



*The block, brick  
& more resource*

## **Terms and Conditions**

The following terms and conditions (“Terms and Conditions”) govern all sales of blocks and bricks (collectively hereinafter “Block”) and other products (“Product”) by Willocks Brothers Company, Inc. (“WB”) to Customer. Customer accepts these Terms and Conditions upon: (i) its signing of the attached purchase order (“Purchase Order”), or (ii) its acceptance of any Block or Product. All Block or Product sold by WB is subject to these Terms and Conditions. Any proposal by Customer for additional or different terms, including any that appear on documents previously or hereafter submitted by Customer are hereby rejected, and any attempt by Customer to vary any of these Terms and Conditions is hereby rejected.

### **1. PRICE**

Unless otherwise agreed in writing, all sales shall be made at the WB’s current price for the Block or Product as shown on its current price list package, which includes its current price list and any attachments thereto, as issued by WB from time to time. WB 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 WB 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 WB in writing. Price extensions when made are for Customer’s convenience only, and they, as well as any mathematical, stenographic or clerical errors, are not binding on WB. Prices shown may not include any sales, excise, or other governmental tax or charge payable by WB to Federal, State or local authority. Any taxes now or hereafter imposed upon sales of shipments will be added to the purchase price. Customer agrees to reimburse WB for any such tax or to provide WB with an acceptable and authorized tax exemption certificate.

### **2. DELIVERY AND ACCEPTANCE**

Unless otherwise provided on the face of Customer’s Purchase Order, Customer shall take delivery of the Block or Product at WB’s yard, plant or facility (“F.O.B. WB’s Facility”), and WB completes any obligation hereunder regarding physical delivery by making the Block or Product available to Customer. Customer shall be responsible for any freight or delivery charges to all destinations, including, without limitation, the cost of any applicable fuel surcharges. Any Block that is set or laid in mortar is deemed accepted by Customer. Customer agrees to pay reasonable storage fees if Block or Product is stored on WB’s yard more than sixty (60) days after WB is ready to make delivery.

WB cannot be responsible for material and/or quantity discrepancies if Customer has verified and signed loading list or Customer has no one on site or readily available to sign loading list. Delivered Block or Product must be inspected at the time of delivery and any damages, nonconformity or shortages reported immediately. Customer has forty-eight (48) hours to

reasonably notify WB of any problems with a delivery by speaking personally to a WB employee. Messages left on voicemail will not be honored.

If Customer's Purchase Order requires WB's vehicle or transport be used for delivery of the Block or Product ("F.O.B. Destination"), and such request is confirmed by WB's purchase order acknowledgment form, the following shall apply:

- (a) Customer shall advise WB in writing as to the requested date, place for delivery and any special instructions regarding delivery and access for delivery of the Block or Product. If WB cannot comply with the requested date or place of delivery, an alternate date or place for delivery shall be proposed by Customer. If Customer fails to provide WB with written instructions regarding special delivery and access issues, WB shall have no liability for any damages caused by WB during the Block or Product delivery. Customer 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, WB shall be authorized to deliver the Block or Product to Customer's last known business address no later than (i) thirty (30) days for Block or Product sold for use in the residential market, and (ii) one hundred eighty (180) days for Block or Product sold for use in the commercial market, after completion of the Block production run, if applicable. Such delivery shall fulfill all of WB's delivery obligations to Customer.
- (b) If neither the Customer nor its agent is present at the date and place scheduled for delivery, WB may leave the Block or Product at the place requested by Customer, and WB's delivery ticket shall constitute conclusive evidence that the quantities of Block or Product referenced therein were delivered to the place specified therein.
- (c) Customer 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. Customer agrees to indemnify and hold WB harmless against any claim, liability, judgment or assessment arising out of such damage and all costs and expenses, including attorney's fees, related thereto.
- (d) It is the Customer's responsibility to inform WB of the cancellation of any scheduled shipment due to weather or job site conditions. Failure to so notify WB will result in delivery of material to the nearest accessible location on the job site or, at the request of the Customer, the shipment shall be returned to a WB facility and the Customer shall be assessed a one hundred and fifty dollar (\$150.00) dry run charge. Orders must be cancelled by speaking personally to a customer service representative. Messages left on voicemail after office hours will not be honored. In any case, the Customer will be charged a handling fee if a load is held, cancelled, or changed once the truck has been loaded. Such fee shall be determined by WB's Distribution Manager. Deliveries outside of the local region cannot be returned. Delays in unloading or the transfer of the material to another site will be subject to additional charges. Contact your local sales representative regarding delivery fees that may be applicable to your job location.

