

**General Terms and Conditions**  
**AIRCRETE EUROPE B.V.**



General Terms & Conditions of Aircrete Europe B.V. in Oldenzaal, filed at the Registry at the Chamber of Commerce in Enschede, THE NETHERLANDS, under number 08166036.

#### **Article 1: Applicability**

1. These General Terms and Conditions of Sale ("Conditions") govern the offering, sale and delivery of all goods and/or services (the goods and services herein both separately and jointly referred to as: the "Goods") from or on behalf of Aircrete Europe B.V. ("AIRCRETE") to customer ("Customer") and apply to all similar dealings between AIRCRETE and Customer.
2. These Conditions supersede any and all prior oral and written quotations, communications, agreements and understandings of the parties in respect of the sale and delivery of the Goods and shall apply in preference to and supersede any and all terms and conditions of any order placed by Customer and any other terms and conditions submitted by Customer. Failure of AIRCRETE to object to terms and conditions set by Customer shall in no event be construed as an acceptance of any terms and conditions of Customer. Neither AIRCRETE's commencement of performance nor AIRCRETE's delivery shall be deemed or constituted as acceptance of any of Customer's terms and conditions. If these Conditions differ from any terms and conditions of Customer, these Conditions and any subsequent communication or conduct by or on behalf of AIRCRETE, including, without limitation, confirmation of an order and delivery of Goods, constitutes a counter-offer and not acceptance of such terms and conditions submitted by Customer. Any communication or conduct of Customer, which confirms an agreement for the delivery of Goods by AIRCRETE, as well as acceptance by Customer of any delivery of Goods from AIRCRETE, shall constitute an unqualified acceptance by Customer of these Conditions.
3. These Conditions may only be varied or waived by a duly executed written agreement between AIRCRETE and Customer.
4. By contracting based on these Conditions, Customer agrees to the applicability thereof in respect of future dealings as described in paragraph 1.1, even if this is not expressly stated. AIRCRETE shall be entitled to update and/or amend these Conditions regularly and by and as of the moment of notifying Customer of such update or amendment or by sending Customer the updated or amended Conditions, these revised Conditions shall apply to all dealings between AIRCRETE and Customer.
5. AIRCRETE and Customer agree that valid, enforceable and binding obligations may result from electronic means of communication. Any electronic communication between AIRCRETE and Customer shall be considered to be a "writing" and/or "in writing".

#### **Article 2 : Quotation, Orders and Confirmations**

6. Quotations, made by AIRCRETE in whatever form, are not binding upon AIRCRETE and merely constitute an invitation to Customer to place an order. All quotations issued by AIRCRETE are revocable and subject to change without notice. Orders are not binding until accepted by AIRCRETE in writing ("AIRCRETE's Confirmation"). AIRCRETE is always entitled to refuse an order without indication of its reasons.
  7. Price quotations based on estimated or projected quantities are subject to increase in the event that actual quantities purchased during the specified period are less than the estimated or projected quantities.
  8. Except as provided for in paragraph 10.3, any samples supplied to Customer are supplied solely for information purposes and in no way imply any express or implied conditions or warranties of any kind, including as to quality, description, merchantability, suitability or fitness for any purpose and Customer shall be deemed to have satisfied itself as to such matters prior to ordering the Goods.
  9. Each delivery shall stand as a separate transaction and any failure to deliver shall have no consequences for other deliveries.
  10. The intellectual property rights of the offer shall belong to AIRCRETE. Information from the offer, including documents submitted in connection with the offer, may only be copied, shown to third parties, disclosed or used with preceding consent from AIRCRETE.
  11. The systems to be delivered are designed and manufactured based on Dutch standards, regulations and design codes. Unless stated otherwise in the offer, alterations to standards, regulations and design codes that pertain at the place where the system is to be put into operation
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shall be made by AIRCRETE at the expense and risk of the Customer, on condition that AIRCRETE is notified of these standards, regulations and design codes in a well-timed manner.

#### **Article 3: Contract**

- .1 If the contract is entered into in writing, AIRCRETE shall not be bound by it until and in so far as, AIRCRETE has given a written confirmation to the respective order. The contents of the contract shall be determined exclusively by this order confirmation.
- .2 Oral statements and agreements made by AIRCRETE's employees, officers, representatives and/or agents are not binding upon AIRCRETE unless and only to the extent that such oral statements are confirmed or made in writing by duly authorized representative(s) of AIRCRETE.
- .3 Modifications to the scope and/or quality of what was prior agreed and/or during the performance of the contract, whether or not set out in writing, shall be considered as contract variations.

