

TERMS AND CONDITIONS

- 1. Scope of Work:** Vendor shall be responsible to supply only that which is expressly stated within this Purchase Order. No obligation or responsibility shall be inferred or imputed upon the Vendor for any other materials or service, unless same is expressly set forth within this written Purchase Order, or agreed to in writing by the parties hereto.
- 2. Payment:** Vendee shall make timely payment to Vendor, as expressly provided for herein. If Vendee fails to make payment within the time frame set forth herein, the amount will bear interest at the maximum allowed by law until payment is received. Failure to timely pay pursuant to this provision shall be considered a material breach of this Purchase Order, and shall relieve Vendor from any further obligations in connection with this or any other Purchase Order. Should Vendee object to amounts claimed due by Vendor, Vendee shall submit to Vendor written explanation of each and every objection, and concurrently therewith place and maintain amount in dispute with an escrow agent mutually agreed to by the parties until objections are resolved. Vendor shall receive Vendee's written explanation of objections and confirmation of deposit of disputed funds with an escrow agent within no more than 7 calendar days from receipt of the materials provided for herein this Purchase Order. The serving of such objections upon Vendor and the depositing of the disputed funds in the escrow account shall be strict conditions precedent to Vendee raising any issues or claims with respect to the subject transaction. Failure to timely and strictly abide by this condition precedent shall waive the Vendee's right to make such claim or assert such defenses. In addition, failure to timely make payment as required by this Purchase Order shall give the Vendor the right to stop supplying Vendee any further materials, and thereafter declare the entire balance due and payable within 5 days of written notification thereof. In the event that Vendee fails to make timely payment as required herein, or as otherwise agreed to in writing, and the Vendor is, therefore, required to incur expenses associated with collection of such amounts owed, Vendee agrees to pay Vendor all attorney's fees, collection costs, and expenses associated therewith, including any appellate costs or costs of any expert retained by Vendor in connection with its collection efforts.
- 3. Property Title:** The Vendee warrants the accuracy of the information concerning ownership of the subject real property, as contained on the reverse side of this Purchase Order. Vendee shall hold Vendor harmless in the event of any misrepresentation or inaccuracy concerning the ownership of the property or any authority to perform the improvements on said real property, as contemplated by this Purchase Order.
- 4. Warranty:** Vendor disclaims any and all expressed and/or implied warranties concerning the materials purchased through this Purchase Order. Vendor also disclaims any representations, statements or promises made by any person concerning the materials purchased through this Purchase Order, and hereby notifies Vendee that such statements are not binding upon Vendor. Vendor disclaims to the maximum extent permitted by law all warranties implied or arising by operation of law, course of dealing, custom and practice, or otherwise, including but not limited to any warranties of habitability, merchantability and fitness for particular purpose; and Vendee represents that Vendee has read and understood this provision, and that Vendee understands and agrees that by entering into this Purchase Order has knowingly relinquished any and all warranties of any kind or nature regarding the product or services rendered in connection herewith.
- 5. Safety:** The Vendor shall not be responsible to the Vendee or any third parties for any damages arising out of the use, misuse and/or transportation of the materials provided under this Purchase Order. Vendee hereby indemnifies and holds Vendor harmless from any claims, demands, lawsuits, and/or damages, including attorneys' fees, resulting from the transportation, use or misuse of the products supplied under this Purchase Order.
- 6. Entire Agreement:** This Purchase Order constitutes the entire agreement between the parties hereto and Vendee expressly acknowledges that no representations, promises, warranties or inducements of any kind whatsoever, written or oral, have been made by Vendor or any of its agents. This Agreement shall be binding on the parties hereto and their respective heirs, personal representatives, successors and assigns.
- 7. Notices:** All notices to be provided to Vendor under this Purchase Order shall be in writing and furnished to the Vendor at the address set forth herein. All such notices shall be mailed by certified mail, return receipt requested, or overnight express with sufficient postage and time so as to reach its destination in a timely fashion. The place where notice is to be given may be changed by written agreement of the parties.
- 8. Legal Action:** Any action brought in connection with enforcing the rights and obligations of the parties pursuant to this Purchase Order shall be brought only and exclusively in Hillsborough County, Florida, or otherwise as required in order to enforce a claim of lien against the property benefiting from receipt of the materials noted under this Purchase Order. The parties hereto waive trial by jury.
- 9. Prohibition Against Assignment:** The rights and obligations under this Purchase Order shall not be assigned to any other entity or person unless agreed to in writing by all parties hereto.
- 10. Transportation:** Vendee agrees to comply with all applicable law and regulations as required for the transportation of the materials purchased through this Purchase Order. As such, the Vendee shall use only that equipment that is maintained pursuant to applicable laws and regulations, and failure to do so shall give rise to Vendor's right, although no obligation thereto, to refuse tendering the materials purchased through this Purchase Order. Vendee shall also be responsible for securing all loads and materials to prevent any material being discarded on any roadway or public or private property.
- 11. Limitation of Liability:** Any claim against Vendor arising out of or relating to the products purchased through this Purchase Order must be instituted within one year of the purchase hereof. Any claims commenced after that time shall be forever waived, barred and released. Under no circumstance shall Vendor's liability for damages exceed the original purchase price noted on the face of this Purchase Order. In no event shall Vendor be liable for any special, consequence, incidental or indirect losses or damages arising out of or relating to the products sold under this Purchase Order, including but not limited to personal injuries, damages to contents or equipment and/or lost profits.
- 12. Allocation:** If Vendor is unable to produce enough products to fill the orders of all of its customers, then Vendor may allocate its products among those customers in a manner it deems fair and reasonable, in its own discretion, based upon all relevant factors. In such an event, Vendor shall not be liable to Vendee for failure to fulfill the full order (or for any other matter related to the allocation).
- 13. Quantities:** Vendor shall exercise good faith efforts to properly fill orders requested by Vendee. Notwithstanding, Vendee understands that Vendor does not employ the use of a scale, therefore, Vendor does not guarantee the quantity of materials supplied to Vendee. It shall be Vendee's responsibility to verify that it has received the proper quantity of materials before leaving the Vendor's property. Once Vendee leaves Vendor's property with material purchased, Vendee shall have been deemed to waive any claims for under or over supplying by Vendor. Furthermore, Vendor makes no representation nor guarantees that the quantities delivered to Vendee shall comply with maximum load limitations imposed on vehicles removing materials purchased from Vendor. Similarly, Vendee is responsible for making sure that the materials supplied by Vendor do not cause the transportation vehicle to be overloaded.
- 14. Suitability:** The Vendee agrees to test material for suitability prior to pick up or delivery. Razorback Mining Company does not imply warranties concerning material picked or delivered to Vendee's location(s). Vendee acknowledges their responsibility to ensure material is suitable for the job and meets job specifications. Razorback Mining Company is to be held harmless from any claims, demands, lawsuits, and/or damages, including attorney's fees, resulting from claims or results of unsuitability of material.