- (e) Pallets: Block and Product is often delivered on pallets. Pallets returned to WB that (1) were purchased from WB, (2) are accompanied by the associated invoice, (3) contain the “Willocks Brothers” stamp on the pallet, and (4) are in reusable condition will be credited at current return rates. Reusable condition shall be determined by the WB employee who accepts delivery of the returned pallets. Credit for returned pallets will not be allowed until WB has issued the credit memo. Pallets must be neatly stacked, no higher than ten (10) per stack.

### **3. FILLING OF ORDERS**

WB may fill Customer’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. Customer may not refuse to accept any partial shipments of Block or Product or refuse to make payment therefore because of WB’s failure to ship or deliver any remaining Block or Product ordered. Customer may not cancel any order without the prior written consent of WB. Under no circumstances may Special Order Block be canceled.

### **4. BLOCK PRODUCTION**

Upon WB’s written acceptance of a Purchase Order from Customer, WB will use its reasonable best efforts to schedule production of the Block so that it is produced in one continuous production run in accordance with the delivery schedule set forth in WB’s acknowledgment form. If more than one delivery date is specified in Customer’s Purchase Order, WB may produce the Block in more than one production run. CUSTOMER ACKNOWLEDGES THAT ANY BLOCK SUBJECT TO MORE THAN ONE PRODUCTION RUN MAY VARY IN COLOR AND OTHER CHARACTERISTICS, AND CUSTOMER WAIVES ANY CLAIM AGAINST WB FOR ANY SUCH VARIATIONS.

### **5. FORCE MAJEURE**

WB shall not be liable for any delay in the production or delivery of any Block 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 (collectively, “Force Majeure”). WB may delay the production or delivery of any Block or Product resulting from any such Force Majeure event. If such delay exists beyond a period of forty-five (45) days, WB 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. WB 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 Block 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, then WB shall be relieved of all obligations with respect to the Block or Product so affected. During any period of shortage, WB may allocate Block or Product among its buyers, including Customer, as it deems appropriate in its discretion. Any non-performance as a result of the occurrence of any Force Majeure event shall not place WB

in default in relation to the affected order, and WB's sole and exclusive liability to Customer for failure to produce or deliver Block or Product due to a Force Majeure event shall be limited to the return of the purchase price for the Block or Product if previously paid by Customer.

## 6. **PASSING OF TITLE**

Title to Block or Product delivered F.O.B. WB's Facility shall pass to Customer at the time the Block or Product is placed on the transport vehicle being used to remove the Block or Product from WB's plant, yard or facility. Title to Block or Product delivered by WB F.O.B. Destination shall pass to Customer when the Block or Product has been removed from the delivery vehicle at the point of destination. Liability for and risk of loss of all Block or Product shall pass at the same time title passes.