#### **Article 4: Drawings & Descriptions**

- .1 The drawings and descriptions presented to the Customer before or after conclusion of the contract shall remain AIRCRETE property. They may be used only for the business operations, and may not be disclosed to third parties without preceding written approval from AIRCRETE. Unless explicitly agreed otherwise, AIRCRETE shall not be required to provide detailed drawings.
- .2 The drawings and descriptions supplied by the Customer to AIRCRETE before or after conclusion of the contract shall belong as Customer's property. They may be used simply for the performance of the contract. AIRCRETE shall not be accountable for information provided by the Customer, for instance – but not limited to – construction site and infrastructure information. The Customer shall be liable for any loss suffered by AIRCRETE as a result of inaccuracies in the information provided by the Customer.
- .3 The special knowledge (know-how) developed in the performance of the contract shall become the exclusive property of AIRCRETE, as well as the patent right, unless the contract explicitly stipulates otherwise.
- .4 The Customer, stating the explanations, within fifteen working days after AIRCRETE sends them, must approved/rejected drawings that have to be accepted by the Customer in writing during the performance of the contract.

#### **Article 5: Prices**

- .1 Prices and currencies of AIRCRETE's Goods are as set out in AIRCRETE's Confirmation. Unless agreed otherwise, AIRCRETE's prices include standard packaging but do not include Value Added Tax or any other similar applicable taxes, duties, levies or charges in any jurisdiction levied in relation to the Goods or the delivery thereof ("Taxes"). The amount of any Taxes levied in connection with the sale of the Goods to Customer shall be for Customer's account and shall be added to each invoice or separately invoiced by AIRCRETE to Customer. If AIRCRETE grants a discount, this discount only relates to the delivery specifically mentioned in AIRCRETE's Confirmation.
  - .2 Unless the prices have been indicated as firm by AIRCRETE in AIRCRETE's Confirmation, AIRCRETE is entitled to increase the price of the Goods still to be delivered, if the cost price determining factors have been subject of an increase. These factors include but are not limited to raw and auxiliary materials, energy, products obtained by AIRCRETE from third parties, wages, salaries, social security contributions, governmental charges, freight costs and insurance premiums. AIRCRETE shall notify Customer of such increase.
  - .3 If no specific price has been agreed for the work to be performed and/or goods to be delivered by AIRCRETE, AIRCRETE rates shall apply, as prevailing at the time of the performance of the work, or the price charged by AIRCRETE at the time the goods are delivered.
  - .4 For contracts including a price in currency other than Euros, equivalent in Euros according to the exchange rate on the date of the contract was concluded shall count as the agreed price.
  - .5 Unless otherwise agreed in writing, additional work shall be charged by AIRCRETE at the customary rate prevailing at the time AIRCRETE performs the additional work, or at the prices customarily charged by AIRCRETE.
  - .6 As far as not explicitly agreed otherwise, AIRCRETE rates shall be revised annually. The revised rates shall apply from the date of revision to all contracts between the Customer and AIRCRETE.
  - .7 In case AIRCRETE has to perform work at a location designated by the Customer, the following costs shall be payable by the Customer, unless otherwise agreed:
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- .7.1 Travel and accommodation expenses in the broadest sense of the word, including costs for visas and insurance, as well as an appropriate hotel facility as close as possible to transport to the place of the work.
- .7.2 Costs of materials to be used and processed, as far as they are not parts of machines and/or systems, which the Customer has already ordered at its expense and risk.
- .7.3 Costs of relevant telephone calls made at the place of the work, as well as other telecommunication costs, as far as the Customer free of charge does not provide these facilities.
- .8 If work based on subsequent calculation is performed at a location designated by the Customer, the Customer must sign the time sheets filled in periodically by the AIRCRETE employees. These time sheets are the basis of the invoice, unless otherwise agreed. The time sheets presented by AIRCRETE employees for signing shall be deemed as accepted and signed if the Customer does not respond to the time sheets presented for signing within ten days, or if the Customer fails to sign them without stating the reasons in writing.
- .9 In case of a delay in the work due to circumstances not attributable to AIRCRETE, the costs resulting from this, such as waiting time and additional travel and accommodation expenses, shall be payable by the Customer.

#### **Article 6: Payment and Customer Credit**

- .1 Unless explicitly stated otherwise in AIRCRETE's Confirmation, payment shall be made based on net cash, to be received by AIRCRETE within thirty (30) days following the date of AIRCRETE's invoice for the Goods by means of transfer into the bank account mentioned on the invoice. All payments shall be made without any deduction on account of any Taxes and free of set-off or counterclaim.
- .2 With regard to payment of the price for Goods, time is of the essence. AIRCRETE may, without prejudice to any other rights of AIRCRETE, charge interest on any overdue payment at the higher rate of either twelve percent (12%) per annum or one and a half times the prevailing rate under applicable law per annum, but not to exceed the maximum interest rate permitted under applicable law, from the due date computed on a daily basis until all amounts outstanding are paid in full. All costs and expenses incurred by AIRCRETE with respect to collection of overdue payments (including, without limitation, reasonable attorney's fees, expert fees, court costs and other expenses of litigation) shall be for Customer's account.
- .3 Every payment by Customer shall in the first place serve to pay the judicial and extra-judicial costs and the interest owed by it and afterwards shall be deducted from the eldest outstanding claim regardless of contrary advice from Customer.
- .4 Any complaint with respect to the invoice must be notified to AIRCRETE within eight (8) days after the date of invoice. Thereafter Customer shall be deemed to have approved the invoice.
- .5 If the Customer delays any payment, even under another contract, all contract sums and/or purchase prices to be paid by it to AIRCRETE shall be immediately due and payable in full, regardless of the status of the work or works. AIRCRETE also reserves the right in such a case to suspend its obligations or work and/or to demand security for payment, such as in the form of bank guarantees. All losses due to this deferral shall be at the Customer's expense.

