

The following terms and conditions (“Terms and Conditions”) govern all sales of brick (“Brick”) and other products (“Product”) by Meridian Brick Canada Ltd./Briques Meridian Canada Ltee (“Seller”) to Buyer. Buyer accepts these Terms and Conditions for all purchases of Brick or Product upon: (i) its signing of the form accompanying these Terms and Conditions, or (ii) its acceptance of any Brick or Product. All Brick or Product sold by Seller are subject to these Terms and Conditions.

The accompanying form or quotation, if applicable, and these Terms and Conditions comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. Any proposal by Buyer for additional or different terms, including any that appear on documents previously or hereafter submitted by Buyer is hereby rejected, and any attempt by Buyer to vary any of these Terms and Conditions shall be ineffective.

1. PRICE

Unless otherwise agreed in writing, all sales shall be made at the Seller’s current price for the Brick or Product as shown on its current price list package, which includes its current price list and any attachments thereto (the “Price List Package”), as issued by Seller from time to time. Seller reserves the right to revise its prices with or without notice. In the event notice is provided, the price change shall be effective as of the date set forth in the notice; if no notice is given, the price in effect as of the date of scheduled delivery shall apply.

Prices in quotations made by Seller are subject to change without notice, and all quotations expire and become invalid if not accepted within thirty (30) days from the date of issue, unless otherwise noted by Seller in writing. Price extensions when made are for Buyer’s convenience only, and they, as well as any mathematical, stenographic or clerical errors, are not binding on Seller. Prices shown may not include any harmonized sales tax, sales tax, goods and services tax, value added tax, use and excise taxes, or other governmental tax, charge or duty imposed by any Federal, State, Provincial or local authority on amounts payable by Buyer. Buyer shall be responsible for all such taxes, charges, and duties, unless it has provided Seller with an acceptable and authorized tax exemption certificate.

2. DELIVERY AND ACCEPTANCE

Unless otherwise provided on the face of Buyer’s purchase order, delivery of Brick or Product shall be made FCA (Seller’s yard, plant or facility) Incoterms 2010. Buyer shall be responsible for any freight or delivery charges to all destinations, including, without limitation, the cost of any applicable fuel surcharges. Any Brick that is set or laid in mortar is deemed accepted by Buyer. Buyer agrees to pay reasonable storage fees if materials are stored on Seller’s yard more than sixty (60) days after Seller is ready to make delivery.

If Buyer’s purchase order requires Seller’s vehicle or transport be used for delivery of the Brick or Product, and such request is confirmed by Seller’s purchase order acknowledgment form, then delivery shall be made FCA (Buyer’s destination) Incoterms 2010 and the following shall apply:

- a) Buyer shall advise Seller in writing as to the requested date and place for delivery. If Seller cannot comply with this request, an alternate date or place for delivery shall be proposed by Buyer. Buyer or its agent shall be present at the agreed upon date and place of delivery and shall acknowledge same in writing. If a date or place for delivery cannot be agreed upon, Seller shall be authorized to deliver the Brick or Product to Buyer’s last known business address no later than (i) thirty (30) days for Brick or Product sold for use in the residential market, and (ii) one hundred eighty (180) days for Brick or Product sold for use in the commercial market, after completion of the Brick production run, if applicable. Such delivery shall fulfill all of Seller’s delivery obligations to Buyer.
- b) If neither the Buyer nor its agent is present at the date and place scheduled for delivery, Seller may leave the Brick or Product at the place requested by Buyer, and Seller’s delivery ticket shall constitute conclusive evidence that the quantities of Brick or Product referenced therein were delivered to the place specified therein.
- c) Buyer shall be responsible for providing access to the location requested for delivery, and for any damage delivery causes to any sidewalk, roadway or other property. Buyer agrees to indemnify and hold Seller harmless against any claim, liability, judgment or assessment arising out of such damage and all costs and expenses, including legal fees, related thereto.

3. FILLING OF ORDERS

Seller may fill Buyer’s purchase order from existing inventory meeting the purchase order specifications, and may ship any order in separate or partial deliveries, with each partial shipment standing as a separate order made pursuant to these Terms and Conditions. Buyer may not refuse to accept any partial shipments of Brick or Product or refuse to make payment therefore because of Seller’s failure to ship or deliver any remaining Brick or Product ordered. Buyer may not cancel any order without the prior written consent of Seller. Under no circumstances may Special Order Brick be canceled.

