

**STANDARD TERMS AND CONDITIONS  
SUPPLY AND INSTALL CONTRACTS (UNIT PRICE BASED)**

**1. INTERPRETATION**

(i) In these Conditions:

**Owner** means the person whose order for the Products/Services is accepted by the Trade Contractor.

**Conditions** means these standard terms and conditions of sale and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Owner and the Trade Contractor.

**Contract or Purchase Order** means the contract for the purchase and sale of the Products/Services. A Customer signed quotation will act as a Contract if no further documentation is produced / exchanged.

**Delivery** means the actual or deemed delivery of the Products/Services in accordance with Clause 4.

**Delivery Address** means the place where the Products/Services are to be delivered as specified in the Sales Order.

**Products/Services** means the Products/Services (including any installment of the Products/Services) which the Trade Contractor is to supply in accordance with these Conditions.

**Specification** means any specification set out in the Sales Order.

**Officer** means Company Secretary, Treasurer, President or Vice President.

**Sales Order** means the acceptance in writing by the Trade Contractor in response to the Owner's order, to sell the Products/Services in accordance with the Trade Contractor's quotation, also known as the Contract.

**Trade Contractor** means ARCHITECTURAL STONEMASONRY (a DBA of Red Leaf Architectural Products Inc.)

(ii) Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

(iii) These Terms and Conditions represent the entire agreement between the parties with respect to the sale of the Products/Services to the Owner and supersede any previous written or oral orders, quotations or other communications or representations by either party related to the Products/Services.

**2. PRICE OF THE PRODUCTS/SERVICES**

(i) The Price of the Products/Services shall be the price quoted by the Trade Contractor (via Estimate) and confirmed in writing by the Owner. Prices do not include the applicable federal, provincial and state taxes. **Quotations are based on quantities stated within the Contract or Quotation and may not represent the final quantities required for installation.** If the architectural drawings, contract drawings, site conditions, shop drawings, site sketches, or engineered assembly drawings deem alternative quantities, then those quantities will prevail and will be considered in addition to the Contract.

(ii) The Owner agrees to pay all such local shipping and handling charges and taxes, unless otherwise agreed and stated within the Sales Order.

(iii) The Trade Contractor reserves the right, by giving notice to the Owner at any time before Delivery to increase the Price of the Products/Services to reflect any increase in the cost to the Trade Contractor due to any change in delivery dates, quantities or specifications for the Products/Services which is requested by the Owner, or any delay caused by any instructions of the Owner or failure of the Owner to give the Trade Contractor adequate information or instructions.

(iii) Except as otherwise stated in Sales Order all prices shall be ex-Trade Contractor's premise. Shall the Trade Contractor agree to deliver the Products/Services, other than at the Trade Contractor's premise, dependent of delivery address the Owner shall be liable to pay the Trade Contractor's charges for any transportation, packaging and insurance.

(iv) The Price is exclusive of any applicable sales, use or other taxes which the Owner shall be additionally liable to pay or reimburse to the Trade Contractor. Applicable taxes and/or duties will be itemized with the Sales Confirmation.

(v) Prices do not include the provision of any mechanical fastening systems or embeds of any sort, unless outlined in proposal documentation and specifically agreed.

(vi) Sealers or surface treatment by others.

**Owner's Initial:** \_\_\_\_\_

**3. TERMS OF PAYMENT**

(i) The Owner shall pay a progress payment at the time of execution of the Sales Order to initiate the order as outlined in the Payment Schedule:

Payment Schedule - <del>07-Jan-15</del>				07-Jan-15	
Contract Value	\$	<b>1,256,452.00</b>	Anticipated Installation Duration	<b>24</b>	Weeks
Title	Due	Description	Amount	% of Contract	
First Progress Draw	On Acceptance	Deposit on Contract	\$ 314,113.00	25.00%	
Second Progress Draw	Stone in yard	Progress Draw	\$ 125,645.20	10.00%	
Third Progress Draw	Mobilization for Installation	Progress Draw	\$ 188,467.80	15.00%	
Additional Draws	Biweekly after Mobilization	Progress Draw	\$ 52,352.17	4.17%	

(ii) Site measure and Shop Drawing preparation will proceed within short order of first progress draw. Raw materials order will be placed upon receipt of first progress draw.