#### **Article 7: Facilities to be Provided by Customer**

- .1 If the assigned work is performed by AIRCRETE at a location designated by the Customer, the Customer must make available the following facilities in good time, in consultation with AIRCRETE and without any costs involved in this for AIRCRETE:
    - .1.1 The buildings in a prepared condition for assembly, the foundations in a state ready for installation, water pipelines, electricity cables and compressed air pipes at the place of the work and the machines and/or installations to be assembled present in good condition.
    - .1.2 All electrician's and plumber's work, hoisting and demolition work, groundwork, brickwork, carpentry, painting and suchlike, in so far as not an integral part of the machines delivered by AIRCRETE, and all other work not mentioned explicitly in the order confirmation from AIRCRETE.
    - .1.3 The auxiliary means, which AIRCRETE considers necessary for the performance of the work, including tests, raw materials and fuels in Delivery period constant quality and quantity, such as oils and fats, polishing materials, gas and oxygen, water, electricity and compressed air,
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- heating and lighting, insulation and scaffolding ready for use, the roads needed for transport, etc.
- .1.4 The legally necessary safety measures, in so far as significant for the work, and informing the employees of AIRCRETE of the pertinent regulations. The Customer must immediately report to AIRCRETE of any violation of these regulations.
  - .1.5 The work shall not be carried out in unhealthy or dangerous surroundings;
  - .1.6 AIRCRETE employees shall be able to obtain suitable and convenient board and lodging in the neighborhood of the site and shall have access to adequate medical services;
  - .1.7 Such equipment, consumable stores, water and power as are specified in the Contract shall be available to AIRCRETE on the site in good time and, unless otherwise agreed, free of charge to AIRCRETE;
  - .1.8 the Customer shall provide AIRCRETE (free of charge, unless otherwise agreed) with closed or guarded premises on or near the site as a protection against theft and deterioration of the Plant to be erected, of the tools and equipment required therefore, and of the clothing of AIRCRETE employees;
  - .1.9 AIRCRETE shall not be required to undertake any works of construction or demolition or to take any other unusual measures to enable the Plant to be brought from the point where it has been unloaded to the point on the site where it is to be erected, unless AIRCRETE has agreed to deliver the Plant to the last mentioned point.
  - .1.10 AIRCRETE shall not be required to undertake any works of construction or demolition or to take any other unusual measures to enable the Plant to be brought from the point where it has been unloaded to the point on the site where it is to be erected, unless AIRCRETE has agreed to deliver the Plant to the last mentioned point.
  - .1.11 A work permit and/or other permits, such as any legally required permits for performing overtime work, if outside the normal working hours –applicable at the Customer’s company – to be worked by AIRCRETE employees, as well as for the presence of a representative of the Customer to be present at such time.
  - .1.12 Outside the Netherlands, the best nursing staff available in the country in the event of the sickness of or an accident happens to employees of AIRCRETE, as far as these expenses are not covered in another way.
- .2 If the Customer makes (auxiliary) workers available for work to be performed by AIRCRETE, this must be agreed. In cases that arise, AIRCRETE shall have the right to test the skills of these (auxiliary) workers and possibly reject them. In that case, the Customer must designate skilled replacements. Staff deployed by the Customer for operational work and/or testing must have the relevant capability and skills. If and to the extent the training of the Customer’s staff is included in the agreed work activities of AIRCRETE, the Customer must deploy only the staff trained by AIRCRETE.
- .3 Losses and costs in relation to failure of the Customer to promptly fulfill or at all with the terms of clauses 7.1 and 7.2, as well as delay resulting from this, shall be at the Customer’s expense.

**Article 8: Delivery Time, Term and Retention of title**

- .4 Unless expressly stated otherwise in AIRCRETE’s Confirmation, all deliveries of goods shall be Ex Works AIRCRETE’s production facility, as the term Ex Works shall have the meaning assigned to same in the latest version of INCOTERMS published by the International Chamber of Commerce at Paris, France, at the time of AIRCRETE’s Confirmation.
  - .5 Delivery dates are not guaranteed but rather are estimates based upon current information. AIRCRETE will endeavor in good faith to meet all estimated delivery dates. Under no circumstances shall AIRCRETE be liable for any loss, damage, or consequential damages due to delay in delivery or failure to meet estimated delivery dates, unless there is a specific written agreement between Customer and AIRCRETE to the contrary.
  - .6 The delivery period starts on the day on which AIRCRETE sent the order confirmation and the following conditions have been met as well:
    - .6.1 all formalities required for performance of the contract have been fulfilled,
    - .6.2 agreement has been reached on all details of the contract,
    - .6.3 the Customer has provided AIRCRETE with all information and necessary documents,
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- .6.4 AIRCRETE has received the down payment and, if agreed, the security for payment of the remaining amounts.

