

**SMITH CONCRETE TERMS & CONDITIONS
FOR QUOTATION, INVOICE AND SUPPLY CONTRACT**

APPLICABILITY. These Contract conditions apply to all quotations, proposals, sales, rentals or leases and supply contracts between the Customer identified on the reverse side hereof and Claxton Smith & Sons Concrete Company, Inc. and its subsidiaries and affiliates, hereinafter referred to as Company.

ACCEPTANCE. This offer is entire and not severable, is made subject to the conditions and provisions set forth on both sides hereof and will expire unless accepted within 30 days from date hereof unless extended by Company. Company will not recognize any separate purchase order unless approved by Company at Customer's cost and unless the terms hereof are incorporated therein by reference. NO MODIFICATION SHALL BE EFFECTED BY ACKNOWLEDGMENT OR ACCEPTANCE OF CUSTOMER'S PURCHASE ORDER FORMS CONTAINING TERMS OR CONDITIONS AT VARIANCE WITH THOSE SET FORTH HEREIN.

PRICES. Company is pleased to offer to sell or lease and then deliver to Customer the goods and services identified on the reverse side hereof, at the prices and quantities indicated, subject to the terms and conditions of this Contract as stated below and on the reverse side hereof. Unless otherwise indicated, the prices quoted apply only to shipments made to Customer within 30 days from quotation date. Unless otherwise specified, deliveries thereafter will be invoiced at the prices in effect at the time of shipment. Monthly concrete form rental/purchase prices are subject to adjustment during the rental term for the prevailing rental/purchase price in effect at the time of invoicing. Rentals on all items commence immediately upon the date of shipment and cease on date of return to Company warehouse. All rentals shall be invoiced weekly. For the purpose of rentals, each week is presumed to have 7 days and each month 28 days, and prorations will be made on this basis. Rental Customers shall have the right to return leased equipment at any time, it being strictly understood and agreed that there shall be a minimum rental period of one month, and all rentals shall be prorated after the expiration of the minimum period. Shipment of products cannot be extended beyond the original shipping date without Company's consent. All prices (except those for ready-mixed concrete) are FOB shipping point, unless otherwise noted. No order may be canceled or changed, in whole or in part, without the prior consent of Company.

TAXES. Unless a tax exemption certificate is sent to Company for each tax-exempt project, the Customer will be responsible for all applicable taxes, excise or other charges. At Company's option, any such taxes, excise or other charges may be added to the invoice or billing statement for such goods.

TERMS/FINANCE CHARGES. Company's discount and payment terms are 2%/upon receipt of invoice. All invoices are due and payable within 10 days of the delivery date. A Finance Charge of 1-1/2% per month (18% Annual Percentage Rate) will be charged upon all balances not paid within 10 days of the delivery date. Deliveries may be suspended at Company's option at any time if balances remain outstanding beyond the delivery date.

CREDIT. This Contract is subject to credit verification and approval by Company. If, in the sole judgment of Company, the financial responsibility of Customer shall, at any time, become impaired, Company may decline to make further deliveries under this Contract. All checks returned unpaid by Customer's bank will be assessed a Returned Check Fee, which shall be paid by Customer. Said fee will be determined by Company but in no event shall exceed \$50.00.

DEFAULT. Each shipment shall constitute a separate and independent transaction, and Company may recover for each such shipment without reference to any other. If Customer is in default in the payment of any sum due, or with respect to any other of the terms or conditions of this Contract, Company may, at its option, defer further shipments hereunder until such default be remedied (in which event Company may elect to extend the Contract period for a time equal to that for which shipments were so deferred) or, in addition to any other legal remedy, Company may decline further performance of this Contract. In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Customer, or in the event of the appointment, with or without the Customer's consent, of an assignee for the benefit of creditors or of a receiver, then Company may cancel this Contract for default and hold Customer accountable for any additional costs or damages incurred. In the event Customer's account is turned over to an attorney or other agency for collection, Customer shall pay all reasonable attorneys' fees, collection expenses and court costs incurred by Company.