## 7. **WARRANTY**

WB provides the following LIMITED WARRANTY for Block:

- (a) **Terms of Warranty.** Unless otherwise provided in a separate warranty document, WB hereby warrants that the Block it manufactures and sells to Customer meets the American Society for Testing and Materials (ASTM) specifications for such Block in effect at the time such Block is produced, including ASTM specifications C90, C55 and C1372, as applicable to such Block. This warranty commences as of the date of sale and extends solely to Customer and not to any assignees, successors or third parties.
- (b) **Notice and Remedies for Warranty Claims.** To preserve its warranty rights under Section 7(a), Customer shall notify WB in writing within seventy-two (72) hours of the date Customer receives delivery of Block or Product manufactured by WB, that such Block or Product may or does not comply with the warranty specifications. Such written notice shall explain the basis for the claim, the date the Block was purchased by Customer, the invoice number, and Block code as stated on the invoice. WB shall have the right to investigate all such claims, and to inspect all Block involved. If any Block is found by WB to not comply with its written warranty as set forth in Section 7(a), then, at WB's election, it shall have the option of: (i) repairing the Block; (ii) replacing the Block unless already laid in mortar or otherwise used in construction; or (iii) refunding the purchase price of the Block paid at the time of purchase. In no event shall WB be responsible for any labor costs.
- (c) **No Warranty for Block or Product Not Manufactured by WB.** WB makes no warranties of any type regarding any Block or Product it does not manufacture. Customer waives any claims against WB for any defects or deficiencies with any Block or Product purchased from WB but which WB does not manufacture, and Customer agrees to look solely to the manufacturer of any such Block or Product for satisfaction of any claims pertaining thereto, including any warranty claims.
- (d) **WARRANTY LIMITATION.** EXCEPT AS SET FORTH IN WB'S WRITTEN BLOCK WARRANTY TO CUSTOMER AS CONTAINED IN SECTION 7(a), WB

MAKES NO EXPRESS, IMPLIED OR STATUTORY WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ANY BLOCK OR PRODUCT SOLD TO CUSTOMER. ORAL STATEMENTS CONCERNING BLOCK OR PRODUCT COVERED BY THIS PURCHASE ORDER, OR STATEMENTS CONTAINED IN WB'S GENERAL ADVERTISING, PAMPHLETS OR OTHER PRINTED MATERIALS DO NOT CONSTITUTE WARRANTIES, AND CUSTOMER ACKNOWLEDGES THAT IT HAS NO RIGHT TO RELY UPON SAME. WB MAKES NO WARRANTY AS TO THE AESTHETIC QUALITIES OF THE BLOCK OR PRODUCT. WB's maximum obligation under this limited warranty shall be limited only to replacement or allowance of credit for any nonconforming (including defective) Block or Product. Accordingly, Customer expressly agrees that WB shall have no liability for loss or damage in excess of the price received for nonconforming or defective Block or Product delivered to Customer or for losses or damages of any nature incurred or suffered by Customer or any other person or entity in repairing or replacing or occasioned by such nonconforming or defective Block or Product, including without limitation commercial losses, special, incidental, consequential, punitive or exemplary damages. THE REMEDY SET FORTH IN THIS SECTION 7 WILL CONSTITUTE THE SOLE REMEDY OF CUSTOMER UNDER THIS LIMITED WARRANTY and Customer expressly releases WB from any liability for any amounts in excess of the replacement of any such nonconforming (including defective) materials.

- (e) **Legal Rights.** Some states do not allow limitations on how long an implied warranty lasts, so the above limitations may not apply to you. Some states 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 state to state. If the laws of a particular state 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 state, 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 shall be brought by the Customer against the WB for any claim with respect to any Block or Product sold by WB to Customer more than one (1) year after delivery of such Block or Product to the Customer. It is agreed that any cause of action with respect to such Block or Product will accrue on the date of delivery of such Block or 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 BLOCK OR PRODUCT

WB has no obligation to accept any Block or Product Customer may seek to return. If, at its

option, WB agrees to allow the return of a Block or Product it shall be returned at Customer's expense with Customer paying all costs of transport, and bearing all risk of loss until such Block or Product has been accepted by WB at one of WB's facilities in Maryville or Knoxville. All returned Block or Product will be inspected before acceptance of the return. All Block or Product returned must be in first quality condition and the Customer must have the invoice showing the purchase. Customer shall be required to pay a restocking fee equal to twenty-five percent (25%) of the cost of all Block or Product returned to WB. An additional charge of \$75 per hour will be applied against any refund granted under this Section for Block picked up on site.

