

NATIONAL RECOVERY ADMINISTRATION

CODE OF FAIR COMPETITION

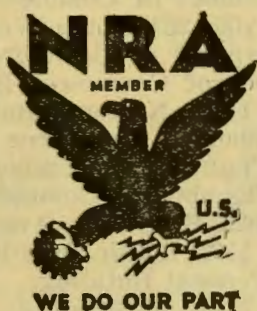
FOR THE

CEMENT INDUSTRY

AS APPROVED ON NOVEMBER 27, 1933

BY

PRESIDENT ROOSEVELT



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Approved Code No. 128

CODE OF FAIR COMPETITION

FOR THE

CEMENT INDUSTRY

As Approved on November 27, 1933

BY

PRESIDENT ROOSEVELT

Executive Order

An application having been duly made, pursuant to and in full compliance with the provisions of title I of the National Industrial Recovery Act, approved June 16, 1933, for my approval of a Code of Fair Competition for the Cement Industry, and hearings having been held thereon and the Administrator having rendered his report containing an analysis of the said code of fair competition together with his recommendations and findings with respect thereto, and the Administrator having found that the said code of fair competition complies in all respects with the pertinent provisions of title I of said act and that the requirements of clauses (1) and (2) of subsection (a) of section 3 of the said act have been met:

NOW, THEREFORE, I, Franklin D. Roosevelt, President of the United States, pursuant to the authority vested in me by title I of the National Industrial Recovery Act, approved June 16, 1933, and otherwise, do approve the report and recommendations and adopt the findings of the Administrator and do order that the said code of fair competition be and it is hereby approved.

FRANKLIN D. ROOSEVELT.

Approval recommended:

HUGH S. JOHNSON,
Administrator.

THE WHITE HOUSE,
November 27, 1933.

(325)

NOVEMBER 3, 1933.

The PRESIDENT,
The White House.

SIR: A proposed Code of Fair Competition for the Cement Industry was submitted to the Administrator on July 19, 1933, by the Cement Institute. The hearing was conducted in Washington on September 15, 1933. The Code was revised during the recess of the hearing and is submitted in its present form for approval. Every person who requested an appearance was properly heard in accordance with statutory and regulatory requirements.

Provisions of Code as to Wages and Hours.—Hours of employment are permitted to be flexible over any half calendar year, but are not permitted to be in excess of an average of more than thirty-six (36) hours per week during this period, nor more than eight (8) hours in any one day. The maximum hours of work are limited to forty-two (42) hours per week for employees other than clerical and office employees who are limited to forty (40) hours per week. Employees engaged in the work of packing and shipping are limited to ten (10) hours in any one day and thirty-six (36) hours per week averaged over any half calendar year.

The following are exempted from the preceding provisions:

(a) Employees engaged in executive, administrative, technical and sales staff work, and employees in supervisory capacities.

(b) Employees engaged in emergency work involving breakdowns or protection of life or property.

No evasion of this Code by reclassification of workers is permitted.

Minimum wages are established in twelve geographical districts as defined by the Bureau of Mines. In two Southern districts a minimum hourly rate of thirty (30) cents per hour is established. In a portion of two districts a minimum of thirty-seven (37) cents, and in a portion of one district a minimum of thirty-eight (38) cents. In all other districts a minimum of forty (40) cents is established.

The above minimum rates are excepted only when the rate for the same class of work on July 15, 1929, was less than forty (40) cents per hour, in which case the hourly rate shall be not less than the hourly rate on July 15, 1929, and in no event less than thirty (30) cents per hour.

No minor under the age of sixteen (16) years shall be employed and no minor under the age of eighteen (18) years shall be employed in any hazardous occupation.

ECONOMIC EFFECT OF THE CODE

Comparison of the production of Portland Cement in the years 1928 and 1932, shows a decline of 54%. Comparison of number of persons employed by the Industry shows a decrease from 34,244 employees in 1928, to 11,941 in February 1933, or a decline in employment of 68.8%. It is estimated that based on employment in 1932, the adoption of the average thirty-six (36) hour week as

proposed in the Code will cause absorption by the Industry of 5,618 additional workers and a payroll increase of approximately 40%.