BUILDING MATERIAL DELIVERIES. Customer shall provide Company with reasonable and sufficient advance shipping instructions. Unless otherwise noted, the Customer agrees to pay, in addition to the purchase price and/or rental charge listed on the reverse side hereof, all transportation charges from the shipping point to destination and, in the case of leased items, the return thereof. All goods shall be shipped FOB Company's dock or Company's supplier's dock. Title to purchased products and risk of loss shall transfer to Customer upon delivery of the goods by Company or Company's supplier to carrier. Customer agrees to bear the expense of any premium transportation charges/fuel surcharges unless otherwise agreed. Company may, at its option, add to the price of goods sold hereunder the amount of any increase in transportation charges for shipments to Customer, provided that such transportation charges are payable by Company hereunder. If a specific delivering carrier is required, Customer must designate such carrier in writing to Company prior to shipment, and any freight premium incurred over the most economical means of transportation will be for the Customer's account. For stock building materials delivered by Company, Company shall levy and collect a delivery charge consistent with its current rate schedule. All carriers shall be the agent of Customer, and all arrangements for the return of leased items are the responsibility of Customer. If the delivery request Company to cross customer's curb line, Customer must sign the attached release.

PLACE OF DELIVERY. When deliveries of products are made to places other than on paved streets, Customer must provide suitable hard-surfaced roadways or approaches permitting safe access of trucks to the point of delivery under their own power, as well as qualified flagmen to assist in required backing movements. Company reserves the right to refuse deliveries in the event such roadways are not provided or if Company's driver deems conditions, in his sole discretion, to be unsafe for delivery. If Customer orders deliveries beyond the curb line, Customer shall be responsible for removal of mud from truck wheels and tires, and Customer assumes all liability for damage to any and all property which occurs during such delivery and agrees to indemnify Company against all liability as a result thereof. Customer is to arrange for immediate unloading of materials with his own crew if Company does not perform same. Concrete is perishable and solely the property of the Customer at dispatch. If the delivery requires the Company to cross the customer's curb line, Customer must sign the attached release prior to Company crossing such curb line.

BUILDING MATERIAL AND PRECAST HANDLING CHARGES. A 20% restocking charge will be assessed on all returned merchandise in undamaged, resalable condition. NON-STOCK OR SPECIAL ORDERS ARE NOT RETURNABLE. All returns must be approved by Company in advance and must be accompanied by the original invoice. If material is returned on Company's trucks, Company shall levy and collect a delivery charge based upon its current rate schedule.

READY-MIXED CONCRETE DELIVERIES. It is the intent of Company to have ready-mixed concrete and related products arrive at Customer's site at the time and rate ordered by Customer; however, full cooperation of Customer and 24- to 48-hour advance notice are necessary to facilitate timely delivery. Company agrees to use its best ability and dispatch in meeting requested delivery schedules but cannot guarantee same. Prices and quantities are based on the volume of concrete products in a set and unhardened state at the time of discharge from the delivery truck, as determined in accordance with provisions of current ASTM Specification C-94.

READY-MIXED CONCRETE QUALITY ASSURANCE. will provide technical assistance as is necessary and reasonable, including submittal of proposed mix designs. Additional testing shall be at expense of Customer. Concrete will meet current applicable ASTM Specifications and conform to approved mix designs, within the tolerances of current ASTM Specification ASTM C-94. Prior to unloading concrete, Customer shall inspect delivery tickets for conformity with order, Customers signature hereto shall constitute acceptance of the concrete as specified. Company reserves the right to take test cylinders from the concrete as delivered. Company is not responsible for the slump, strength or quality of any concrete to which water or any other material has been added by Customer, his employees or agents, or at his request by Company, except for water required to increase the slump at the time of arrival to that provided for in the mix design. **EXCESS WATER REDUCES STRENGTH AND MAY CAUSE OTHER HARMFUL IMPACTS ON QUALITY AND PERFORMANCE.** If slow unloading threatens product quality or concrete accumulation in mixer drum, truck shall be returned to Company forthwith, and Customer shall be responsible for costs of removing concrete accumulation. If there are repeated delays in unloading, Company reserves the right to suspend deliveries until conditions are corrected. Sampling of concrete and testing for strength shall be in strict accordance with procedures described in the current ASTM Specification C-94. Conformance with strength requirements shall be determined on the basis of that Specification. Strength tests must be performed by a testing service whose facilities and competence to perform such tests have been inspected within the past three years, pursuant to ASTM E329, by a qualified national authority and any reported deficiencies corrected. Sampling must be done by a certified technician. Tests for slump and air content shall be made in accordance with procedures listed in the current ASTM Specification C-94. Any rejection of concrete on the basis of deviations in slump or air content from limits designated in the contract shall be at the time of delivery. Since has no control over the placing, curing or handling of concrete after unloading, NNW cannot guarantee, and shall under no circumstances be held liable for, the finished work in which its concrete is used.

