

Terms and Conditions of Sale

1. Governing Terms and Conditions of Sale. These Terms and Conditions of Sale ("T&Cs") are agreed to between Zamaroni Quarry, Inc., dba Wheeler Zamaroni Landscape Supplies ("Wheeler Zamaroni") and the purchaser of Wheeler Zamaroni products and services ("Customer"). Wheeler Zamaroni's acceptance of any order is subject to and conditioned upon Customer's acceptance of these T&Cs, which T&Cs shall govern over any contrary, additional or different terms, provisions or conditions unless Wheeler Zamaroni expressly accepts them in writing. **CUSTOMER'S SIGNATURE OR INITIALS ON WHEELER ZAMARONI'S QUOTE, SALES ORDER OR INVOICE, OR DEPOSIT OR PAYMENT FOR, OR CUSTOMER'S ACCEPTANCE OF DELIVERY OR USE OF ANY PRODUCTS OR SERVICES, SHALL CONSTITUTE ITS AGREEMENT TO THESE T&Cs.**

2. Entire Agreement. Customer acknowledges that it has read, understands and agrees to these T&Cs, and that this document sets forth the complete and exclusive statement of the agreement between the parties, and supersedes any other proposal, agreement, or representation, whether oral or written, and any other communications relating hereto. No waiver or modification shall be effective unless signed by an authorized officer of Wheeler Zamaroni.

3. Payment Terms. Payment is due net thirty (30) days from invoice date on approved credit. If Customer's credit has not been established with Wheeler Zamaroni or has been revoked, terms may be payment in advance or C.O.D. All shipments are F.O.B. Wheeler Zamaroni's designated place of business, unless otherwise agreed to in writing by the parties. All invoices which are not paid within 30 days shall be subject to a finance charge as specified on the face of this invoice from the date of the invoice until it is paid.

4. Customer's Credit. Wheeler Zamaroni may, in its sole discretion, extend credit to Customer but reserves the right to deny credit or cancel any credit sales without notice at any time for any reason. Prior to purchasing on credit, Customer must accurately complete and sign Wheeler Zamaroni's credit application and make at least two C.O.D. purchases totaling \$2,000.00. To continue to be eligible for credit sales, Customer should make at least \$5,000 in new purchases each year and otherwise maintain its account current. If Customer fails to remit payment for any one shipment when it becomes due, Wheeler Zamaroni may suspend further deliveries or sales until the account is brought current, and shall not be liable for any resulting direct or indirect damages or expenses of Customer. Sales discounts are allowed only where payment is received within ten (10) days of the invoice date; however, no discounts are allowed if any payments are overdue. Customer agrees to pay \$25.00 per returned check.

5. Deposits; Holding Fees. Wheeler Zamaroni may require Customer to place a deposit at the time of order for, among other things, items not normally kept in stock and specialty items. Customer agrees that all deposits are *non-refundable* but do not limit Wheeler Zamaroni's remedies. Wheeler Zamaroni may, in its sole discretion, charge an inventory handling fee of 5% of the total purchase price on all products stored at any of its places of business more than fifteen (15) days after order, delivery to Wheeler Zamaroni, and notice to Customer, but not picked up within such period. If Customer fails to take delivery, the goods shall be held at its sole risk in all respects, but Wheeler Zamaroni may nevertheless, acting as Customer's agent and at Customer's expense, thereafter store, insure and/or otherwise protect the goods or may resell same for Customer's account.

6. Taxes. All taxes assessed on any order are Customer's sole responsibility, including, but not limited to, local and regional sales, use, transportation, excise and personal property taxes. Customer may provide Wheeler Zamaroni with a valid Reseller's permit. In the event Customer either fails to pay the tax or other charges as agreed above or fails to provide a valid Reseller's permit, Customer agrees to indemnify and hold Wheeler Zamaroni harmless from any liability and expense, including attorneys' fees and costs, by reason of such failure.

7. Insurance; Safety Rules. Customer shall not move, load, transport or otherwise handle the products on Wheeler Zamaroni's premises without first having obtained and provided evidence of insurance coverage satisfactory to Wheeler Zamaroni. Such insurance includes workers compensation, public liability, and automobile liability insurance. Customer shall comply at all times with Wheeler Zamaroni's signs, instructions, safety rules, and regulations.

8. DISCLAIMERS.

A. "AS IS" SALE. ALL PRODUCTS AND SERVICES ARE SOLD WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, CAPACITY, TITLE, NONINFRINGEMENT, AND EXPRESS WARRANTIES BY REPRESENTATION, DESCRIPTION, OR OTHER AFFIRMATION OF FACT, SAMPLE, OR ILLUSTRATION, WHETHER ORAL, WRITTEN, OR CONTAINED IN ANY LETTER, BROCHURE, WEBSITE, IMAGE OR OTHER MEDIUM. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF SUCH PRODUCTS AND SERVICES IS WITH CUSTOMER. WHEELER ZAMARONI DOES NOT WARRANT THE

PERFORMANCE OR RESULTS OF USING ITS PRODUCTS OR SERVICES.