4. BRICK PRODUCTION

Upon Seller's written acceptance of a purchase order from Buyer, Seller will use its reasonable best efforts to schedule production of the Brick so that it is produced in one continuous production run in accordance with the delivery schedule set forth in Seller's acknowledgment form. If more than one delivery date is specified in Buyer's purchase order, Seller may produce the Brick in more than one production run. BUYER ACKNOWLEDGES THAT ANY BRICK SUBJECT TO MORE THAN ONE PRODUCTION RUN MAY VARY IN COLOR AND OTHER CHARACTERISTICS, AND BUYER WAIVES ANY CLAIM AGAINST SELLER FOR ANY SUCH VARIATIONS.

5. FORCE MAJEURE

Seller shall not be liable for any delay in the production or delivery of any Brick or Product due to any circumstances beyond its reasonable control, including, without limitation, any act of nature, labor troubles, governmental laws, or any unforeseen manufacturing or shipping delays. Seller may delay the production or delivery of any Brick or Product resulting from any such Force Majeure event. If such delay exists beyond a period of forty-five (45) days, Seller may cancel the Purchase Order, in whole or in part, or suspend performance under the Purchase Order for the duration of the delay and extend the shipment or delivery schedule accordingly. Seller reserves the right to adjust prices due to delays, shortage, or increased costs of materials or transportation. In the event the production or distribution of Brick or Product becomes impractical by reasons of unavailability or shortages from manufacturers or suppliers or by reason of compliance with any applicable law, whether or not such laws should later be held invalid, the Seller shall be relieved of all obligations with respect to the Brick or Product so affected. During any period of shortage, Seller may allocate Brick or Product among its buyers, including Buyer, as it deems appropriate in its discretion. Any non performance as a result of the occurrence of any Force Majeure event shall not place Seller in default in relation to the affected order, and Seller's sole and exclusive liability to Buyer for failure to produce or deliver Brick or Product due to a Force Majeure event shall be limited to the return of the purchase price for the Brick or Product if previously paid by Buyer.

6. PASSING OF TITLE

Title to Brick or Product delivered FCA (Seller's yard, plant or facility) Incoterms 2010 shall pass to Buyer at the time the Brick or Product is placed on the transport vehicle being used to remove the Brick or Product from Seller's plant, yard or facility. Title to Brick or Product delivered by Seller FCA (Buyer's destination) Incoterms 2010 shall pass to Buyer when the Brick or Product has been placed at the disposal of Buyer or its carrier or other designee ready for removal from the delivery vehicle at the point of destination. Liability for and risk of loss of, or damage to, all Brick or Product shall pass at the same time title passes.

7. WARRANTIES

Seller provides the following LIMITED WARRANTY for Bricks:

- a) Terms of Warranty.** Unless otherwise provided in a separate warranty document, Seller hereby warrants that each Brick it manufactures and sells to Buyer meets the Canadian Standards Association A-82-14 and the American Society for Testing and Materials (ASTM) specifications for such Brick in effect at the time such Brick is produced, including ASTM specifications C 216, C 62, C 652, C 902, C1088 or C 1272 as applicable to such Brick. This warranty commences as of the date of sale and extends solely to Buyer and not to any assignees, successors or third parties.
- b) Notice and Remedies for Brick Warranty Claims.** To preserve its warranty rights under Section 7(a), Buyer shall notify Seller in writing within thirty (30) days of the date Buyer first knows or ought reasonably to know that any Brick manufactured by Seller may or does not comply with the warranty specifications. Such written notice shall explain the basis for the claim, the date the Brick was purchased by Buyer, the invoice number, and Brick code as stated on the invoice. Seller shall have the right to investigate all such claims, and to inspect all Brick involved. If any Brick is found by Seller to not comply with its written warranty as set forth in Section 7(a), then, at Seller's election, it shall have the option of: (i) repairing the Brick; (ii) replacing the Brick unless already laid in mortar or otherwise used in construction; or (iii) refunding the purchase price of the Brick. In no event shall Seller be responsible for any labour costs.
- c) No Warranty for Product Not Manufactured by Seller.** Seller makes no warranties of any type regarding any Product it does not manufacture. Buyer waives any claims against Seller for any defects or deficiencies with any Product purchased from Seller but which Seller does not manufacture, and Buyer agrees to look solely to the manufacturer of any such Product for satisfaction of any claims pertaining thereto, including any warranty claims.
- d) Warranty Limitation. EXCEPT AS SET FORTH IN SELLER'S WRITTEN BRICK WARRANTY TO BUYER AS CONTAINED IN SECTION 7(a), SELLER MAKES NO EXPRESS, IMPLIED OR STATUTORY CONDITIONS OR WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS OF**

MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ANY BRICK OR PRODUCT SOLD TO BUYER. ORAL STATEMENTS CONCERNING BRICK OR PRODUCT COVERED BY THIS PURCHASE ORDER, OR STATEMENTS CONTAINED IN SELLER'S GENERAL ADVERTISING, PAMPHLETS OR OTHER PRINTED MATERIALS DO NOT CONSTITUTE WARRANTIES, AND BUYER ACKNOWLEDGES THAT IT HAS NO RIGHT TO RELY UPON SAME. SELLER, WHETHER AS A MANUFACTURER OR CARRIER, SHALL IN NO EVENT BE LIABLE FOR ANY COMMERCIAL LOSSES, SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, OR FOR ANY LOSS, DAMAGE OR EXPENSE ARISING UNDER OR IN CONNECTION WITH ANY SALE OF BRICK OR PRODUCT. SELLER'S LIABILITY FOR DAMAGES OF ANY KIND, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), WHETHER FOR BRICK OR PRODUCT DELIVERED OR FOR NON DELIVERY OF BRICK OR PRODUCT, AND WHETHER SELLER IS ACTING AS A MANUFACTURER OR CARRIER, SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE PARTICULAR ORDER, LOT OR SHIPMENT (OR THE PURCHASE PRICE OF THAT PORTION THEREOF WHICH IS NOT REPAIRED OR REPLACED) WITH RESPECT TO WHICH A CLAIM IS ASSERTED AND BUYER WAIVES ANY CLAIM FOR AMOUNTS IN EXCESS OF THAT AMOUNT. IN PARTICULAR, SELLER SHALL NOT BE LIABLE FOR LOSS OF SALES, REVENUES OR PROFITS ARISING DIRECTLY OR INDIRECTLY FROM THE SALE, HANDLING OR USE OF THE BRICK OR PRODUCTS OR FOR CLAIMS OF ANY THIRD PARTIES INCLUDING, BUT NOT LIMITED TO BREACH OF WARRANTY OR NEGLIGENCE. THE FOREGOING LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

- e) **Legal Rights.** Some jurisdictions do not allow limitations on how long an implied warranty lasts, so the above limitations may not apply to you. Some jurisdictions do not allow the exclusion or limitation on incidental or consequential damages, so the above limitation or exclusion may not apply to you. This warranty gives you specific legal rights, and you may also have other rights which vary from jurisdiction to jurisdiction. If the laws of a particular jurisdiction require terms other than or in addition to those contained in this Section 7, this warranty shall be deemed modified so as to comply with the appropriate laws of such jurisdiction, but only to the extent necessary to prevent the invalidity of this warranty or any provision of this warranty or to prevent the imposition of fines, penalties or any liability.
- f) No legal action under these Terms and Conditions of Sale shall be brought by the Buyer against the Seller for any claim with respect to any Product sold by Seller to Buyer more than one (1) year after delivery of such Product to the Buyer. It is agreed that any cause of action with respect to such Product will accrue on the date of delivery of such Product. If any provision hereof is held by any court of competent jurisdiction to be illegal, void, or unenforceable, such provision will be of no force and effect, but the legality or unenforceability will have no effect upon and will not impair the enforceability of any other provision of this document.

8. RETURN OF BRICK OR PRODUCT

Seller has no obligation to accept any Brick or Product Buyer may seek to return. If, at its option, Seller agrees to take back such Brick or Product, it shall be returned at Buyer's expense, with Buyer paying all costs of transport, and bearing all risk of loss until such Brick or Product has been accepted by Seller at Seller's plant or facility. All returned brick must be in saleable condition in full cubes. Buyer shall also be required to pay a restocking fee equal to twenty-five percent (25%) of the cost of all Brick or Product returned to Seller.

