

CITY CONCRETE, INC.
CITY CONCRETE COMPANY
General Terms and Conditions of Quotation and Sale

NOTWITHSTANDING ANY PROVISIONS OF ANY INSTRUCTIONS TO BIDDERS, BID, PROPOSAL, ACCEPTANCE OF BID, CONTRACT DOCUMENTS, PURCHASE ORDER, MASTER SERVICES AGREEMENT, OR SUBCONTRACT TO THE CONTRARY THE FOLLOWING TERMS AND CONDITIONS ARE INCORPORATED INTO THE ATTACHED SUBCONTRACT BY REFERENCE. IN THE EVENT OF A CONFLICT BETWEEN THE ADDITIONAL TERMS HEREINBELOW AND THE SUBCONTRACT AGREEMENT, THESE ADDITIONAL TERMS SHALL CONTROL. ANY CONTRARY OR DIFFERENT TERMS IN ANY REQUEST FOR BID, QUOTATION, ACKNOWLEDGMENT, OR PURCHASE ORDER OF CONTRACTOR SHALL CONSTITUTE A COUNTEROFFER AND SUCH COUNTEROFFER SHALL BE ACCEPTED ONLY BY SUBCONTRACTOR'S EXPRESS WRITTEN ACCEPTANCE. ANY ALTERATION OF THIS DOCUMENT THAT ALTERS, AMENDS OR VARIES THESE TERMS AND CONDITIONS IS REJECTED.

1. DEFINITIONS: "Subcontractor" or "Supplier" shall mean City Concrete, Inc. "Contractor" shall mean Purchaser. "Subcontract" shall mean any subcontract, work order, and/ or purchase order issued by purchaser to City Concrete, Inc. or any of it's subsidiaries.

2. LIMITATION OF PRODUCTION OR DELIVERIES: Subcontractor's obligation to produce and/or deliver concrete at prices quoted is limited to production or delivery on the project specified within six (6) months after date of quotation, unless otherwise specified on the front side thereof. Subcontractor may refuse to commence or continue production or delivery at prices quoted on projects not started within a reasonable time or on projects not continuously prosecuted after the commencement of production or delivery.

3. TERMS AND PAYMENT: Any special terms of payment on approved credit and any discounts, if offered, are as stated on the face of this quotation and/or in the special conditions section of this quotation. Otherwise, all invoices are to be paid on a Net 30 basis. All invoices become past due on the 31st day from Contractor's receipt of invoice. Discounts (if offered) will be allowed only if Contractor owes Subcontractor no past due account on any product sold by the company, and discounts will not be allowed unless earned strictly in accordance with terms stated on the face hereof. Subcontractor reserves the right to refuse to deliver to any Contractor with unsatisfactory credit history or to discontinue deliveries to any Contractor with a past due account and to make discounts applicable only for cash payment upon delivery. Payments received will be applied in order beginning with the oldest outstanding invoices on account. **Any provision providing that progress payments and/or final payments to Subcontractor shall be conditioned upon, shall depend upon receipt by Contractor of payment from another (including an owner) for Subcontractor's Work, or is limited to such payments shall not apply unless the failure or refusal of such third party to pay Contractor for such work is the result of a default or deficiency by this Subcontractor.** All accounts shall be payable in Wichita Falls, Wichita County, Texas. Any past due account shall bear interest up to the maximum legal rate allowed by law; in the event the collection of any unpaid balance is placed in the hands of the Subcontractor's attorney, Contractor shall pay a reasonable attorney's fee.

4. TAXES: Any sales, processing or similar tax imposed by any governmental authority which is now or hereafter becomes applicable to deliveries by Subcontractor shall be paid by Contractor unless otherwise provided by law in addition to the prices specified herein.

5. PAVING CONCRETE DESIGNATIONS: Paving concrete quoted in accompanying quotation and sales agreement will typically be referred to as 'Slipform' and/or 'Handwork' concrete. 'Slipform' concrete shall have a maximum slump of 2.50 inches. 'Handwork' concrete shall have either a maximum slump of 4.00 inches or the maximum allowed by governing specifications, whichever is less. Slump shall be determined using ASTM test method C-143/ C143M, latest revision or TxDOT test method TEX-415-A, latest revision.