If a predetermined delivery date has been agreed, and the Customer does not meet the above-mentioned conditions on time, the delivery date shall shift accordingly. If the down payment is not received within three months of the date of AIRCRETE order confirmation, AIRCRETE shall have the right to dissolve the contract, without prejudice to AIRCRETE right to damages. If the Customer fails to meet its payment obligations and/or other obligations in good time, the delivery period shall be suspended accordingly.

- .7 Unless expressly stated otherwise in AIRCRETE's Confirmation, any times or dates for delivery by AIRCRETE are estimates and shall not be of the essence. AIRCRETE is entitled to deliver the Goods as stated in AIRCRETE's Confirmation in parts and to invoice separately. In no event shall AIRCRETE be liable for any kind of indirect or consequential damages caused by any delay in delivery. Delay in delivery of any Goods shall not relieve Customer of its obligation to accept delivery thereof. Deviations in quantity of Goods delivered from that stated in AIRCRETE's Confirmation shall not give Customer the right not to accept the Goods. Customer shall be obliged to pay the rate specified in AIRCRETE's Confirmation for the quantity of Goods delivered.
- .8 If a test/inspection has been agreed, the goods and/or work shall be deemed as delivered with respect to the delivery period when AIRCRETE notifies the Customer in writing that the relevant test/inspection has been completed. If no inspection/test has been agreed, the delivery date of goods shall be the date on which goods are delivered in accordance with clause 8.3, and the delivery date for the performance of work and/or services shall be the date on which AIRCRETE notifies the Customer that the work and/or services are ready.
- .9 If the Customer suffers a loss due delay in delivery attributable to AIRCRETE of an agreed delivery period, the Customer shall have the right, as full and only compensation of the loss suffered by the Customer, commencing one month after the delivery period was exceeded, to payment of 0.5% of the agreed price of the delayed part of the delivery for each full week of delay after the end of the aforementioned month, subject to a maximum of 5% of that price, to the exclusion of any other rights due to delay of the delivery period. This right to payment shall Lapse if the Customer fails to notify AIRCRETE in writing within fifteen weeks of the end of the original delivery period that it wishes to exercise this right.
- .10 If delivery is made before payment of the full amount due under the contract, AIRCRETE shall keep hold of title to the goods delivered. If, in departure from the provisions of Clause 27, Netherlands law should not apply, or should only apply partially to the contract, and the then applicable law does not permit such retention of title, AIRCRETE shall be entitled to all other rights, which, as far as possible, grant AIRCRETE comparable rights to the goods. The Customer must always cooperate fully, including by granting unrestricted access to the systems delivered, in giving AIRCRETE the opportunity to establish and exercise these rights. The Customer must, at any rate until payment in full of the amounts due has been made to AIRCRETE, keep the delivered goods in a good state of repair and assure them adequately for the benefit of AIRCRETE. The Customer shall not be entitled to assurance the goods or use them as security for third parties until full payment has been made to AIRCRETE.

#### **Article 9: Cancellation**

- .1 Customer's wrongful non-acceptance or rejection of Goods or cancellation or repudiation of AIRCRETE's Confirmation shall entitle AIRCRETE to recover, in addition to any other damages caused by such action:
- .1.1 In the case of Goods which reasonably cannot be resold by AIRCRETE to a third party, the price of such Goods; or
- .1.2 In the case of Goods, which can be resold by AIRCRETE or where an action for the price is not otherwise permitted by law, damages equal to fifty percent (50%) of the price for the Goods as liquidated damages.

