

## Terms and Conditions

### 1. Definitions.

- (a) "Concrete" means ready mix concrete.
- (b) "Purchaser" means the individual or company placing an order to purchase Concrete.

### 2. Purchase of Concrete. The Quotation and these Terms and Conditions shall together constitute the purchase agreement ("Agreement"). The Agreement is the only agreement between the parties and supersedes all other agreements, representations, correspondence, undertakings or communications between the parties regarding the purchase of Concrete.

### 3. Payment Terms.

- (a) Full payment is due on the 15<sup>th</sup> day of the month following the month in which the invoice is dated.
- (b) Prices exclude applicable taxes, fees, duties and surcharges. Purchaser is solely responsible for the payment of such amounts.
- (c) Unless otherwise stated, prices are in Canadian Dollars.
- (d) Purchaser shall pay all fees, expenses and disbursements (including legal fees on a solicitor and his own client basis) incurred by Seller in connection with collecting any overdue accounts
- (e) Seller reserves the right at any time to require the Purchaser to post adequate security, and to discontinue the supply of Concrete in the absence of such security, in its sole discretion.
- (f) All purchases by Purchaser pursuant to this Quotation require payment in advance unless Seller has entered into a written credit agreement with Purchaser. In the event Purchaser makes payment with a cheque, and such cheque, upon presentation, is not promptly negotiated by Purchaser's bank, Purchaser shall immediately make payment using a certified cheque. Purchaser shall also pay a service charge of \$25.00 for any cheque that is not negotiated by Purchaser's bank promptly upon presentation. Purchaser shall pay Seller interest on all amounts not paid when due at a rate of 1.0% per month (12% per annum). Invoice shall be deemed correct unless Purchaser notifies Seller in writing of any errors within 30 days from the date of such invoice. Purchaser's payments shall be applied first against any outstanding interest charges, next against any service charges and then to the outstanding principle in the invoice.

### 4. Conditional Charges. This Quotation may include the following surcharges:

- (a) a **Fuel** surcharge associated generally with increases in Seller's energy and/or fuel costs;
- (b) an **Environmental** surcharge associated generally with increases in Seller's costs to comply with environmental regulations (which surcharges are neither taxes nor other required charges of federal or municipal authorities);
- (c) a **Special Delivery** surcharge for;
  - i. deliveries on Saturday, Sundays, holidays, and all other days prior to the regularly-scheduled plant opening or after the regularly-scheduled plant closing (please consult your sales representative for regular plant-opening hours)
  - ii. each delivery of Concrete that exceeds the unloading time specified in the Quotation.
- (d) a **Winter/Seasonal** surcharge for deliveries.
- (e) a **Small Load** surcharge for each cubic meter under the minimum delivery of Concrete specified in the Quotation.
- (f) a **Returned Concrete** surcharge in the amount of Seller's estimated costs to clean up, dispose of, and haul away returned Concrete (including Concrete blown back into Seller's delivery trucks by pumps);
- (g) a **Cancellation** surcharge if Purchaser cancels a scheduled delivery without providing the required notice specified in the Quotation; and
- (h) a **Premium Delivery** surcharge for partial loads in the event of highway or road restrictions.

### 5. Concrete Availability. The quantities of the Concrete stated in this Quotation are for the sole purpose of identifying the estimated total quantities and price of the Concrete expected to be delivered by Seller to Purchaser and are not intended to constitute a commitment by Purchaser to purchase, or Seller to deliver, the stated quantities of the Concrete (or another quantity or Concrete sufficient to meet Purchaser's requirements) to Purchaser. Although Seller will make reasonable efforts to deliver Concrete in accordance with Purchaser's schedule, Seller's ability to actually deliver the amount of the Concrete stated in Seller's invoices to Purchaser is subject to the availability of the Concrete (which availability might be limited for reasons both within and outside of Seller's control, including, without limitation, those set forth in Section 6).

### 6. Force Majeure. Seller shall not be considered in default in the performance of its obligations hereunder if such performance is prevented or delayed because of an act of God, lack of availability of raw materials or Concrete, equipment or facility failures, war, blockade, embargo, hostilities, revolution, civil commotion, strike or lockout, labor dispute, epidemic, fire, wind, earthquake or flood, severe weather, traffic delays, delays of third parties or because of any law, order, proclamation, regulation or ordinance of any government, or for any other cause, whether similar or dissimilar to those enumerated, beyond the reasonable control of Seller.

### 7. Delivery Conditions.

- (a) Purchaser shall schedule all deliveries directly with the Seller.
- (b) The Purchaser is responsible to provide Seller with safe and reasonable access for Seller's delivery truck to deliver the Concrete. Seller reserves the right to stop deliveries until Purchaser provides such access.
- (c) Concrete will have slumps of 80mm +/- 30mm unless otherwise specified in writing.

- (d) Quotations are based on the volume of Concrete in a plastic and unhardened state at the time of discharge from the Sellers delivery truck. The quantity shown on the delivery ticket shall be deemed to be correct unless the Purchaser disputes the same in writing within 24 hours of the time of delivery.
- (e) Unless otherwise stated in the Quotation, the Purchaser is responsible for placing, consolidation, finishing, protection and curing of Concrete.
- (f) Concrete may not be pumpable in all conditions. Prior to delivery Purchaser shall confirm with Seller whether Concrete is pumpable or if the mix must be modified.

