

## BRAMPTON BRICK LIMITED TERMS AND CONDITIONS OF SALE

The Terms and Conditions contained in the "Terms and Conditions" link at [bramptonbrick.com](http://bramptonbrick.com) are incorporated herein by reference

1. As used herein, the term "Seller" refers to Brampton Brick Limited, and its affiliates and subsidiaries, as applicable, and their respective successors and/or assigns. As used herein, the term "Buyer" refers to the customer named in the Order (as defined below).
2. From time to time Buyer may request to purchase certain products offered for sale by Seller ("Seller Goods"), upon Buyer's submission to Seller of a purchase order ("Order"). No Order shall be binding upon Seller unless and until it has been accepted by Seller in accordance with paragraph 3. These sellers Terms and Conditions of Sale ("Terms and Conditions") shall be deemed to be incorporated into every Order. The terms and conditions governing each Order placed by Buyer and accepted by Seller shall be expressly limited to these Terms and Conditions. Each Order made by Buyer and accepted by Seller will be a separate and individual contract between Buyer and Seller subject to these Terms and Conditions and any two or more of said Orders are not intended to, and shall not be deemed to be, parts of an installment contract, but rather, shall be separate and severable contracts between Buyer and Seller.
3. Each Order will be submitted to Seller in writing via hand delivery, mail, facsimile, or other electronic means and signed by Buyer's authorized agent. An Order will be deemed to have been accepted by Seller upon Buyer's receipt of Seller's written Confirmation of the Order or upon Seller's first shipment or other tender of Seller Goods pursuant to the Order, whichever occurs first.
4. The price(s) applicable to each Order shall be determined in accordance with Seller's published pricing or by quotation. All quotations by Seller and all prices set forth in or with reference to each other shall be: (a) F.O.B. Seller's Plant; (b) Non-inclusive of applicable taxes, excises, duties, any fees or taxes to be paid or collected by Seller or other governmental impositions, on or related to the production and sale of Seller Goods; (c) Non-inclusive of transportation/ freight; and (d) Subject to change without notice to Buyer. Title to and risk of loss of the Seller Goods shall pass to Buyer upon Buyer's acceptance of Seller Goods at Seller's Plant; provided that, if, and only if, Seller has agreed to deliver, or cause to be delivered, Seller Goods to an agreed upon delivery point, title to Seller Goods shall pass to Buyer upon Seller's delivery at the delivery point.
5. Unless otherwise specified in writing signed by Seller, Buyer shall remit payment in full for each invoice submitted by Seller in connection with an Order immediately upon receipt of invoice, or following delivery of the applicable Order. Interest shall be charged against all outstanding balances which are not paid by the due date specified on the invoice at the rate of eighteen percent (18%) per annum. Interest shall begin to accrue on the first day after the invoice due date until entire outstanding balance and all accrued interest is paid in full. If Buyer fails to comply with the terms of this paragraph, Seller may, in its sole and absolute discretion, place Buyer's account on a credit hold until the entire outstanding balance owing to Seller and all accrued interest and fees are paid in full. If Seller incurs expenses in order to collect amounts owed to it by Buyer, such expenses, including a reasonable allowance for legal fees, shall be added to and become part of the purchase price due to Seller from Buyer. If at any time the creditworthiness of Buyer becomes unsatisfactory to Seller, in Seller's sole and absolute discretion, Seller reserves the right to demand payment in advance of delivery or other security and to cancel the unfilled portion of any particular Order upon Buyer's failure to provide such advanced payment or additional security.
6. To secure payment of the purchase price of Seller Goods described in the Order, and all sums now or hereafter owing to Seller from Buyer pursuant to each Order, Buyer does hereby assign and grant to Seller a continuing security interest in and lien against the following assets of Buyer, whether now owned or subsequently acquired or arising: goods and inventory consisting of Seller Goods subject to each Order and all replacements of, substitutions for and increases, additions and accessions to, such goods and inventory and all proceeds, profits and royalties from such goods and inventory in any form.
7. If Seller has agreed to arrange delivery of Seller Goods to Buyer, Seller will deliver Seller Goods at the time (within normal business hours) and place of delivery specified by Buyer in each Order accepted by Seller, provided however Seller Goods specified in each Order shall be delivered in truckload quantities to a point nearest the place of delivery that is accessible to Seller's trucks as loaded, without risk of accident, injury or undue delay. Buyer must take full delivery of an Order within six (6) months from the date of acceptance of the Order by Seller. Any of Seller Goods delivered may be subject to any increase in prices as shown in Seller's regular quoted list prices in effect at the time of each delivery, and such increased price will be reflected in the invoice submitted by Seller for the Order. MINIMUM FREIGHT CHARGES FOR EACH DELIVERY ZONE