#### **Article 10: Inspection, Testing, Examination and Conformity to specifications**

- .2 Customer's wrongful non-acceptance or rejection of Goods or cancellation or repudiation of AIRCRETE's Confirmation shall entitle AIRCRETE to recover, in addition to any other damages caused by such action:
- .3 If as a result of such inspection and checking the Customer shall be of the opinion that any materials or parts are defective or not in accordance with the Contract, he shall state in writing his objections and the reason therefore.
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- .4 If a test has been agreed explicitly and in writing, the Customer shall be entitled to be present during the testing at its own expense and risk. AIRCRETE must inform the Customer in good time as to when the test will be carried out, in order to give the Customer the opportunity to be present during the testing, or to be represented by members of staff or third parties who are specially authorized and qualified for such purpose. The agreed properties and parameters of the goods delivered shall be tested in accordance with the instructions from AIRCRETE. If the Customer or its authorized representative is not present during the testing, AIRCRETE shall inform it of the test report. In that case, the Customer will not be able to challenge its correctness. For the purposes of the test at the location designated by the Customer, the Customer must provide all necessary auxiliary and raw materials, fuels and materials of constant quality and quantity, at no cost to AIRCRETE.
- .5 If the test report shows that the agreed properties and parameters have not been met, AIRCRETE shall have the opportunity within a reasonable period to repair/modify the goods and have a following test carried out in the manner and under the conditions set out in clause 10.3.
- .6 If the test report designated by AIRCRETE as definitive shows that the agreed properties and parameters have not been met, AIRCRETE shall be liable to the Customer for fixed damages as full and sole compensation of the loss suffered/yet to be suffered by the Customer, as stipulated in the contract and up to a maximum of 5% of the agreed price, to the exclusion of any other right based on failure to meet the agreed properties and parameters.
- .7 On delivery and during the handling, use, processing, transportation, storage and sale of the Goods (the "Use"), Customer shall examine the Goods and satisfy itself that the Goods delivered meet all contractual requirements.
- .8 Complaints about the Goods shall be made in writing and must reach AIRCRETE not later than seven (7) days from the date of delivery in respect of any defect, default or shortage which would be apparent from a reasonable inspection on delivery, and seven (7) days from the date on which any other claim was or ought to have been apparent, but in no event later than six (6) months from the date of delivery of the Goods. Use or processing of the Goods shall be deemed an unconditional acceptance of the Goods and a waiver of all claims in respect of the Goods.
- .9 A determination of whether or not delivered Goods conform to the agreed specifications for the Goods as stated in AIRCRETE's Confirmation or, in the absence of agreed specifications, to the most recent specifications held by AIRCRETE at the time of delivery of the Goods (the "Specifications"), shall be done solely by analyzing the samples or records retained by AIRCRETE and taken from the batches or production runs in which the Goods were produced in accordance with the methods of analysis used by AIRCRETE. Goods that AIRCRETE consents or directs in writing to be returned shall be returned to AIRCRETE at the risk of Customer, to the destination directed by AIRCRETE.
- .10 Defects in parts of the Goods stated in AIRCRETE's Confirmation do not entitle Customer to reject the entire delivery of the Goods. Complaints, if any, do not affect Customer's obligation to pay as defined in paragraph 4. Upon receipt of a notice of defect, AIRCRETE is entitled to suspend all further deliveries until the complaints are established to be unfounded and/or refuted or until the defect has been totally cured.

#### **Article 11: Takeover, Transfer of Risk and Property**

- .1 As soon as the goods have been delivered in the agreed manner and, in as far as agreed, assembled and/or put into operation by AIRCRETE, or the work and/or services have been reported as ready by AIRCRETE in accordance with clause 8.5, the Customer shall be deemed to have taken over the goods, work and/or services. From the takeover date, AIRCRETE liability on any basis shall cease to exist, except for the warranty obligations contained in Article 12. The goods, work and/or services shall also be deemed as taken over if the Customer fails to comply with its obligations within 3 months of a request from AIRCRETE to do so, through which delivery or assembly and/or operational process and/or the work and/or services cannot be performed by AIRCRETE in accordance with the contract, and in case the goods and/or the machine, system or components on which work has been performed have been put to use by the Customer for commercial production. In case of shortcomings, which have hardly any or no effect on their envisaged use, the goods and work shall be deemed as accepted regardless of these shortcomings. AIRCRETE shall remedy these shortcomings under warranty pursuant to Article 12 as soon as possible. Despite the fact that the goods have been taken over, AIRCRETE reserves the rights stipulated in clause 8.7 of these terms and conditions.
  - .2 The Customer must enable AIRCRETE to make the improvements and changes, which AIRCRETE considers necessary within three months of the takeover.
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- .3 The risk of the Goods shall pass to Customer on delivery. Goods for which delivery is suspended pending payment by Customer, as well as Goods of which delivery is wrongfully rejected or not accepted by Customer, shall be held and stored by AIRCRETE at the risk and expense of Customer.
- .4 The ownership of the Goods shall not pass to Customer and full legal and beneficial ownership of the Goods shall remain with AIRCRETE unless and until AIRCRETE has received payment in full for the Goods, including all secondary costs such as interest, charges, expenses etcetera.
- .5 In the event of termination based on paragraph 19 of these Conditions, AIRCRETE shall, without prejudice to any other rights of AIRCRETE, be entitled to require immediate re-delivery of the Goods for which it may invoke retention of title.
- .6 As long as title to the Goods remains with AIRCRETE pursuant to this paragraph 8, Customer is entitled to use the Goods solely to the extent required in its ordinary course of business, and, to the extent possible, shall:
  - .6.1 Keep the Goods separate and in a clearly identifiable manner;
  - .6.2 Notify AIRCRETE immediately of any claims by third parties which may affect the Goods;
  - .6.3 Adequately insure the Goods.

