

## GENERAL SERVICES AGREEMENT (GSA) - TERMS AND CONDITIONS OF SALE

"Customer" agrees to do business with Cemstone Ready-Mix, Inc. ("Cemstone"), pursuant to this General Services Agreement (GSA), and accepts all terms in the GSA without reservation or modification. Customer anticipates entering into further agreements whereby Cemstone will provide/sell to Customer certain labor, materials, products and services relating to projects where Customer has a contract with a third party to provide construction services; Customer also agrees in advance to the following GSA Terms and Conditions of Sale for all such projects:

**GSA Term:** This GSA is effective retroactive as of January 1st in the year signed below by Customer, and will remain in effect for ten years or until amended, or cancelled in writing by Cemstone with notification to Customer, or replaced with a subsequent GSA.

**GSA Services:** Materials, products and services provided by Cemstone to Customer include, but are not limited to: ready mix concrete, concrete related materials, concrete placing services, aggregate, and construction materials, equipment and tools.

**GSA Contracts:** This GSA shall be considered part of all written price quotations, contractor pricing agreements, specific project agreements, and any other agreements between Cemstone and Customer, including Cemstone's policies and procedures, during the Term of this GSA; to the extent the terms of the price quotations, contractor pricing agreements, specific project agreements, and any other agreements or contracts between Cemstone and Customer ("Contracts"), including Cemstone's policies and procedures, conflict with the terms of this GSA, the terms of this GSA take precedence, supersedes those terms and control.

**GSA Authorized Signature:** This GSA shall be signed by one of the Customer's corporate officers, partners or owners, authorized to bind Customer to this GSA. Customer's corporate officers, partners, or owners authorized to bind Customer, may also designate in writing to Cemstone an employee(s) who is authorized to sign this GSA and other contracts.

### TERMS AND CONDITIONS OF SALE

All sales made by Cemstone are subject to the terms and conditions set out in this GSA. Should Customer receive material, product or services pursuant to a specific quote, but prior to signing it, Customer shall be deemed to have accepted the quote as well as all Terms and Conditions of Sale and the terms of this GSA as stated herein; to the extent the terms of the quote conflicts with the terms of this GSA, the terms of this GSA take precedence, supersedes those terms and control.

