

RELIABLE READY MIX CO.,

GENERAL TERMS AND CONDITIONS OF SALE

1. **Sale of Goods.** Reliable Ready Mix Co., ("Seller") shall sell to Buyer and Buyer shall purchase from Seller the goods set forth in the Quotation (the "Goods") and upon the terms and conditions set forth herein. "Quotation" should be understood as including all written quotations, as well as phone-in orders received by Seller.

2. **Price.** Buyer shall purchase the Goods from Seller at the price[s] (the "Price[s]") set forth in the Quotation. All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes.

3. **Payment Terms.** Buyer shall pay all invoiced amounts due to Seller within 30 days from the date of Seller's invoice, without any right of setoff or deduction. Buyer shall pay interest on all late payments at the lesser of the rate of 2% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Seller may suspend or cancel future deliveries until all outstanding payments are received. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. Notwithstanding the foregoing, if Buyer does not have an established account with Seller, payment shall be due and payable immediately upon delivery of Goods to the Delivery Point (hereinafter defined).

4. **Delivery.**

(a) The Goods will be delivered within a reasonable time after the date set forth on the Quotation, subject to Seller's production schedule and capacity. All delivery dates are estimates only and time shall not be of the essence. Seller shall not be held responsible for any delay in performance or delivery, regardless of cause, and any delay shall not constitute grounds for cancellation, rejection, damages, or any other claims against Seller.

(b) Seller shall deliver the Goods to the location set forth on the Quotation (the "Delivery Point") using Seller's standard methods for packaging and shipping such Goods. Buyer shall take delivery of the Goods within 3 days of Seller's written notice that the Goods have been delivered to the Delivery Point.

(c) If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller's notice that the Goods have been delivered at the Delivery Point, or if Seller is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods

shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses including, without limitation, storage and insurance.

5. **Title and Risk of Loss.** Risk of loss for the Goods will pass to Buyer upon delivery of the Goods at the Delivery Point. Title to the Goods will not pass to Buyer until Seller has received full payment of the purchase price for the Goods in cleared funds. Until such payment is received:

(a) Seller retains all right, title, and interest in and to the Goods;

(b) Buyer will hold the Goods as bailee for Seller and will keep them separate from other goods in its possession and properly stored, protected, insured, and identified as Seller's property; and

(c) as collateral security for payment of all amounts due, Buyer hereby grants Seller a lien on and a security interest in all right, title, and interest of Buyer in, to, and under the Goods, wherever located, whether now existing or hereafter acquired, and all proceeds thereof, including insurance proceeds.

The security interest granted under this provision is intended to constitute a purchase money security interest. If Buyer fails to pay the purchase price in full when due, Seller may, without notice, retake possession of the Goods in addition to any other remedies available at law or equity.

6. **Inspection and Rejection of Nonconforming Goods.**

(a) Buyer shall inspect the Goods immediately upon receipt. Buyer will be deemed to have irrevocably accepted the Goods unless it notifies Seller at the time of delivery of any Nonconforming Goods and furnishes detailed written evidence, photographs, and other documentation as required by Seller. Use of the Goods in any manner shall constitute acceptance. "Nonconforming Goods" means only the following: (i) the product delivered is not the specific product identified in the Quotation; or (ii) product's label or packaging materially misidentifies its content.

(b) If Buyer timely notifies Seller of any Nonconforming Goods and provides complete documentation, Seller shall, at its sole and exclusive discretion: (i) replace such Nonconforming Goods with conforming

Goods, or (ii) issue a credit for the price of such Nonconforming Goods. Buyer shall ship, at its sole expense and risk of loss, the Nonconforming Goods to Seller's facility located at 1606 Allen Avenue SE, Canton, Ohio 44707 within five (5) days of written notice. Seller will not ship replacement Goods, or issue any credit, until actual receipt and inspection of the returned Goods. Any replacement Goods will be shipped to Buyer at Buyer's sole cost and risk.

(c) The remedies described in Section 6(b) are Buyer's sole and exclusive remedies for Nonconforming Goods. Except as expressly provided in Section 6(b), all Goods are sold on a final, non-returnable basis, and Buyer waives any right to reject or return Goods for any reason. Buyer waives any other remedies at law or in equity related to the delivery or condition of the Goods.

7. **No Setoff.** Buyer expressly waives any and all rights of setoff, deduction, recoupment, holdback, or counterclaim of any kind, whether arising by contract, law, equity, or otherwise, against any amount due or to become due to Seller or any of its affiliates under these Terms and Conditions or any other agreement. Under no circumstances may Buyer withhold or offset any payment owed to Seller or its affiliates on account of any dispute, claim (including claims for breach, non-performance, indemnity, tort, or otherwise), or other obligation asserted by Buyer or any of its affiliates against Seller or its affiliates, whether related or unrelated. This provision applies regardless of any alleged default or non-performance by Seller or its affiliates.

