

# Terms and Conditions

## Quality Concrete Limited

### 1. General

- 1.1. Capitalized terms not defined herein have the meanings given to them in the Quotation Supply Contract document. Upon the earlier of the signing by the Purchaser of the Quotation Supply Contract document and the departure of the Seller's delivery truck or trucks or those of its agents for the Job Site Address in accordance with the requirements of the Quotation Supply Contract, a contract for the provision of the materials and equipment described in the Quotation Supply Contract (the "Goods") and services incidental to the delivery of the Goods will be constituted between the Purchaser and the Seller.
- 1.2. All sales are subject to these terms and conditions and, if buying on credit, to Purchaser's credit agreement with Seller, incorporated herein by reference; all other terms, including any terms contained in Purchaser's purchase order or request for quotation, are excluded. Any changes must be in writing and signed by each party.
- 1.3. Full payment is due in our accounts office no later than 30 days after delivery. Interest of 1.5% per month compounded monthly being an annualized interest rate of 19.5618% will be added thereafter. The Purchaser will pay to Seller all applicable taxes. In addition to any other available rights and remedies, Seller will be entitled to recover from Purchaser all costs of collection and litigation including, but not limited to, reasonable attorneys' fees. Seller reserves the right to require payments in advance or to cancel the unfilled portion of these Terms and Conditions without notice in the event of Purchaser default of any provision of these Terms and Conditions, or if Purchaser's financial status becomes impaired or deemed unsatisfactory to Seller.
- 1.4. The Seller's obligations under this Contract are limited to delivery of materials and services incidental to the delivery of those materials.
- 1.5. The Purchaser must provide and maintain an appropriate wash down location and facility (in compliance with applicable regulations) for Seller to wash down the truck's chutes and drum after discharging concrete. Purchaser is responsible for full payment of, including all costs of disposal and Seller's return charge per truck for, (i) orders not cancelled at least one hour prior to delivery time; (ii) concrete delivered due to Purchaser's mistake or in excess of requirements; (iii) concrete not deliverable due to unsuitable approaches.
- 1.6. Concrete prices and quantities are based upon the wet volume at the time of discharge from the truck, and are not sold "form measurement" or measured "in place". Yield will be established in strict accordance with applicable CSA standards. The Purchaser will pay all charges incident to inspection or tests made by or on behalf of the Purchaser.
- 1.7. The Purchaser will furnish any admixtures or ingredients it desires that are not regularly supplied by the Seller in the marketplace along with all required Health and Safety information on such admixtures or ingredients in form and substance acceptable to the Seller. The Purchaser will be solely responsible for the effect of such admixture or ingredients on the concrete. Any extra product which may be required in excess of the mix design quoted, or which may be required to provide workability, strength, setting time or water/cement ratio, will result in an additional ingredient charge (please inquire) payable by the Purchaser. Concrete containing Purchaser provided ingredients shall have no warranty from the Seller.
- 1.8. Seller is not responsible for slump, strength or quality of any concrete to which water or other material has been added by or on behalf of Purchaser. The Purchaser is responsible to see that the concrete is handled in accordance with best construction practices. Seller has no control over the placing or handling of concrete after unloading and does not guarantee the finished work in which it is used. The Purchaser is responsible to prevent unloaded concrete from coming into contact with any material, such as aluminum, which may adversely impact concrete strength.
- 1.9. Concrete temperature will be dictated by the environmental and material conditions at the time of delivery. Any requirement beyond these conditions will require the implementation of controlled measures during production at the expense of the Purchaser.
- 1.10. The Purchaser must provide the Seller any inspection and testing results obtained either by the Purchaser or on their behalf on any and all Goods supplied by the Seller. All reports will be complete and delivered within 48 hours of the results being determined.
- 1.11. The Purchaser must give Seller written notice within 48 hours after delivery of any claim against Seller as a result of any alleged nonconforming materials or any other cause whatsoever (other than failure to meet tests that are performed at a specified age for testing such as compressive strength, in which event the time for notice will be within 48 hours after the specified age of the test sample in accordance with CSA standards), time being of the essence. Seller will be given reasonable

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opportunity to investigate all claims. Any failure by the Purchaser to give written notice within such 48 hour period will be deemed a conclusive waiver by the Purchaser of all such claims against Seller.