9. TERMS OF PAYMENT

- a) All Brick or Product must be paid for on the due date specified in the Price List Package furnished by Seller, and if not so specified, within thirty (30) days following the date of delivery. All amounts owed and not paid within thirty (30) days of the due date or the date of delivery, as applicable, shall be assessed a finance charge of 1 1/2% per month (effective percentage rate of 18% per annum), or the highest legal rate, whichever is lower. Finance charges shall continue to accrue after Seller obtains a judgment against Seller until the debt is paid in full. The Seller has the right to exercise setoff or recoupment when needed to satisfy any outstanding debt.
- b) All indebtedness due is payable at Seller's office identified in the invoice or billing for such payment, unless and until Seller designates a different place of payment. Invoices shall be deemed correct unless contested in writing within seven (7) business days of receipt. Seller may apply Buyer's payment against any open charges within Seller's sole discretion.
- c) Seller reserves the right to require payment for any Brick or Product in cash prior to delivery. Buyer agrees that all funds owed to Buyer or received by Buyer from a third party, to the extent those funds result from Brick or Product supplied by Seller, shall be held in trust for the benefit of Seller (the "Trust Funds"). Buyer agrees it has no interest in the Trust Funds held by anyone and will promptly account for and pay to Seller all such Trust Funds. Buyer also hereby grants to Seller a security interest in all Brick or Product subject to these Terms and Conditions as security for the performance of Buyer's payment obligations.

- d) If Buyer fails to make any payment in accordance with these Terms and Conditions, or fails to comply with any of the terms hereof, Seller may, at its option, cancel any work in progress for Buyer, whether on this order or any other order, and may refuse to deliver any undelivered Brick or Product to Buyer, whether on this order or any other order. In such event, all unpaid amounts owed by Buyer to Seller for the purchase of Brick or Product, whether on this order or any other order, shall be immediately due and payable.

10. BUYER INSOLVENCY

Any order by Buyer for Brick or Product shall constitute a representation that Buyer is solvent. If Buyer (i) becomes insolvent, or institutes or has instituted against it insolvency proceedings, or admits in writing its inability to pay its debts generally, or any proceeding is instituted by or against Buyer seeking adjustment, protection or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee or other similar official for it or for any substantial part of its property; or (ii) fails to comply with any of the Terms and Conditions hereof or any other contract or purchase order with Seller, then the same shall constitute a breach hereof and a default hereunder. In the event of such breach or default, Seller shall be entitled to cancel any unfilled part of this agreement or order without any liability whatsoever, and shall have such other rights and remedies available to Seller for breach of contract under any applicable law, including, but not limited to, the remedies of incidental and consequential damages.

11. LEGAL ACTION

Buyer agrees to pay Seller all costs and expenses of collection, suit, or other legal action, including all actual legal fees, incurred through trial, on appeal, or in any administrative proceedings brought as a result of the commercial relationship between them. Any cause of action which Seller may have against Buyer may be assigned by Seller. All matters between Seller and Buyer, including venue, will be governed by the laws of the province in which the delivery of Brick or Product by Seller to Buyer is to occur, and the federal laws of Canada applicable in that Province without giving effect to any choice or conflict of law provision or rule (whether of the Province of Ontario or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the applicable province. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this document.

12. MISCELLANEOUS

A counterpart of this document delivered by facsimile or electronic transmission shall be deemed an original document and be valid for all purposes. If Seller electronically stores this document in the manner known as “scanning”, a reproduction from the scanned document shall be considered to be an original counterpart and shall be enforceable. Electronic and digital signatures may be used by either party. No waiver by Seller of any of these provisions of this document is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this document operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Buyer and Seller represent and agree that there are no third party beneficiaries to this document and that Buyer and Seller are the sole intended beneficiaries of this document and all sales.

As a standard practice, Seller offers electronic invoicing to its customers. Buyer must contact Seller if Buyer does not wish to receive electronic invoicing.

13. IMPORTANT BRICK INFORMATION

If sawing of Brick is required, Seller recommends wet sawing. Buyer should not use acid for cleaning buff or grey Brick, and Seller suggests contacting a professional brick cleaner for instructions as to how to clean your Brick.

