



HILFIKER RETAINING WALLS GENERAL TERMS AND CONDITIONS OF SALE

These General Terms and Conditions of Sale ("Terms") shall govern all orders for and purchases of products and services from Hilfiker Retaining Walls ("HRW"), unless HRW and buyer have entered into a purchase agreement or other written agreement that expressly provides that its terms supersede and replace these Terms with respect to the products or services covered by the purchase or other agreement

- PRICE.** The price for any product or service (hereinafter collectively "Product") shall be the price stated in HRW's quotation to buyer for the Product ("HRW's Quotation"). Prices stated are exclusive of all taxes, fees, licenses, duties, levies or other governmental assessments ("Taxes"). All Taxes related to sale shall be paid by buyer, or in lieu thereof, buyer shall provide HRW with a tax exemption certificate acceptable to the relevant taxing authorities. Taxes and other charges payable by buyer may be billed as separate items on HRW's invoice.
- PAYMENT TERMS; COLLECTION COSTS.** Payment terms are net 30 days from date of HRW's materials invoice. **Invoices for Engineering are due upon receipt.** Payment for partial shipments shall be based on unit or prorated prices, and payment for partial installation(s) shall be based on percentage of completion of delivery, as reasonably determined by HRW. Prices quoted apply only to the referenced project and are in effect through the noted expirations date. HRW reserves the right to adjust prices after the quotation's expiration date if a written commitment has not yet been made. Prices are based on estimated quantities shown on HRW's quotation. If a different quantity is purchased, HRW reserves the right to adjust the prices. If payment is not received by the due date, HRW may assess and buyer agrees to pay a late payment charge at the rate of 1.5% per month (18% per year) or the maximum legal rate, whichever is less, of the amount due from the due date to the date of payment. If HRW retains a collection agency or attorney to collect unpaid amounts, HRW may invoice buyer for, and buyer will pay, all reasonable costs of collection, including without limitation reasonable attorneys' fees. **NO RETENTION** will be withheld from contracts; HRW is a manufacturer and we do not provide labor. No Bonds or Letters of Credit will be provided; HRW standard Material Warranty only.
- REJECTION AND RETURN OF GOODS.** Any claims for damaged, missing or defective Product must be reported in writing by buyer within one business day of the date of buyer's receipt of the Product. For any valid claim timely made, HRW, at its option, may repair the Product or replace the Product with an identical or substantially similar Product. **THESE ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES FOR DAMAGED OR MISSING PRODUCT, AND, EXCEPT FOR EXPRESS WRITTEN WARRANTY RIGHTS, FOR DEFECTIVE PRODUCT.** Any material returned to HRW must be accompanied by a valid return authorization number obtained from HRW.
- BY BUYER FOR BUYER'S MODIFICATIONS OR SPECIFICATIONS.** If buyer modifies any Product or furnishes HRW with specifications or designs or requests outside of HRW's standard materials, buyer agrees to defend, indemnify and hold HRW harmless against all liabilities, damages, costs, expenses and claims arising from or based upon buyer's modifications or HRW's manufacture and sale of Product or other performance in compliance with such specifications or designs or requests.



HILFIKER RETAINING WALLS

Welded Wire Wall • Eureka Reinforced Soil
Gabion Faced M.S.E. • Reinforced Soil Embankment
ArtWeld Gabions • Spiralnail • Steepened Slope • Trinity Wall

