLEDGMENT OR ACCEPTANCE OF CUSTOMER'S PURCHASE ORDER FORMS CONTAINING TERMS OR CONDITIONS AT VARIANCE WITH THOSE SET FORTH HEREIN.

ASSIGNMENT. This Contract shall be binding upon and inure to the benefit of the respective successors and assigns of each of the parties hereto, but shall not be assigned by Customer without the prior written consent of Kuhlman. Customer shall notify Kuhlman, by Certified Letter, immediately of any change in ownership status of Customer.

WAIVER. Kuhlman's waiver of any breach, or failure to enforce any of the terms and conditions of this Contract, at any time, shall not in any way affect, limit or waive Kuhlman's right thereafter to enforce and compel strict compliance with every term and condition hereof. Any waiver by Kuhlman of Kuhlman's rights, whether a single waiver by Kuhlman or repeated waivers by Kuhlman, shall not be deemed to be a course of dealing which Customer may rely upon.

APPLICABLE LAW. The Customer and Kuhlman agree that this Contract shall be deemed to have been made and executed in the State of Florida and that any dispute arising under this Contract shall be resolved in accordance with the internal laws of the State of Florida and not its laws of conflict. Customer and Kuhlman agree that any legal action related to this Contract shall be filed in any court of competent jurisdiction in Lee County, FL.

FORM OF CONTRACT. Kuhlman is a supplier of materials, within the meaning of applicable laws and regulations, and is not be deemed to be a subcontractor.