(iii) Balance payments as per above Schedule.

**Owner's Initial:** \_\_\_\_\_

- (iv) If the Owner fails to make any payment on the due date then, without limitation to any other right or remedy available to the Trade Contractor, the Trade Contractor shall be entitled to:
- (a) cancel the Contract or suspend any further deliveries to the Owner;
  - (b) appropriate any payment made by the Owner to such of the Products/Services (or the Products/Services supplied under any other contract between the Owner and the Trade Contractor) as the Trade Contractor may think fit (notwithstanding any purported appropriation by the Owner); and
  - (c) charge interest to the Owner at the lower of the rate of 26½% per annum or highest rate allowed by law, on the unpaid balance (such interest to accrue on a day to day basis from the due date for payment until receipt by the Trade Contractor of the full amount whether before or after any judgment);
  - (d) the Owner shall indemnify the Trade Contractor against all costs and expenses (including any legal costs and expenses on a full indemnity basis) incurred or sustained by the Trade Contractor in recovering sums due or in exercising its rights pursuant to the Sales Order.
  - (v) **Builder's Lien Holdbacks or any other security retentions do not apply.** Interim Statutory declarations will not be submitted. Final Payment to be made within 15 days of Trade Contractor declaration of Substantial Completion and submission. Supplier lien waivers can be provided upon request.
  - (vii) All payments shall be made in such means as the Trade Contractor may specify, such as by letter-of-credit, direct deposit, certified cheque, bank draft or wire transfer. **Credit cards are not accepted.** Full payment may be required in advance until the Owner provides assurance of performance reasonably satisfactory to the Trade Contractor.
  - (viii) If Owner defaults in payment, Owner will be liable for all collection costs incurred by Trade Contractor including, but not limited to, legal and collection agency fees and all related disbursements.
  - (ix) Owner must provide proof of financing or a payment guarantee upon request.

Owner's Initial: \_\_\_\_\_

#### 4. DELIVERY (via 3<sup>rd</sup> Party Carriers)

Delivery to the project address is generally included unless specifically excluded in writing.

- (i) Time is not the essence in this Agreement. Any shipping dates for goods in advance of actual shipment of goods are the Trade Contractor's best estimate for informational purposes only.
- (ii) Interim storage costs for the goods are not included in the price. The Owner is liable for any storage costs if the Products/Services cannot be delivered in conjunction with the order at dates notified by the Trade Contractor.
- (iii) Any dates quoted for Delivery of the Products/Services are approximate only and the Trade Contractor shall not be liable for any delay in Delivery of the Products/Services howsoever caused.
- (iv) The Trade Contractor reserves the right to Deliver the Products/Services in installments.
- (v) Delivery shall occur when the Trade Contractor achieves DAP and Products/Supplies are installed.