5. **INDEMNIFICATION.** The buyer agrees to indemnify, hold harmless, reimburse and defend HRW and each of HRW's officers, directors, employees, and affiliates, at all times against any claim, cost, expense, liability, obligation, loss or damage (including reasonable legal fees incurred in the defense thereof) of any nature, incurred by or imposed upon HRW which results, arises out of or is based upon any negligence or misconduct of the of the buyer.
6. **INSURANCE.** HRW carries insurance in the following amounts; if different coverage is required any additional charges incurred by HRW will be passed along to Buyer.
 - Commercial General Liability: \$1,000,000 per occurrence, \$2,000,000 aggregate.
 - Automobile Liability: \$1,000,000
 - Excess Liability: \$1,000,000
 - Workers Comp: \$1,000,000
7. **WARRANTY.** [Material Warranty for Hilfiker Systems](#)
8. **LIMITATION OF LIABILITY. TO THE FULLEST EXTENT ALLOWED BY LAW, IN NO EVENT SHALL HRW BE LIABLE, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE, WARRANTY, OR UNDER ANY STATUTE OR ON ANY OTHER BASIS FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, MULTIPLE OR CONSEQUENTIAL DAMAGES SUSTAINED BY BUYER OR ANY OTHER PERSON OR ENTITY ARISING OUT OF OR CAUSED BY PRODUCT, HRWS PERFORMANCE OR FAILURE TO PERFORM ITS OBLIGATIONS RELATING TO THE PURCHASE OF PRODUCT OR PERFORMANCE OF SERVICES, , THE POSSESSION OR USE OF ANY PRODUCT, OR THE PERFORMANCE BY HRW OF ANY SERVICES, WHETHER OR NOT FORESEEABLE AND WHETHER OR NOT HRW IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES ARISING FROM OR RELATED TO LOSS OF USE, DOWNTIME, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR LOSS OF REVENUE, PROFITS, GOODWILL, OR BUSINESS OR OTHER FINANCIAL LOSS.**
9. **SOLE TERMS; INCONSISTENCIES; ORDER OF PRECEDENCE.** These Terms, together with HRW's Quotation, other written conditions of use, any other terms and conditions expressly agreed to in writing by an authorized representative of HRW (collectively, "HRW's, Terms"), constitute the complete, exclusive and entire agreement between HRW and buyer with respect to purchases of Product, and HRW's offer to sell Product is expressly limited to such terms. Such terms shall take precedence over, supersede, and replace all prior or contemporaneous understandings or agreements, written or oral, and any of buyer's additional or different terms and conditions, which are hereby rejected and shall be void. Buyer's submission of a purchase order or other instrument for or regarding the purchase of Product, whether or not in response to an HRW Quotation, shall be deemed acceptance of and agreement to HRW's Terms to the exclusion of any other terms and conditions. Except as otherwise provided in these Terms, in the event of an inconsistency between these Terms and the terms appearing on HRW's Quotation or other agreement signed by an authorized representative of HRW, the terms appearing on HRW's Quotation or such other agreement shall supersede and take precedence over the inconsistent provision(s) of these Terms, and all other provisions of these Terms shall remain in full force and effect.
10. **CHOICE OF LAW.** Any contract between HRW and buyer relating to Product, including these Terms, and any disputes relating thereto, shall be governed by and construed in accordance with the laws of the County of Humboldt, State of California, U.S.A. Buyer consents that such courts have jurisdiction with respect to any action relating to this contract.





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11. **ACCEPTANCE.** Buyer's acceptance of delivery of all or any portion of the goods or the performance of all or any portion of the services covered by the agreement will constitute buyers unqualified acceptance of all the Agreement's terms and conditions.
12. **DELIVERY.** This signed and accepted quotation must be received by Hilfiker Retaining Walls prior to wall fabrication. Delivery in full truck load lots will be made in a timely manner acceptable to both Buyer and Hilfiker Retaining Walls. Buyer to unload with mechanical equipment, Normal highway truck is used to haul this commodity. Truck must be able to access drop-off point under own power (going & returning).
It is strongly recommended that all material remain on the same flatbed from pick up location to jobsite. Hilfiker discourages any unloading/reloading and/or transfer of this commodity during transit to jobsite. Damage can render the material subject to rejection. Hilfiker will not be liable for any materials damages during unloading/trans loading
All orders must be shipped within 30 days of manufacture or a storage charge applies equal to a maximum of 5% per month of the selling price of the stored material. Allowable unloading time for delivery trucks is two (2) hours. Demurrage charges of \$90.00 per hour thereafter will be added.
13. **DELAYS.** Hilfiker Retaining Walls will not be held liable for delays in delivery date due to circumstances beyond its reasonable control; such as acts of God, acts of Government, weather-related incidents, performance failure by suppliers, etc. Excusable delays do not relieve Buyer of obligation to accept and pay for all materials specified in the Agreement.

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