

GENERAL CONDITIONS - STEPS PLUS, INC.

(ver. 071605)

NOTE: The term "Architectural Precast Concrete" & "Precast" includes items specified as "Cast Stone".

1) **PRICE:** Price is for listed items only. If the actual quantities are found at any time to differ from those listed on this proposal, a price correction will be issued. Price is for listed finish and mix design only. If a different finish or mix design is required, a price correction will be issued. The price is based on the Purchaser's acceptance of all the terms and conditions listed on this proposal.

2) **NOT INCLUDED:** Loose hardware, clamps, dowels, anchors, bolts, inserts, sleeves, nail holes, miscellaneous supports, gaskets, reglets, plate, sealers, coatings, caulking, steel angles, tubes, columns, grating, painting, custom aggregates, custom admixtures, installation or site visits (for repairs, cleaning, dimensioning, project meetings, etc.) are not included in price unless specifically listed on the reverse side.

3) **PROPOSAL ACCEPTANCE:** If acceptance of this proposal be made on any other form or shall include any other items or conditions, such acceptance shall be expressly limited to the terms and conditions set forth in this proposal pursuant to N.Y.U.C.C. 2-207(2)(a). The price is strictly a function of the conditions of this proposal. Acceptance of this proposal must be made as soon as possible. The Company shall not be liable for any delays due to the Purchaser's delayed acceptance of this proposal.

4) **TAXES:** No State or Local Sales or Use Tax included in this proposal. If any such taxes are applicable under State or Local Law to the merchandise sold in this contract, the Purchaser shall promptly pay any and all such taxes to the Company or, if the project is located out side of New York State, the Purchaser shall be responsible for paying any applicable taxes directly to the appropriate authorities of that state. All such New York State taxes shall be deemed a part of this contract and shall be added to the price listed on this proposal.

5) **CONTRACT DRAWINGS & PROJECT INFORMATION:** The Purchaser is responsible for supplying the Company with all the necessary architectural and structural contract drawings, specifications, addenda, field dimensions, color samples, and all other information required for preparation of shop drawings and the execution of this contract. The quoted price for the listed items is based on the contract drawings as rendered. The Company shall not be liable for delays in shipments occurring as a result of delayed receipt of any of the above.

6) **SHOP DRAWINGS:** All shop drawings furnished by the Company in connection with this contract shall be checked and approved by the Purchaser and by the engineer or architect, who shall relieve the Company of all responsibility for the correctness thereof. The Purchaser shall coordinate the work shown on the shop drawings with field conditions and the work of other trades. Fabrication will not commence until written precast concrete shop drawing approval is received by the Company. The Company shall not be liable for delays in shipments occurring as a result of delayed receipt of approved drawings.

7) **REVISIONS:** The Purchaser will be responsible for all costs (including overhead) incurred by the Company for engineering, scheduling, and reworking pieces due to the Purchaser requesting changes to the approved shop drawings after having previously given the Company notice to proceed with production.

8) **COLORED PRECAST:** Unless otherwise noted, only earthen colors (buffs, browns, dark oranges, dull yellows, dark brownish reds, grays, whites) are covered under this proposal. All other colors (black, greens, bright primary colors, etc.), if achievable at all, would only be done at an additional charge. Not all colors can be successfully matched in concrete. Unless noted otherwise on the reverse, the quoted price is based on only one mix type being required for the Project. The Purchaser must deliver to the Company a sample that illustrates the desired color and texture. If the existing material to be matched on the building is to be cleaned, then the Purchaser must clean the sample sent to the Company. The Company will do no field checking. There will be an extra charge of \$50.00 for each incorrect sample sent to the Company for matching. The Company will submit to the Purchaser for review and approval at least one sample that is similar to and compatible with the Purchaser's sample. The Company in no way suggests or guarantees that the precast sample it submits for approval or the precast product itself will match the Purchaser's sample exactly. In accordance with PCI standards, the color and texture of the finished precast product will match the general color and texture of the approved Steps Plus sample when viewed with the unaided eye at a 20 foot distance in good typical daylight illumination with only slight color and texture variations being evident between pieces in the finished product. Darker colors will exhibit more variation than lighter colors. The Company will not start production until written sample approval is received.

9) **MOCK-UP:** Precast pieces for mock-ups are not included in the price unless specified on the reverse side. Mock-ups will not be made until shop drawings and a color sample are approved. Production will not start until written approval of the mock-up is received. The Company shall not be held responsible for any delays caused by the time required to produce and get mock-up approval.

10) **INITIAL PRODUCTION APPROVAL:** The Purchaser has the option of performing an Initial Production Inspection as suggested in PCI MNL - 117. At this inspection, which takes place at the Company's plant, the responsible party (Purchaser, Architect, Engineer, or Owner) can inspect and review the first production units and establish an acceptable range of color and texture. If no inspection is performed at the beginning of the production schedule, then the Company shall be the sole judge of acceptable variations in color, texture and quality. It shall be the responsibility of the Purchaser to notify the Company before or upon the Company's receipt of approved shop drawings if an Initial Production Inspection is desired.

