

## GENERAL TERMS AND CONDITIONS OF SALE

1. General. These terms and conditions (“**Terms**”) set forth the terms and conditions by which the purchaser (“**Purchaser**”) will purchase and Aqua Patch Road Materials (“**Seller**”) will sell Aqua Patch water activated cold mix asphalt (“**Product**”).

2. Purchase Orders. All orders must, unless Seller agrees to otherwise in writing, be submitted to Seller on a completed pre-printed (current) order form provided by Seller and shall set forth the quantity of the Product desired, the price per bag or pail of the Product, and all other relevant information necessary to effectuate shipment of the Product. Such purchase orders shall be limited and conditioned upon acceptance of these Terms. No additional, inconsistent or contrary terms are agreed to by Seller and shall in no case become part of this agreement or any sale of Product to Purchaser, unless specifically accepted by a writing that specifically references an intent to modify these Terms and is duly executed by an officer or authorized manager of Seller.

3. Acceptance/Return. All orders for Product shall be subject to acceptance by Seller. Purchaser and its customers shall not return any Product without the written consent of, and upon terms agreed to, by Seller, including, without limitation, returns based upon the Limited Warranty.

4. Expiration. Customer shall not use Product 6 months after the date of manufacture.

5. Price. Pricing for Product and freight (where applicable), together with applicable taxes, shall be those in effect at the time of order entry by Seller and as reflected on Seller’s invoice. Seller’s prices do not include sales, use, excise or similar taxes. Consequently, the amount of any present or future sales, use or other similar tax applicable to the sale or use of the Product shall be paid by Purchaser.

6. Payment/Delinquency Charge. Payment is due to Seller within thirty (30) days after the date on the invoice issued by Seller.

7. Delivery and Freight Charges. All delivery dates are approximate and based upon the prompt receipt of all necessary information from Purchaser. Unless otherwise instructed, Seller will ship Product to the address provided by Purchaser with Seller’s order, F.O.B. at the Product manufacturing facility. Delivery shall be complete and possession, title and risk of loss shall pass to Purchaser at the F.O.B. point. Thereafter, carrier shall be deemed to be acting for Purchaser. Purchaser is responsible for ensuring that the vessel is clean and appropriate for transporting the Product, and Purchaser shall be fully responsible for the acts and omissions of the freight carrier. Seller shall not be responsible to inspect vessels, nor shall Seller be responsible for draining or cleaning vessels. Seller reserves the right to reject any vessel that Seller determines is not in proper condition to transport the Product. Purchaser is responsible for all costs incurred to arrange or clean a vessel for shipment of Product. Notwithstanding the provisions contained in these Terms to the contrary, Seller is not responsible or liable for any loss or damage whatsoever, including loss of income and/or profits, incidental, special or consequential damages resulting from Seller’s delayed performance in shipment or delivery of the Product for any reason whatsoever. Seller shall have no liability for any delay in delivery. Seller’s freight charges, if any, are stated on Seller’s invoices and are part of Seller’s payment terms.

8. Measurement/Inspection. The volume of Product transferred to Purchaser and subsequently billing for such Product will be based on the measurements/counts taken at the Product manufacturing facility. Any claim for deficiency in quantity shall be waived unless Purchaser, within thirty (30) days after Purchaser first learns of the deficiency, gives written notice of such claim to Seller; and, where practicable, gives Seller or Seller’s appointed agent an opportunity to inspect such Product. Any claim of any other kind (not related to quantity or quality) based on or arising out of any transaction hereunder shall be conclusively waived unless Purchaser

gives written notice to Seller within thirty (30) days after Purchaser discovered or should have reasonably discovered the claim.

9. EXCLUSION OF ALL WARRANTIES BY SELLER. THE LIMITED WARRANTY PROVIDED BY SELLER, THE TERMS OF WHICH ARE AVIALBLE AT [www.aquapatchasphalt.com](http://www.aquapatchasphalt.com) AND EXPRESSLY INCORPORATED HEREIN, IS THE SOLE AND EXCLUSIVE REMEDY OF THE PURCHASER AND THE EXCLUSIVE LIABILITY OF SELLER. THE LIMITED WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES REGARDING THE PRODUCT, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE CREATED UNDER APPLICABLE LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY AND ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, USE, DESCRIPTION, QUALITY OR FROM COURSE OF PERFORMANCE, COURSE OF DEALING, USAGE OF TRADE OR ANY OTHER MATTER. PURCHASER ACKNOWLEDGES THAT SELLER’S LIMITED WARRANTY SHALL NOT IN ANY WAY AFFECT THIS EXCLUSION OF ALL OTHER WARRANTIES AS BETWEEN SELLER AND PURCHASER. IN NO EVENT SHALL ANY PARTY BE AUTHORIZED TO AMEND THIS EXCLUSION OF ALL OTHER WARRANTIES BY SELLER. SELLER SHALL NOT BE RESPONSIBLE IN ANY WAY FOR OTHER WARRANTIES, IF ANY, OF ANY KIND PROVIDED BY ANYONE ELSE TO PURCHASER.

10. LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW: (1) IN NO EVENT AND UNDER NO LEGAL THEORY WILL SELLER BE LIABLE FOR ANY LOSS OR DAMAGE CLAIMED TO HAVE RESULTED FROM THE USE, OPERATION OR PERFORMANCE OF THE PRODUCT, REGARDLESS OF THE FORM OF ACTION, INCLUDING, WITHOUT LIMITATION, OTHER PRODUCTS USED WITH THE PRODUCT, IMPROPER OR NEGLIGENT INSTALLATION, STORAGE, HANDLING, THIRD PARTY ACTIONS; AND (2) IN NO EVENT WILL SELLER BE LIABLE TO PURCHASER FOR (A) ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR EXEMPLARY LOSSES OR DAMAGES, OR ANY LIABILITY FOR LOSS OF REVENUE, LOSS OF PROFIT, LOSS OF PRODUCT, LOSS OF REPLACEMENT POWER OR BUSINESS INTERRUPTION, LOSS OF BUSINESS OPPORTUNITY, COVER, LOSS OF INFORMATION, OR USE BASED UPON ANY CLAIM BY PURCHASER FOR BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER LEGAL THEORY, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY THEREOF, OR (B) ANY CLAIM WHETHER IN CONTRACT OR TORT THAT AROSE MORE THAN ONE YEAR PRIOR TO INSTITUTION OF SUIT THEREON. SELLER MAY ONLY BE LIABLE FOR ACTUAL DAMAGES RESULTING FROM A MATERIAL BREACH OF THIS LIMITED WARRANTY AND FOR PERSONAL INJURY OR PROPERTY DAMAGE DIRECTLY RESULTING FROM GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT ON THE PART OF SELLER UP TO, BUT NOT EXCEEDING, THE PURCHASE PRICE FOR THE PRODUCT PAID.

11. Product Modification. Seller may, at its sole and unfettered discretion, modify and/or adjust the formula and manufacturing process it uses for manufacturing the Product, including, without limitation, as a result of and depending on the particular rock quarry being utilized for the Product and the particular aggregate water absorption rate. Changes to the Product shall be intended for the purpose of maintaining consistent quality and performance. Purchaser understands that Seller shall have no obligation to upgrade any previously manufactured Product to include any modifications or adjustments.

12. Patent Infringement. Seller's liability for patent infringement is limited to Seller's defense of any proceeding brought against Purchaser based on a claim that the Product, when employed in the manner intended by Seller, constitutes an infringement of any patent of the United States. If Purchaser's use of the Product in the manner intended by Seller is finally enjoined, Seller shall, at its option, procure for Purchaser the right to continue using the Product, replace it with a non-infringing Product, modify the Product so that it becomes non-infringing, but equivalent to the Product sold, or refund the purchase price (less allowance for use, damage or obsolescence). Seller makes no warranty against patent infringement resulting from the use of Product in combination with any other products or in the practice of any process and if a claim, suit or action is based thereon, Purchaser shall defend, indemnify and save Seller harmless from and against any and all claims, losses or damages arising therefrom.

13. Arbitration. (a) Except as provided in subparagraph (b), the parties agree that all disputes arising out of the Terms (including, without limitation, the enforceability of this arbitration provision), the purchase or sale of Product and/or the relationship of the parties shall be settled by submission for arbitration to the American Arbitration Association ("AAA") for hearing to take place in Los Angeles, California, under the Commercial Rules of Arbitration of the AAA, which may be found at [www.adr.org](http://www.adr.org). This arbitration provision shall be self-executing and shall remain in effect after and regardless of expiration, cancellation or termination of these Terms. Any judgment upon any award rendered by the arbitrators may be entered in any court having appropriate jurisdiction. Except as provided in subparagraph (b), if any suit or proceeding is filed in any court, the court shall, on application of one of the parties, stay the action until such arbitration has been had in accordance with these Terms. (b) The provisions of subparagraph (a) hereof to the contrary notwithstanding, the parties reserve their right to bring an action for injunctive or equitable relief, including, without limitation, replevin in an appropriate case, and the parties' agreement to arbitrate hereunder shall not stay or otherwise affect their right to petition a court of competent jurisdiction for equitable relief in appropriate circumstances, or for the purpose of repossessing or replevining Product, provided, however, that all claims for money or money damages related thereto shall be referred to arbitration as aforesaid.

