



**CREDIT APPLICATION**

**INDEPENDENT CONCRETE LTD.**

765 Industrial Way, Victoria BC V9B 6E2

Phone (250) 478-0555

Fax (250) 478-5299

HOME OWNERS SECTION			
Last Name		First Name	Spouse's Name
Mailing Address		City	Postal Code
Telephone ( )	Fax ( )	Site Telephone ( )	Site Fax ( )
Site Address (if different)			
Email Address			
Employer		Telephone	How Long
SIN #		Birth Date (mmm/dd/yy)	
Spouse's Employer		Telephone	How Long

COMMERCIAL/CONSTRUCTION COMPANY			
Company Name (in full)			Telephone ( )
Address	City	Prov	Postal
			Fax ( )
Email address			
Type of Business		Years in Business	G.S.T. #
Accounts Payable Contact		Credit Limit Required \$	Purchase Order Required Yes No
Name of Principles	Home Address	Home Phone	Title

THE FOLLOWING SECTION TO BE COMPLETED BY ALL APPLICANTS	
Bank	Telephone
Branch Address	Acct #
Legal Address of Construction Project	
Detail of Financing of Construction Project Tender	Amount \$
	Type

Trade References	Address	Telephone	Fax	Contact
		( )	( )	
		( )	( )	
		( )	( )	

VISA CARD #	EXP DATE /	SEC.CODE ( )
MASTER CARD #	EXP DATE /	SEC.CODE ( )

## Credit Agreement

In connection with and in consideration for the extension of credit and / or the sale of materials to the customer (the "Customer"), the Customer, by submitting this application, acknowledges and agrees to the following:

1. This credit agreement ("Agreement") supersedes, with respect to sales made subsequent to the acceptance of this application by Independent Concrete Ltd. ("ICL"), any prior credit agreement governing the extension of credit by ICL to the Customer.
2. The receipt of this application shall not create any obligation on the part of ICL to sell material to the Customer or to extend credit to the Customer in connection with any such sale and the Customer further acknowledges and agrees that any granting of credit is without commitment to provide future credit, if credit is granted.
3. The Customer consents to a credit investigation being conducted by ICL, or its agent, including the investigation and exchange of credit reports and other information relating to the Customer towards establishing or verifying the Customer's financial standing for the purpose of obtaining, maintaining and extending credit. For the purposes of any applicable statute pertaining to privacy of information this clause shall constitute full and sufficient consent for the collection, use and disclosure of information, as required for a credit investigation.
4. If credit is extended, the Customer acknowledges and agrees that full payment shall be made by the 15th of the month following the date of any invoice provided by ICL, without set off or deduction. The Customer further acknowledges and agrees that ICL may increase the Customer's credit as ICL, in its sole and unfettered discretion, sees fit, with or without notice to or the consent of the Customer.
5. In the event the Customer fails to pay any invoice as required, the Customer agrees to pay interest on such delinquent invoice commencing the first day that the Customer's account is overdue until same is fully paid, at the rate of 2% per month (24% per annum), both before and after judgment.
6. If credit is extended, the Customer acknowledges and agrees that ICL may, at its sole and unfettered discretion and at any time, cancel or suspend this Agreement with or without notice to the Customer. No failure or delay on the part of ICL in exercising any right, remedy, power or privilege hereunder shall operate as a waiver thereof.
7. The Customer acknowledges and agrees that, with or without notice or demand, the undersigned shall reimburse ICL, for all expenses (including, without limitation, actual legal costs on a solicitor and own client basis) incurred by ICL in connection with any indebtedness of the Customer or the collection of such indebtedness.
8. The Customer agrees to fully and promptly furnish ICL with signed acknowledgements of receipt of material and whatever other information is needed or requested by ICL for proper filling out and filing of a claim of lien pursuant to the *Builders Lien Act*, S.B.C. 1997, c. 45, as amended.
9. The Customer agrees that this Agreement cannot be assigned without the express written consent of ICL which consent can be unreasonably and / or arbitrarily withheld, and further agrees that this Agreement shall bind and inure to the benefit of all of its respective heirs, executors, administrators, successors or permitted assigns.
10. Should any part or portion of this Agreement be rendered or declared invalid, such invalidation of such part or portion of this Agreement shall not invalidate the remaining parts and portions hereof, and those remaining parts and portions shall remain in full force and effect.

