

WELLINGTON HAMRICK, INC.
DELIVERY AGREEMENT

Wellington Hamrick, Inc. (the "Company") hereby delivers the Materials purchased by the Purchaser, _____. Any inconsistent or additional terms contained in Purchaser's order are hereby rejected unless expressly accepted in writing by the Company. The terms and conditions stated herein shall represent the entire understanding of the parties, unless modified in a writing executed on behalf of each.

1. **Safe Entrance Into and Out of Jobsite.** Purchaser or Purchaser's agent shall provide safe access into and out of the jobsite from and to public portion of the highway. Purchaser's safe access shall include, but not be limited to signage and flaggers in accordance with OSHA standards.
2. **Competent Person:** Purchaser or Purchaser's agent must have a competent person on the jobsite to take delivery of all materials. Purchaser or Purchaser's agent must identify the competent person upon the Company's arrival to deliver the Materials. The competent person MUST direct truck into and around on the jobsite and authorize the addition of water or other materials.
3. **Wrecker Service:** Wrecker service to assist in unloading or to remove a delivery truck that has become stuck from the jobsite will be added to the charges for concrete and payable at the time of payment for materials. Wrecker charges start at \$ 100.00.
4. **Standing Charges:** Trucks will stand for delivery without additional charge for a time of 10 minutes per cubic yard of materials, up to a maximum of one hour per truckload, whichever comes first. Thereafter, Purchaser or Purchaser's agent agrees to pay \$ 100.00 per hour truck standing charge. Payment is due at the time of payment for materials.
5. **Truck Damages:** Purchaser and Purchaser's agent hereby relieve the Company for any responsibility for damages caused by truck or driver at any time during the delivery of materials. Waiver includes, but is not limited to damages to jobsite yard, landscaping, concrete or asphalt pavement, septic lines or tanks, culvert pipe or catch basins, swimming pools, playground equipment, fencing, tools and equipment. Purchaser and Purchaser's agent shall hold Company harmless and indemnify Company for any claim or expense relating to such damage, including attorney fees.
6. **Wash-up Area:** Purchaser agrees to provide and indicate an area for trucks to wash out chutes before proceeding down any public road. Purchaser or agent assumes all responsibility for the selection of wash up area. If no wash up area is provided, the Company may choose to dispatch another vehicle to allow the truck to wash up. Charges for a wash up vehicle are \$ 100.00 per trip. This charge is due and payable at the time of payment of the Materials.
7. **Force Majeure:** The Company shall not be responsible or liable for any delays or failures in manufacture or delivery due to any cause or condition beyond the control of the Company, including, without limiting the generality of the foregoing, strikes or other labor difficulties, fire, floods, inability to secure transportation facilities, acts of God, actions of the elements, shortage of materials or equipment, riots or other civil commotion, governmental interference or embargoes, or war.
8. **Warranties:** The Company warrants to purchaser that, for a period of one year from

delivery all the Materials delivered are merchantable and will pass without objection in the trade under the Invoice description. **THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, AS TO DESCRIPTION, QUALITY, MERCHANTABILITY, FITNESS, FOR ANY PARTICULAR PURPOSE OR ANY OTHER MATTER.** Additionally, if an alteration, modification, or amendment occurs to the Materials including, but not limited to, the addition of water exceeding the maximum designed water/cement ratio, or other materials to ready mix concrete, then the express warranty contained herein is void and ineffective, then purchaser assumes sole responsibility for the use, application, defects, deficiencies and suitability of the Materials and hereby waives all rights, claims, demands, and causes of action against the Company.

9. **Liability Limitation:** In no event shall the Company be liable for consequential, incidental, or special damages resulting from or in any manner related to the Materials, their design or use, or any inability to use the same, including, without limitation, damages arising out of or in any manner relating to the delivery of the Materials or any delay with respect to their delivery, it being understood that the **SOLE AND EXCLUSIVE REMEDY** with respect to defective products shall be the repair, correction or replacement thereof covered by the warranties listed in paragraph 8 above, if any. If the Materials prove so defective, however, as to preclude the remedying of warranted defects by repair or replacement, the Purchaser's **SOLE AND EXCLUSIVE REMEDY** shall be the refund of the purchase price of the defective Materials involved.

Customer or agent

Wellington Hamrick, Inc. Driver

Company

Date