1. Warranties, Remedies and Limitations:
  - a) Cemstone warrants to Customer that, at the time of delivery, the goods sold will conform substantially to the description on the face of the specific quotation. If a substitution or "or equal" approval is included the Customer is fully responsible for obtaining all necessary approvals. **CEMSTONE'S LIABILITY AND CUSTOMER'S REMEDY UNDER THIS WARRANTY ARE LIMITED AT CEMSTONE'S DISCRETION TO 1) REPLACEMENT OF DELIVERED READY-MIXED CONCRETE ONLY WHICH IS SHOWN TO CEMSTONE'S REASONABLE SATISFACTION TO HAVE BEEN NON-CONFORMING; OR 2) A REFUND OF THE PURCHASE PRICE; OR, 3) IF NOT PAID, TO A CREDIT IN THE AMOUNT OF THE PURCHASE PRICE. IN NO EVENT SHALL CEMSTONE BE RESPONSIBLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND.**
  - b) Cemstone warrants to Customer that it will convey good title to the goods sold hereunder.
  - c) Cemstone shall not be responsible for, or pay, any charges for inspection or tests made by or on behalf of Customer.
  - d) **THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE GIVEN AND ACCEPTED IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE UNIFORM COMMERCIAL CODE ("UCC") WARRANTY OF MERCHANTABILITY AND THE UCC WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. THE REMEDIES OF CUSTOMER FOR ANY BREACH OF WARRANTY SHALL BE LIMITED TO THOSE PROVIDED HEREIN. NO AGREEMENT VARYING OR EXTENDING THE FOREGOING WARRANTIES, REMEDIES OR LIMITATIONS WILL BE BINDING UPON CEMSTONE UNLESS IN WRITING, SIGNED BY A DULY AUTHORIZED OFFICER OF CEMSTONE. THESE WARRANTIES EXTEND ONLY TO CUSTOMER AND ARE NOT INTENDED TO BENEFIT OTHER PARTIES.**
  - e) When possible, Cemstone will pass on available product warranties or guarantees provided by others to the Customer, but Customer understands and agrees that such warranties or guarantees are not being provided by Cemstone and that Cemstone will not fulfill the terms of such warranties or guarantees, but will assist the Customer in gaining access to or information regarding the provider of such warranty or guarantee.
2. Any contract between Cemstone and Customer shall include in its entirety the terms of this GSA. The terms and conditions of this GSA shall govern and control as between this GSA and any other contract or form. This GSA supersedes all previous communication, representations or agreements, either oral or written, between the parties hereto. Any contract between Cemstone and Customer shall not be affected or modified by Customer's purchase order forms or other documents containing terms different from or in addition to those contained herein. Any modification, amendment or change to the terms of this GSA must be agreed to in writing signed by both parties specifically referring to this GSA and any other applicable contract between Cemstone and Customer.
3. Safe, hazard free approaches for Cemstone vehicles at jobsite are to be provided by Customer. Cemstone is not liable for any damage incurred if Customer requests that Cemstone's vehicles move past the curb line or right of way limits. Customer shall pay all fees and costs in repairing damages to the Cemstone vehicle and all damages and injuries to third parties or other property.
4. Cemstone is not responsible for strikes, lockouts, fires, accidents, raw material shortages, transportation shortages, breakdowns or accidents, severe weather, riots, civil unrest, industry disturbance, war, pandemic or other public health emergency, computer malfunction or hacking incident, wire fraud, government intervention, labor disputes or shortages, or other causes, natural or otherwise, beyond its control ("Force Majeure Events") which delay or cancel the manufacture and/or delivery of ready-mixed concrete, material, products and services.
5. Cemstone observes New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Eve Day, and Christmas Day as holidays, and plants are closed. Ready-mixed concrete, materials, products and services delivered on the above days will require an additional charge for the increased costs.
6. Customer is solely responsible for obtaining and complying with the current version of Cemstone's Customer Service Guidelines (available at [www.cemstone.com/order-concrete/](http://www.cemstone.com/order-concrete/)) which are incorporated by reference as if fully set forth herein.
7. Cemstone's Material Safety Data Sheet (MSDS) is available to Customer upon request or from [www.cemstone.com](http://www.cemstone.com). Customer is solely responsible for supplying, and shall supply, all relevant MSDS information to its employees and its own customers.