Signing below the Customer understands the terms and conditions of the Credit Agreement:

\_\_\_\_\_  
Company Name (in full)

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness' Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name of Authorized Signature

\_\_\_\_\_  
Print Name of Witness

## Guarantee Agreement

In consideration of the extension of credit to the customer (the "Customer"), the undersigned acknowledge and agree as follows:

1. The undersigned, jointly, severally and unconditionally guarantee and promise to pay all amounts now owing or which may hereinafter become owing by the Customer to ICL Concrete Ltd. ("ICL").
2. This is an absolute, unconditional, continuing and unlimited guarantee.
3. The obligations arising hereunder shall not be affected by any changes, material or otherwise, to any agreement between the Customer and ICL, including, but not limited to, changes in terms of indebtedness, the extension of credit beyond amounts specified (if any), a change in the term or time for payment, a change in the form of indebtedness, the acceptance of security or collateral or any changes in the name or ownership of the Customer.
4. The undersigned agree that their obligations hereunder will not be affected by any dealings whatsoever between the Customer and ICL and that ICL may increase the Customer's credit as ICL, in its sole and unfettered discretion, sees fit, with or without notice to the undersigned.
5. ICL shall not be required to exhaust any remedies, including, but not limited to, any remedies against the Customer or pursuant to the *Builders Lien Act*, S.B.C. 1997, c. 45, as amended, and prior to exercising rights granted hereby. ICL may, without giving notice to or obtaining the consent of the undersigned, grant extensions of time and other indulgences, take or give up securities, accept compositions, grant releases and discharges (whether full, partial, conditional or otherwise), perfect or fail to perfect any securities, or release any undertakings, property or assets charged by any securities to third parties, and otherwise deal or fail to deal with the Customer without prejudice to or in any way discharging or diminishing the liability of the undersigned. The undersigned further waives any right to require that any action be brought against the Customer or any other person or to require that resort be had by ICL to any security.
6. The undersigned agree that in the event of default by the Customer, ICL may treat all obligations of the Customer owed to ICL as due and payable and the undersigned shall immediately be liable for, and make payment to ICL of, the entire amount owed by the Customer to ICL, even though there may be more than one guarantor.
7. The undersigned hereby waives: (a) Notice of acceptance of this guarantee and of extensions of credit by ICL to the Customer; (b) Presentment and demand for paying of any indebtedness of the Customer; (c) Protest and notice of dishonour or default to the undersigned with respect to any indebtedness of the Customer; (d) All other notices to which the undersigned might otherwise be entitled; (e) Any demand for payment under this guarantee; and (f) All set-offs and counterclaims.
8. The undersigned agrees that, with or without notice or demand, the undersigned shall reimburse ICL, to the extent that such reimbursement is not made by the Customer, for all expenses (including, without limitation, actual legal costs on a solicitor and own client basis) incurred by ICL in connection with any indebtedness of the Customer or the collection of such indebtedness, and will pay actual legal costs on a solicitor and own client basis if this guarantee is placed with a lawyer for enforcement or collection from the undersigned.
9. The undersigned consents to a credit investigation being conducted by ICL, or its agent, including the investigation and exchange of credit reports and other information relating to the undersigned towards establishing or verifying the Customer's financial standing for the purpose of obtaining, maintaining and extending credit to the Customer and evaluating this guarantee. For the purposes of any applicable statute pertaining to privacy of information this clause shall constitute full and sufficient consent for the collection, use and disclosure of information, as required for a credit investigation.
10. The undersigned agree that all present and future debts, liabilities and obligations of the Customer to any of the undersigned are hereby postponed to the present and future debts, liabilities and obligations of the Customer to ICL, and all payments and benefits received by any of the undersigned from the Customer are received as trustees for ICL and shall be paid to ICL.
11. Should any part or portion of this guarantee be rendered or declared invalid, such invalidation of such part or portion of this guarantee shall not invalidate the remaining parts and portions hereof, and those remaining parts and portions shall remain in full force and effect.
12. The undersigned further acknowledge and represent that any titles written near their signatures below are merely intended to clarify the individual's position with the Customer and in no way is intended to limit or cancel the personal nature of this guarantee.
13. The undersigned agree that this guarantee cannot be assigned without the express written consent of ICL which consent can be unreasonably and / or arbitrarily withheld, and further agree that this guarantee shall bind and inure to the benefit of all of their respective heirs, executors, administrators, successors or permitted assigns.
14. All terms and expression referring to the singular shall include the plural and vice versa. No failure or delay on the part of ICL in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