READY-MIXED CONCRETE WARNING. CONTACT BETWEEN FRESH CONCRETE PRODUCTS AND SKIN, EYES AND CLOTHING MAY CAUSE SKIN IRRITATION OR INJURY. WASH EXPOSED AREAS PROMPTLY WITH CLEAN WATER, SEEK PROMPT MEDICAL ATTENTION WHEN NECESSARY, CUSTOMER MUST OBSERVE ALL SAFETY INSTRUCTIONS THAT ACCOMPANY KUHLMAN'S DELIVERY TICKET, CUSTOMER AGREES TO PROVIDE THIS WARNING TO ALL EMPLOYEES AND OTHER PERSONS WHO MAY COME INTO CONTACT WITH CONCRETE AND WILL INDEMNIFY Company AGAINST ANY CLAIMS ARISING AS A RESULT OF ITS FAILURE TO DO SO.

READY-MIXED CONCRETE ADDITIONAL CHARGES. Customer acknowledges that Company may levy and collect additional charges to compensate Company for additional costs for such items as winter heated concrete, chilled concrete, admixtures, special mixes, special aggregates, fibers, overtime deliveries, weekend and holiday deliveries, small or part loads, finish-up loads, excessive unloading time, orders canceled or postponed on the day of scheduled delivery (whether concrete has been batched or not), returned concrete (for all concrete sent back for any reason beyond Company's control), fuel surcharges, environmental fees, etc. Such charges shall be determined per Company's current rate schedule for such items. Said schedule will be determined by Company in its sole discretion.

SAFETY DATA SHEETS. Safety Data Sheets are available for all products upon request. If no request is made by Customer, Company will assume that Customer is in possession of all SDS's and similar materials.

WARRANTY. Customer must read and comply with all manufacturer's product, application, installation, SDS, and warranty information, SDS Information shall be made available to all persons handling or coming into contact with Company, materials. Only manufacturers' warranties or guarantees apply on items purchased by Customer from Company. Company warrants that rental equipment will be free from defects in material and workmanship at the time of delivery, and in the case of custom-designed formwork, will possess the characteristics contained in the approved design drawings. Company does not warrant or guarantee products for a particular application. Warranties will not apply to any Item that has been subjected to misuse, neglect or accident. Company **MAKES NO EXPRESS WARRANTIES; THERE ARE NO IMPLIED WARRANTIES THAT EXTEND BEYOND THE DESCRIPTION ON THE FACE OF ANY SHIPMENT AND THERE IS NO IMPLIED WARRANTY OF MERCHANTABILITY; AND CUSTOMER ASSUMES ALL RISK AND LIABILITY FOR ALL DIRECT OR INDIRECT, CONSEQUENTIAL OR INCONSEQUENTIAL LOSS, Company, DAMAGE OR INJURY TO PERSON OR PROPERTY, WHETHER THAT OF CUSTOMER OR ANY THIRD PARTY, RESULTING FROM THE USE OR HANDLING OF THE GOODS, BY CUSTOMER OR ANY THIRD PARTY, UNDER ANY CIRCUMSTANCES.** Customers sole remedy for defective goods shall be replacement of such defective goods at Company's FOB point. Charges for correcting defects will not be allowed, nor can items returned for credit be accepted, unless authorized in advance by and upon Company's terms.

