

TERMS AND CONDITIONS - SALE OF CEMENT PRODUCTS

McInnis USA Inc., a corporation formed under the *Delaware General Corporation Law*, having an address at 50, Oak Point Ave., Bronx, NY 10474 (“**McInnis**”) and the customer referenced herein below (the “**Customer**”) agree to the following terms and conditions regarding all sales and purchases of McInnis cement products made by the Customer. The foregoing provisions are incorporated into any McInnis’ credit application, bill of lading and any invoices and are made part of it by reference.

1. **Prices.** The Customer agrees to pay the prices agreed with McInnis or its agents or as announced by McInnis from time to time, together with other applicable fees, tolls or surcharges and any sales or applicable taxes. If Customer has requested that cement products be delivered by McInnis, additional costs will be applicable to McInnis’ prices to include freight (including tolls and taxes), fuel surcharge and any special delivery requests to the stated point of destination specified on the bill of lading (the “**Point of Delivery**”).

2. **Invoicing & Payment.** McInnis will invoice the Customer weekly for the cement products sold in the preceding week. Every invoice will be detailed enough to describe the quantity of cement products sold and to indicate any applicable taxes. Invoices issued during a month have to be paid in full by Customer not later than the last day of the following month. Interest at the rate of 1.5% per month, up to the fullest extent permitted by applicable law, shall accrue on all accounts not paid when due. In addition, any amounts paid to McInnis by Customer, late payment may be applied by McInnis to outstanding principal and interest and other charges as McInnis deems appropriate. Customer shall be liable for all costs and expenses, including without limitation reasonable attorneys’ fees, incurred by McInnis in the collection of any unpaid balance. If at any time the financial responsibility of Customer becomes impaired or unsatisfactory to McInnis, McInnis reserves the right to require payments in advance or such other security or guarantee as McInnis deems appropriate.

3. **Bulk Cement Weights.** Bulk cement products sold by rail or by truck transportation will be invoiced and paid for on the basis of certified scale weights at McInnis’ terminal. The standard unit of measure of McInnis cement product shall be the U.S. ton, unless otherwise specified by McInnis. McInnis’ certified scales will be used to determine the weight of bulk truck shipments. In the case of rail shipments, the carrier’s scales located nearest to the point of origin shall conclusively determine the weight of shipment.

4. **Pick-up of McInnis Cement Products.** In all cases whereby Customer will pick-up cement products at a McInnis’ terminal, Customer shall have the sole liability and responsibility to comply with any local, state and federal applicable regulations, including regulations regarding oversize/overweight road or highway restrictions. The Customer acknowledges that McInnis has given it all necessary information, tools and clear instructions concerning the loading standards, and consequently, that the Customer is solely responsible for any violation related directly or indirectly to the loading of its vehicles.

5. **Delivery.** If Customer has requested that cement products be delivered by McInnis, delivery of the cement products shall be to the Point of Delivery. McInnis reserves the right to determine the route and method of transportation. McInnis reserves the right, but shall not be obligated, to ship from any McInnis’ terminal other than the facility closest to the Point of Delivery. Customer agrees to permit unloading and release all transportation vehicles and equipment after two (2) hours and agrees to comply with such instructions, if any, as McInnis may give for return of the equipment. McInnis reserves the right to charge Customer for expenses and losses resulting from delay in loading, unloading and/or releasing delivery vehicles. Fuel surcharges in effect on the date of shipment shall be added to the invoice. All expenses for return movement, diversion or demurrage charges incurred by reason of any refusal to accept delivery shall be paid by Customer. McInnis reserves the right to add other charges including but not limited to cancellation, evening and/or weekend charges.

6. **Notice.** Any notice to be given by the parties must be given in writing and shall be validly communicated by delivery of such notice to its recipient, either personally, by prepaid registered mail or by e-mail, at the addresses of the parties indicated herein.

7. **Governs.** Except as otherwise provided by a written agreement signed by both Customer and McInnis, these terms and conditions shall supersede the terms and conditions of any purchase order or Customer’s order (including, without limitation, statement that Customer’s terms or conditions are to take precedence over any contrary provisions). Except as specifically stated herein with respect to the warranty hereunder, no prior or subsequent understanding, oral representation, agreement, terms, condition, or trade custom at variance with or supplemental to these terms and conditions shall be binding upon the parties hereto.