Signing below the Customer understands the terms and conditions of this Guarantee Agreement:

\_\_\_\_\_  
Guarantor's Name (in full)

\_\_\_\_\_  
Guarantor's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness' Name

\_\_\_\_\_  
Witness' Signature

\_\_\_\_\_  
Date

## Master Terms & Conditions of Sale

The following terms and conditions of sale apply to the sale of all concrete and related materials (the "Materials"), or any part thereof, and any services related thereto ("Services"), provided by Independent Concrete Ltd. ("ICL") to the customer (the "Customer").

### 1. Master Terms and Conditions

- 1.1 These terms and conditions supersede and replace all prior agreements, correspondence, negotiations or representations, either written, oral or implied, between the parties with respect to the purchase of Materials and / or the provision of the Services.
- 1.2 These terms and conditions are to be utilized for various projects and serve as the terms and conditions applicable to any agreement by ICL to sell Materials and the provision of the Services to the Customer.
- 1.3 All sales of Materials and Services are subject to these terms and conditions, any applicable quotation or estimate provided by ICL, any delivery ticket provided by ICL, and, if buying on credit, to the Customer's credit agreement with ICL.
- 1.4 All other terms and conditions, including any contained in the Customer's purchase order, request for quotation, contract or similar document, are excluded and inapplicable to the purchase and sale of Materials and the provision of the Services.
- 1.5 No variation of these terms and conditions will be binding on ICL unless agreed to in writing by an authorized representative of ICL, and any other conditions sought to be imposed by the Customer on ICL unilaterally are specifically excluded.

### 2. Quotations and Estimates

- 2.1 All quotations and estimates given in writing by ICL are valid for the period stated therein and otherwise for 30 days from the date of the quotation or estimate if no such period is set out, but may be withdrawn at any time by ICL on written notice before receipt of an order from the Customer.

### 3. Scope and Materials

- 3.1 Unless otherwise specified, ICL's obligations are limited to delivery of the Materials and provision of the Services. For clarity, ICL's obligations do not include preparatory work, measuring, placing, finishing, forming or consolidation relating to the Materials unless otherwise agreed to in writing by ICL.
- 3.2 The Customer is solely responsible for determining the type and quantity of Materials to be purchased. Any measurements provided by ICL are not guaranteed and the Customer acknowledges and agrees that it will not rely on any such measurements.
- 3.3 The Materials delivered are those as described in ICL's quote or estimate, and if not so described, as described on ICL's delivery ticket or invoice.
- 3.4 Unless ICL agrees otherwise, concrete slump of 80mm or greater shall have a tolerance of +/- 30mm, and concrete slump of less than 80mm shall have a tolerance of +/- 20mm. ICL shall not be responsible for concrete to which water has been added at the instruction of the Customer, or its agent, to bring slump in excess of that which is specified in the delivery ticket.
- 3.5 ICL assumes no responsibility for the Materials' quality reduction due to the inability of others to place or consolidate the Materials within a maximum of 120 minutes after mixing.
- 3.6 ICL reserves the right to reject at its discretion any order for Materials requested by the Customer.