B. Product Variability. Customer acknowledges that stone, soil, and organic products are natural materials with variations in composition, color, texture, and other characteristics, and may have imperfections from item to item. Customer accepts the entire risk of such variations and imperfections.

C. Descriptions, Samples, and Specifications. Any descriptions, models, samples or specifications with respect to products offered for sale are not part of the basis of the bargain. Wheeler Zamaroni strongly recommends that Customer inspect the actual products it is purchasing prior to delivery, and shall not be responsible for the consequences of its failure to do so.

D. No Representations; Technical Advice; Quantities. Wheeler Zamaroni's employees are not authorized to make any statements or representations as to the quality, character, size, condition, quantity, etc., of the products offered for sale inconsistent with these T&Cs. Any technical advice is provided without charge, and Wheeler Zamaroni assumes no duty or liability for the advice given or results obtained, all such advice being given and accepted at Customer's sole risk. Wheeler Zamaroni shall not be responsible for estimating quantities.

9. LIMITATION OF LIABILITY. IN NO EVENT SHALL WHEELER ZAMARONI BE LIABLE FOR ANY LOST PROFITS, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR COST OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, ARISING OUT OF THESE T&Cs, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF PURPOSE OF ANY LIMITED REMEDY. THE AGGREGATE LIABILITY OF WHEELER ZAMARONI FOR CLAIMS ARISING HEREUNDER OR OTHERWISE SHALL NOT EXCEED THE AMOUNTS PAID BY CUSTOMER HEREUNDER. HOWEVER, THIS LIMITATION DOES NOT LIMIT OR EXCLUDE ANY LIABILITY TO THE EXTENT NOT PERMITTED BY APPLICABLE LAW. ANY ACTION FOR BREACH OF THESE T&Cs MUST BE COMMENCED WITHIN ONE YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.

10. EXCLUSIVE REMEDY. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AGAINST WHEELER ZAMARONI ARISING OUT OF ANY BREACH OF THESE T&Cs IS THE REPAIR OR REPLACEMENT OF ANY NONCONFORMING PRODUCT, OR AT WHEELER ZAMARONI'S ELECTION, A REFUND OF THE PORTION OF THE PURCHASE PRICE ALLOCABLE TO THE NONCONFORMING PRODUCT.

11. INDEMNIFICATION. Customer hereby agrees to defend, indemnify and hold harmless Wheeler Zamaroni its directors, officers, employees, agents, assigns, and successors from and against any and all liabilities, judgments, claims, settlements, losses, damages, penalties, obligations and expenses, including attorneys' and experts' fees and expenses, incurred or suffered by Wheeler Zamaroni or any such person arising out of the sale of any products or services. This indemnification shall survive delivery of the products to Customer and any subsequent transfer of the products to a third party.

12. Delivery; Risk of Loss; Restocking Charge. Wheeler Zamaroni may agree to deliver products to Customer's location at Customer's sole risk and expense. Customer shall provide unfettered access and a representative to take delivery; if not, and re-delivery is required, Customer shall pay for each delivery and attempted delivery. Customer shall inspect all products within ten days of delivery, and shall notify Wheeler Zamaroni within such time of any nonconformance. Title and risk of loss pass upon delivery to the specified delivery point. Upon request, Customer shall provide Wheeler Zamaroni with all information to prepare and serve/post all notices under applicable mechanic's lien laws. A restocking charge of 25% shall be applied to all approved returns.

13. Force Majeure. Wheeler Zamaroni's performance shall be excused where it is prevented or delayed by war, actual or threatened act of terrorism, strike, embargo, riot, power outage, explosion, machinery breakdown, accident, inability to obtain labor or materials, government restrictions or regulations, fire, flood, earthquake, act of God, or other causes beyond its reasonable control.

14. Severability. If any provision of the invoice or these T&Cs is determined to be illegal or unenforceable, it shall be disregarded and shall not affect the enforceability of any other provision of the invoice or these T&Cs.

15. Attorneys' Fees. If any legal action is necessary to enforce these T&Cs, the prevailing party shall be entitled to reasonable attorneys' and experts' fees, costs, and expenses in addition to any other relief to which it may be entitled.

16. Governing Law and Venue. These T&Cs shall be governed and construed in accordance with the laws of the State of California without regard to its choice of law principles. The sole jurisdiction and venue for actions related to the subject matter of these T&Cs shall be the appropriate state and U.S. federal courts having within their jurisdiction the location of Wheeler Zamaroni's principal place of business.