#### **Article 12: Limited Warranty**

- .1 AIRCRETE warrant that the Goods shall conform to the specifications set forth in the Terms and shall be free from defects in material and workmanship. Except as may otherwise be specified in this Contract, this warranty shall remain in force for a period of 12 months after initial operation of the Equipment or 18 months after shipment from the point of manufacture, whichever period is shorter. The foregoing will be our sole obligation under this warranty with respect to the equipment, other property and services included in this Contract. With respect to equipment, materials, parts and accessories manufactured by others, AIRCRETE sole obligation will be to use reasonable efforts to obtain for the Customer the full benefit of the manufacturer's warranties. AIRCRETE will have no liability, whether in contract, tort, negligence, or otherwise, to Customer with respect to products not manufactured by AIRCRETE. This warranty does not apply to Equipment that has been subject to misuse, neglect, accident, decomposition caused by chemical action, erosion, corrosion or improper installation or maintenance, or to Equipment that has been altered or repaired by anyone other than our authorized representative. The Customer is solely responsible for selection of the materials of construction. This warranty also does not apply to any claim of which Customer does not notify AIRCRETE within a reasonable time, which shall not exceed 15 days after learning of a basis to believe that the Equipment does not meet the warranty. AIRCRETE shall make no other warranty or representation, express, implied, by operation of law, or otherwise. IN PARTICULAR, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE IS EXPRESSLY EXCLUDED.
  - .2 However, AIRCRETE's obligation to repair, replace, or credit shall be contingent upon receipt by AIRCRETE of timely notice of any alleged non-conformance of Goods and, if applicable, the return of the Goods, in accordance with paragraph 10 of these Conditions. The foregoing warranty is exclusive and in lieu of all other warranties, representations, conditions or other terms, express, implied, statutory, contractually or otherwise, including, without limitation, any warranty of merchantability, suitability or fitness for any purpose, or absence of infringement of any claim in any intellectual property right covering the Goods.
  - .3 The warranty terms shall apply only if:
    - .3.1 The payment obligations have been fulfilled;
    - .3.2 The operating and maintenance instructions have been followed;
    - .3.3 The Customer or a third party has not assembled and/or repaired and/or put into operation the goods delivered without written permission from AIRCRETE;
    - .3.4 Warranty claims have been reported to AIRCRETE in writing immediately after the occurrence of a defect and not later than two weeks after expiry of the warranty period.
  - .4 Excluded from warranty are defects:
    - .4.1 Resulting from to normal wear and tear;
    - .4.2 Due to injudicious use, an intentional act or omission, fault or negligence on the part of the Customer and/or third parties.
    - .4.3 In or because of materials, working methods, construction and suchlike, the use of which was prescribed by or agreed with the Customer.
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- .4.4 In materials or items given by the Customer to AIRCRETE for processing;
- .4.5 Due to the application of any government regulation.

**Article 13: Limitation of Liability**

- .5 Under no circumstances shall AIRCRETE be liable to Customer or any other person for any kind of special, incidental, indirect, consequential or punitive damage or loss, cost or expense, including without limitation, damage based upon lost goodwill, lost sales or profits, work stoppage, production failure, impairment of other goods or otherwise, and whether arising out of or in connection with breach of warranty, breach of contract, misrepresentation, negligence or otherwise. Notwithstanding anything herein contained to the contrary, the liability of AIRCRETE for all claims for direct damages arising out of or in connection with the Goods and the Use thereof shall under no circumstances exceed the sum of Customer's payments for the Goods that are the subject of the claim.
- .6 AIRCRETE total liability, both contractual and based on the law, shall be limited to 50% of the contract sum of the relevant contract. This limitation of liability shall not apply in the event of losses caused intentionally by or through gross negligence on the part of AIRCRETE.
- .7 AIRCRETE shall not be liable for damage to existing property of the Customer, unless this damage is caused by gross negligence and/or an intentional act or omission on the part of AIRCRETE.
- .8 Notwithstanding the provisions relating to liability elsewhere in these terms and conditions, AIRCRETE shall not accept any liability for indirect and/or consequential loss, such as, but not limited to, trading loss, loss of goodwill, loss of profit, reduction in the value of or damage to assets, and loss with respect to third parties as a result of failure to deliver correctly, promptly or at all and/or failure of the work/services to function properly, promptly or at all.
- .9 AIRCRETE shall not accept liability for losses due to errors or defects in any sense, if AIRCRETE has not stipulated consideration for its work, or any damage or personal injury is caused by acts or omissions by the Customer, its personnel or third parties engaged by the Customer in conflict with AIRCRETE operating, maintenance and other regulations and/or in the event that goods have been altered in any way without explicit permission from AIRCRETE.
- .10 If the contract is dissolved, partially or not, as a result of an attributable failure on the part of AIRCRETE, and the Customer has suffered demonstrable losses from this, AIRCRETE liability shall be limited to the costs incurred by the Customer for the replacement performance, after verification of these costs and only if and to the extent these costs exceed the agreed price for the non-performed or dissolved part of the contract.
- .11 The Customer indemnifies AIRCRETE for claims, including those of third parties, which exceed the liability limit contained in this article.