The approval of this Code is expected to:

(1) Stabilize the Industry and prevent economic disturbance due to price wars.

(2) Protect dealers and the consumer against undue monopolistic tendencies of the Industry.

(3) Preclude the possibility of uncontrolled abuses due to the multiple basing system.

FINDINGS

The Administrator finds that—

(a) The Code as recommended complies in all respects with the pertinent provisions of Title I of the Act, including, without limitation, subsection (a) of Section 7 and subsection (b) of Section 10 thereof; and that

(b) The applicant group imposes no inequitable restrictions on admission to membership therein and is truly representative of the Cement Industry; and that

(c) The Code as recommended is not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of Title I of the National Industrial Recovery Act.

It is recommended, therefore, that this Code be approved.

Respectfully,

HUGH S. JOHNSON,
Administrator.

CODE OF FAIR COMPETITION

FOR THE

CEMENT INDUSTRY

ARTICLE I—PURPOSE

To effectuate the policies of Title I of the National Industrial Recovery Act, the following provisions are submitted as a Code of Fair Competition for the Portland Cement Industry, and upon approval by the President shall be the standard of fair competition for such industry, and shall be binding upon every member thereof.

ARTICLE II—DEFINITIONS

1. The term "Portland Cement Industry" as used herein includes the manufacture and sale by manufacturers of Portland Cement.

2. The term "employee" as used herein includes anyone engaged in the Portland Cement Industry, in any capacity, receiving compensation for his services, irrespective of the nature or method of payment of such compensation.

3. The term "employer" includes any enterprise by whom any such employee is compensated or employed.

4. The term "member of the industry" as used herein includes any enterprise engaged in the industry as above defined.

5. The term "district" as used herein means the geographical producing district as now or hereafter designated by the United States Bureau of Mines or other Governmental Agency, or as may hereafter be determined by the Code Authority.

6. The term "productive capacity" as used herein shall mean the productive capacity of the industry as determined by the United States Bureau of Mines.

7. The term "Institute" as used herein shall mean The Cement Institute.

8. The term "Board" as used herein shall mean the Board of Trustees of The Cement Institute.

9. The term "plant" as used herein shall mean a Portland Cement Manufacturing Plant.

10. The terms "President" and "Act" and "Administrator" as used herein, shall mean respectively the President of the United States, the National Industrial Recovery Act, and the Administrator of said Act.

ARTICLE III—LABOR

A. General.—1. Pursuant to subsection (a) of Section 7 of the Act, and so long as this Code shall be in effect:

(a) Employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection;

(b) No employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing;

(c) Employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.

2. No person under 16 years of age shall be employed, and no person under 18 years of age shall be employed in any hazardous occupation, in the industry.

3. Within each State, no provisions of this Code shall supersede any laws of such State imposing more stringent requirements, regulating the age of employees, wages, hours of work, or health, fire, or general working conditions, than are imposed under this Code.

4. Employers shall not reclassify employees or duties or occupations performed by employees to defeat the purposes of the Act.

B. Hours.—1. Except as hereinafter otherwise provided, on and after effective date no employee shall work or be permitted to work in excess of forty-two (42) hours in any one week or eight (8) hours in any one day; nor more than thirty-six (36) hours per week averaged over any half calendar year, excepting, however (a) employees engaged in emergency maintenance and repair work involving breakdowns or protection of life and property, and (b) employees in packing and shipping departments, who shall not, however, work more than ten (10) hours in any one day or thirty-six (36) hours per week averaged over any half calendar year. If any employee on an hourly rate works in excess of 36 hours per week averaged over any half calendar year the wages paid for such excess shall be at the rate of not less than one and one third ($1\frac{1}{3}$) times the regular hourly rate.

2. No clerical or office employee shall work or be permitted to work in excess of forty (40) hours in any one week.

3. The maximum hours specified in the foregoing sections of this Article shall not apply to executive, administrative, supervisory, or technical employees who are paid thirty-five (\$35) dollars or more per week, nor to sales staff employees.

