

Standard Terms & Conditions of Knife River's Material Sales Offer

These Standard Terms & Conditions are attached to and incorporated in Knife River's Material Sales Offer ("MSO") for all purposes.

1. **No Additional Terms; Complete Agreement.** Acceptance of Knife River's MSO is expressly limited to the terms and conditions set forth herein. Any transaction regarding the material being sold pursuant to the MSO ("Material") is governed exclusively by these Standard Terms & Conditions and Knife River's Additional Terms and Conditions, as applicable (collectively "standard and additional terms and conditions"). Customer accepts the MSO, together with such standard and additional terms and conditions, by its signature on MSO Cover Sheet or when Knife River delivers to Customer any of the Material or renders for Customer any of the incidental services ordered. The MSO with such standard and additional terms and conditions represents the entire and integrated agreement between Knife River and Customer, and supersedes prior and subsequent negotiations, representations, or agreements, either written or oral, unless the procedure for a change in terms is followed as described below. **No additional terms and conditions submitted by Customer shall be binding on Knife River related to the Material - whether dated before, on, or after the date hereof - including, without limitation, any document by or from Customer that accompanies Knife River's MSO; further, not with standing any purported term or condition in any such accompanying document, Knife River's signature or initials on the same shall serve and be construed only as an agreement to provide Material under these standard and additional terms and conditions, and as a formality to facilitate payment by Customer.**
2. **Change in Terms.** A change in terms to the MSO and these standard and additional terms and conditions shall become valid only by means of a writing signed by both parties.
3. **Disclaimer of Responsibility for Events beyond Knife River's Control.** Knife River is not responsible for any damage, delay, stoppage, or non-performance due to, in whole or in part, any or all of the following: disruption of the supply of required products and/or materials necessary for production; disruption of electrical power and/or energy supply; mechanical break downs; acts of God; acts of public enemies; public unrest; compliance with government/agency laws and/or regulations; disruption of the supply of labor, adverse weather, or other adverse local conditions; and/or any cause beyond Knife River's control.
4. **Submittal Deadline.** Customer must submit to Knife River assigned MSO, including these standard and additional terms and conditions, within thirty (30) calendar days of the date on the MSO to secure the offered price.
5. **Payment and Interest.** So long as the credit worthiness of the Customer is approved by Knife River, and/or is approved for the project(s), Knife River will invoice the Customer regularly for the Material delivered here under. Payment will be due thirty (30) calendar days following the date of delivery. Failure to make payments by the specified due date will result in: (a) the cessation of deliveries; and (b) interest charges of 1.5% per month (18% per annum) or the maximum amount permitted by law from the date payment was due. In addition to all other rights and available remedies, Knife River shall be entitled to recover from Customer all costs of collection and litigation-including, but not limited to, reasonable attorney's fees, court costs, and any other related expenses.
6. **Taxes.** Taxes are NOT included in the MSO price. Customer is responsible for paying all applicable sales, use, excise, and other taxes arising from Customer's purchase of Material pursuant to this MSO. If purchases by the Customer for the project are tax exempt, a valid tax exemption certificate or other appropriate documentation must be provided to Knife River before deliveries are made indicating that sales taxes do not apply; Customer is responsible for the accuracy of the same.
7. **Price Escalation.** Price escalations will be implemented per the terms specified in the MSO.
8. **Availability of Material and Required Notice.** Knife River does not guarantee the availability of all Material. Please contact [Name] at [Phone Number] for availability and scheduling information at least twenty-one (21) calendar days prior to pickup/delivery. If the requisite twenty-one (21) calendar days notice is not given, the Customer may be subject to delays. Also, Specialty Material not part of Knife River's customary inventory (or not otherwise on hand) require a minimum of ninety (90) calendar days notice to Knife River to ensure production and availability.
9. **F.O.B. Knife River's Facility.** Unless otherwise agreed to in the MSO, all sales of Material will be F.O.B. at the Knife River facility; Customer is solely responsible for arranging and paying for all aspects of transportation and delivery of the Material from Knife River's facility to its final destination. Under no circumstance shall Knife River be responsible for the acts, omissions, or failures of any transportation provider.
10. **Delivery Costs.** Any transportation and delivery pricing provided by Knife River is provided as a convenience only; Knife River does not guarantee any pricing related to transportation and delivery services, unless otherwise specified in the MSO. In the event Knife River agrees to provide transportation and delivery services for the Material, and Knife River incurs a cost increase of more than ten percent (10%) of the transportation and delivery services set forth in the MSO, Customer and Knife River shall negotiate a revised haul rate for ongoing sales of Material under the MSO. If the parties are unable to agree to a revised haul rate, then all transportation and delivery terms in the MSO shall be void and excluded from the MSO; Customer will then assume the obligations of transportation and delivery.
11. **Information and Warnings.** Customer agrees and warrants that it will forward, as required by law or contract, all information and warnings contained in any applicable Material Safety Data Sheets, MSHA, and OSHA standards. Knife River disclaims any responsibility to provide such documentation to any third party.
12. **Limitations of Express Warranties; Disclaimer of Implied Warranties.** Knife River warrants that upon loading at Knife River's facility the Material will conform to the express warranties set forth in the Additional Terms & Conditions, if applicable. If such warranties are applicable, upon receipt of the Material, or any portion thereof, Customer shall promptly inspect and test all Material for conformity to express warranties and specifications before using, reselling, or commingling the Material with materials of like kind. Unless Customer gives written notice to Knife River of any such non-conformity within ten (10) calendar days of receipt and, in any event, prior to use, resale, or commingling the Material with materials of like kind, any non-conformity or breach of express warranties and specifications is waived. The parties agree that the express warranties in the Additional Terms & Conditions, if applicable, are the only express warranties applicable to the Material described herein. **KNIFE RIVER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES**

OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. The Material offered is not warranted to be acceptable for any particular use, purpose or application, nor is it warranted to be acceptable for use in any particular environment or in conjunction with any particular soil conditions. Customer's selection of the Material, unless otherwise acknowledged in writing by Knife River, shall be deemed to be without the advice, consultation, recommendation, or suggestion of Knife River; Customer shall further assume all risk of loss, damages, or other harm related to its selection of Material for any particular application.

13. *Limitation on Damages.* If Customer claims a breach of warranty, Customer shall permit Knife River to examine and test the Material. Customer's exclusive remedy for breach of any warranty shall be, at the option of Knife River: (1) replacement of the non-conforming Material F.O.B. delivery point; (2) the cost to replace the nonconforming Material F.O.B. delivery point; or (3) a refund of the purchase price paid for the Material. THE TOTAL LIABILITY OF KNIFE RIVER WITH RESPECT TO THIS MSO, INCLUDING THESE STANDARD AND ADDITIONAL TERMS AND CONDITIONS WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), INDEMNITY, STRICT LIABILITY, OR OTHERWISE SHALL NOT EXCEED THE PRICE OF THE MATERIAL, AS SET FORTH IN THE MSO. IN NO EVENT, WHETHER ARISING BEFORE OR AFTER COMPLETION OF ITS OBLIGATIONS UNDER THE MSO, INCLUDING THESE STANDARD AND ADDITIONAL TERMS AND CONDITIONS, SHALL KNIFE RIVER BE LIABLE FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PENAL DAMAGES OF ANY KIND (INCLUDING BUT NOT LIMITED TO LOSS OF USE, REVENUE OR PROFITS, INVENTORY OR USE CHARGES, COST OF CAPITAL, LIQUIDATED DAMAGES OR DAMAGES RELATING TO SOME OTHER THIRD-PARTY CLAIM) INCURRED BY CUSTOMER. Customer acknowledges that but for such agreement regarding the limitation of damages, the price of the Material would be higher.

ADDITIONAL TERMS & CONDITIONS OF KNIFE RIVER'S MATERIAL SALES OFFER READY-MIX MATERIAL

1. *Standard Terms and Conditions Incorporated.* The Standard Terms and Conditions are incorporated herein. These Additional Standard Terms & Conditions apply to ready-mix material sales under Knife River's MSO.

2. *Delivery.* For Ready-Mix Material, prices are F.O.B. job site, over suitable access roads that are capable of handling Ready-Mix truck traffic. Knife River reserves the right to stop delivery if access is not suitable. When Customer orders delivery beyond the street curb, Customer assumes responsibility for damage to sidewalks, driveways, or other property, and agrees to indemnify and hold Knife River harmless against all liabilities, loss, and expense incurred as a result of such deliveries. Customer shall be responsible for recovery costs and damages resulting from unsuitable site conditions. All delivered concrete prices are for loads of nine (9) or more cubic yards (CY). For less than five (5) CY, Knife River may assess an additional minimum delivery charge. However, one final load of less than nine (9) CY may be delivered on a per-order basis so that the concrete placement may be completed with no additional minimum delivery charge. Completion load will be invoiced at stated project price. Thereafter, on the same day and same order, any additional quantities less than five (5) CY will be charged an additional \$125.00 per delivery regardless of load quantity. All concrete correctly dispatched and with delivery underway will be charged to Customer's account.

3. *Standby Time Charges.* Unless otherwise stated within the MSO, the price for Ready-Mix Material includes delivery, with one (1) hour allowed from the time that the truck arrives at the delivery point specified by Customer. In the event that truck time on site exceeds one hour, excess time (beyond the first hour) will be charged as "Standby" at a rate of \$25 for each fifteen (15) minute interval.