8. **Warranties.** Seller provides the following limited warranty:

(a) **SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

9. **Limitation of Liability.**

(a) **IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES, LOSS OF USE OF THE MACHINE OR PARTS OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, DOWNTIME COSTS, LABOR COSTS, CLAIMS OF CUSTOMERS, PURCHASERS, LESSEES OR ANY THIRD PARTY FOR SUCH DAMAGES, OR DIMINUTION IN VALUE, ARISING OUT OF, OR RELATING TO, OR IN CONNECTION WITH ANY BREACH OF THESE TERMS AND CONDITIONS, REGARDLESS OF (A) WHETHER**

SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT SELLER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND (D) THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS AND CONDITIONS, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE LESSER OF (I) THE TOTAL OF THE AMOUNTS ACTUALLY PAID TO SELLER UNDER THE PARTICULAR QUOTATION FOR THE PARTICULAR GOODS WHICH ARE AT ISSUE, OR (II) TWENTY THOUSAND DOLLARS (\$20,000). THE LIABILITY OF SELLER, AND CUSTOMER'S SOLE EXCLUSIVE REMEDY, WHETHER IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE, AND ANY AND ALL DAMAGES IMPOSED UPON SELLER, SHALL BE LIMITED TO, AT SELLER'S OPTION, AS PROVIDED ABOVE, THE REPLACEMENT BY SELLER OF ANY NONCONFORMING COMPONENTS AND PARTS FOR WHICH CLAIM IS MADE BY CUSTOMER, OR TO THE REPAYMENT OF THE PORTION OF THE PURCHASE PRICE PAID BY CUSTOMER ATTRIBUTABLE TO THE NONCONFORMING PRODUCT, AND IN ALL CASES, LIABILITY OF SELLER FOR ANY AND ALL DAMAGES SHALL IN NO EVENT EXCEED THE PURCHASE PRICE FOR THE PRODUCT SUBJECT TO THE CLAIM.

10. **Termination.** In addition to any remedies that may be provided in these Terms and Conditions, Seller may terminate these Terms and Conditions with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under these Terms and Conditions; (ii) has not otherwise performed or complied with any of the terms of these Terms and Conditions, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

11. **Acceptance.** Buyer acknowledges that it has read, understands, and accepts all terms and conditions set forth herein and in any attachments hereto. Any additional, different, or conflicting terms or conditions contained in any prior or subsequent acknowledgment, purchase order, invoice, communication, or document from Buyer, whether oral or written, are hereby expressly rejected by Seller and will be null and void and of no effect. Buyer's acceptance of delivery of any Goods, payment of any amount due, placement of any order, or remittance of any deposit will constitute Buyer's unqualified acceptance of these Terms and Conditions. No amendment, modification, or waiver of any provision of these Terms and Conditions will be effective unless set forth in a writing signed by an authorized representative

of Seller. Acceptance by electronic means, including electronic signatures or electronic communications, will be deemed valid and binding as if in original form.

12. **Indemnification.** Buyer covenants and agrees at all times to indemnify, defend, and hold Seller, its officers, employees, directors, representatives, shareholders, agents, successors and assigns harmless against any and all losses, claims, damages, judgments, liabilities, or expenses, including, without limitation, attorney fees, related expenses and any amounts paid in the defense or settlement, incurred by Seller as a result of or arising out of: (a) Buyer's breach of these terms, of any agreement between the parties hereto, or of any obligation to Seller; (b) actual or alleged misuse or misappropriation of a trade secret resulting directly or indirectly from Buyer's action, or any actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark, or copyright by reason of the use of the Goods by Buyer; (c) the use of the Goods by Buyer or any other third party; (d) any act or omission of Buyer or its agents, employees, representatives or subcontractors, including without limitation, any act or event of Buyer, or its employees, representatives, or agents, described herein above. Buyer shall promptly notify Seller of any suit filed against it or its Buyers on account of any such indemnification obligation of Buyer hereunder, and at Seller's option, Buyer may assume the sole responsibility for the defense of such action at Buyer's sole expense. Seller may be represented by their own counsel in any such suit at the expense of Buyer, however, no settlement shall be entered into on behalf of Seller without Seller's prior consent in its sole discretion.

13. **Default.** In the event that Buyer fails to pay any amount due to Seller, or otherwise breaches any obligation or covenant owing to Seller, Seller may, in its sole discretion, in addition to all other remedies to which Seller may be entitled without affecting an election of remedies, cancel or terminate all obligations to Buyer upon notice to Buyer, or suspend performance by Seller until Buyer pays for such charges or amounts. Furthermore, in the event of a cancellation or termination by Seller, Seller shall be entitled to any and all damages under the Uniform Commercial Code, including, without limitation, lost profits, and all other expenses and losses incurred by Seller. Furthermore, in the event of a breach or violation by Buyer of these terms, or any other agreement between the parties hereto, or in the event of any dispute or controversy hereunder, in such event, Buyer shall pay Seller for any and all attorneys' fees incurred in enforcing the terms hereof, or otherwise resolving any disputes with Buyer.