DELAYS. Company shall not be liable for any failure or delay in manufacture shipment or delivery of products resulting from any cause beyond Company's control, including, but not limited to, delays caused by the Customer in approving transaction details or drawings, acts of God, fires, floods, wars, sabotage, accidents, labor disputes or shortages, plant shut-down, equipment failure, power failure, water supply failure, adverse weather conditions, voluntary or involuntary compliance with any law, order, rule or regulation of government agency or authority, or inability to obtain goods (including power and fuel), equipment or transportation. Shipping dates are approximate and are based on factory conditions at the time of quotation. Company shall not be liable for failure or delay in performance due to prior sales of products.

CLAIMS/LIMITATION OF DAMAGES. No claim of any kind, whether as to goods delivered or for nondelivery of goods, including claims or shortages or improper or defective materials, and whether arising in tort or contract shall be greater in amount than the purchase price or lease rate of the goods in respect of which such damages are claimed; and the failure to give written notice of claims within fifteen (15) days from the date of delivery, or the date fixed for delivery, as the case may be, shall constitute a waiver by Customer of all claims in respect of such goods. **IN NO EVENT SHALL Company BE LIABLE FOR SPECIAL, DIRECT, INDIRECT OR CONSEQUENTIAL DAMAGES, AND Company's LIABILITY, WHETHER FOR NEGLIGENCE OR OTHERWISE, SHALL BE LIMITED TO THE REPLACEMENT OF DEFECTIVE GOODS AND IN NO EVENT SHALL EXCEED THE PURCHASE PRICE OR LEASE RATE OF THE GOODS IN RESPECT OF WHICH DAMAGES ARE CLAIMED.** Customer shall, and warrants that it will, comply with all federal, state and local laws, regulations, ordinances and rules, including, but not limited to, all environmental laws, safety regulations, ordinances and use and maintenance rules in its use, storage or disposal of the goods. Customer shall indemnify Company for any costs incurred by Company for claims of any third party arising from Customer's use, storage or disposal of the goods or the failure by Customer to carry out any of its obligations hereunder. Customer shall pay all damages for any injury or death sustained by any person or persons and for all damage to property growing out of any act or deed, or any omission to act, of the Customer or any subcontractor or any servant, agent or employee of the Customer and to indemnify, save and keep Company harmless against all liabilities, judgments, costs, damages and expenses that may in any way come against Company for or on account of injury received or death sustained by any person or persons and for all damage to property caused by any act or deed, or any omission to act, of the Customer

or any subcontractor, or any servant, agent or employee of the Customer In the performance of work with the goods specified herein or any at them, or in which such items are used, except where such liability results from the negligence of Company or its servants, agents or employees.

MODIFICATIONS. This Contract constitutes the entire agreement between the parties, and there are no understandings, representations or warranties of any kind, express or implied, not expressly set forth herein. No modification of this Contract shall be of any force or effect unless such modification is In writing and signed by the party to be bound thereby; AND NO MODIFICATION SHALL BE EFFECTED BY THE ACKNOWLEDGMENT OR ACCEPTANCE OF CUSTOMER'S PURCHASE ORDER FORMS CONTAINING TERMS OR CONDITIONS AT VARIANCE WITH THOSE SET FORTH HEREIN.

ASSIGNMENT. This Contract shall be binding upon and inure to the benefit of the respective successors and assigns of each of the parties hereto but shall not be assigned by Customer without the prior written consent of Company. Customer shall notify Company, by Certified Letter, immediately of any change in ownership status of Customer.

WAIVER. Company's waiver of any breach, or failure to enforce any of the terms and conditions of this Contract, at any time, shall not in any way affect, limit or waive Company's right thereafter to enforce and compel strict compliance with every term and condition hereof. Any waiver by Company of Company's rights, whether a single waiver by Company or repeated waivers by Company shall not be deemed to be a course of dealing which Customer may rely upon.

APPLICABLE LAW. The Customer and Company agree that this Contract shall be deemed to have been made and executed in the State of West Virginia and that any dispute arising under this Contract shall be resolved in accordance with the internal laws of the State of Florida, and not its laws of conflict. Customer and Company agree that any legal action related to this Contract shall be filed in any court of competent jurisdiction in West Virginia.

FORM OF CONTRACT. Company is a supplier of materials within the meaning applicable laws and regulations and is not deemed to be a subcontractor.