4. *Operating Hours.* The MSO price for Ready-Mix Material is based on production and delivery during standard/regular/normal work hours and workdays, as defined by Knife River. After-hours work and/or night work and/or weekend work is subject to an additional charge of \$15.00 per CY, and a plant open charge of \$1,500.00 per day. For night or Sunday work, pricing will be quoted on a job-by-job basis.

5. *Truck Wash-down.* Customer is responsible for providing a TCEQ- and EPA-compliant washout area at the project site. If no washout area is provided, a truck clean-up fee of \$100.00 per load will be assessed. All washouts must be contained in an impermeable containment until it has time to evaporate, solidify, or be disposed of in an appropriate manner that meets state and federal regulations. Washout material may never be allowed to discharge from the construction site. (40 CFR 450.21, TCEQ 30 TAC 305.541, 30 TAC 205.2, 30 TAC 26.040, Section 402 of the Clean Water Act and Chapter 26 of Texas Water Code). Knife River will not assume liability for any damage or trespass as a result of cleaning and wash-down. Customer agrees to indemnify and hold Knife River harmless against all liabilities, losses, and expenses incurred as a result of any damage or trespass caused by such cleaning and wash-down. Any environmental cleanup costs or fines associated with truck washout are the sole responsibility of the Customer.

6. *Additional Warranty Disclaimers.*

a. *Strength, Durability, and Submittals.* Knife River warrants that the strength of the Ready-Mix Material delivered to Customer meets or exceeds the specifications submitted by the Customer, when tested in accordance with applicable American Society for Testing Materials (ASTM) procedures, and evaluated in accordance with all applicable American Concrete Institute standards and guidelines. However, Knife River disclaims all warranties with respect to: (1) any ready mix Material to which water or other materials have been added by Customer; (2) load sizes of less than two (2) cubic yards; and (3) any other Ready Mix Material to which Customer has made alterations or additions thereto. Knife River does not warrant finished work. Mix design water-cement ratio and actual production water-cement ratio may vary, as recognized by industry standards such as ASTM C 94 & TxDOT.

b. *Concrete Temperatures.* Unless otherwise contemplated and set forth in the MSO, Customer is responsible for notifying Knife River of concrete temperatures specific to Customer's requirements. Additional fees may apply if temperature control is required.

c. *Architectural Concrete Disclaimer.* Knife River does not warrant color, texture, or other variations in architectural concrete. Without limiting the foregoing, Knife River is not responsible for, e.g., floor flatness/levelness tolerances or final finished concrete, wear surface, ride, moisture content, smoothness, bug holes, honeycombing, etc.

d. *Liquid Color, Fiber, and Special Additives.* Due to normal fluctuations in Ready Mix components, Knife River disclaims any responsibility for color, other than to add the liquid color at manufacturer's dosage rate based upon the base concrete color of the plant. Therefore, Knife River warrants only that concrete, color, fibers, or any other special additive will be batched according to mix design and/or per manufacturer's recommended dosage rate.

e. *Fly Ash and Slag Cement.* Fly ash is a byproduct of coal-fired electric power generation and slag cement is a byproduct of steel production. Availability is dependent on factors outside Knife River's control. Should any of these supplementary cementations materials (by-products)

become regionally unavailable (e.g. plant breakdowns, closures, lack of supply, etc.), Customer will assume all additional costs for non fly-ash and/or slag-cement mixes.

f. *Yield.* Knife River does not guarantee an "in-place" yield, an "in-the-form" yield, or any other yield calculation except by measurement in accordance with ASTM C138.

g. *Sampling and Testing.* All sampling and testing shall be in accordance with ASTM & ACI standards. These procedures include, but are not limited to, sampling, initial curing, air content, ambient and concrete temperatures, and transportation of concrete samples. However, unless specifically stated in the MSO, prices do not include costs for testing or other engineering services. Any costs for additional testing, repairs, or delays due to improper sampling, testing, or inspection procedures shall be the responsibility of Customer. Material compliance testing shall be sampled from the truck chute per ASTM C172, not point of placement.

h. *Delays.* Without limiting the Limitation on Damages provisions in the Standard Terms & Conditions, Knife River is not responsible for failure to make delivery, and Knife River shall not be liable for any delay, loss of profits, additional expense, claims of third parties, or any other special, incidental, or consequential damages of Customer, due to strikes, lockouts or other labor troubles, accidents, or necessary repairs to machinery, fires, flood, adverse weather conditions, or by reasons of any other contingencies beyond Knife River's control. Knife River is not responsible for allocations or priorities that may be imposed by its suppliers and Knife River shall not be liable for any delay, loss of profits, additional expense, claims of third parties, or any other special, incidental, or consequential damages of Customer caused by such imposed allocations or priorities.

7. *Claims.* All claims of Customer shall be deemed waived unless made in writing within ten (10) calendar days from date of delivery. Knife River shall be given full opportunity to investigate claims. Knife River's limited warranty only extends to the cost of the original Material.