11) **STORAGE ISSUES:** The price includes storage of completed precast at the Company's yard for up to 30 days past the Purchaser's requested delivery date as of the start of precast production. If, after that, Steps Plus starts to run out of storage space and the Purchaser still can not accept delivery at the site, the Purchaser must make arrangements to accept delivery at some other location and pay for the difference in shipping should it cost more to ship to the storage area than to the job site. The Purchaser would then be responsible for transporting the precast to the job site from the storage area. The Purchaser is responsible for correcting any problems that result from prolonged storage (either at the Company's yard or at the job site), such as dirt accumulation and stacking board lines. Dirt accumulation must be cleaned off with brushes and soapy water. Stacking board lines from dirt will fade or wash off. Stacking board lines from moisture retention typically fade over time (typically months but sometimes years). If stacking board lines do not fade, then the Purchaser would be responsible for staining the precast to hide the lines (Also see SCHEDULE clause).

12) **PREMATURE SHIPMENTS:** Shipment of products not fully cured will only be done at the Purchaser's request and at the Purchaser's risk. If 28 day test results have not yet been received and reviewed by the Company when the Purchaser requests delivery, the Purchaser will assume full responsibility for any and all costs associated with removing or modifying any installed pieces shown by tests not to meet the specified requirements and for field testing any delivered or installed pieces should the Company's manufacturing tests not be conclusive as to whether or not the pieces meet the specified requirements. The Purchaser also acknowledges and assumes responsibility for the fact that partially cured concrete is more likely to break resulting in numerous adverse consequences, including injury to persons property and/or possible replacement of product

13) **DELIVERY TO SITE:** The Company will tentatively schedule deliveries in advance but will not guarantee any delivery dates and times and will not be responsible for any damages resulting from a delivery not arriving as scheduled. If suitable roadways and approaches at the building site are not provided and maintained by the Purchaser to accommodate a tractor trailer, the Company reserves the right to stop delivery until the condition is remedied. The Company shall bill the Purchaser at a rate of \$60.00 per hour for any time a delivery truck is kept waiting due to unsuitable approaches. The Purchaser is responsible for unloading.

14) **DAMAGED PRODUCT:** All precast concrete items shall be inspected by the Purchaser upon delivery before unloading, and, should any defects be found, they must be noted on the delivery sheet. The Purchaser shall be responsible for any patching required to repair any pieces that arrive at the site with minor damage. The Purchaser must immediately call the Company should any of the precast have major damage or should any of the precast need to be sent back on the delivery truck. The Company shall not be responsible for any damage that occurs to the precast as it is unloaded or after its delivery. Any on-site repairs are to be performed by the Purchaser using instructions and patch material supplied by the Company. No back charges for patching or repairs will be allowed unless written consent of the Company is first obtained.

15) **PRODUCT ACCEPTABILITY, INCORRECT PRODUCT & PURCHASER'S FIELD ADJUSTMENTS:** Applicable standards for inspection and quality control shall be PCI MNL - 117 "Manual for Quality Control for Plants and Production of Architectural Precast Concrete Products", 3rd Edition, Appendix J. The Architectural Precast Concrete units shall show no obvious repairs or imperfections other than minimal color variations when viewed with the unaided eye at a 20 foot distance in good typical daylight illumination. The Purchaser shall be responsible for a drilling amount of cutting, grinding, patching, re-finishing, etc., that is generally necessary due to the custom nature of the product. Before and during installation, the Purchaser shall inspect all the precast concrete items for any pieces that exceed the acceptable PCI tolerances for dimensions and color. Should any incorrect pieces be found, the Purchaser shall immediately contact the Company for instructions. No back charges for fitting or cutting will be allowed unless written consent of the Company first be obtained. In the event of defective or incorrect product the Company's liability will not be responsible for any consequential damages arising from the Purchaser's use, delivery or installation of such product. The Company's liability shall be limited only to the repair or replacement of the defective or incorrect precast. It shall be up to the Company's discretion as to whether to replace or repair any incorrect product. Repair procedures may include, but are not limited to, cutting, patching, bleaching, staining, and re-finishing as well as any and all other measures deemed by the Company to best provide for maximum repair of the product.

16) **SHORTAGE OF PRODUCT:** The Purchaser shall check the load for shortages within one week of its delivery. The Purchaser will be responsible for any additional setup costs that may be incurred by the Company for shortages reported after one week from delivery. Note that custom forms are discarded two months after the final delivery or when they become deteriorated beyond use. No claims for shortage of material will be allowed more than sixty (60) days after delivery.

17) **LIABILITY & GOVERNING LAW:** The Company's liability for delays, defective product, or any other claim will under no circumstances exceed the contract price. This contract shall be governed by, and interpreted according to, the laws of the State of New York. The Purchaser consents to jurisdiction and venue in New York State Supreme Court for the County of Onondaga in any action between the Company and the Purchaser relating to or arising out of this contract.

18) **RISK OF LOSS:** Risk of loss shall pass to the Purchaser upon delivery of precast, receipt of precast, or transfer of title, whichever comes first.

