

CANADA BUILDING MATERIALS COMPANY - TERMS AND CONDITIONS OF SALE - READY MIXED CONCRETE

1. Acceptance. This Agreement contains the terms and conditions of the agreement between Canada Building Materials Company, a division of St. Marys Cement Inc. (Canada) ("CBM"), and the Purchaser, (together "the Parties") for the purchase and sale of CBM's ready mixed concrete product or products ("Products") with the exception of concrete blocks. Acceptance or delivery of the Products hereunder shall constitute acceptance of these terms and conditions. Products will be deemed accepted by the Purchaser upon delivery unless rejected and returned at time of delivery.

2. Volume and Delivery. No cancellation of an order will be accepted after the Product has been loaded at CBM's plant. The quantity of Product shown on the delivery ticket shall be deemed to be conclusive evidence of the quantity delivered unless reported to CBM upon delivery. Any claim for shortage of Product(s) must be made to CBM within 24 hours after delivery. The Purchaser's rights with respect to Product(s) rightfully rejected are limited to the rights set forth in Article 7 below. Delivery charges based on load size may apply. CBM reserves the right to add other charges upon prior written notice to the Purchaser, including but not limited to cancellation or evening or weekend delivery charges. The Purchaser agrees to provide suitable roadways and entrances to point of delivery for CBM vehicles if other than on paved streets. If, in CBM's opinion, such suitable roadways or approaches are not provided or available, CBM reserves the right to stop deliveries until conditions are remedied and suitable roadways or approaches are available. In the event the Purchaser orders delivery beyond curb line, CBM assumes no liability for any damage to sidewalks, driveways, roadways or other property and the Purchaser hereby agrees to indemnify and CBM, its directors, officers, employees, shareholders, successors and assigns harmless against all claims, liability, loss or expense incurred as a result of such damage that may occur. The Purchaser agrees to provide suitable facilities to allow for washing of CBM's truck mixer.

3. No Added Materials. The Purchaser shall not add any materials into the Product(s).

4. Limited Warranty. Products supplied hereunder shall conform to applicable specifications for compressive strength, durability and workability in the Canadian Standards Association Standard (CSA A23.1/A23.2 Concrete Materials and Methods of Concrete Construction/Methods of Test and Standard Practices for Concrete) or such other alternative specifications as may be required for a particular order, all as may be amended from time to time. It is the Purchaser's responsibility to provide any alternative applicable specification(s) to CBM. The Purchaser acknowledges that CBM has no responsibility for the Product(s) after the Product(s) leave(s) CBM's custody and control; and, in particular, that CBM has no control over placing, finishing or curing of Product(s). **Except for the Limited Warranty, CBM expressly disclaims any other warranty, including any express warranty, implied warranty of merchantability of goods, or any implied warranty of fitness of goods for any particular purpose.**

5. Exclusions from Limited Warranty. This limited warranty shall not apply and CBM has no liability under this Limited Warranty if:

- a. Sampling and testing of Products is not in strict accordance with the above-noted CSA Standards or if results are not interpreted in strict accordance with then current CSA Standard A23.1/A23.2;
- b. Placing, finishing and curing of Products is not in strict accordance with either the Canadian Standards Association procedure on concrete curing (CSA A23.1/A23.2) or Ontario Provincial Standard Specification (OPSS 904 Construction Specification for Concrete Structures), or such other more stringent curing specification as may be applicable for a particular order;
- c. Addition of water results in the slump exceeding the maximum specified slump;
- d. The Purchaser adds any materials to the Product(s);
- e. The Purchaser specifies any of the proportions of the Product mixed. In order for the limited warranty to apply, the proportions of the constituent materials comprising the Product(s), must be within CBM's control;
- f. Placement of Product(s) is not completed within the timeframe specified for delivery and placing in the applicable specifications;
- g. The Purchaser fails to supply any alternative applicable project specifications, supplies incorrect project specifications or orders Product(s) that are not within applicable project specifications;
- h. Product is concrete blocks.

