

1. These Standard Purchase Order Terms and Conditions ("Terms") only apply to transactions that do not have a previously negotiated and written agreement, duly executed by both parties. If there is such an agreement, then those terms shall be the terms that govern the transaction and relationship of the parties.
2. In the absence of such a written agreement, duly executed by both parties, then these Terms apply to any purchases by Soil-Nail Holdings, LLC, its subsidiaries, affiliates, successors, and assigns ("Buyer") of the goods or services ("Merchandise") described in the applicable purchase order, any document of Buyer attached to the applicable purchase order, and any communication of Buyer that directed Seller to or incorporates these Terms (collectively, the "Contract Documents"). The purchase order, subject to these Terms constitutes the agreement between the parties for purchase and sale of the items listed on the purchase order (the "Agreement") unless any items are services subject to the terms of Buyer's standard subcontract agreement as described below.
3. Seller's full or partial performance under the purchase order will constitute acceptance of these Terms. These Terms apply to everything listed in the purchase order and constitute Buyer's offer to Seller, which Buyer may revoke at any time prior to Seller's acceptance. The purchase order is not an acceptance by Buyer of any offer to sell, any quotation, or any proposal. Reference in the purchase order to any such offer to sell, quotation, or proposal will not constitute a modification of any of these Terms. Terms and conditions different from or in addition to these Terms, whether contained in any acknowledgment of the purchase order or with delivery of any goods or services under the purchase order, or otherwise, will not be binding on Buyer, whether or not they would materially alter the purchase order, and Buyer hereby rejects them. These Terms may be modified only by a written document signed by duly authorized representatives of Buyer and Seller.
4. Buyer shall pay Seller to provide the Merchandise and for any incidental services as identified in the purchase order for the total sum listed in the purchase order (the "Price"). Unless otherwise documented, the Price excludes applicable federal, state, and local taxes, for which Seller shall be fully responsible regardless of the estimated amount. Unless otherwise indicated, prices shall not include costs or deposits for shipping and packing materials. No increase in price or extra charges, including any interest or finance charges, shall be effective unless Buyer, in its sole discretion, consents to them in writing in advance, and if Buyer consents to a price increase or extra charges, it shall not be effective until at least thirty (30) days after such consent is given.
5. If any incidental services identified in the Purchase Order constitute the substantial, specified portion of the work of construction of a given building or project which is the subject of a general construction contract in accordance with the plans and specifications of such contract the Seller agrees the provision of those services are subject to the Standard Agreement between Constructor and Subcontractor as set forth in ConsensusDocs 750.
6. Any incidental services performed by Seller that are not governed by the terms of ConsensusDocs 750 are governed by these Terms. Nothing in these Terms shall be construed to create a contractual relationship between persons or entities other than Buyer and Seller. Except as specifically provided in these Terms, these Terms are exclusively for the benefit of Buyer and Seller and not for the benefit of any third-party. The Agreement represents the entire and integrated agreement between Buyer and Seller, and supersedes all prior negotiations, representations, or agreements, either written or oral.
7. Along with the delivery of materials or equipment, at no additional cost, Seller shall promptly submit to Buyer all available manufacturer's warranties, product data, and literature relating to such materials or equipment.
8. Time is of the essence of this Agreement. Buyer and Seller shall coordinate with one another with respect to the timing and delivery of the materials and equipment pursuant to the purchase order and these Terms. In the event the delivery schedule agreed to by Buyer and Seller cannot be met for any reason, Seller shall notify Buyer as soon as reasonably practical as to such delay.
9. Shipping instructions furnished by Buyer shall be strictly complied with and shall be considered a part of the Agreement. Seller shall endeavor to provide Buyer at least twenty-four (24) hours' notice prior to the delivery of any materials or equipment. Any provisions for delivery of materials or equipment by installment shall not be construed as making the obligations of either party severable. Risk of loss or damage shall be upon Seller until the materials or equipment are physically delivered to Buyer at the project site or other authorized destination, unless otherwise agreed to in writing and signed by Buyer, or if covered by project all risk or equivalent insurance.
10. Seller shall submit to Buyer all Material Safety Data Sheets, if applicable and as required by law, for materials or substances sold to Buyer.