8. Prices quoted may escalate due to increases in the cost to Cemstone of aggregate, cement, admixtures, fuel, commodities, or materials obtained from Cemstone suppliers from the date of specific quotation to the date of delivery. If it becomes necessary for Cemstone to institute a surcharge due to price increases, the surcharge will be assessed as an add-on to the price of the material, product or service.
9. If a dispute arises between Customer and Cemstone regarding any labor, materials, products and services Cemstone provides to Customer, a dispute regarding this GSA, or a dispute regarding any Contract, Cemstone may elect at its sole option, and the customer herewith consents, to submit the dispute to arbitration under the Construction Industry Rules of the American Arbitration Association in Minneapolis, Minnesota, but Cemstone and Customer shall mutually agree on the arbitrator(s). Under no circumstances may customer withhold from timely payment any amount in excess of the bona fide amount under dispute.
10. If Cemstone elects to bring legal action to collect any past due amount, to enforce any provisions of this GSA, or to enforce any provisions of any Contract, Customer shall pay all collection costs including, but not limited to, arbitration, mediation, court costs and reasonable attorney's fees. Customer further agrees to be subject to the jurisdiction and venue of the Dakota County District Court in Hastings, Minnesota.
11. Cemstone is not responsible for securing loads of materials/merchandise on vehicles other than their own delivery vehicles.
12. **CUSTOMER SHALL, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HOLD HARMLESS, INDEMNIFY AND DEFEND CEMSTONE, ITS AFFILIATES AND SUBSIDIARIES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, INSURERS AND SUBCONTRACTORS FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, LOSSES, COSTS AND EXPENSES ARISING OUT OF OR RESULTING FROM THE NEGLIGENT ACTS OF OMISSIONS OF THE CUSTOMER, INCLUDING BUT NOT LIMITED TO A) ANY AND ALL CONSTRUCTION ACTIVITIES AT THE SITE, B) PERSONAL INJURIES RESULTING OR ARISING OUT OF CONSTRUCTION ACTIVITIES AT THE SITE, C) LIABILITY OR INJURIES RESULTING FROM SECURING LOADS IN TRANSIT. OR D) LOSS OR INJURY AS A RESULT OF WIRE FRAUD, HACKING, OR COMPUTER MALFUNCTION. CUSTOMER AGREES TO PURCHASE INSURANCE PROPERLY ENDORSED TO COVER THIS OBLIGATION TO CEMSTONE. CUSTOMER'S OBLIGATION TO HOLD HARMLESS, INDEMNIFY AND DEFEND CEMSTONE DOES NOT EXTEND TO ANY FAULT PROVEN TO BE DIRECTLY ATTRIBUTABLE TO THE ACTIONS OF CEMSTONE.**
13. **Environmental Fee and Fuel Surcharge.** Environmentally-related costs and fuel-related costs are something we cannot fully control. Cemstone's environmental fee and fuel surcharge are meant to help us cover these costs and to help us achieve an acceptable operating margin. The environmental fee are separate line items on customer invoices. Seller's environmental fee helps to cover our costs and expenses to operate, on a company-wide basis, in a safe and environmentally responsible manner. The amount or percentage of the environmental component is not specifically tied to the direct or indirect costs to service Customer's account, but instead to Cemstone's overall costs and operating margin goals. Similarly, Cemstone's fuel surcharge is a charge to cover Cemstone's overall costs associated with the delivery of products, including but not limited to the cost of fuel, and the incremental costs for unexpected mileage, wait times, and traffic patterns, and to help meet margin goals.  
**NOT A GOVERNMENTAL TAX; FUTURE CHANGES.** Cemstone's environmental fee and fuel surcharge are not taxes, surcharges, or fees imposed by or remitted to any governmental or regulatory agency; they are Cemstone's charges. The environmental fee and fuel surcharge may be changed at the discretion of Cemstone. To the extent required by Customer's applicable customer service terms, the assessment of the environmental fee and fuel surcharge or any change to such charge is effective upon Customer's acceptance of rebate payments from Cemstone or Customer's payment of any such charges to Cemstone.
14. **Payment Terms:** SALES TAX is not included in the pricing and will be charged accordingly. Payment to Cemstone by Customer on its open credit accounts shall be made by the thirtieth (30<sup>th</sup>) day following each of Customer's orders and the resulting delivery of products and services by Cemstone. The Customer shall pay interest at a rate of 1.5% per month (an annual percentage rate of 18%) on the unpaid balances owed at the end of the previous billing cycle after subtracting any payments made and credits allowed during a billing cycle. The Customer shall pay a minimum fee of \$25.00 per credit transaction for failure to submit proper tax-exempt documentation prior to the start of the project.
  - a) Customers may pay via ACH debit and schedule payments on or before the due date. These transactions will be exempt from any processing fees.
  - b) If a customer, with an open line of credit, chooses to pay with a credit card after the invoices have been billed on Customer's account, a credit card processing fee of 2.46% will be added to the total of invoices being paid. Customers may choose Automatic Payment via credit card through the online bill pay system.
  - c) For C.O.D. orders processed by Cemstone Customer Service, the customer's credit card will be processed prior to the ticket being shipped and will be exempt from a credit card processing fee.