APPLY. Seller requires at least 48 hours' notice of an Order and of Buyer's particular requirements to ensure adequate service and to enable Seller to schedule the trucks and deliveries. Buyer assumes the risk of delivery of Seller Goods beyond a point accessible to Seller's trucks, as described in this paragraph. Further, delivery of Seller Goods for the purposes of this paragraph means "Delivered to the Curb Line". Any delivery made by Seller beyond the curb line shall be the sole responsibility of Buyer and Seller shall bear no liability for it. Seller shall not be liable for any direct or indirect damages whatsoever caused by the delay of a delivery of Seller Goods. Any failure to meet scheduled delivery dates shall not be sufficient cause for cancellation of Buyer's obligations under any Order and these Terms and Conditions. The following charges are in addition to Seller's normal freight charges for delivery of Seller Goods and Buyer agrees to pay any such additional fees charged by Seller pursuant to this paragraph, on the terms set forth in paragraph 5:
  - A. Seller reserves the right to charge an additional fee for unreasonable delay in unloading or releasing its vehicles. As used in this paragraph "unreasonable delay" means any delay in delivery that is not directly caused by Seller, its agents or employees, or by an Excusable Delay (as defined herein) which results in an increase in costs to Seller.
  - B. Seller reserves the right to charge an additional fee for deliveries of less than truckload quantities.
  - C. If wooden pallets are taken by Buyer, Seller will charge a pallet fee which will be indicated on the invoice submitted by Seller for the Order. Credit will be given on returned pallets only when the pallets are returned by Buyer to Seller in a condition acceptable to Seller, in its sole and absolute discretion; provided however, pallet fees will not be credited if returned to Seller one year after shipment.
  - D. Seller reserves the right to charge an additional fee for drop charges for all drops less than twelve bundles.
8. Upon delivery of Seller Goods to Buyer, Buyer shall inspect Seller Goods to confirm that Seller Goods meet the specifications in the Order. Any and all claims of Buyer that Seller Goods do not meet the specifications in the Order must be made in writing by Buyer at the time of delivery of Seller Goods to Buyer, failing which Buyer hereby fully, finally and forever waives any and all such claims and releases Seller therefrom. It is Buyer's sole and absolute responsibility to verify the quantities, colours, shapes, etc. of Seller Goods at the time of delivery and Seller assumes no responsibility in this regard. If any of Seller Goods do not meet the specifications in the Order, as Buyer's exclusive right and remedy against Seller, Seller agrees to deliver replacement Seller Goods that meet the specifications in the Order at a time mutually agreed upon by Buyer and Seller. Buyer acknowledges and agrees that for any Order, including, without limitation, replacement Seller Goods delivered to Buyer, Seller cannot guarantee exact colour shades.
9. BUYER ACKNOWLEDGES, AGREES AND CONFIRMS THAT ITS SOLE AND EXCLUSIVE REMEDY AGAINST SELLER REGARDING SELLER GOODS SHALL BE LIMITED TO THE REPLACEMENT OF SELLER GOODS THAT DO NOT CONFORM TO THE ORDER SPECIFICATIONS OR THAT DO NOT MEET THE WARRANTY STANDARDS FOR SUCH SELLER GOODS PROVIDED IN THESE TERMS AND CONDITIONS; AND PROVIDED THAT BUYER HAS NOTIFIED SELLER IN WRITING OF ANY NON-CONFORMITY OF SELLER GOODS AS PROVIDED IN THESE TERMS AND CONDITIONS AND HAS NOT TAKEN ANY ACTION THAT MAY VOID OR WAIVE THE WARRANTY FOR SUCH SELLER GOODS. THIS EXCLUSIVE REMEDY SHALL NOT BE DEEMED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE SO LONG AS SELLER IS WILLING AND ABLE TO REPLACE THE SUBJECT SELLER GOODS. IN ANY EVENT, SELLER'S LIABILITY FOR ANY DAMAGES DUE TO BUYER UNDER THE ORDER AND THESE TERMS AND CONDITIONS SHALL BE LIMITED TO THE PURCHASE PRICE OF THE SELLER GOODS THAT ARE THE SUBJECT OF THE DAMAGES BEING CLAIMED BY BUYER. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR ANY INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST REVENUES AND PROFITS, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER SUCH CLAIM IS BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT, STRICT LIABILITY OR ANY OTHER THEORY OF LAW OR EQUITY.
10. Neither Seller nor Buyer shall be deemed to be in default or responsible for delays or failures in performance (excluding Buyer's payment obligations under paragraph 5) resulting from causes beyond its control ("Excusable Delay"), including, but not limited to, acts of God, acts of war, or civil disturbance, governmental action or inaction, fires, earthquakes, unavailability of labor, materials, power, or communication or other causes beyond either party's control.
- 11.A. CLAY BRICK STANDARD: The only impartial authorities for acceptable tolerances are the Canadian Standards Association (CSA) as established by their CSA A82 "Fired masonry brick made from clay or shale" and American Society for Testing and Materials (ASTM) as established by their C -216 "Standard Specification for Facing Brick (Solid Masonry Units Made from Clay or Shale). Seller warrants that Seller Goods consisting of clay brick meet the most current version of CSA A82 and ASTM C-216 standards and do not exceed such tolerances. Said standards shall form the basis of Seller's evaluation of any claim by Buyer that Seller Goods exceed such tolerances.