4. No employee shall be permitted to work for a total number of hours in excess of the maximum hours specified in the foregoing sections of this Article whether employed by one or more employers.

C. Wages.—1. Except as hereinafter otherwise provided, no employee shall be paid at less than the hourly rates specified for each

of the twelve geographical districts as set forth in exhibit "A" of this Code, as follows:

District Number :	Minimum Wage per Hour
1	40¢
2	40¢
3	40¢
4	40¢
5 Except (a)	40¢
(a) Jefferson and Meade Counties, Ky	38¢
6	30¢
7 Except (a) and (b)	40¢
(a) St. Louis Co., Minn	37¢
(b) Ralls County, Mo	37¢
8	40¢
9	30¢
10	40¢
11	40¢
12	40¢

2. When the hourly rate for the same class of work on July 15, 1929, was less than 40 cents per hour, employers shall not pay less than the hourly rate on said date and in no event less than 30 cents per hour.

3. Untrained labor for a period not exceeding three (3) months and employees who by reason of old age or physical infirmities are not capable of normal productive effort shall be paid not less than 80 percent of the minimum wage rates, but the total number thereof at any one plant shall not exceed 5 percent of the total number of employees engaged by any employer in any one plant at any one time.

4. The foregoing provisions of this section established a minimum rate of pay regardless of whether an employee is compensated on a time rate, piece rate, or other basis. The rates of pay hereinbefore provided shall not be understood to be the maximum rates of pay for the respective districts.

5. The amounts by which wages in the higher paid classes of employees have exceeded wages in the lower paid classes of employees, shall be maintained, having in view long-standing wage differentials.

6. Female employees shall not be employed after 6:00 p.m.

7. Each employer shall post at a conspicuous place at each plant the minimum wages and maximum hours under this Code.

ARTICLE IV—ADMINISTRATION

To effectuate further the policy of the Act a Code Authority is hereby constituted to cooperate with the Administrator in the administration of this Code.

A. Organization and Constitution of the Code Authority.—The Code Authority shall consist of seven individuals, or such other larger number as may be approved from time to time by the Administrator, to be selected as hereinafter set forth. The President, in his discretion, may appoint not more than three additional members without vote to represent the Administrator.

1. The Board shall elect the Code Authority. The persons so elected shall, subject to changes at any time by the Board, serve on such Code Authority for such term as the Board shall determine.

The Board shall be made up as follows:

(a) One member to be chosen from each district.

(b) Trustees at Large, not to exceed seven (7) in number, shall be chosen by those members of the Board who represent the cement districts.

(c) The President, the Vice Presidents, and the Treasurer of the Institute shall be ex-officio members of the Board with full power to vote.

The members of the Board to represent the cement districts shall be elected by the members of the industry who participate in the activities of the Code Authority, as provided in Section B, subsection 8 below, in the respective districts by a majority vote of such members in each such district to serve for the term of one year and until their successors are elected and have qualified, and the members of the Board, so elected, shall elect the Trustees at Large; provided, however, that any member of the Board elected to represent any cement district may be recalled by a majority vote of the members of the industry in any such cement district in the event of the change in status of such Trustee or if, for any other reason, any such Trustee is not considered to be representative of the members of the industry in such district and, in the event of such recall, such members shall elect, by a majority vote, a Trustee to fill the unexpired term of the Trustee who has been recalled; a majority of the members of the Board shall have like power with respect to any Trustee at Large.

In the event of a vacancy in the Board, such vacancy shall be filled for the unexpired term of the Trustee whose vacancy is to be filled in the same manner as such Trustee was elected a member of the Board.

In the event of the inability of any Trustee elected to represent a cement district, or of any Trustee at Large to attend any meeting of the Board or of the Institute or of any committee or committees thereof, the members of the industry in such district, with respect to Trustees representing cement districts and the other Trustees at Large, with respect to any such Trustee at Large, shall have the right, from time to time as the occasion may require, to elect an Alternate Trustee to attend any such meeting or meetings who shall have such authority to represent the members of such district or to act as Trustee at Large as may be prescribed by such members or by such other Trustees at Large. Within the limits of the authority conferred upon him, as herein provided, any such Alternate Trustee shall have the right to vote and to act in all respects in the place of the member of the Board whose place he fills.

