Terms of Sale

1. Definitions

"Business Day" means a day other than a Saturday, Sunday or public holiday in New Zealand, when banks are open for business.

"Business Hours" means the period from 9.00 am to 5.00 pm on any Business Day.

"Customer" means the Customer, any person acting on behalf of and with the authority of the Customer, or any other person purchasing products and Goods from the Supplier. Where there is more than one Customer, each Customer is jointly and severally liable with the other Customers.

"Delivery Location" has the meaning set out in Clause 4.1.

"Force Majeure Event" means an event or circumstance beyond a party's reasonable control, including, but not limited to:

a. a fire, flood, explosion, earthquakes or other natural disaster, sabotage and weather events; strikes, lock-outs or labour disputes;

b. the inability to obtain suitable components, material or equipment from our supply chain; and;

c. the acts of any public authority or imposition of any government sanction, embargo or similar action.

"Goods" means the goods (or any part of them) that are set out in the Order.

"GST'' means goods and services tax as set out in the Goods and Services Tax Act 1985.

"Order" means the Customer's order for the Goods, as provided in the Supplier's written quotation, or in the Customer's purchase order/request (as the case may be).

"Specification" means any specification for the Goods agreed in writing by the Customer and the Supplier.

"Supplier" means Precision Ready Mix Limited.

"Terms of Sale" means the terms and conditions contained in this document.

2. Applicable Terms

The Customer acknowledges and agrees that these Terms of Sale are to be read in conjunction with any terms or conditions contained within an Order and the Supplier's Application for Credit for the Customer's account, which shall apply upon the Customer engaging the services of the Supplier. In the event of any conflict, inconsistency or ambiguity these Terms of Sale shall take precedence.

3. Concrete Mixes

3.1 Unless agreed otherwise in writing, the Supplier's standard design mixes are supplied in lieu of an agreed Specification.

3.2 Materials or additional water added by the Customer or their representatives to the concrete will be at the Customer's sole risk. The Supplier does not accept liability or responsibility for the resultant performance of the concrete.

3.3 Mixes including waterproofing products and other such additives are standard concrete mixes in all respects and have had waterproofing or other additive products added at the dose rate and dosing procedure as stipulated by the manufacturer of the additive product.

3.4 Any warranty or guarantee given by the manufacturer of the additive product is between the additive manufacturer and the Customer. The Supplier gives no warranty or guarantee in relation to the performance of such additive products.

3.5 The Supplier supplies concrete on the basis that the Customer is familiar with industry standard trade practice for concrete construction as set out in the New Zealand Standard NZS3109.

3.6 Unless expressly agreed by the parties in writing, the Customer is responsible to ensure that the Goods supplied by the Supplier are suitable for the Customer's intended purpose.

3.7 Early age care of the concrete is the responsibility of the Customer. The Supplier's responsibility for delivery is discharged as the concrete leaves the chute.

4. Terms of Delivery

4.1 The Supplier shall deliver the Goods to the location set out in the Order or such other location the parties may agree in writing at any time after the Supplier notifies the Customer that the Goods are ready (Delivery Location).

4.2 The Supplier may deliver the goods in instalments. Each separate instalment shall be paid and invoiced to the Customer in accordance with these Terms of Sale.

4.3 Delivery is completed on the completion of unloading of the Goods at the Delivery Location. If the Customer fails or refuses or indicates to the Supplier that the Customer will

fail or refuse to take or accept delivery, then the Goods shall be deemed to have been delivered when the Supplier was willing to deliver them. These will be treated as returned concrete in accordance with clause 4.13.

4.4 Any claim by the Customer for alleged short delivery of Goods must be made in writing and received by the Supplier within five Business Days after delivery of the Goods. If notification is not made within this timeframe (time being of the essence) the Customer shall have no entitlement to any financial compensation or other remedy.

4.5 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence.

4.6 The Supplier has no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions, or any other instructions that are relevant to the supply of the Goods.

4.7 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery in an instalment shall not entitle the Customer to cancel any other instalment.

4.8 The Supplier may charge the Customer transportation and disposal expenses and may in addition recover from the Customer all additional costs, charges and expenses incurred by the Supplier as a result of failure, return, refusal or inability to take or accept delivery. The Supplier shall not be required to make any adjustment to its price in respect of any such Goods unless the Supplier has received written notice of the Customer's requirements before loading the Supplier's delivery vehicle(s) at the Supplier's premises.

4.9 The Customer at its own cost will ensure that the Goods are discharged immediately upon arrival of the Supplier's delivery vehicle(s) at the site. The Supplier shall not be responsible for any malfunction of, or damage caused, to any such equipment used in discharging the Goods and the Customer indemnifies the Supplier from and against all related costs, expenses, claims, actions and liabilities.

4.10 The Customer must provide safe and suitable access to the Delivery Location in all weather conditions for the Supplier's delivery vehicle(s) and personnel. Damage to footpaths, kerbs, drains, verges or other property caused by any of the Supplier's vehicles in the course of deliveries beyond the kerbline, charges payable in returning any of the Supplier's vehicles to the roadway, including but not limited to the removal of mud, clay and other materials tracked onto footpaths, roads or verges in the course of delivery shall be the Customer's responsibility and the Customer indemnifies the Supplier from and against all related costs, claims, actions, expenses and liabilities.