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B. CONCRETE LANDSCAPE STANDARD: The only impartial authority for acceptable tolerances are CSA as established by A231.2 "Precast concrete pavers" and A231.1 "Precast concrete paving slabs" and by ASTM as established by C936 "Standard Specification for Solid Concrete Interlocking Paving Units", C1372 "Standard Specification for Dry-Cast Segmental Retaining Wall Units" and C1319 "Standard Specification for Concrete Grid Paving Units". Seller warrants that Seller Goods consisting of concrete landscape meet the most current version of CSA A231.2 and A231.1 and ASTM C-936, C1372 and C1379 standards and do not exceed such tolerances. Said standards shall form the basis of Seller's evaluation of any claim by Buyer that Seller Goods exceed such tolerances.

C. CONCRETE MASONRY STANDARD: The only impartial authority for acceptable tolerances is the ASTM as established by their C55 "Standard Specification for concrete Building Brick", C90 "Standard Specification for Loadbearing Concrete Masonry Units" and C1634 "Standard Specification for Concrete Facing Brick". Seller warrants that Seller Goods consisting of concrete masonry meet the most current version of ASTM C55, C90 and C1634, as applicable. Said standards shall form the basis of Seller's evaluation of any claim by Buyer that Seller Goods exceed such tolerances.

If Buyer claims that such Seller Goods do not conform to the above CSA or ASTM Standards, as applicable, Buyer shall not use such Seller Goods and instead shall set such Seller Goods aside and notify Seller of the same in writing no later than thirty (30) days of delivery of Seller Goods. Seller shall promptly investigate any such claim made by Buyer in writing as provided in this paragraph and may examine Seller Goods as part of such investigation. If Seller determines that Seller Goods do not meet such standards, Seller shall provide replacement Seller Goods as provided in paragraph 8.

D. RESALE ITEMS: Seller makes no warranties whatsoever with respect to Seller Goods comprising of Resale Items.

12. Installation of Seller Goods by Buyer constitutes full and final acceptance of Seller Goods by Buyer and constitutes a waiver by Buyer of any claim for breach of warranty.

13. THE WARRANTIES SPECIFICALLY SET FORTH IN THESE TERMS AND CONDITIONS ARE THE ONLY WARRANTIES PROVIDED BY SELLER TO BUYER FOR THE ORDER AND FOR SELLER GOODS AND ARE IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SAID WARRANTIES BEING EXPRESSLY DISCLAIMED BY SELLER. THE WARRANTIES SET FORTH IN THESE TERMS AND CONDITIONS SHALL ONLY BE EFFECTIVE IF SELLER HAS HAD A REASONABLE OPPORTUNITY TO INVESTIGATE THE ALLEGED BREACH, AND, IF REQUESTED BY SELLER, SUCH ALLEGEDLY NON-CONFORMING SELLER GOODS ARE SHIPPED TO THE SELLER IN ACCORDANCE WITH THE SHIPPING INSTRUCTIONS PROVIDED BY SELLER TO BUYER. IF SUCH SELLER GOODS ARE NOT SHIPPED IN ACCORDANCE WITH SUCH SHIPPING INSTRUCTIONS, THEN BUYER SHALL BE ENTITLED TO NO REMEDY UNDER THE WARRANTIES SET FORTH IN THESE TERMS AND CONDITIONS APPLICABLE TO SUCH SELLER GOODS. ANY REPAIRS, MODIFICATIONS OR ALTERATIONS MADE TO THE SELLER GOODS WITHOUT THE AUTHORIZATION OF SELLER WILL VOID THE WARRANTIES SET FORTH IN THESE TERMS AND CONDITIONS APPLICABLE TO SUCH SELLER GOODS. THE WARRANTIES SET FORTH IN THESE TERMS AND CONDITIONS WILL NOT APPLY WHERE DAMAGES TO THE SELLER GOODS ARE CAUSED BY MISUSE, ABUSE, NEGLIGENCE, FAULTY INSTALLATION OR IMPROPER APPLICATION OR USE OF THE SELLER GOODS.