14. Force Majeure. Seller's obligations hereunder are subject to, and Seller shall not be held responsible for, any delay or failure to make delivery of all or any part of the Product due to acts or circumstances beyond the control of Seller, including, but not limited to, labor difficulties, fires, casualties, accidents, acts of God, terror, transportation difficulties, inability to obtain Product, materials or components or qualified labor sufficient to timely perform part or all of any obligation, or governmental regulations or actions. In the event of the occurrence of any of the foregoing, at the option of Seller, Seller shall be excused from the performance hereunder or the performance of the Seller shall be correspondingly extended.

15. Relationship. The relationship of Seller and Purchaser shall be strictly limited to that of seller and buyer. In no event shall the dealings between Seller and Purchaser be construed to give rise to any franchise or any other special relationship. Nothing in this Agreement or in the course of business between the parties shall make or constitute either party a representative or agent of the other. Neither party shall have any authority to commit or legally bind the other in any way whatsoever, including without limitation, the acceptance of any order or the making of any agreement, representation or warranty. In all of their respective performance hereunder, the parties are acting solely as independent contractors, each responsible for their own business, employees and expenses.

16. Safety Precautions. Purchaser shall convey to its customers, all instructions, manuals, notices, and limitations/disclosures, including, without limitation, those set forth in these Terms regarding the Product. Purchaser shall require its employees and all operators to use all safety devices, guards, and proper safe operating procedures including, without

limitation, those set forth in Material Safety Data Sheets, warnings, safety and health notices, manuals and instructions furnished to Purchaser. Purchaser is responsible for providing all means that may be necessary to effectively protect all its employees and operators from serious bodily injury, which otherwise may result from the method of particular use, operation, set-up, or service of the Product. The user's manual and all safety information should be consulted and be made available to Purchaser's employees and customers. Purchaser shall promptly communicate all post sale notices or warnings received with respect to the safe operation of the Product. If Purchaser fails to comply with such provisions of this paragraph or the applicable standards or other requirements imposed by law or regulation, Purchaser shall defend, indemnify and hold Seller and its parent and affiliated companies, and their respective agents and employees, harmless from and against any and all claims, losses, damages and legal fees arising therefrom. Seller shall not be responsible for compliance with any local laws, ordinances, codes or the interpretation thereof which may be in effect at the Purchaser's or its customer's facility, unless a Seller officer has specifically agreed in a signed writing to accept that responsibility.

17. Indemnity. Purchaser hereby waives, releases and discharges all claims of any kind (including, without limitation, death of any person or damage to property), which it may have at any time against Seller and Purchaser covenants to defend, indemnify and hold harmless Seller and its parent or affiliates or employees by reason of or arising out of any claimed improper or inadequate design, manufacture, warning, sale, distribution or use of the Product.

18. Security Interest. To secure any indebtedness due and owing from Purchaser from time to time, Purchaser hereby grants to Seller, and Seller hereby reserves unto itself, a continuing purchase money security interest in any and all Seller Product heretofore or hereafter sold or delivered according to Purchaser's request by Seller, and all proceeds arising from the sale or other disposition of the foregoing, including, but not limited to, cash, accounts, contract rights, accounts receivable, instruments and chattel paper. Purchaser shall at no time grant any security interest in conflict with that granted to Seller herein. Purchaser shall cooperate in the preparation, signing and filing of financing statements necessary to evidence and perfect Seller's security interest as described above.

19. Installation or Service. Under no circumstances, shall any installation or service of the Product be performed by Seller and no expense associated therewith shall be borne by Seller.

20. Miscellaneous Provisions. (a) These Terms constitute the entire agreement between Seller and Purchaser for the purchase and sale of Product to Purchaser by Seller and the liability of Seller, and supersede any and all prior agreements, correspondence, quotations or understandings heretofore enforced between the parties relating to the subject matter hereof. (b) If any term or condition or part of these Terms is held invalid, the remaining Terms shall not be affected thereby. (c) These Terms may be modified, canceled or rescinded only by a written agreement that specifically references an intent by both parties to modify, cancel or rescind these Term and is duly executed by authorized agents. (d) All rights available to Seller under the Uniform Commercial Code except as specifically limited or excluded herein (even though not specifically enumerated), are reserved to Seller as remedies available in the event of default or breach by Purchaser. (e) This agreement and any sale of Product to Purchaser shall be deemed to have been made in and governed by the substantive laws of the State of California, without regard to choice-of-law provisions. (f) Any failure by either party to enforce at any time any of the Terms shall not be considered a waiver of such party's right thereafter to enforce the same or any other term or condition hereof. (g) These Terms shall be binding upon the successors and legal representatives of Purchaser and Seller. (h) Seller is a d.b.a. of Jalux Americas, Inc. Aqua Patch Road Materials and the Aqua Patch logo are trademarks of Jalux Americas, Inc. © Copyright 2017 Jalux Americas, Inc. All rights reserved.