1.12. The laws of the province of Nova Scotia govern this Contract and all proceedings arising out of and related to it.

## 2. Basis of sale

- 2.1 Quotations and estimates by the Seller are open for acceptance for 30 days from their date and thereafter shall be automatically withdrawn.
- 2.2 Quotations are given on the basis of supplying all concrete for the entire project. Cancellation of the Contract by the Purchaser will only be accepted at the discretion of the Seller and in any case on condition that any costs or expenses incurred by the Seller up to the moment of cancellation and all loss or damage resulting to the Seller by reason of such cancellation will be paid by the Purchaser to the Seller forthwith. Upon cancellation of the contract all Goods supplied to the project will be stripped of any discount and invoiced at undiscounted rates.
- 2.3 A charge, not exceeding the value of the goods, will be made for any costs incurred by the Seller due to suspension or deferment of the Contract by the Purchaser or in the event that the Purchaser defaults in receiving, or giving instructions for the delivery of any Goods.
- 2.4 Health and Safety information relating to the Goods is available at [www.qualityconcrete.ca](http://www.qualityconcrete.ca) or by contacting the Seller. The Purchaser warrants that it will pass on to its employees, contractors and all third parties to whom it may supply the Goods all information as to the use and safe handling of the Goods as may have been made available to the Purchaser by the Seller. For the avoidance of doubt, Purchaser shall provide all Health and Safety information relating to admixtures and ingredients it furnishes to all such employees, contractors and third parties.
- 2.5 **Limited Warranty:** The Purchaser is solely responsible for determining the type and quantity of goods to be purchased. Concrete will be batched and delivered in accordance with current edition of CSA A23.1. Seller warrants that its Goods will meet or exceed applicable CSA standards, when tested in accordance with CSA and evaluated by CSA standards. **ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY EXPRESSLY EXCLUDED. THE REMEDY SET FORTH IN SECTION 1.11 WILL CONSTITUTE THE SOLE REMEDY OF THE PURCHASER UNDER THIS LIMITED WARRANTY.**
- 2.6 **Limitation of Remedies.** The sole and exclusive remedy of the Purchaser or any other party against Seller for all claims of any kind, whether based on contract, tort (including negligence), breach of warranty or otherwise, for any loss or damages arising out of, connected with or resulting from the sale or failure to sell, shall be replacement of such Goods sold hereunder, or, at Seller's option, refund of the purchase price paid for the Goods and shall in no event be greater than the invoiced value of the Goods as supplied and fully paid for. No other remedy shall be available to the Purchaser (including, but not limited to, indirect or consequential damages, lost profits, delays, lost sales, punitive damages, injury to persons or property or any other incidental or consequential loss).
- 2.7 Failure of Seller to exercise any of its rights hereunder will not be deemed a waiver of any such right; a waiver of any right or obligation hereunder will not constitute a continuing waiver. The unenforceability of any provision of this Contract will not affect the enforceability of any other provision of these Terms and Conditions, and each other provision of this Contract will be severable and enforceable to the extent permitted by law.