11. Except as otherwise provided in these Terms, all shipments shall be subject to final inspection by Buyer after receipt by Buyer at destination. Shipments shall be accompanied by detailed delivery tickets to assist Buyer in its inspection. Buyer must inspect all materials and equipment and advise Seller of any visible damage or shortfalls within a reasonable time after delivery; otherwise, such materials and equipment will be deemed to be accepted. Should Buyer discover any damage or shortfalls, Buyer shall report them to Seller. Materials or equipment not accepted due to nonconformance with the requirements of these Terms shall, at Buyer's option, be (a) returned to Seller at Seller's expense; (b) exchanged for replacement products; or (c) repaired at Seller's expense to the extent such repairs do not exceed the replacement cost of such materials or equipment. If nonconforming materials have been installed, Seller is responsible for labor costs to uninstall nonconforming materials and reinstall conforming materials. Incorporation of the materials or equipment into the project shall constitute acceptance by Buyer of such materials or equipment and incidental services, if any, subject to Seller's warranty obligations. Payment for any materials or equipment shall not constitute acceptance. Notwithstanding the foregoing, Buyer shall have the right to reject and refuse acceptance of materials or equipment that are not in accordance with specifications or information identified in the purchase order, these Terms, or Seller's warranty, if any, as provided pursuant to these Terms.
12. Changes, Cancellation. Buyer may at any time direct changes to the Merchandise or to otherwise change the scope of the Agreement including such matters as inspection, testing or quality control, and Seller agrees to make such changes promptly. Any difference in price or time for performance resulting from such changes shall be equitably adjusted by Buyer after receipt of documentation in such form and detail as Buyer may direct. Any changes to the Agreement shall be made in accordance with this Section 12. In addition to any other rights of Buyer to terminate the Agreement, Buyer may, at its option, immediately terminate all or any part of the Agreement, at any time and for any reason, by giving written notice to Seller. Upon such termination, Buyer shall pay to Seller the following amounts without duplication: (a) the price for all Merchandise completed and delivered in accordance with the Contract Documents and not previously paid for and (b) the actual costs of work-in-process and raw materials incurred by Seller in furnishing the Merchandise under the Agreement to the extent such costs are reasonable in amount and are properly allocable to the terminated portion of the Agreement (provided Seller has delivered to Buyer any such work-in-process or raw materials), less the sum of the reasonable value or cost (whichever is higher) of any goods or materials used or sold by Seller with Buyer's written consent and the cost of any damaged or destroyed goods or material. Buyer will make no payments for finished goods, services, work-in-progress or raw materials fabricated or procured by Seller in amounts in excess of those expressly authorized under the Agreement or for any undelivered goods or raw materials that are in Seller's standard stock or that are readily marketable. Payments made under this Section shall not exceed the aggregate price payable by Buyer for Merchandise that is undelivered at the date of termination. Except as provided in this Section, Buyer shall not be liable for payments to Seller, directly or on account of claims by Seller's subcontractors, for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, or general and administrative burden charges from termination of the Agreement. Within sixty (60) days from the effective date of termination, Seller shall submit a comprehensive termination claim to Buyer with sufficient supporting data to permit Buyer's audit and shall thereafter promptly furnish such supplemental and supporting information as Buyer shall request. Buyer or its agents shall have the right to audit and examine all books, records, facilities, work, material, inventories and other items relating to any termination claim of Seller.
13. Should Buyer order Seller in writing to suspend, delay, or interrupt the performance of the Agreement for such period as may be determined to be appropriate for the convenience of the project owner and not due to any act or omission of Seller, then Seller shall immediately suspend, delay, or interrupt as ordered by Buyer.
14. Should Seller fail to deliver items and materials or perform the incidental services required within the time provided under the Agreement or any mutually agreed upon extension of time, or should Seller fail to perform any of the provisions of the Agreement or fail to make progress so as to endanger performance of the Agreement in accordance with its terms, Seller may be deemed in default and Buyer may terminate the Agreement for default by providing written notice of the same. The rights and remedies of Buyer provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Agreement.
15. Seller assigns to Buyer any applicable vendor or manufacturer warranties or remedies. In addition to the foregoing warranties, Seller hereby expressly warrants that all materials or equipment covered by the Agreement shall be (a) fit and sufficient for the intended purpose for which such materials or equipment was manufactured; and (b) free and clear of all liens. In the event of a breach of such warranties, Seller shall (a) refund the Price, (b) repair, or (c) replace, at Seller's option and expense, any defective materials or equipment. Seller's warranty excludes remedies for defects or damages caused by ordinary wear and tear, use for a purpose for which the materials or equipment were not specified, improper or insufficient installation, operation, maintenance, storage, or abuse, and modification not performed by Seller. THE WARRANTIES IN THIS SECTION ARE EXCLUSIVE, AND SELLER MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES.
16. Payment for conforming material or equipment shall be made by Buyer in accordance with any terms indicated in the Purchase Order and after a receipt by Buyer of Seller's invoice. If requested by Buyer, Seller shall promptly provide affidavits that all of Seller's suppliers have been paid, and a release of all liens either by Seller or Seller's supplier and claims in a form reasonably acceptable to Seller and Buyer. Such releases or waivers of lien may be conditioned upon payment. Prior to final payment, Seller shall provide to Buyer copies of warranties, applicable manuals, and all other close-out documents required for the materials or equipment by the Agreement.