#### 5. WARRANTIES AND LIABILITY

- (i) Subject to the conditions set forth below the Trade Contractor warrants that the Products/Services will correspond in all material respects with any specification for the Products/Services forming part of the Contract at the time of Delivery and at the time will be free from material defects in materials and workmanship. Products made of natural stone can only perform to the performance characteristics documented in accredited laboratories. The Seller will make those available upon request. Design professionals can only verify the suitability of the material specifications/characteristics for the functional demands of the intended use. The Seller only warrants the craftsmanship to manufacture the contractually assigned dimensions/geometry. Natural materials will perform as they will related to any observed test criteria. Structural steel used for affixing stone to the substructure is warranted to perform to the material properties as intended. Structural resistance is defined by a 3<sup>rd</sup> Party Structural Engineer that the Trade Contractor includes within his Contract. Joint Sealants are subject to the Manufacturer's Warranty. The Trade Contractor provides a Warranty for workmanship (fabrication and installation) for a period of two years beyond substantial completion of the Contract. Material Warranty is as per Supplier / Manufacturer. Warranties against structural deficiencies are not applicable if Owner declines specialty structural engineering.
- (ii) The above limited warranty is given by the Trade Contractor subject to the following conditions:
  - (a) the Trade Contractor shall be under no liability in respect of any defect in the Products/Services arising from any drawing, design or specification supplied by the Owner and / or his designers. Production is solely on the basis of approved shop drawings. Shop Drawings are to be approved for aesthetic and assembly conformance only. Dimensions and fit related to site measure are the responsibility of the Trade Contractor;
  - (b) the Trade Contractor shall be under no liability in respect of any defect arising from reasonable wear and tear, willful damage, negligence, incorrect movement, installation or erection, failure to follow the Trade Contractor's instructions (whether oral or writing), misuse or alteration or repair of the Products/Services without the Trade Contractor's approval. Owner warrants that the sub-structure will be able to receive the designed stone Products/Services. Trade Contractor is not responsible for damage resulting from incremental movement of the substructure in any way. Wood framing will shrink, and therefore, the joints are closed with flexible sealants to the gap measurement specified by the designer. If the sub-structure is designed or erected for deflection greater than L/720, then it is reasonable to assume that settlement and joint collapse will occur. The prevention of lippage of the stone will be impossible to prevent for design less than L/720. Full thickness, full load bearing installations can be mortar set, as they are not affected by wood shrinkage, except in areas spanning large openings. In such cases it is advised to set onto structural steel. The use of structural steel stud is highly recommended in lieu of wood framing. A more rigid, non-shrinking and load accepting structure.
- (iii) Any claim by the Owner which is based on any defect in the quality or condition of the Products/Services or their failure to correspond with the Specification of the Products/Services shall be made in writing to the Trade Contractor within 7 days from the date of Delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery otherwise claims based on warranty will be void.
- (vi) EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN THIS CLAUSE 7.(i), THE TRADE CONTRACTOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS/SERVICES, AND THE TRADE CONTRACTOR EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- (vii) In no event shall the Trade Contractor be liable to the Owner or any third party for any special, incidental or consequential damages (whether for loss of profit or otherwise) costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Trade Contractor, its employees or agents or otherwise) which arise out of or in connection with the supply of the Products/Services or their use or resale by the Owner.
- (viii) In no event shall the Trade Contractor's total monetary liability to the Owner under this Contract for any and all claims or causes of action exceed the cumulative amount of the payments made by the Owner and actually received by the Trade Contractor for the Products/Services under this Contract.
- (ix) The Trade Contractor shall not be liable to the Owner or be deemed to be in breach of the Contract by reason of delay in performing, or any failure to perform, any of the Trade Contractor's obligations in relation to the Products/Services, if the delay or failure was due to any cause beyond the Trade Contractor's reasonable control. Without limitation to the generality of the foregoing, the following shall be regarded as causes beyond the Trade Contractor's reasonable control:
  - (a) Act of God, weather conditions, explosion, flood, tempest, fire or accident;

Owner's Initial: \_\_\_\_\_

- (b) war or threat of war, sabotage, insurrection, civil disturbance or requisition;
  - (c) acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, or local authority;
  - (d) import or export regulations or embargoes;
  - (e) strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Trade Contractor or a third party);
  - (f) difficulties in obtaining supplies, raw materials, labor, fuel, parts or machinery;
  - (g) power failure or breakdown in machinery.
- (x) SOME PROVINCES OR STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE EXCLUSION IN CLAUSE 7.(vi), ABOVE, MAY NOT APPLY TO YOU AS THE OWNER. THIS WARRANTY GIVES THE OWNER SPECIFIC LEGAL RIGHTS, AND THE OWNER MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM PROVINCE TO PROVINCE OR STATE TO STATE.