### 4. Price

- 4.1 The price for the Materials shall be as shown on ICL's quotation or estimate or, if no quotation or estimate has been provided, as set out in ICL's delivery ticket or invoice. The quantity of Materials delivered shall be as set out in ICL's delivery ticket or invoice.
- 4.2 Without prejudice to any other right or remedy ICL may have, an additional charge may be made at ICL's discretion if:
  - 4.2.1 the Customer incurs any additional charges set out in ICL's quotation or estimate;
  - 4.2.2 delivery of the Materials occurs outside of ICL's normal business hours, on a weekend or on a holiday;
  - 4.2.3 delivery of the Materials occurs at a location other than the nearest public roadway to the site;
  - 4.2.4 the Customer re-directs or fails to take a delivery of Materials, fails to give sufficient delivery instructions, fails to obtain necessary licenses, permits or authorizations or otherwise prevents or delays delivery;
  - 4.2.5 the Customer fails to accept the full order of the Materials or unused Materials are returned to ICL for disposal;
  - 4.2.6 the delivery is canceled due to unsuitable access to or egress from the point of delivery of the Materials;
  - 4.2.7 the Materials are supplied between November 1 to March 31 in which case a winter heat charge shall be applicable; or
  - 4.2.8 The free unloading time of 10 minutes per cubic metre for the Materials, commencing when ICL's truck arrives at or near the point of delivery for the Materials, is exceeded.

### 5. Payment

- 5.1 ICL will provide invoices from time to time to the Customer with respect to the delivery of the Materials and the Services. Full payment shall be made by the Customer to ICL no later than the 15th of the month following the date of any invoice provided by ICL, without set off or deduction.
- 5.2 The Customer will pay ICL all applicable taxes, including GST.
- 5.3 If the Customer fails to make payment of all or part of any invoice, the Customer agrees to pay interest on such delinquent invoice commencing the first day that the Customer's account is overdue until same is fully paid, at the rate of 2% per month (24% per annum), both before and after judgment.
- 5.4 If the Customer fails to make payment of all or part of any invoice then any amounts due on any order between ICL and the Customer shall become immediately payable by the Customer and ICL shall be entitled to do one or more of the following, without prejudice to any other right or remedy it may have:
  - 5.4.1 require payment in cleared funds in advance of delivery of any undelivered Materials;
  - 5.4.2 cancel or suspend any further delivery of Materials to the Customer under any order; or
  - 5.4.3 sell or otherwise dispose of Materials which are the subject of any order with the Customer.
- 5.5 The Customer agrees that it shall reimburse ICL for all expenses (including, without limitation, actual legal costs on a solicitor and own client basis) incurred by ICL in connection with any indebtedness of the Customer or the collection of such indebtedness.

## Master Terms & Conditions of Sale Cont'd

### 6. Delivery

- 6.1 Delivery times and dates are approximate and cannot be guaranteed. Agreed upon deliveries will be made to the best of ICL's ability. For clarity, the Customer waives any claims associated with any delays in delivery of the Materials, including claims based on ICL's breach of contract or negligence.
- 6.2 Time for delivery of the Materials shall not be of the essence.
- 6.3 ICL's regular delivery hours are between 7:00 a.m. to 4:00 p.m., Monday to Friday and excluding holidays.
- 6.4 It is the Customer's obligation to provide ICL with sufficient address information and details of the site and point of delivery for the Materials to enable ICL to satisfactorily deliver the Materials.
- 6.5 Delivery of the Materials to the site is limited to ICL's truck being located on the nearest public roadway to the site.
- 6.6 If ICL agrees to deliver the Materials to a location other than the nearest public roadway to the site the Customer takes on all risk and liability associated with such delivery, and ICL assumes no risk or liability for damage to vehicles, pipes, manholes, sidewalks, driveways, curbs, ramps or other property. Further, the Customer shall indemnify and hold ICL harmless with respect to all demands, liability or claims relating to such damage, including with respect to those by third parties.
- 6.7 It is the Customer's obligation to provide safe access and egress to the site and the point of delivery for the Materials. ICL may refuse delivery or continued delivery if, at its discretion, the site or the point of delivery of the Materials, or access to or egress from same, may be potentially unsafe.
- 6.8 Traffic control services shall be provided by the Customer whenever required for delivery of the Materials or site access and egress.

### 7. Title and Risk

- 7.1 The risk in Materials shall pass to the Customer on delivery to the point of delivery for the Materials.
- 7.2 Title in the Materials shall remain with ICL until ICL has received payment in cleared funds of all sums owed for the Materials. ICL shall be entitled to payment in full for the Materials notwithstanding that ownership in the Materials remains with ICL.