**8. Concrete Specifications.**

- (a) Concrete shall conform to CAN/CSA A23.1-14 / A23.2-14.
- (b) If Seller is requested to provide a Concrete mix design, such Concrete shall be provided in accordance with CAN/CSA A23.1-14, Table 5, Alternative (1) Performance.
- (c) If the Purchaser or its employees, agents, representative or contractors (collectively, "Agents") provides a Concrete mix design, such Concrete shall be provided in accordance with CAN/CSA A23.1-14, Table 5, Alternative (2) Prescription.
- (d) Sampling and testing of Concrete shall be performed in strict compliance with the applicable CSA procedures. Any sampling or testing that does not meet these procedures will be deemed to be null and void.

**9. Limited Warranty.** Seller expressly warrants the title to the Concrete and, except as provided in Section 8, Seller makes no representation or warranty whatsoever with respect to the Concrete, express or implied (whether written, oral, statutory or arising by previous course of dealing or usage of trade) including merchantability and fitness for a particular purpose, and Seller hereby disclaims all such other representations and warranties to the maximum extent permitted by applicable law.

**10. Waiver of Certain Liabilities.** Notwithstanding any other provision's in this Agreement, and without regard to the fault of Purchaser or Seller, Purchaser waives all claims against Seller, and shall indemnify Seller from and against all claims, liability, loss, damages, or expenses, arising out of or relating to:

- (a) Seller's delivery of Concrete beyond the curb of any public road at the request of Purchaser or its Agents;
- (b) physical changes to ready-mix Concrete after delivery by Seller at Seller's plant or, if Concrete is delivered to Purchaser's site by Seller, after Concrete has left the chute of Seller's delivery truck;
- (c) Seller's addition of water and/or foreign products to the Concrete at the request of Purchaser or its Agents;
- (d) improper placing, finishing, forming or curing of the Concrete by Purchaser or its Agents including, but not limited to, where a trowel finishing is applied to air-entrained Concrete. In accordance with CAN/CSA A23.1-14, Alternative (1), Section 7.6.4.3.2;
- (e) the colour of the finished Concrete;
- (f) surface popouts due to soft aggregates; and
- (g) any cracking or curling of Concrete due to the inherent characteristics of Concrete to shrink during the early stages of curing. Seller recommends Buyer adhere to the curing procedures described in CAN/CSA A23.1-14, Section 7.7, Table 2 and 19. For low shrinkage Concrete mix design options and recommendations, please contact the Seller's sales representative.
- (h) any damage (including freeze thaw damage or spalling) which occurs as a result of creating stamped Concrete, a product created by impressing a pattern into the surface of the Concrete while it is in a plastic state.

**11. Limitation of Liability.** Notwithstanding any other provisions of this Agreement, Seller shall not be liable to the Purchaser whether due to breach of contract, negligence, warranty, strict liability or otherwise, for any special, indirect or consequential damages, or for any loss of profits, loss of revenue or loss of anticipated business suffered or incurred by the Purchaser. Seller's liability to a Purchaser in relation to this Agreement, whether due to breach of contract, negligence, warranty, strict liability or otherwise, is strictly limited to the replacement of the Concrete or a refund of the purchase price for the order of Concrete in question.

**12. Limitation of Actions.** Purchaser is responsible for inspection of the Concrete upon delivery. Notwithstanding any other provisions in this Agreement, no suit or claim based on any cause of action whatsoever arising out of or in any way connected with this Agreement or the Concrete may be brought by the Purchaser, or any party claiming through the Purchaser, more than 60 days after receipt of the Concrete.

**13. Use of Concrete.** The Purchaser's use of the Concrete is at its own risk and the Purchaser shall indemnify and save Seller harmless from all liabilities arising out of, or relating to the Purchaser's control, use, possession, transportation or ownership of the Concrete.

**14. Shipment.** Unless the parties otherwise agree, title and risk of loss shall pass to the Purchaser upon delivery of the Concrete to the Purchaser's site.

**15. Recycled Concrete.** The Purchaser acknowledges that the Concrete may include recycled concrete.

**16. Waiver.** No waiver of any provision of the Agreement shall be binding unless given in writing and signed by an authorized officer of the party to be bound thereby.

**17. Governing Law.** This Agreement shall be interpreted under and governed by the laws of the Province where the Concrete is delivered and the federal laws of Canada applicable therein

**18. Arbitration.** If any dispute arises between the parties pursuant to this Agreement such dispute shall be resolved by a sole arbitrator pursuant to the provisions of the Arbitration Act of the Province where the Concrete is delivered.

**19. Term of Agreement.** Unless otherwise agreed to by the parties in writing, the prices in the Quotation are valid for the period of time set out in the Quotation from the date of the Quotation. Seller may, in its sole discretion, increase the price of, or decline to deliver, the Concrete identified in this Quotation after such date