7. RETURNED MATERIAL: Limited storage space for some raw materials may require returning material(s) to their respective places of origin, or to some other location, thus incurring transportation charges for unused material. Payment of these charges shall be the contractor's responsibility **unless**:

- a. Mechanical failure on the part of Subcontractor or its agent(s) causes conditions that lead to material being delivered that cannot be stored
- b. Material cannot be stored due to difficulties with Subcontractor's procurement of other materials associated with the manufacture of concrete.

All material returned due to issues with scheduling and/or under or over estimation of daily quantities shall be the contractor's responsibility.

8. PROJECT SCHEDULING: Subcontractor's Operations Manager and/or Plant Superintendent shall receive an accurate project schedule once a week, preferably with a three-week outlook; however, at least a one week outlook is required. Schedule must be complete with paving dates and daily quantities. Subcontractor and/or its agents will use this information to order material and schedule production resources accordingly. **Subcontractor reserves the right to bill contractor for expenses incurred due to lack of updated daily schedule.**

Subcontractor will not be expected to hold trucks and equipment available for deliveries to Contractor, and will not, without reimbursement, hold plants open and equipment available for production for which adequate and reasonable notice has not been given. In addition, Subcontractor will not honor back charges for delays in production and/or delivery due to inadequate notice by Contractor or due to underestimation of quantities for a placement or placements.

10. HOURS OF SERVICE/ WORK SHIFT: Unless otherwise noted on quotation, prices include only one shift of labor. Subcontractor and/ or its agents will comply with all current Federal Motor Carrier Safety Administration (FMCSA) regulations in regards to the operation of material delivery vehicles, which may place limitations on the hours available to produce and/or deliver concrete. Unless otherwise stated on quotation, plant hours of service are Monday through Friday - 7:00 A.M. through 6:00 P.M.

11. QUALITY AND TESTING: Subcontractor warrants that all ready-mixed concrete delivered to Contractor shall conform to requirements of ASTM specification C-94, latest revision or TxDOT Standard Specifications for Construction of Highways, Streets, and Bridges, latest applicable revision or special provision. However, unless stated otherwise on face of this quotation, **TEMPERATURE CONTROL PRICING, IF AVAILABLE, IS ADDITIONAL TO CONCRETE UNIT PRICE.** Any production rates indicated in this quotation are exclusive of temperature control measures; Temperature control measures may limit overall production rates. Slump is governed by either the maximum specified or designed water/ cement ratio or by the maximum slump specified, provided maximum slump specified does not exceed design water/ cement ratio. Where quantity of Portland cement is specified, Subcontractor warrants that concrete delivered contain the specified quantity and type of materials specified within accepted tolerances for ready-mixed concrete. Where strength of concrete is specified, Subcontractor warrants that the concrete furnished will meet the strength specified in accordance with the provisions of ASTM specification C-94-latest revision, Section 16. All strengths shall be determined in pounds per square inch as shown by compressive tests at 28 days when cured, capped and tested In accordance with procedures of ASTM C-31-latest revision. All concrete produced for use on TxDOT projects shall be governed by the latest TxDOT specifications for the class of concrete ordered by Contractor and tested using applicable TxDOT test methods. The addition of water to the mix by Contractor or on his orders relieves Subcontractor of any responsibility as to the strength of concrete provided the slump at the time of delivery is equal to or greater than that specified. **SUBCONTRACTOR MAKES NO OTHER WARRANTY OF ANY KIND, EXPRESS OR IMPLIED INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE OR OF FUTURE PERFORMANCE.** Subcontractor's obligation under this warranty shall be limited to replacement or allowance of credit for nonconforming materials as provided herein. **WITH REGARD TO PUMPED CONCRETE,** the various boom configurations, length of hose, line reductions, conditions of various pump equipment, and free fall distance are beyond Supplier's control. Supplier will deliver concrete within project specification, but cannot be responsible for loss of air content or any costs associated with either rejected fresh concrete or the removal and replacement of hardened concrete due to non-compliant air content after transport through post delivery concrete placement equipment.