4.11 The Supplier shall be entitled to charge waiting time at its current rate for the period of time beyond ten minutes per cubic meter the vehicle is on, or at, the Delivery Location to discharge the Goods. The Supplier may elect (at its discretion) for the vehicle to leave the site. In that event, the Customer shall be responsible for the cost of the Goods and the Supplier's costs pursuant to clause 4.8 and clause 4.13.

4.11 Delivery times provided by the Supplier are made in good faith and are an estimate not a commitment where delivery time is beyond the direct control of the Supplier.

4.12 Late delivery does not entitle the Customer to cancel any order or part of an order. The Supplier is not liable for any loss incurred by the Customer as a result of late delivery.

4.13 Any unused or returned concrete will be charged to the Customer as if it had been delivered and shall be treated as a variation to the Price. The Customer may be charged for the Suppliers removal of the returned concrete from the delivery truck at the Suppliers discretion.

4.14 The terms implied by sections 131 to 142 of the Contract and Commercial Law Act 2017 are, to the fullest extent permitted by law, excluded from these Terms of Sale or any Order.

4.15 A small load fee will be applied to any orders of less than $2.5m^{3.}$

4.16 If the Supplier determines that the Goods cannot be delivered due to unsafe, insufficient or unsuitable access (or

otherwise), or if the Customer fails or refuses to take delivery of any of the Goods at any specified delivery time, the Supplier may, without limiting any other right that the Supplier may have, charge the Customer for any of the following expenses incurred:
a. hourly truck and driver rates for waiting time and;
b. transportation and/or disposal of the Goods and;
c. any other additional expenses incurred by the supplier in relation to the Goods.

4.17 If the Supplier agrees to redeliver the Order the Supplier will be entitled to charge a reasonable redelivery fee and, or storage fee.

4.18 The Supplier shall be entitled to make an additional charge for an amount to be determined by the Supplier for deliveries made on Sundays and statutory holidays.

5. Price

5.1 Unless otherwise expressly stated in writing, the price of the Goods shall be priced as at the date of delivery. A quotation price shall only be valid for a period of twenty (20) Business Days from its date of issue, after which it shall be deemed to have expired and will require repricing or the price will be as priced by the Supplier as at the date of delivery.

5.2 Unless any price quoted in writing is expressed to be a fixed price, the Supplier reserves the right to adjust its prices at any time, and from time to time.

5.3 The Supplier may, by giving notice to the Customer at any time up to two (2) Business Days before delivery, increase the price of any quoted Goods to reflect any increase in the cost of the Goods that is due to:
a. any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
b. any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
c. any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

5.4 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.

5.5 The Customer shall pay each invoice submitted by the Supplier:
a. on or before the 20th day of the month following delivery (the due date); and
b. in full and in cleared funds to a bank account nominated in writing by the Supplier; and
c. prompt payment shall be of the essence of the Contract.

5.6 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting any other remedies available to the Supplier, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum. Interest under this Clause 5.6 will accrue at 18% per annum. Interest shall compound monthly on the 20th day of each month following the month of the due date. The Customer shall also be immediately liable for all costs of collection (including legal costs on a solicitor and client basis) of and incidental to the enforcement or attempted enforcement of the Supplier's rights, remedies and powers under these Terms of Sale.

5.7 All amounts due under the Contract shall be paid in full without any set-off, abatement, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

5.8 The Supplier reserves the right to withdraw any discounts on overdue accounts. Overdue accounts may be re-invoiced at "list" price and interest charged in accordance with Clause 5.6.

5.9 Notwithstanding the Supplier having processed or approved the application or having previously granted credit and without prejudice to any other of its rights, the Supplier shall be entitled, at its sole discretion, to withhold delivery until payment has been made in advance.

5.10 The prices and rates in each quotation and Contract are exclusive of Goods and Services Tax (GST).

5.11 The price payable by the Customer may be subject to variation pursuant to these Terms of Sale.

6. Aesthetics

6.1 Concrete and concrete products are manufactured from natural materials and can produce varied shades and surface textures. The Customer acknowledges the Supplier will not have any liability for variations in shades and surface textures caused by factors outside of its control.

6.2 Concrete cracking is common and to be expected, as this is a part of the curing process. Cracking is caused by factors outside of the Supplier's control, and the Supplier will not be liable whatsoever for early aged or hardened concrete cracking or subsequent loss of function or amenity, unless it can be demonstrated that the concrete compressive strength is less than levels set in NZS3104 and concrete strength is the primary cause for concrete cracking or breakdown of concrete element.