#### **ADDITIONAL READY MIX & PLACING TERMS AND CONDITIONS**

1. Specifications: Ready-mixed concrete shipped shall generally conform to the current American Society for Testing Materials (ASTM) Standard Specification C94/C94M-21a (except paragraph 6.4.2) unless otherwise specified in writing by Customer and agreed to by Cemstone.
2. Warranties, Remedies and Limitations:
  - a) Cemstone does not, under any circumstances, warrant the performance of concrete which is not adequately cured, is improperly handled and/or finished, or is not fit for the intended use after delivery/discharge to Customer or for which the mix design was provided by a party other than Cemstone.
  - b) Cemstone does not warrant, under any circumstances, the final color or appearance of any architectural specified ready-mixed concrete.
3. Testing of plastic concrete properties including sampling, temperature, slump, unit weight, air content, casting and curing of strength samples, etc. shall be in accordance with procedures listed in the current ASTM specifications and performed by an ACI certified field-testing technician or their equivalent. Any rejection of ready-mixed concrete on the basis of deviations in slump or in air content from limits designated in this contract shall be at the time of delivery. Acceptance of delivery by the Customer shall constitute waiver of any claim. Strength tests shall be in accordance with ASTM C 31.
4. Except for water necessary to bring ready-mixed concrete up to a specified slump at time of delivery or admixtures based upon the mix design, any additional water, admixtures or additional materials added to ready-mixed concrete shall be at Customer's risk.
5. Customer shall provide a pumpable mix, in terms of gradation of aggregate, slump, and batching of concrete, for the designated pumping equipment; provide for adequate scheduling of concrete delivery; provide for reasonable access in a level, well-compacted

location, free from overhead power lines to safely set up and operate the equipment. In addition, Customer shall provide sufficient on-site access and clean-out areas for the placing equipment; provide adequate notice of change of schedule to Cemstone; and provide hoisting of placement equipment.

6. Customer shall provide personnel for set up of the pump line and to handle the pump line during concrete placement, as well as providing a suitable place for line and pump clean-up. Customer assumes all responsibility and cost for removal of pump from job site if tow trucks, wrecker trucks, etc., are required due to road or job site conditions.
7. No quote or contract includes (a) any costs which may be incurred for engineering or testing requested by Customer or (b) cooling costs of concrete required by the weather or admixtures.
8. Customer will comply with all municipal, state, federal and/or environmental agency Construction Site Regulations and permits. Customer acknowledges that they will not request or direct Cemstone to perform in any manner that is not in accordance with applicable regulations and permits. Customer further acknowledges that in the State of Minnesota (and other states as may be designated in the future) Cemstone will not wash out on construction sites, or be required to utilize any waste material containment system other than that provided by Cemstone. Cemstone will retain its own wash water utilizing a Cemstone provided wash out system or other approved Cemstone service and will return wash water to a Cemstone plant for disposal and/or recycling in accordance with fees and regulations.
9. If, directly or indirectly, due to any Force Majeure Event or other causes, natural or otherwise, Cemstone is unable to provide ready-mixed concrete of the specified mix-design or as otherwise identified in Cemstone's quote or Contract, then Cemstone reserves the right to offer a substitute or alternative ready-mixed concrete product to Customer. If Customer accepts said substitute or alternative, Customer is fully responsible for obtaining all necessary approvals. Customer also agrees to pay the difference in price, if any, between the originally specified mix-design and the substitute.
10. Cemstone and Customer agree and consent to the use of electronic signatures solely for the purposes of executing the GSA or any related transactional document. Such electronic signature shall be deemed to have the same full and binding effect as a handwritten signature.

**ADDITIONAL AGGREGATE TERMS AND CONDITIONS**

1. Aggregates provided by Cemstone to Customer shipped under any specific price quotation or Contract shall conform to the current American Society for Testing Materials (ASTM) Standard Specification for the specific aggregate ordered unless otherwise specified in writing by Customer.
2. Aggregate testing shall be made in accordance with procedures listed in current ASTM Standard Specification applicable to each aggregate product. Acceptance of delivery by the Customer shall constitute waiver of any claim.
3. Prices quoted are for aggregates inventoried by Cemstone at the time of delivery unless otherwise specified herein. Prices may vary depending upon inventory. Some aggregates products may not be available from time to time.

**ADDITIONAL CEMSTONE SUPPLY TERMS AND CONDITIONS**

Customer agrees to comply with policies related to special orders, product returns, material and equipment rental, and delivery charges (available at [www.cemstone.com](http://www.cemstone.com)).

IN WITNESS WHEREOF, this General Services Agreement has been executed on behalf of the Customer by its duly authorized officer, partner, owner, or designated employee below:

Company ("Customer") Name: \_\_\_\_\_

\_\_\_\_\_

Cemstone Authorized Signature

Authorized Signature: \_\_\_\_\_

\_\_\_\_\_

Print Name

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CEMSTONE READY-MIX, INC.**  
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