**Article 14: Force Majeure**

- .1 Neither party shall be liable in any way for any damage, loss, cost or expense arising out of or in connection with any delay, restriction, interference or failure in performing any obligation towards the other party caused by any circumstance beyond its reasonable control, including, without limitation, acts of God, laws, statutes, ordinances, regulations, legislative measures, acts of governments or other administrative measures, orders or decrees of any court, earthquake, flood, fire, explosion, war, terrorism, riot, sabotage, accident, epidemic, strike, lockout, slowdown, labor disturbances, difficulty in obtaining necessary labor or raw materials, lack of or failure of transportation, breakdown of plant or essential machinery, emergency repair or maintenance, breakdown or shortage of utilities, delay in delivery or defects in goods supplied by suppliers or subcontractors ("Force Majeure").
- .2 Upon the occurrence of any event of Force Majeure, the party suffering thereby shall promptly inform the other party by written notice thereof specifying the cause of the event and how it will affect its performance of its obligations under AIRCRETE's Confirmation. In the event of any delay, the obligation to deliver shall be suspended for a period equal to the time loss due to Force Majeure. However, should a Force Majeure event continue or be expected to continue for a period extending to more than two (2) months after the agreed delivery date, either Party is entitled to cancel the affected part of AIRCRETE's Confirmation without any liability to the other Party.

**Article 15: Modifications and Information, Indemnity**

- .1 Unless the Specifications have been agreed to be firm for a certain period or quantity of Goods, AIRCRETE reserves the right to change or modify the Specifications, construction and/or manufacture of Goods and to substitute materials used in the production and/or manufacture of Goods from time to time upon written notice. Customer acknowledges that data in AIRCRETE's
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catalogues, specification sheets and other descriptive publications distributed or published on its websites by AIRCRETE, may accordingly be varied from time to time without notice. Any statement, representation, recommendation, advice, sample or other information of AIRCRETE in relation to the Specifications, the Goods and the Use thereof shall be furnished for the accommodation of Customer only.

- .2 Customer must utilize and solely rely on its own expertise, know-how and judgment in relation to the Goods and Customer's Use thereof and in Customer's application of any information obtained from the part of AIRCRETE for the purposes intended by Customer. Consultation provided by AIRCRETE shall not give rise to any additional obligations. Details and information provided with regard to the suitability, Use of the Goods shall not be binding, and AIRCRETE does not assume any liability based on such consultations. Customer shall indemnify and hold AIRCRETE harmless from and against any and all damage, losses, costs, expenses, claims, demands and liabilities arising out of or in connection with the Goods, Customer's Use thereof and/or Customer's use or application of any information disclosed or provided by or on behalf of AIRCRETE.

#### **Article 16: Compliance with Laws and Standards**

- 1 AIRCRETE makes no promise or representation that the Goods shall conform to any law, statute ordinance, regulation, code or standard ("Laws and Standards"), unless expressly stated in AIRCRETE's Confirmation or in the Specifications. Customer acknowledges that the Use of the Goods may be subject to requirements or limitations under Laws and Standards. Customer shall be exclusively responsible for:
  1. Ensuring compliance with all laws and standards associated with its intended use of the goods, and
  2. Obtaining all necessary approvals, permits or clearances for such use

#### **Article 17: Independent Contractors**

- 2 AIRCRETE and Customer are independent contractors, and the relationship created hereby shall not be deemed that of principal or agent. No sale to or obligation of either party towards a third party shall in any way bind the other party.

#### **Article 18: Non-assignment**

- 3 Neither party may assign any of the rights or obligations under AIRCRETE's Confirmation without the prior written consent of the other party, provided however, that AIRCRETE may assign such rights and obligations, wholly or partly, to any of its parent companies, subsidiaries or affiliates or to a third party acquiring all or a substantial part of AIRCRETE's assets or business relating to the Goods.