6.3 Efflorescence, both brown and white, is a naturally occurring complex phenomenon caused by moisture movement through concrete. The Customer acknowledges and accepts that the Supplier is not responsible for efflorescence. The Supplier recommends the Customer consults Concrete NZ's factsheet which outlines some of the measures that can be taken to lessen the risk of this occurring: https://concretenz.org.nz/page/efflorescence

7. Health, safety and environmental compliance when using Precision Ready Mix Products

7.1 The Customer acknowledges that it must comply with all laws (including without limitation the Resource Management Act 1991 or any subsequent or replacement legislation) in respect of the use, storage and/or disposal of any Goods.

A general risk **assessment** when using our delivery services - for incorporation into your site safety plan

8. Testing

8.1 Unless stated otherwise, quoted prices for Goods are based on the industry standard production testing defined in NZS3104. It is the responsibility of the Customer to provide written notice to the Supplier at least forty eight (48) hours prior to the scheduled delivery of the first load if any additional testing is required.

8.2 The Supplier does not accept any liability for additional testing unless it has received a written instruction from the Customer prior to quotation.

8.3 The Customer agrees that where any unwanted concrete is returned to the Supplier of more than 0.6m³ in any one load, the Supplier (at its sole discretion), may charge to the Customer a returned concrete fee.

9. Intellectual Property

9.1 Any Intellectual Property Rights in any Specification, Vendor Data or Goods which arise from, or are otherwise created pursuant to or for the purpose of or during the performance of these Terms of Sale, shall be the sole and exclusive property of the Supplier. The Customer shall not disclose, release, license or sell to any third party or use or otherwise deal with the same in any manner, except as disclosure or use is necessary for the purpose of these Terms of Sale shall be sought from the Supplier prior to passing onto any such party.

9.2 Notwithstanding clause 9.1, if any action is contemplated or instituted due to an alleged infringement of any Intellectual Property Rights, the Supplier reserves the right, without waiting for the determination of such matter to require the Customer at its expense to remove the Goods already delivered and the Customer shall refund the Supplier any part of the Price already paid (without prejudice to any other rights or remedies of the Supplier).

9.3. The Customer shall be liable for all damages, loss, costs and expense incurred or suffered by the Supplier, and shall indemnify the Supplier against all liabilities, damages, costs and other compensation awarded to the Supplier, in connection with any infringement or alleged infringement arising from or occasioned by or in relation to the use of any Intellectual Property Rights pursuant to these Terms of Sale.

10. General

10.1 To the extent the Goods are to be manufactured in accordance with a Specification supplied by the Customer in writing, the Customer shall indemnify the Supplier against any liabilities, costs, expenses, damages and losses including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties

and legal and other professional costs and expenses suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification.

10.2 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall endeavour to notify the Customer in any such event.

10.3 To the extent permitted by law, the maximum aggregate liability of the Supplier to the Customer whether in contract, tort (including negligence), under statute or otherwise at law is the lesser of:

a. a. the contract price; or

b. the value of the goods or service which are the subject of the claim.

10.4 The Customer acknowledges and agrees that the Supplier shall not be liable for any of the following types of loss, which are wholly excluded:

a. liquidated damages or general damages for delay;

b. loss of profits;

c. loss of sales or business;

d. loss of agreements or contracts;

e. loss of anticipated savings;

f. loss of use or corruption of software, data or information;

g. loss of or damage to goodwill; and

h. indirect or consequential loss or expenses.

10.5 Without limiting its other rights or remedies, the Supplier may terminate any Order, with immediate effect by giving written notice to the Customer if:

a. the Customer commits a material breach of any term of the Order or these Terms of Sale and (if such a breach is remediable) fails to remedy that breach within 5 Business Days of being notified in writing to do so;

b. the Customer takes any step or action in connection with its entering administration, liquidation or any arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;

c. the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;

d. The Customer breaches any of its obligations under these Terms of Sale or any other contract or arrangement between the Customer and the Supplier;

e. The Customer commits an act of bankruptcy.

10.6 On the termination by the Supplier all amounts owing from the Customer to the Supplier shall become immediately due and payable, notwithstanding that their due date may not have arisen.

10.7 Without limiting its other rights or remedies under these Terms of Sale, the Supplier may suspend provision of the Goods if the Customer fails to pay any amount due on the due date for payment.

10.8 Without limiting its other rights or remedies, the Supplier may terminate the Terms of Sale with immediate effect upon giving written notice to the Customer if the Customer fails to pay any amount due under any Order on the due date.

10.9 Neither party shall be in breach of any Order or otherwise liable for any failure or delay in the performance of its obligations if that delay or failure results from a Force Majeure Event. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for two (2) months the party not affected may terminate these Terms of Sale by giving no less than five (5) Business Days' written notice to the other party.

10.10 Waiver: a waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

10.11 Variation: no variation of these Terms of Sale shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

10.12 Severance: if any provision or part provision of these Terms of Sale is or becomes

illegal , invalid or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the remainder of the Terms of Sale.

10.13 These Terms of Sale should be governed by and interpreted in accordance with the laws of New Zealand.

10.14 The Supplier and Customer will endeavour to promptly resolve any dispute between them. If a mutually acceptable resolution cannot be reached within 15 working days of one party notifying the other of the dispute in writing, the dispute may be referred to meditation or arbitration under the Arbitration Act 1996.