### 8. Inspection and Testing

- 8.1 The Customer shall inspect the Materials at the time and place of unloading.
- 8.2 The Customer shall within 48 hours of each delivery of Materials advise ICL in writing of any claim or issue with respect to the quality or quantity of the Materials delivered. Any failure by the Customer to give written notice within this 48 hour period shall be deemed a conclusive waiver by the Customer of all such claims against ICL, including, subject to the terms herein, any warranty claims, and the Customer shall be conclusively deemed to have accepted the Materials. ICL shall be given an adequate opportunity to investigate all claims.
- 8.3 Any inspection or testing performed on the Materials shall be in strict accordance with appropriate CSA standards in order to be considered valid. The Customer shall provide ICL with all inspection and testing reports or results with respect to the Materials within 48 hours of the reports or results being provided to the Customer.
- 8.4 The Customer shall pay all charges relating to inspection or testing of the Materials.

### 9. Warranty

- 9.1 The Materials shall be manufactured in conformance with the design and specifications set out in ICL's quotation or estimate or, if no quotation or estimate has been provided, in conformance with those set out in ICL's delivery ticket at the time of delivery (the "Warranty"). ICL shall not be responsible for the finished product other than complying with CSA testing requirements done on the fresh concrete at the point of delivery when placing, finishing and curing of the concrete is done by others.
- 9.2 Materials manufactured by ICL in accordance with its mix design and specification shall be in conformance with the most recent edition of CSA-23.1 unless otherwise stipulated.
- 9.3 Materials manufactured by ICL in accordance with a design and / or specification provided by the Customer shall be at the Customer's sole risk and ICL makes no warranty or guarantee, express or implied, with respect to such design and / or specification or the Materials to be manufactured therefrom. For clarity, the Customer is fully responsible and liable for any design and / or specification provided by it to ICL, including any defect in such design and / or specification.
- 9.4 The Warranty shall not apply unless the Customer notifies ICL in writing of the alleged defect or failure immediately upon its first becoming aware of it and in any event within 48 hours of each delivery of Materials; or, where the defect was not apparent on reasonable inspection, within 48 hours after the earlier of:
- 9.4.1 the discovery of the defect or failure by the Customer; or
- 9.4.2 the time when the defect or failure ought reasonably to have been discovered by the Customer.
- 9.5 If:
- 9.5.1 the Customer gives notice to ICL in accordance with this clause; and
- 9.5.2 ICL is given reasonable opportunity to inspect the Materials, ICL shall replace the defective Materials or, at its option, refund the price of the defective Materials, which shall in no event be greater than the invoiced value of the defective Materials as supplied and fully paid for by the Customer.
- 9.6 ICL shall not be liable for the Materials' failure to comply with the Warranty or for any defects or failures with respect to the Materials if:
- 9.6.1 the defect or failure arises from the Customer's improper use of the Materials;
- 9.6.2 the Customer makes further use of the Materials after giving notice;
- 9.6.3 the defect or failure arises as a result of ICL following any design or specification provided by the Customer;
- 9.6.4 the Materials are altered without the written consent of ICL or are altered inconsistently with ICL's written instructions or anything whatsoever is added to the Materials other than as directed in writing by ICL;
- 9.6.5 the defect or failure arises as a result of the breach of contract or the negligence of the Customer;
- 9.6.6 the defect or failure arises from improper preparatory work, placing, finishing, forming, curing or handling of the Materials;
- 9.6.7 the defect or failure arises from settlement or from frost, heat or other weather conditions; or
- 9.6.8 the defect or failure arises from incorrect specification or other data or information supplied by the Customer to ICL.
- 9.7 Except as provided in this clause 9, ICL shall have no liability to the Customer in respect of defective Materials or the Materials' failure to comply with the Warranty, and these conditions apply to any replacement Materials provided by ICL.
- 9.8 Other than the Warranty, ICL makes no warranties, either express or implied, as to any matter whatsoever, including, without limitation, the condition of the Materials, their merchantability or fitness for a particular purpose, or that the Materials are suited for the Customer's intended use. The Customer hereby:

## Master Terms & Conditions of Sale Cont'd

- 9.8.1 irrevocably waives any and all rights with respect to any implied terms or warranties under the provisions of the Sale of Goods Act, R.S.B.C. 1996, c. 410, as amended; and
- 9.8.2 acknowledges that it has not and will not rely on any statement, promise, representation, assurance or warranty made or given by or on behalf of ICL which is not set out in these terms and conditions, any applicable quotation or estimate provided by ICL, any delivery ticket provided by ICL, and, if buying on credit, the Customer's credit agreement with ICL.
- 10. Default, Termination and Suspension**
- 10.1 ICL may, at its discretion, terminate for convenience these terms and conditions and / or any order with the Customer on 15 days' written notice to the Customer.
- 10.2 If the Customer is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the Customer's insolvency, or if a receiver is appointed because of the Customer's insolvency, ICL may, without prejudice to any other right or remedy it may have, terminate these terms and conditions and / or any order with the Customer by giving the Customer or receiver or trustee in bankruptcy written notice to that effect.
- 10.3 ICL may give written notice of default to the Customer if the Customer fails to pay any amount due to ICL or otherwise breaches these terms and conditions. The Subcontractor's written notice of default shall advise that if the default is not corrected within 1 day following the receipt of the written notice, ICL may, without prejudice to any other right or remedy it may have, suspend these terms and conditions and / or any order with the Customer or terminate these terms and conditions and / or any order with the Customer. If such default is not corrected within the 1 day period, ICL may, at its discretion:
- 10.3.1 suspend these terms and conditions and / or any order with the Customer; or
- 10.3.2 terminate these terms and conditions and / or any order with the Customer.
- 10.4 On termination of these terms and conditions for any reason ICL shall issue final invoices on all extant orders and the Customer shall pay ICL all of ICL's unpaid invoices, with interest, within 5 days of receipt of ICL's final invoices without set off or deduction.
- 10.5 On termination of any extant order with the Customer, ICL shall issue a final invoice with respect to that order and the Customer shall pay ICL all of ICL's unpaid invoices for that order, with interest, within 5 days of receipt of ICL's final invoice for that order without set off or deduction.
- 11. Limitation of Liability and Indemnity**
- 11.1 Unless otherwise expressly set out herein, the sole, absolute and exclusive remedy of the Customer as a result of breach of contract, breach of warranty, tort (including negligence), indemnity, strict liability, breach of statute or any other legal theory, for any claims, demands, losses, costs, expenses, damages, actions, suits, or proceedings arising out of, connected with or resulting from the delivery of Materials and / or provision of the Services, shall be the replacement of the Materials or, at ICL's option, the refund of the price of the Materials and / or the Services, but shall in no event be greater than the invoiced value of the Materials and / or Services as supplied and fully paid for by the Customer.
- 11.2 In no event shall ICL be liable for, irrespective of whether alleged to be as a result of breach of contract, breach of warranty, tort (including negligence), indemnity, strict liability, breach of statute or any other legal theory, and the Customer hereby waives any right to:
- 11.2.1 any consequential, incidental or indirect claims, losses, damages or expenses of any kind, including loss of profits or revenue, loss of goodwill, loss of expected savings or expected profits, business interruption, lost business or opportunity, loss of use of equipment or plant, loss of production, loss of productivity, cost of capital or financing, loss of use of the Materials or any associated equipment, cost of substituted equipment, loss of anticipated profit or revenue, loss of time, delay or inconvenience, even if ICL has been advised of or is aware or reasonably ought to have been aware of the possibility of such loss; or
- 11.2.2 special, punitive or aggravated damages of any kind.
- 11.3 Without restricting the Customer's obligation to indemnify as described in these terms and conditions, the Customer shall indemnify and hold ICL harmless from and against all claims, demands, losses, costs, expenses, damages, actions, suits, or proceedings whether in respect to losses suffered by ICL or in respect to claims by third parties that arise out of, or are attributable in any respect to ICL's delivery of the Materials and / or the Services, provided such claims are caused by:
- 11.3.1 the acts or omissions of the Customer; or
- 11.3.2 a failure of the Customer to fulfil these terms or conditions.
- The Customer's obligation to indemnify shall be inclusive of interest and ICL's legal costs on a solicitor and own client basis.
- 12. Force Majeure**
- 12.1 Neither party shall be liable for any failure or delay in performing its obligations to the extent that such failure or delay is caused by a Force Majeure Event (as defined herein). A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions.
- 12.2 For clarity, a Force Majeure Event does not include strikes, lock-outs or other industrial disputes (whether involving a party's own workforce or a third party's) or the default of a party's suppliers, subcontractors or contractors.
- 13. Miscellaneous**
- 13.1 The Customer acknowledges and agrees that pursuant to these terms and conditions ICL is acting as a material supplier for the purposes of the Builders Lien Act, S.B.C. 1997, c. 45, as amended, and, as such, no statutory holdback may be retained from any payment due to ICL.
- 13.2 The Customer agrees to fully and promptly furnish ICL with signed acknowledgements of receipt of Materials and whatever other information is needed or requested by ICL for proper filling out and filing of a claim of lien.
- 13.3 The Customer agrees that these terms and conditions cannot be assigned without the express written consent of ICL which consent can be unreasonably and / or arbitrarily withheld, and further agrees that these terms and conditions shall bind and inure to the benefit of all of its respective heirs, executors, administrators, successors or permitted assigns.
- 13.4 Should any part or portion of these terms and conditions be rendered or declared invalid, such invalidation of such part or portion of these terms and conditions shall not invalidate the remaining parts and portions hereof, and those remaining parts and portions shall remain in full force and effect.