## 3 Delivery

- 3.1 Regular delivery hours are 7:00 a.m. - 5:00 p.m., Monday through Friday excluding Holidays. An additional charge (please inquire) may be added for deliveries outside of these hours and for any waiting/unloading periods in excess of 30 minutes. Prices are based on full loads; an additional charge will apply to short loads.
- 3.2 Delivery times and dates are given in good faith but are estimates only.
- 3.3 Time for delivery shall not be of the essence of the Contract.
- 3.4 Purchaser should give Seller at least 48 hours prior notice of the time and rate of requested deliveries. Delivery schedules will be mutually agreed upon between Seller and Purchaser. Seller reserves the right to reject any order. No cancellation of an order will be accepted after the Goods have been loaded at Seller's plant. Agreed-upon deliveries will be made to the best of Seller's ability to dispatch, however, Purchaser waives any claims associated with any delays in delivery.
- 3.5 For the avoidance of doubt and without derogation from any other provision of these Conditions the Seller shall not be liable for any damages whatsoever whether direct or indirect (including for the avoidance of doubt any liability to any third party)

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resulting from any delay in delivery of the Goods or failure to deliver the Goods within a reasonable time whether such delay or failure is caused by the Seller 's negligence or otherwise howsoever.

- 3.6 The Seller reserves the right to make delivery by instalments and tender a separate invoice for each instalment. Each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Purchaser in respect of any one or more instalments shall not entitle the Purchaser to treat the Contract as a whole as repudiated.
- 3.7 The price of the Goods is based on:
  - 3.7.1 The Purchaser requiring delivery during the Seller 's normal working hours or days. If the Purchaser requires delivery at any other time then the Purchaser shall give at least seven working days' notice in writing to the Seller and, if the Seller agrees to such delivery, the Purchaser shall pay all additional expenses as determined by the Seller occasioned by such delivery; and
  - 3.7.2 Delivery being made in full loads. Requested delivery in loads of lesser quantity shall be subject to a premium for delivery. Details of such premiums are available upon request.
- 3.8 Purchaser shall provide proper assistance to the driver of the delivery truck in unloading the Goods. Purchaser shall take all reasonable measures to ensure the Seller's delivery vehicles or those of its agents are not held at the Job Site Address for more than one half an hour per cubic meter while unloading the Goods. Any period in excess of these times will be charged as waiting time to the Purchaser at the rate determined by the Seller and such rate is available from the Seller upon request.
- 3.9 Delivery by the Seller 's road vehicles shall be made on the nearest good hard road to site with adequate turning space at the point of delivery. The truck driver is empowered to refuse delivery or continue delivery if, in his opinion, the point of unloading is unsafe or is likely to prove dangerous to a vehicle. If the delivery vehicle is required to deliver at any point off a public road, the Purchaser will be responsible for any damage to vehicles, pipes, manholes or any other property of any sort resulting there-from and hereby indemnifies the Seller against any loss, damage, claims, costs, including legal costs on an indemnity basis or demands which the Seller may incur as a result of such delivery.
- 3.10 Traffic control services shall be provided by the Purchaser whenever required for safe delivery, site access and egress, and during unloading.
- 3.11 In the event that the Purchaser requests that any Goods be deposited on a street or public highway the Purchaser shall be responsible for compliance with all regulations and for all steps which need to be taken for the protection at all times of persons or property and shall indemnify the Seller in respect of all costs, claims, losses or expenses including legal costs on an indemnity basis which the Seller may incur as a result of such delivery.

#### **4 Inspection**

- 4.1 The Purchaser shall inspect the Goods at the place and time of unloading.
- 4.2 The Purchaser must inform the Seller by telephone or facsimile as soon as reasonably practical and in any event must give the Seller written notice within one working day of unloading of any claim for involving a discrepancy in yield.
- 4.3 If the Purchaser does not give the Seller that written notice within the time specified the Goods will be deemed to have been delivered in the quantities shown in the delivery documents.
- 4.4 The Purchaser shall not be entitled and irrevocably and unconditionally waives any right to reject the Goods or claim any damages whatsoever for discrepancy in yield howsoever caused.
- 4.5 The Seller 's liability for discrepancy in yield is limited to making good the discrepancy.

#### **5 Call recording**

- 5.1 The Seller reserves the right to record or monitor telephone calls and make and retain copies of all communications received for training, security and order verification.