14. **Confidentiality.** The Buyer acknowledges that Seller possesses certain confidential or proprietary information of Seller, and of Seller's customers, including, without limitation, designs, data, ideas, drawings, specifications, trade secrets, formula, technical experience, financial data, financial information, the specifications, the Goods, and other products and services of Seller, and other valuable, confidential and proprietary information, which may be disclosed to Buyer or for which Buyer may have access (hereafter "**Confidential Information**"). At all times thereafter, Buyer agrees not to disclose to any person, firm, or entity any Confidential Information. Furthermore, Seller retains exclusive ownership of all of

its Confidential Information, and Buyer obtains no license or other rights thereto. Seller shall also have exclusive rights to any improvements, modifications, or variations of its Goods or services, including, without limitation, any and all patent, copyright, trademark, trade name, or other intellectual property rights, and Buyer shall not disassemble or reverse engineer the Goods or any Confidential Information. The Buyer hereby agrees that if Buyer breaches its obligations hereunder, Seller shall incur irreparable injury and harm and money damages would be an insufficient remedy, and as such, and in addition to all other remedies, Seller shall be entitled to seek injunctive relief restraining Buyer from further breach of this section.

15. **Entire Agreement.** These Terms and Conditions, including and together with any related exhibits, schedules, attachments and appendices, and the Quotation, constitutes the sole and entire agreement of the parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding such subject matter. Any and all other documentation, including without limitation, any Quotation from Buyer is hereby rejected and shall not be part of the contract between Buyer and Seller.

16. **Notices.** All notices, requests, consents, claims, demands, waivers and other communications under these Terms and Conditions must be in writing and addressed to the other party at its address set forth on the Quotation or to such other address that the receiving party may designate from time to time in accordance with this Section. Unless otherwise agreed herein, all notices must be delivered by personal delivery, nationally recognized overnight courier or certified or registered mail in each case, return receipt requested, postage prepaid. Except as otherwise provided in these Terms and Conditions, notice shall be deemed duly given: (a) upon delivery if delivered by hand; (b) upon receipt by the addressee if sent by US mail; (c) upon the date signed for a receipt by a party to this Agreement if sent by US certified mail - return receipt requested; and (d) one business day after being deposited with an overnight delivery service.

17. **Severability.** If any term or provision of these Terms and Conditions is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of these Terms and Conditions or invalidate or render unenforceable such term or provision in any other jurisdiction.

18. **Amendments.** No amendment to or modification of these Terms and Conditions is effective unless it is in writing and signed by each party.

19. **Waiver.** No waiver by any party of any of the provisions of these Terms and Conditions shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in these Terms and Conditions, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from these Terms and Conditions shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or

privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

20. Notwithstanding the previous sentence, the parties intend that Buyer's rights under Section 4, Section 6, Section 8, and Section 9 are Buyer's exclusive remedies for the events specified therein.

21. **Assignment.** Buyer shall not assign, transfer, delegate or subcontract any of its rights or obligations under these Terms and Conditions without the prior written consent of Seller. Any purported assignment, transfer, delegation or subcontract in violation of this Section shall be null and void. No assignment, transfer, delegation or subcontract shall relieve Buyer of any of its obligations hereunder. Seller may at any time assign, transfer, delegate or subcontract any or all of its rights or obligations under these Terms and Conditions without Buyer's consent.

22. **Successors and Assigns.** These Terms and Conditions are binding on and inures to the benefit of the parties and their respective permitted successors and permitted assigns.

23. **No Third-Party Beneficiaries.** These Terms and Conditions benefit solely the parties hereto and their respective permitted successors and assigns and nothing in these Terms and Conditions, express or implied, confers on any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms and Conditions.

24. **Choice of Law.** These Terms and Conditions, including all exhibits, schedules, attachments and appendices attached to these Terms and Conditions and thereto, and all matters arising out of or relating to these Terms and Conditions, are governed by, and construed in accordance with, the laws of the State of Ohio, United States of America, without regard to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Ohio.

25. **Arbitration.** In the event a dispute shall arise between Buyer and Seller relating to these Terms and Conditions or the Goods sold, said dispute shall be settled by arbitration in Stark County, Ohio. The arbitration shall be administered by the American Arbitration Association under its Commercial Arbitration Rules. The results of said arbitration shall be final and binding, and judgment may be entered thereon in any court of competent jurisdiction. The results of said arbitration shall be final and binding, and judgment may be entered thereon. In the event that a party to these Terms and Conditions fails to comply with the results of arbitration or unsuccessfully challenges the arbitration results, the other party shall be entitled to the costs of suit, including reasonable attorneys' fees.

26. **Force Majeure.** Seller will not be responsible for any acts or omissions of Buyer. Any delay, failure, or inability of Seller to perform its obligations under these Terms and Conditions will be excused to the extent that the delay, failure, or inability was caused directly or indirectly by an event beyond Seller's reasonable control, without such Seller's fault or negligence and that by its nature could not have

been foreseen by Seller or, if it could have been foreseen, was unavoidable which events may include natural disasters, embargoes, explosions, riots, wars, acts of terrorism, strikes, labor stoppages or slowdowns or other industrial disturbances, and shortage of adequate power or transportation facilities.

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