8. **Modification.** All agreements entered between McInnis and the Customer are conditional upon the results of the credit investigation carried out by McInnis (or a third party acting on behalf of McInnis) in accordance with the information provided by the Customer in the document entitled “*Credit application document*”, to which the terms and conditions herein are incorporated. Upon reception of said credit report, McInnis reserves the right to modify, at any time and at its sole discretion, the terms and conditions of any purchase order or sales contract between the parties

including the line of credit provided by McInnis to the Customer. If McInnis exercises its right to amend under this provision, the Customer agrees to comply with these modifications, without any compensation or penalty.

9. **Termination of Sale Agreement.** McInnis reserves the right to terminate all agreements and credit application entered between McInnis with Customer at any time and at its sole discretion terminates Customer's right to make further purchases under the credit application, without any compensation, penalty or indemnity. However, Customer shall remain liable to McInnis for all amounts owed at the time of termination.

10. **Warranty.** All McInnis cement products sold or shipped under these terms and conditions are warranted to conform in quality to the applicable product industry specification. Except as expressly set forth in the preceding sentence, there are no warranties, either written or oral, express or implied or statutory, pertaining to the product sold under Customer's account. Without limiting the foregoing, there are no statutory or implied warranties of merchantability or fitness for a particular purpose made in respect of any products sold hereunder. Having no control over the use of McInnis' cement products, McInnis will not guarantee finished work, nor shall McInnis be responsible for the condition of McInnis cement products after delivery to Customer. Any charges incident to inspections or tests made by, or on behalf of, Customer to determine compliance with specification, shall be paid by Customer.

11. **Liability for Delay.** McInnis shall not be liable to Customer for any delays in manufacturing, shipping, or delivering said McInnis cement products, due to a *force majeure* event (including earthquake, flood, tornado or other events of nature, fire, strikes, lockouts, labor disputes, plant failure or equipment and machinery breakdown, accidents, war, insurrection, riot, civil commotion, inability to secure rail cars, trailers, or trucks, fuel or other materials, communicable disease, governmental interference or regulation, delays in transportation), unavailability of McInnis products for any reason, or market factors beyond McInnis' control. If a shortage of the supply of McInnis cement products occurs for any reason or if McInnis cement products are unavailable for any reason, McInnis shall have the right to apportion available McInnis cement products among its customers, including Customer, as McInnis may determine.

12. **Claims.** Any or all of Customer's claims for loss or damage are limited to actual damages not to exceed the purchase price of the cement product purchased herein. This shall be Customer's exclusive remedy. Customer waives all rights to claims for damages against McInnis in excess of those provided in these terms and conditions, including, but not limited to, any and all special, incidental, consequential, indirect loss, or punitive damages from any default, breach or performance by McInnis under these terms and conditions or Customer's use of McInnis' cement product sold herein. Included in this waiver of damages are, without limitation, back charges, labor costs, costs of removal, replacement, testing or installation, loss of efficiency, loss of profits or revenues, loss of use of the products sold herein, damage associated to products, lateness or delays in delivery, unavailability of products, cost of capital, cost of substitute products, facilities or service, downtime, or claims from Customer's customers or other parties.

13. **Cumulative rights.** All rights, powers and remedies shall be cumulative and not alternative.

14. **Title.** Title to McInnis cement products shall pass to Customer upon full payment made by Customer. Upon the delivery or the pick-up of McInnis cement products by Customer, Customer assumes all risk and liability for loss, damage and/or injury to persons and/or property of Customer or others arising out of the use or possession of the cement products.

15. **Caution.** Freshly mixed cement, mortar, concrete or grout may cause skin injury. Avoid contact with skin. Skin exposed to cement, mortar, concrete or other cement mixtures is to be washed immediately with water. If any McInnis cement products gets into the eyes, rinse immediately with water and get immediate medical attention. Keep out of the reach of children.

16. **Term.** This agreement shall become effective on the date of the signatures and remains effective for an indefinite period, subject to the provisions 8 and 9.



THE NEW CEMENT COMPANY

Customer/Company Name: _____

Name/Title: _____

Address: _____

Courriel: _____

Date: _____

Signature: _____