17. Compliance with Laws. Seller agrees that it shall strictly comply with all applicable foreign, federal, state, and local laws, rules, regulations, codes, and ordinances, including all applicable laws and regulations regarding employment and discrimination and data protection. Seller shall arrange for all inspections and approvals by governmental officials including customs clearance or other import or export obligations, if necessary. Seller shall not offer or provide to Buyer's purchasing agents any gratuities, gifts, payments, or anything of value, nor shall Seller offer or provide to any employees, agents or other representatives of Buyer any gratuities, gifts, payments, or anything of value in an attempt to influence directly such person's administration of the provisions of the Agreement.
18. Confidentiality. Buyer may disclose technical or business information to Seller in connection with the negotiation or performance of the Agreement. Seller agrees to keep confidential all such information as well as any other information relating to the Agreement, including Buyer's interest in, or the existence or terms of, the Agreement. Seller shall not disclose or use, directly or indirectly, such information for any purpose other than the purposes of performing the Agreement, nor shall Seller disclose to Buyer any of Seller's information that Seller deems confidential.
19. Intellectual Property. Neither party transfers to the other party any patent, know-how, trade secret, trademark, copyright, or any other intellectual property right in the information, documents or property that such party makes available to the other under this Contract, other than (a) Seller has the right to use Buyer's intellectual property rights solely to produce and supply Merchandise to Buyer under this Contract, (b) if the Merchandise is experimental, custom or developed for Buyer (including any original works of authorship or art qualifying for copyright protection), all rights, title and interest in and to any intellectual property conceived, developed, or first reduced to practice in order to produce or supply the Merchandise is hereby irrevocably assigned to the Buyer and Seller agrees to have all necessary documents executed to document such assignment and assist the Buyer in perfecting any such interest (Buyer agrees to pay Seller's reasonable costs in assisting the Buyer to perfect any such interest), and, (c) if this Contract is terminated due to Seller's default and Buyer cannot reasonably obtain substitute Merchandise from a third party without Seller's intellectual property, Buyer shall have a non-exclusive royalty free right and license to use Seller's intellectual property to obtain, use and sell substitute Merchandise. Seller may not use Buyer's name, logo or trademark without Buyer's written consent.
20. Buyer and Seller waive claims against each other for consequential or special damages arising out of or relating to the Agreement; however, this waiver shall not apply to any claim for reimbursement or indemnification for any consequential damages one party was required to pay to a third party as a result of an act or omission of the other party or their employees or agents.
21. Except for assignment of proceeds, no assignment of the Agreement or of any right, obligation, or delegation of duty under the Agreement shall be made without the written consent of the other party or their duly authorized agent. Any attempted assignment or delegation without such consent shall be void.
22. Either party's failure to insist on performance of any term, condition, or instruction, or to exercise any right or privilege provided in the Agreement, or its waiver of any breach, shall not thereafter waive any such term, condition, instruction, or any right or privilege.
23. The Agreement shall be governed by the law in effect at the location of the project.
24. DISPUTE MITIGATION AND RESOLUTION.
 - a. Unless otherwise agreed in writing, except for nonpayment by Buyer, Seller shall continue to provide materials, equipment, and incidental services as identified in the Purchase Order, maintain the delivery schedule, if applicable, during any dispute mitigation or resolution proceedings. If Seller continues to perform, Buyer shall continue to make payments in accordance with the Agreement.
 - b. If a dispute arises out of or relates to the Agreement or its breach, the parties shall endeavor to settle the dispute in a cooperative manner, including resolving minor nonconformities that would give rise to economic waste. Within five (5) business days, the parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions, shall conduct direct discussions and make a good faith effort to resolve such dispute.
 - c. If the matter is unresolved after direct discussions, the parties shall submit the matter to arbitration using the current Construction Industry Arbitration Rules of the American Arbitration Association, or the parties may mutually agree to select another set of arbitration rules. The administration of the arbitration shall be as mutually agreed by the parties.
 - d. The costs of any binding dispute resolution procedures shall be borne by the non-prevailing party, including reasonable attorneys' fees, as determined by the adjudicator of the dispute.
 - e. The venue of any binding dispute resolution procedure shall be the location of the project, unless the parties agree on a mutually convenient location.
 - f. All parties necessary to resolve a matter shall be parties to the same dispute resolution procedure. Appropriate provisions shall be included in all other contracts relating to the material, equipment, or incidental services, if any, as identified in the Purchase Order to provide for the joinder or consolidation of such dispute resolution procedures.
25. The parties expressly agree that the Agreement was jointly drafted, and that they both had opportunity to negotiate terms and to obtain assistance of counsel in reviewing terms prior to execution. The Agreement shall be construed neither against nor in favor of either party but shall be construed in a neutral manner.