#### **Article 19: Suspension and Termination**

- 4 If (a) Customer is in default of performance of its obligations towards AIRCRETE, or (b) if AIRCRETE has reasonable doubts with respect to Customer's performance of its obligations to AIRCRETE and Customer fails to provide to AIRCRETE adequate assurance (such as by means of ongoing credit approval) of Customer's performance before the date of scheduled delivery and in any case within thirty (30) days of AIRCRETE's demand for such assurance; or if Customer becomes insolvent or unable to pay its debts as they mature, or goes into liquidation (otherwise than for the purposes of a reconstruction or amalgamation) or any bankruptcy proceeding shall be instituted by or against Customer or if a trustee or receiver or administrator is appointed for all or a substantial part of the assets of Customer or if Customer enters into a deed of arrangement or makes any assignment for the benefit of its creditors, then, without prejudice to any other rights of AIRCRETE, AIRCRETE may by notice in writing forthwith
    - 4.1 Demand re-delivery and take repossession of any delivered Goods which have not been paid for, for which purpose Customer hereby grants an irrevocable right and license to AIRCRETE to enter upon all or any of the premises where the Goods are or may be located and all costs relating to the recovery of the Goods shall be for the account of Customer; and/or
    - 4.2 Suspend its performance or terminate AIRCRETE's Confirmation for outstanding delivery of Goods unless Customer makes such payment for Goods on a cash in advance basis or provides adequate assurance of such payment for Goods to AIRCRETE; without any intervention of courts being required and without liability for AIRCRETE of whatsoever kind arising out of or in connection with such suspension or termination.
  - 5 In any such event of 19.1.1 and and/or 19.1.2, all outstanding claims of AIRCRETE shall become due and payable instantly in proportion to the quantity of Goods delivered to Customer and not re-possessed by AIRCRETE.
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**Article 20: Waiver**

- .1 Failure by AIRCRETE to enforce at any time any provision of these Conditions shall not be construed as a waiver of AIRCRETE's right to act or to enforce any such term or condition and AIRCRETE's rights shall not be affected by any delay, failure or omission to enforce any such provision. No waiver by AIRCRETE of any breach of Customer's obligations shall constitute a waiver of any other prior or subsequent breach.

**Article 21: Severability and Conversion**

- .1 In the event that any provision of these Conditions shall be held to be invalid or unenforceable, the same shall not affect in any respect whatsoever, the validity or enforceability of the remaining provisions between the parties and shall be severed therefore. The pertaining provisions held to be invalid or unenforceable shall be reformed to provisions satisfying the legal and economic intent of the original provisions to the maximum extent permitted by law.

**Article 22: Limitation of Action**

- .1 No action by Customer shall be brought unless Customer first provides Customer commence written notice to AIRCRETE of any claim alleged to exist against AIRCRETE within thirty (30) days after the event complained of first becomes known to Customer and an action within twelve (12) months after such notice.

**Article 23: Survival of rights**

- .1 The parties' rights and obligations shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, directors, officers, employees, agents and legal representatives. Termination of one or more of the rights and obligations of the parties, for whatsoever reason, shall not affect the provisions of these Conditions, which are intended to continue to have effect after such termination.

**Article 24: Headings**

- 6 The headings contained in these Conditions are included for mere convenience of reference and shall not affect their construction or interpretation.

**Article 25: Intellectual property right**

- .2 AIRCRETE has not verified the possible existence of third party intellectual property rights which might be infringed as a consequence of the sale and/delivery of the Goods and cannot be held liable for any loss or damages in that respect.
- .3 The sale of Goods shall not, by implication or otherwise, convey any license under any intellectual property right relating to the compositions and/or applications of the Goods, and Customer expressly assumes all risks of any intellectual property infringement by reason of its importation, Use of the Goods, whether singly or in combination with other materials or in any processing operation.

**Article 26: Parts and Software**

- .4 These terms and conditions also apply to the delivery of parts, in so far as not explicitly departed from below.
  - .5 AIRCRETE shall be entitled, instead of delivering the parts ordered by the Customer, to supply replacement parts, on condition, primarily, that these parts are at least technically equivalent to the originally ordered parts.
  - .6 Assembly of the parts is not included in the price.
  - .7 The warranty on parts is valid for three months from the shipment date ex works.
  - .8 The Customer must not make modifications to the software delivered by AIRCRETE or any part thereof, nor reproduce it or multiply it, without prior written permission from AIRCRETE, except that the Customer may make a copy for backup purposes only.
  - .9 The delivery of software electronically shall always be followed by the delivery of a hard copy. AIRCRETE only gives a warranty on the software provided in hard copy form, and shall not be liable for modifications made by the Customer, its staff or third parties to the software delivered electronically.
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**Article 27: Governing Law and Jurisdiction**

- .10 The parties' rights and obligations arising out of or in connection with AIRCRETE's Confirmation and/or these Conditions shall be governed, construed, interpreted and enforced according to the laws of The Netherlands, excluding principles of conflict of laws. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.
- .11 The parties agree that any suits, actions or proceedings that may be instituted by any party shall be initiated exclusively before the competent courts of The Netherlands without prejudice to AIRCRETE's right to submit the relevant case to the court which would have jurisdiction if this provision has not been incorporated in the Conditions, and the parties do hereby consent to the jurisdiction of those courts and waive any objection which they may have, now or hereafter, to venue of those suits, actions or proceedings.

Only the English version of these Conditions shall be authentic and shall prevail, in case of inconsistency, over any translation of these Conditions in another language.

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