In addition, with respect to any use of CBM's ready-mixed concrete products in sidewalks, curbs, gutters or other exterior exposed flatwork applications, Product durability is not warranted where the installed concrete is exposed to any non-traditional or alternative chemical de-icing materials, application techniques or application rates. Non-traditional or alternative chemical de-icing materials include, without limiting the foregoing, calcium chloride, calcium magnesium acetate (CMA), potassium chloride, magnesium chloride, and urea or any combination thereof.

6. Warranty Claims. Warranty claims must be accompanied by the applicable delivery ticket(s) and the Purchaser's proof of adherence to the applicable specification. The requisite proof can be obtained (at the Purchaser's expense) by performance of a Petrographic examination in accordance with the applicable American Society for Testing and Materials (ASTM) procedures. Unless expressly agreed otherwise, all warranty claims must be made in writing within one (1) year from the date of delivery of the Product(s) in question.

7. Limitation of Remedies. The sole and exclusive remedy of the Purchaser or any other party against CBM 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 Product sold hereunder, or, at CBM's option, refund of the purchase price paid for the Product(s) and shall in no event be greater than the invoiced value of the Product(s) 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, lost sales, punitive damages, injury to persons or property or any other incidental or consequential loss).

8. Technical Information and Assistance. The Purchaser is solely responsible for interpretation of plans and specifications. Any technical information or assistance provided by CBM or its agents, or oral statements made by CBM or its agents about the Product(s), is given and accepted at the Purchaser's risk and is not a warranty or a specification.

9. Force Majeure. CBM shall not be liable for any expense, loss or damage for reasons outside of CBM's reasonable control, including but not limited to any delays in manufacturing, shipping or delivering Products caused by acts of God, governmental action, regulations, orders or rulings, acts of war, terrorism, strikes, lockouts, other labour disputes, breakdowns, accidents, acts or omissions of the Purchaser.

10. **Prices and Terms of Payment.** Prices quoted do not include taxes unless otherwise stated. The Purchaser agrees to pay the prices as quoted by CBM or its agents, together with other applicable fees or surcharges and any sales or other applicable taxes. Upon approval of the Purchaser's credit, CBM will issue invoices for shipments delivered and, unless expressly agreed otherwise, the Purchaser agrees to pay the invoices within thirty (30) days after the date of the invoice. Any amount unpaid after the due date of the invoice shall be overdue and interest will be charged at the rate of 1 ½% per month (18% per annum). If at any time the financial responsibility of the Purchaser becomes impaired or unsatisfactory to CBM or the Purchaser is in default to CBM or its affiliates under this or any other agreement, CBM reserves the right to require advance cash payment or satisfactory security upon request and shipments may be withheld until such payment or security is received or CBM may cancel any unfilled part of the Purchaser's order. The Purchaser shall make no deductions (including those for alleged damages) from payments due hereunder.

11. **Security Interest or Guarantee.** CBM shall have the right, at its option, to retain a security interest in the Products sold and to require the Purchaser to execute a security agreement and financing statements to be filed under the applicable filing provisions of the Personal Property Security Act of Ontario, as amended from time to time; or to require the Purchaser to provide a guarantee. The Purchaser hereby agrees to grant such security interest or guarantee if requested.

12. **General.**

(a) **Waiver.** The failure by CBM to exercise any of its rights under this agreement shall not operate as a waiver of such rights.

(b) **Entire Agreement.** Except as may be provided on the Quotation, if applicable, the Credit Application, or otherwise provided by written agreement between the Parties executed by both CBM and the Purchaser, these terms and conditions supercede all other agreements, written or oral, regarding the subject matter of this Agreement, and no prior or subsequent understanding, agreement, term, condition or trade custom that conflicts with or is supplementary to these terms and conditions is binding on CBM.

(c) **Governing Law.** This Agreement shall be governed by the laws of the Province of Ontario.