## Master Terms & Conditions of Sale Cont'd

- 13.5 A waiver by ICL of any right or remedy under these terms and conditions, at law or otherwise is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by ICL to exercise any right or remedy provided under these terms and conditions, at law or otherwise shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy by ICL. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy by ICL.
- 13.6 These terms and conditions and the transactions contemplated by same are governed by the law in force in British Columbia, including the federal laws of Canada applicable therein and the parties hereby attorn to the exclusive jurisdiction of the courts of British Columbia.
- 13.7 The parties acknowledge and agree by agreeing to these terms and conditions, that they have read all terms and conditions and that they are bound by all such terms and conditions, including but not limited to the warranty, indemnification and limitation of liability provisions, all of which the parties have read and understand and agree to. The parties further acknowledge that all of such terms and conditions, including but not limited to the warranty, indemnification and limitation of liability provisions were freely negotiated and bargained for.
14. **Gravity Wall Blocks**
- 14.1 Sections 1, 2, 4, 5, 6, 7, 8, 10, 11, 12 and 13 of these terms and conditions apply to the purchase and sale of gravity wall blocks, and for that purpose the term Materials is replaced by gravity wall blocks.
- 14.2 ICL makes no warranties, either express or implied, as to any matter whatsoever, including, without limitation, the condition of the gravity wall blocks, their merchantability or fitness for a particular purpose, or that the gravity wall blocks are suited for the Customer's intended use. The Customer hereby:
- 14.2.1 irrevocably waives any and all rights with respect to any implied terms or warranties under the provisions of the Sale of Goods Act, R.S.B.C. 1996, c. 410, as amended; and
- 14.2.2 acknowledges that it has not and will not rely on any statement, promise, representation, assurance or warranty made or given by or on behalf of ICL which is not set out in these terms and conditions, any applicable quotation or estimate provided by ICL, any delivery ticket provided by ICL, and, if buying on credit, the Customer's credit agreement with ICL.
- 14.3 The Customer is solely responsible for determining that the gravity wall blocks are fit for their particular purpose and are suitable for their intended use. ICL has no control over the Customer's use of gravity wall blocks and ICL shall not be responsible for any property damage, or personal injury, or block damage caused by handling or use of same by the Customer.
- 14.4 ICL's obligations are limited to delivery of the gravity wall blocks. For clarity, ICL's obligations do not include preparatory work, measuring or placing of the gravity wall blocks.

Signing below the Customer understands the Master Terms and Conditions of Sale:

\_\_\_\_\_  
Company Name (in full)

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness' Signature

\_\_\_\_\_  
Date