It is the Customer's responsibility to cover or protect Block or Product from exposure damage.

We, therefore, cannot guarantee any takeoffs due to the extreme number of variables outside of our control.

THE FOLLOWING ARE NOT RETURNABLE:

- (a) All bagged goods including mortar, cement, and all sand
- (b) Special order/non-stock items
- (c) Any item not in first quality condition as determined by WB personnel
- (d) All sale items, seconds, and overrun materials
- (e) Cut to length geogrid and filter fabric
- (f) Restacked, muddy, damaged or chipped Block
- (g) Installed Block, including but not limited to Block that is set or laid in mortar
- (h) Less than full cubes of paver Product or brick Product.
- (i) Items out of their original packaging as well as any material not on the WB stock list
- (j) Pallets not in reusable condition
- (k) Cash sale material and pallet returns without an invoice copy

Due to the inherent nature of these materials, WB utilizes a five percent (5%) allowance for "chipped" and/or cracked materials. "Chipped" materials in quantities above five percent (5%) of the order will be exchanged at no charge and no credit will be issued. Full credit will be issued for materials deemed to be defective due to manufacturing processes that are defective beyond the five percent (5%) allowance.

An invoice dated within sixty (60) days must accompany returns. Any cash refund over fifty dollars (\$50.00) will be issued in the form of a check and mailed to the Customer. For all

account Customers, any credit derived from the returning of material or pallets will be credited to the account unless approved by a WB manager.

## **9. TERMS OF PAYMENT**

All Block or Product shall be paid for in cash prior to delivery, unless Customer has an approved credit account with WB, in which event the following payment terms shall apply:

- (a) All Block or Product must be paid for within thirty (30) days following the invoice date. Invoice date shall mean the date the invoice is issued by WB. Invoices not paid within thirty (30) days of the invoice date are subject to a one and a half percent (1.5%) finance fee (eighteen percent (18%) annual rate) and all costs of collection, including reasonable attorneys' fees. Finance charges shall continue to accrue after WB obtains a judgment against Customer until the debt is paid in full. WB has the right to exercise setoff or recoupment when needed to satisfy any outstanding debt.
- (b) All indebtedness due is payable at WB's office identified in the invoice or billing for such payment, unless and until WB designates a different place of payment. Invoices shall be deemed correct unless contested in writing within seven (7) days of receipt. WB may apply Customer's payment against any open charges within WB's sole discretion.
- (c) WB reserves the right to require payment for any Block or Product in cash prior to delivery. Customer agrees that all funds owed to Customer or received by Customer from a third party, to the extent those funds result from Block or Product supplied by WB, shall be held in trust for the benefit of WB (the "Trust Funds"). Customer agrees it has no interest in the Trust Funds held by anyone and will promptly account for and pay to WB all such Trust Funds. Customer also hereby grants to WB a security interest in all Block or Product subject to these Terms and Conditions as security for the performance of Customer's payment obligations.
- (d) Accounts that are delinquent forty-five (45) days or more will be placed on HOLD status. Deliveries will not be made if accounts are not in good standing. If Customer fails to make any payment in accordance with these Terms and Conditions, or fails to comply with any of the terms hereof, WB may, at its option, cancel any work in progress for Customer, whether on this order or any other order, and may refuse to deliver any undelivered Block or Product to Customer, whether on this order or any other order. In such event, all unpaid amounts owed by Customer to WB for the purchase of Block or Product, whether on this order or any other order, shall be immediately due and payable.

## **10. CUSTOMER INSOLVENCY**

Any order by Customer for Block or Product shall constitute a representation that Customer is solvent. If Customer (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 Customer 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 WB, then the same shall constitute a breach hereof and a default hereunder. In the event of such breach or default, WB 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 afforded to WB for breach of contract under the Uniform Commercial Code as enacted in the State of Tennessee or under any applicable law, including, but not limited to, the remedies of incidental and consequential damages.