19) **CREDIT:** Shipment and deliveries under this agreement shall at all times be subject to the approval of the Company's Credit Department and in case the Company shall have any doubt as to the Purchaser's financial responsibility, the Company may decline to make any further shipments hereunder except upon receipt of satisfactory security or cash before shipment. Title to material shall remain with the Company until payment in full by the Purchaser. If the Company turns over, for collection or legal action, any sum due under the contract, the Purchaser agrees to pay, in addition to interest and late charges, the full cost of any collection and/or legal action, including, but not limited to, attorney's fees (whether or not legal action is undertaken), costs, disbursements, experts' fees, and any and all other expenses reasonably incurred. The Purchaser waives the right to assert any defense, setoff, or counterclaim in any such action brought by the Company.

20) **INSURANCE:** Prior to the transfer of title, the Purchaser shall maintain, or cause to maintain, full insurance on all material herein called for that is incorporated in the project, in or about the premises, or in transit on one of the Purchaser's trucks until paid for, with loss, if any, payable to the parties hereto as their interest may appear.

21) **STRIKES, ETC.:** The Company shall not be responsible for any loss, damage, detention or delay caused by fires, accidents, strikes, civil or military authority, insurrection, riot, flood, weather delays, acts of God, or any occurrences beyond its control.

22) **SCHEDULE:** Orders are generally processed on a first come, first served basis calculated from the Company's receipt of the last required approval (of shop drawings, sample, mockup, etc.), field dimension or RFI (Request For Information) answer. Due to the custom nature of the product and the inability to predict when approvals for orders will come in, it is impossible for the Company to accurately predict schedules in advance. Thus, all schedule predictions given by the Company are approximate and the Company shall not be liable for any extraneous or liquidated damages the Purchaser incurs for the Company's failure to meet any schedule or deadline. The Company shall make a good faith effort to keep the Purchaser apprised of production progress and to provide approximate schedules that are as accurate as possible. Should the Company's production schedule not be acceptable to the Purchaser, the Purchaser may cancel the order in accordance with the "Cancellation" section of this proposal. If the product is not needed within three months of the Purchaser sending the Company approval, the Purchaser must advise the Company of that fact in writing with the return of the approved shop drawings so as to avoid problems associated with prolonged storage of the finished product (see STORAGE ISSUES).

23) **CANCELLATION:** This contract is not subject to cancellation or change in whole or in part except by written consent of the Company. Should the order be cancelled for any reason, the Purchaser shall pay the Company for all work done and custom materials obtained (such as samples, shop drawings, engineering, inserts, forms, etc.), including overhead, for the project up to the point of cancellation at a price to be established by the Company. The minimum charge for cancellation after an order has been placed is \$40.00. The Company shall not be liable for any increased costs the Purchaser incurs by using an alternate material or supplier. Should shop drawings or engineering data prepared by the Company before the cancellation be subsequently used by the Purchaser after the cancellation, the Purchaser assumes all risk for such use. The Company shall not be liable for any costs or damages incurred by the Purchaser due to omissions or errors on shop drawings or engineering calculations prepared by the Company before the cancellation.

24) **LIMITED WARRANTY:** The Company warrants its precast concrete products against defects in materials and workmanship in accordance with PCI standards for a period of one (1) year after delivery. Defective product will be repaired or replaced at the Company's discretion. Under no circumstances shall the Company be liable for consequential damages resulting from incorrect or damaged product; rather the Company's liability shall be limited to repair or replacement of the incorrect or damaged product. Under no circumstances shall the Company be responsible for costs associated with the Purchaser's removal of defective units or installation of new product, it being the Purchaser's obligation to inspect all product prior to installation. The Company's limited warranty shall be void if salt or other ice or snow melting compounds or solvents are used on the precast concrete or cast stone or if the product is exposed to extreme heat or open flame, regardless of whether or not the product has been sealed. The use of salt or other deicing compounds or solvents or the exposure to extreme heat or open flame will cause concrete to deteriorate. Problems resulting from prolonged storage of completed precast, such as dirt accumulation and stacking board lines, are not covered by this warranty (see "Storage Issues"). See the "Premature Shipments" clause on this sheet for exclusions regarding the shipment of concrete not fully cured. Damage resulting from physical impacts (such as from chipping ice, skateboards, etc.) is not covered under this warranty. It is the responsibility of the Purchaser to advise the ultimate end user of the exceptions to this warranty. No other warranties are expressed or implied.

25) **WASH-DOWN & SEALING:** The Purchaser should wash down the precast concrete after installation according to the Company's instructions and the project specifications. Any precast concrete that may ultimately come in contact with salt or other deicers (such as stair treads, patio trim, etc.), should be sealed regularly after installation to help reduce deterioration of the concrete. Note that sealing will not afford warranty coverage for damage resulting from the use of salt or other deicing compounds or solvents, but may provide additional protection against such hazards. Sealers must be applied in accordance with the sealer manufacturer's instructions and with the Project Architect's approval. Sealers may affect the color of the precast and may prevent patches, mortar, sealants, paint, stains, rub mixes, and other materials from adhering to the sealed product.