## 6. RISK AND SECURITY INTEREST

- (i) Risk of damage to or loss of the Products/Services shall pass to the Owner upon Delivery at the project address, not Installation. The Trade Contractor does not provide security to the delivered Products. However, should the Trade Contractor damage any delivered materials due to negligence or recklessness, then that material will be replaced free of charge.
- (ii) Notwithstanding Delivery of the Products/Services and the passing of risk damage to or loss of the Products/Services, or any other provision of these Conditions, the Trade Contractor shall retain a purchase price security interest in the Products/Services until the Trade Contractor has received in cash or immediately available funds payment in full of the Price of the Products/Services and all other Products/Services agreed to be sold by the Trade Contractor to the Owner for which payment is then due.
- (iii) The Trade Contractor shall be entitled at any time during which it retains a security interest in the Products/Services to require the Owner to deliver up the Products/Services to the Trade Contractor and, if the Owner fails to do so forthwith, to enter upon any premises of the Owner or any third party where the Products/Services are situated and repossess the Products/Services in accordance with the provisions of the Personal Property Security Act (Canada) or Uniform Commercial Code (USA) and local law.
- (iv) The Trade Contractor is entitled to immediate possession of the Product and shall be free to enter the premises where the Product may be located and remove the Product as the Trade Contractor's property without prejudice to the Trade Contractor's right to recover and further expenses including expenses arising for the removal or disassembly of the Product, or damages suffered by the Trade Contractor as a result of such non-payment by the Owner or his Customer.

## 7. ERECTION/INSTALLATION

The erection and installation of the Products/Services is the Trade Contractor's sole responsibility. The Owner agrees to provide work platforms for the installation suitable to carry the necessary loads to perform the work. The Trade Contractor shall conform to any applicable Supplier recommendations instructions for installation or erection of the Products/Services. The Trade Contractor will conform to common industry practice to perform the work, unless otherwise agreed with the Owner. The Owner shall be responsible for the removal of extra materials and waste from the jobsite.

## 8. CANCELLATION, CHANGES OR DELAYS

Once accepted by the Trade Contractor and confirmed by way of Sales Order, an order is not subject to cancellation or change except on terms acceptable and satisfactory to the Trade Contractor which may include, among other things, Trade Contractor retaining any and all deposits or progress payments made by Owner. Direction by the Owner to cancel an order may be treated as a repudiation making the Owner immediately liable for full payment of the balance, unless the order has not been manufactured.

## 9. OWNERSHIP - INTELLECTUAL PROPERTY

All intellectual property rights in the Shop Drawings and Products/Services shall vest in the Trade Contractor absolutely and the Owner shall at the Trade Contractor's expense execute any documents or do any acts necessary to give effect to the vesting of such rights in the Trade Contractor. The Trade Contractor shall have and retain all right, title and interest in and to any and all trade secrets, technical data, sales service and product plans, methodologies, techniques, designs, moulds, tools, samples, systems, know-how, expertise and other proprietary information that it may use pursuant to, or in connections with any Products/Services identified within the Sales Confirmation. The Owner shall not obtain a license to, or any other property rights in, any such Trade Contractor property pursuant to or in connection with this Agreement.

## 10. GENERAL

- (i) No waiver by the Trade Contractor of any breach of the Contract by the Owner shall be considered as a waiver of any subsequent breach of the same or any other provision.
- (ii) If any provision of these Conditions is held by a competent authority to be invalid or unenforceable in whole or in part validity of the other provisions of these Conditions and the remainder of the provisions in question shall not be affected thereby.
- (iii) The Purchase Order, Trade Contractor's Sales Order and these Conditions shall be governed by the laws of the Province of British Columbia, Canada, and the parties hereto hereby submit themselves to the jurisdiction and venue of the Supreme Courts of British Columbia.
- (iv) The remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law or equity.
- (v) These Conditions, along with the duly executed purchase order (other than any additional or different terms and conditions therein) and Trade Contractor's Sales Confirmation, shall be deemed to contain the entire and only agreement between the parties relating to the subject matter hereof, and any terms or conditions relating hereto not incorporated herein shall not be binding upon either party.
- (vi) Any dispute, controversy or claim arising out of or relating to these Conditions, the purchase order, including, without limitation, the interpretation or the breach thereof, shall be settled by arbitration in the City of Vancouver.

## 11. RETURNED PRODUCTS/SERVICES

- (i) Orders are generally of a custom nature. No Products/Services may be returned to the Trade Contractor without the Trade Contractor's written authorization which authorization may be refused in the Trade Contractor's sole unfettered discretion.
- (ii) Product authorized to be returned by the Trade Contractor shall be returned at the Owner's expense.
- (iii) Credits for the returned Product shall be an amount determined by the Trade Contractor in accordance with the condition of the product.

Owner's Initial: \_\_\_\_\_