## **11. PURCHASE MONEY SECURITY INTEREST**

To secure payment and performance of all obligations, any Customer that receives an extension of credit from WB, whether or not pursuant to a duly completed credit application, hereby grants WB a continuing purchase money security interest in all goods purchased by such Customer from WB, wherever sold, directly or indirectly, to or for the benefit of the Customer by WB, wherever located, now owned and hereafter acquired, until invoices for those goods have been fully paid. If requested, the Customer shall execute financing statements or other documents required to perfect such security interest. The Customer will not subject the collateral to any adverse encumbrance or lien, or sale or other transfer other than as approved in writing by WB. The goods will remain personal property regardless of how they are affixed to real property and WB reserves a purchase money security interest in the goods until the purchase price has been fully paid. The Customer agrees to execute, and hereby appoints WB as its attorney-in-fact to execute and file on Customer's behalf, any documents requested by WB which is necessary for attachment and perfection of its security interest. If the Customer defaults, WB will have all of the rights of a secured creditor under the Uniform Commercial Code as enacted in Tennessee.

## **12. NOTICES**

Any notice, demand, waiver, consent or other communication required or permitted hereunder shall be in writing and shall be deemed received (a) on the date delivered, if sent by hand delivery (to the person or department if one is specified below), (b) on the third (3rd) business day (for the United States Postal Service) following the date deposited in the U.S. mail, certified or registered, with return receipt requested, or (c) on the next business day following the date deposited with FedEx, Airborne, UPS or other national overnight courier service, and in each case addressed to WB as follows:

Willocks Brothers Company, Inc.  
1021 Foch Street  
Maryville, TN 37801  
Attention: President  
Phone: (865) 983-3971



**13. LEGAL ACTION**

Customer agrees to pay WB all costs and expenses of collection, suit, or other legal action, including all actual attorneys' and paralegal 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 WB may have against Customer may be assigned by WB. All matters between WB and Customer, including venue, will be governed by the laws of the State of Tennessee.

**14. APPLICABLE LAW**

The laws of the State of Tennessee shall govern the construction and performance of this agreement. Any action brought pursuant to this agreement must be brought and prosecuted as to all parties in, and each of the parties' consents to service of process, personal jurisdiction and venue in, the state and federal courts of general jurisdiction located in Blount County, Tennessee.

**15. WAIVER OF JURY TRIAL**

CUSTOMER VOLUNTARILY AND IRREVOCABLY WAIVES TRIAL BY JURY WITH RESPECT TO ANY ACTION OR CLAIM BROUGHT IN CONNECTION WITH THESE TERMS AND CONDITIONS.

**16. 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 WB 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.

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

**17. IMPORTANT BLOCK INFORMATION**

If sawing of Block is required, WB recommends wet sawing. Customer should not use acid for cleaning any Block, and WB suggests contacting a professional block cleaner for instructions as to how to clean your Block.

Due to natural variations in color and variations from chemical processes during production inherent in our Block and Product, it is essential that you look at more than one piece to see the range of color, shading, and texture. Selections should be made from a representative sampling, and when possible, from an existing project. Once Block or Product is installed, we can no longer be responsible for selection. Before ordering, quantities should be checked against job

site conditions. Factors out of our control that do affect materials required are: job conditions, weather conditions, workmanship, plan changes, job site theft, and job site supervision.

Due to the nature of the product and the manufacturing process, “efflorescence” may be present and does not constitute defective product. Efflorescence is a whitish, powder-like deposit that may appear on concrete products. It in no way affects the structural integrity of the concrete product and will wash and wear off over time. Industry acceptable products are available to assist in the cleaning and removal of efflorescence. The use of concrete setting beds may also increase the possible occurrence of efflorescence. Because this is a natural occurrence, WB accepts no responsibility or liability for this condition.