12. DELAYS: Subcontractor shall have no liability whatsoever to Contractor or to any other person for delays in deliveries or orders accepted hereunder resulting from fire, casualties, calamities, strikes or other labor disputes, war, insurrection, interruption or shortage of utility service or materials, acts or regulations of any governmental body or agency, or resulting from conditions or events beyond the reasonable control of Subcontractor. Should Subcontractor experience any delays or shortages of transportation or materials, Subcontractor shall be permitted to allocate deliveries among its customers, but Subcontractor shall exercise due diligence in assuring delivery hereunder.

13. LIMITATIONS OF LIABILITY OF SUBCONTRACTOR/LIMITATIONS OF REMEDY: Subcontractor shall not be liable for loss or damage of any nature after delivery. Subcontractor's only liability and obligation with respect to nonconforming (including defective) concrete shall be to replace such nonconforming concrete at point of delivery or, at Subcontractor's option, to allow credit for such nonconforming concrete, provided that Contractor shall be deemed to have waived all rights or claims hereunder with respect to nonconforming concrete not reported to Subcontractor within one (1) year after the time of delivery thereof to Contractor. Subcontractor shall have no liability for loss or damage in excess of the price received for nonconforming or defective concrete delivered to Contractor or for losses or damages of any nature incurred or suffered by Contractor or any other person or entity in repairing or replacing defective concrete or occasioned by defective concrete, and Subcontractor shall have no other responsibility, obligation or liability whatsoever with respect to any concrete delivered hereunder whether predicated on alleged breach of contract or negligence or otherwise.

14. PLANS AND SPECIFICATIONS: Subcontractor shall not be responsible for compliance with any drawings, plans or specifications in connection with the project(s) subject to this agreement, nor shall Subcontractor be charged with notice of the contents of such documents. Subcontractor is not responsible for Contractor's selection of the grade of material supplied under this agreement and assumes no design responsibility regarding the project by virtue of this agreement or supplying materials to Contractor.

15. LIMITATION ON INDEMNITY: Subcontractor's indemnity obligation **shall be limited** to claims for personal injuries, death or property damage (including the loss of use thereof) caused by Subcontractor. Subcontractor does not and shall not indemnify any party or person for their own negligence or other fault. In the event that damage, loss, or expense is caused in part by: (1) Subcontractor or any of its agents, employees, or subcontractors and (2) in part by others (including an indemnified party under this paragraph); Subcontractor shall only be liable for the proportionate amount of damages, losses or expenses caused by any negligent act or omission of Subcontractor or any of its agents, employees, or subcontractors.

16. GOVERNMENT REGULATIONS: This quotation is made subject to all applicable governmental orders, rules and regulations and with respect to construction or the use of building materials.

17. NO VERBAL AGREEMENTS: It is understood that there are no verbal agreements or understandings, which are not incorporated herein.

18. SUBCONTRACTOR'S EQUIPMENT: Even on Subcontractor's default, Contractor **shall not be entitled** to take possession of Subcontractor's equipment, tools, construction equipment or machinery.

19. VENUE: If the Subcontract or any other contract document contains a provision requiring Subcontractor to participate in any arbitration proceeding, the venue for such proceeding or any other litigation shall be the county in which the project is located.

20. LIEN RIGHTS: If the project is not a public works project, Subcontractor does not waive its right to file a mechanic's lien, materialmen's lien, or lien on retained funds.

21. RETAINAGE: Contractor will not withhold any percentage of progress payments (retainage).

22. TERMINATION FOR CONVENIENCE: If the Subcontract is terminated for convenience by Contractor, Subcontractor shall be entitled to recover from Contractor its reasonable costs to remove any portable concrete plant, in addition to the any other sums it to which it is entitled.

I agree to the terms and conditions as written

ENTITY: _____

ENTITY: _____

BY: _____

BY: _____

TITLE: _____

TITLE: _____