

# CONTINENTAL CEMENT COMPANY

## TERMS AND CONDITIONS OF SALE

The following terms and conditions shall apply to all purchases and sales of cement sold by Continental Cement Company, L.L.C. ("Seller") except to the extent Seller agrees in writing to other terms and conditions. Ordering or accepting delivery of cement at Seller's quoted prices constitutes agreement to such terms and conditions.

**Article 1: ACCEPTANCE.** Cement will be deemed accepted by Buyer unless Seller is notified in writing of non-acceptance within ten (10) days of receipt by Buyer. Any claim with respect to the cement, including claims based on shortage of goods, will be waived if not brought in writing within ten (10) days of receipt of that shipment or delivery. Buyer's rights with respect to cement which is rightfully rejected will be limited to the rights set forth in Article 8. Cement shall not be returned except with Seller's consent. Claims for loss or damage must be supported by driver's notation on truck delivery receipt or, if rail transportation is used, by seal record and railroad agent's acknowledgment. Freight overcharge claims must be accompanied by original receipted freight bill.

**Article 2: DELIVERY AND RISK OF LOSS.**

A. Unless Buyer provides transportation or indicates shipping instructions at the time of placing its order, Seller shall, without liability, select the route and carrier by which shipment will be made. All shipments shall be subject to applicable tariff regulations. If shipment is by truck, all standby or detention charges at destinations shall be paid by Buyer. If shipment is by rail, all demurrage, car service or terminal charges at destination shall be paid by Buyer. If shipment is by barge, all fleeting, local switching, demurrage and cleaning charges at destination shall be paid by Buyer.

B. Seller reserves the right to ship all or any part of the products from any shipping point of Seller other than the shipping point specified herein. If Seller exercises such right, Seller may adjust the price stated herein to reflect the current quoted price at the point of actual shipment and actual transportation charges from such point. If any such change results in an increase in the delivered cost of the product at the named destinations, Buyer, within 10 days of notification thereof, shall have the right to cancel by written notice to Seller that portion of any contract to which such increase is applicable.

C. Title and risk of loss to products priced F.O.B. Seller's shipping point shall pass to Buyer upon delivery at such shipping point. Title and risk of loss to products priced F.O.B. destination shall pass to Buyer upon delivery at the destination specified, and any charges at destination for spotting, switching, handling, storage and other accessorial services, and demurrage shall be paid by Buyer.

**Article 3: BULK CEMENT WEIGHT.** For delivery of bulk cement by truck or rail, the cement will be invoiced and collected for on the basis of scale weight at Seller's plant or weights obtained from the scale nearest to point of shipment. For delivery of bulk cement by barge, the cement will be invoiced and collected for on the basis of draft measurements taken at Seller's plant.

**Article 4: SECURITY INTEREST.** Seller shall have the right, at its option, to retain a security interest in the cement shipped and to require Buyer to execute a security agreement to be filed under the applicable filing provisions of the Uniform Commercial Code of the state in which the cement is located.

**Article 5: TERMS OF PAYMENT.** Upon approval of Buyer's credit, all invoices will be due at the gross amount and payable not later than the last day of the month following shipment. When invoices for cement are paid in full on or before the tenth (10th) day of the month following the month of shipment, a cash discount of one dollar (\$1.00) per ton may be deducted from the total amount of the invoice provided no previous items remain unpaid. Any amounts unpaid after the last day of the month following shipment will bear interest from the first day of the second month following shipment until paid at an annualized rate of 18%. Buyer shall make such arrangements for payment as Seller shall from time to time require and Seller may suspend production, shipments or delivery until such arrangements are made. If Buyer fails to comply with terms of payment, or with any of the other terms of sale, Seller reserves the right to cancel unfilled portion of any contract or order, without notice, Buyer remaining liable for all unpaid accounts. If at any time financial responsibility of the Buyer becomes impaired or unsatisfactory to Seller, cash payment or security satisfactory to Seller may be required in advance of shipment. Each shipment shall be considered a separate and independent transaction and payment therefor shall be made accordingly. In addition to the foregoing, Buyer agrees to pay to Seller all costs and expenses incurred by Seller in connection with the collection and enforcement of these terms and conditions or any past or future invoice from Seller to Buyer, including but not limited to expenses, court costs and attorneys' fees, irrespective of whether or not any suit has been commenced.

**Article 6: TAXES.** To the extent legally permissible, all present and future taxes imposed by any Federal, state, foreign or local authority which Seller may be required to pay or collect, upon or with reference to the sale, purchase, transportation, delivery, storage, or use or consumption of cement shipped hereunder, including taxes upon or measured by the receipts therefrom (except net income and equity franchise taxes), or upon the ownership thereof after title has passed to Buyer, shall be for account of Buyer.

**Article 7: LIMITED WARRANTY.**

A. Seller warrants to Buyer that all cement shipped shall conform to the applicable standard specifications of the American Society for Testing and Materials, the American Association of State Highway Officials and the United States Government. Seller, having no control over the use of cement, does not guarantee finished work, nor shall Seller be responsible for the condition of cement after delivery to Buyer. Charges incident to inspection or testing made by or on behalf of Buyer to determine compliance with specification shall be paid by Buyer.

B. EXCEPT FOR THE WARRANTIES MADE IN PARAGRAPH A ABOVE, ALL WARRANTIES ARE EXCLUDED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**Article 8: LIMITATION OF REMEDIES.** The sole and exclusive remedy of Buyer or any other party against Seller for all claims of any kind, whether based upon 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 cement shall be replacement of such cement F.O.B. Seller's plant or terminal or, at Seller's option, refund of the purchase price paid for such cement. No other remedy (including, but not limited to general, special, incidental or consequential damages for lost profits, lost sales, injury to persons or property or any other incidental or consequential loss) shall be available to Buyer.

**Article 9: FORCE MAJEURE.** Seller shall not be liable for any expenses, loss or damage resulting from any delays in manufacturing, shipping or delivering cement caused by Government actions, regulations, orders or rulings, acts of God, acts of war, acts of public enemy, fire, explosion, strikes, lockouts, breakdowns, accidents, shortage of utilities, inability to secure rail cars, trucks, barges or other materials, delays in transportation, acts or omissions of Buyer, or any other events or other conditions beyond Seller's control, whether similar or dissimilar to the above-mentioned acts or occurrences. Seller shall have such additional time within which to perform any resulting contract as may be reasonably necessary under the circumstances. During times of shortage, Seller shall have the right to prorate among its customers in accordance with the provisions of Section 2-615 of the Uniform Commercial Code such cement as it may be able to manufacture and ship.

**Article 10: GENERAL.**

A. No terms or conditions, other than those stated herein, and no agreement or understanding, oral or written, in any way purporting to modify these terms or conditions whether contained in Buyer's purchase or shipping release forms, or elsewhere, shall be binding on Seller unless hereafter made in writing and signed by its authorized representative. All proposals, negotiations, and representations, if any, made prior, and with reference, hereto are merged herein. Any oral statements made by Seller's Market Manager or other employee about the cement does not constitute warranties, shall not be relied upon by Buyer, and are not part of the contract for sale. All of the terms and conditions of purchase and sale are embodied in this writing.

B. Any clause required to be included herein by any applicable law or administrative regulation having the effect of law shall be deemed to be incorporated herein.

C. Failure of Seller to exercise any right shall not be deemed a waiver of any rights of Seller.

D. Waiver by Seller or Buyer of any breach of these provisions shall not be construed as a waiver of any other breach.

E. The laws of the State of Missouri shall govern all sales.