14. Buyer shall be solely responsible for the installation of Seller Goods and Seller shall not be subject to, and shall have no liability whatsoever for, defective installation of Seller Goods. Buyer shall indemnify, defend and hold Seller harmless from any and all claims, demands, losses, damages, assessments, liabilities, deficiencies, actions, taxes, charges, orders, fines, penalties, interest and amounts paid in settlement and all costs and expenses (including all legal and other professional fees and disbursements) arising as a consequence of any action or inaction by Buyer related directly or indirectly to Buyer's use of Seller Goods (excluding claims for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of Seller, its agent or employees). The provisions of this paragraph shall survive the completion of the purchase and sale of Seller Goods pursuant to an Order.

15. Buyer may return excess or unused Seller Goods for exchange or credit; provided such Seller Goods are unopened and in their original packaging. Buyer's right to return Seller Goods pursuant to this paragraph is further subject to the following terms and conditions: (a) Seller will only accept full bundle quantities on any of Seller Goods returned by Buyer; (b) Seller Goods may not be returned after ninety (90) days from the original shipment date or pick-up date; (c) Any of Seller Goods returned for credit will be subject to a restocking charge and Seller's approval of return of such Seller Goods; and (d) Products ordered by Buyer, including without limitation, special products, are not subject to cancellation. Any products, including without limitation, special products, ordered and not taken will be paid for by Buyer, according to the terms of paragraph 5.

16. Seller may terminate an Order or any part thereof in the event that: (a) Buyer is in default of any performance, warranty or representation hereunder; (b) Buyer is subject to any administrative or governmental action or measure which suspends or terminates its business; or (c) Buyer makes a general assignment for the benefit of creditors, should suspend business or commit any act amounting to business failure, or should make a voluntary assignment of transfer of all substantially all of its property; (d) Buyer has a receiver appointed for the whole or any substantial part of its assets or becomes in any way the subject of a bankruptcy proceeding, (e) Buyer discontinues its existence or merges or consolidates with any other entity without the prior written consent of Seller; or (f) An Excusable Delay or any other event enumerated in paragraph 10 (including industrial disturbances), suspends or substantially or materially impairs the performance hereunder of Buyer for longer than four months.

17. Any waiver of any one or more of the provisions of these Terms and Conditions on the part of Seller must be in writing signed by Seller. Waiver of any one or more of the provisions of these Terms and Conditions by Seller shall not constitute a waiver of a subsequent breach of the same provision or a general waiver of any other provision of these Terms and Conditions not so waived and Seller reserves the right to enforce any and all provisions not waived by Seller in writing.

18. It is the responsibility of Buyer to notify its customers regarding these Terms and Conditions.

19. These Terms and Conditions and any matter arising under or related to these Terms and Conditions shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and Seller and Buyer hereby irrevocably attorn to the exclusive jurisdiction of the courts of Ontario with respect to any matter arising under or related to these Terms and Conditions.

20. Except for the provisions relating to Sellers' obligation regarding the delivery of Seller Goods and replacements thereof, time shall be of the essence of every provision of these Terms and Conditions. Should any clause or provision of the Order or these Terms and Conditions be held unenforceable or unlawful, the clause or provision in question shall be modified so as to eliminate the unenforceable element and as so modified shall be binding upon Seller and Buyer. The remaining clauses and provisions of the Order and these Terms and Conditions shall not be affected thereby.

21. Buyer may not assign the Order and these Terms and Conditions without the prior written consent of Seller. Subject to the foregoing, the Order and these Terms and Conditions shall enure to the benefit of and shall be binding on and enforceable by Buyer and Seller and their respective successors, heirs, executors, administrators and legal representatives and permitted assigns, as applicable.