2. The Institute or its successors or any trade or industrial association participating in the selection or activities of the Code Authority, shall:

(1) Impose no inequitable restrictions on membership;

(2) Submit to the Administrator true copies of its Articles of Association, By-Laws, Regulations, and any amendments when made thereto, together with any other information relating to membership, organization, and activities as the Administrator may deem necessary to effectuate the purposes of the Act.

3. In order that the Code Authority shall at all times be truly representative of the industry, and in other respects comply with

the provisions of the Act, the Administrator shall provide such hearings as he may deem proper; thereafter if he shall find that the Code Authority is not truly representative, or does not in other respects comply with the provisions of the Act, he may require an appropriate modification in the method of selection of the Code Authority.

B. Powers and Duties of the Code Authority.—In addition to the powers and duties herein specifically conferred upon the Code Authority, it shall have the following duties and powers to the extent permitted by the Act and subject to the right of the Administrator by review to disapprove or modify any action taken by the Code Authority pursuant to this Code.

1. The Code Authority shall be the general planning, coordinating, and administering agency of this Code. It may make such rules and regulations as may be necessary for the conduct of its business in the administration of this Code.

2. The Code Authority may designate the Institute or such other committees or agents, and may delegate to them such of its powers as it may deem necessary for the administration of this Code; provided, however, that the Code Authority shall not be relieved of final responsibility with respect to any such delegated powers.

3. The Code Authority shall, upon complaint of interested parties, upon request of the Administrator, or upon its own initiative, make such inquiry and investigation as to the operation and observance of this Code as may be necessary and report the results thereof to the Administrator for such action by him as may be in accordance with law.

4. No member of the Code Authority or of any committee designated by it shall participate as such member in a proceeding in which he is interested, either as complainant or as respondent, or in which he is in any other manner directly interested; and in the event of any such disqualification, the remaining members of such Code Authority or committee shall certify such disqualification, together with the reasons therefor, to the President of the Institute, who shall promptly designate a person to sit as a special member of such Code Authority or committee for the purposes of any such proceedings; provided, however, that any such special member so appointed shall be selected from the same group of the industry as is represented by the member whom he replaces.

5. In order that the President may be informed of the extent of the observance of the provisions of this Code and of the extent to which the declared policies of the National Industrial Recovery Act are being effectuated in the industry, the Code Authority and members of the industry shall make such reports as the Administrator may require periodically or as often as he may direct. Each member of the industry shall make such sworn or unsworn reports to the Code Authority or to such agency as it may designate as to wages, hours of labor, number of employees, and such other matters as the Code Authority may require for the administration of this Code; provided, however, that any information furnished hereunder of a confidential nature as between competitors in the industry shall not be available to competitors nor published in such form as shall reveal the identity of any member of the industry furnishing such reports.

In addition to the information required to be submitted to the Code Authority, there shall be furnished to governmental agencies, such statistical information as the Administrator may deem necessary for the purposes recited in Section 3(a) of the Act.

6. Any interested party shall have the right to complain to the Code Authority under such rules and regulations as it may prescribe in respect of any rule, regulation, order or finding made or course of action pursued by the Code Authority, and any interested party shall have the right to appeal to the Administrator under such rules and regulations as he may prescribe in respect to any decision, rule, regulation or course of action of the Code Authority, pursuant to any provision of this Code.

7. The Code Authority and/or the Board may, from time to time, make such recommendations to the President as it may deem advisable or necessary to effectuate the policy of the Act and to develop and maintain conditions of fair competition in the Industry; and any modification or additions to this Code recommended by the Code Authority and/or the Board shall, upon approval by the President, become part of and shall have the same force and effect as other provisions of this Code.

8. Any member of the Industry shall be entitled to participate in and share the benefits of the activities of the Code Authority, and to participate in the selection of the members thereof by assenting to and complying with the requirements of this Code and by either paying his reasonable share of the expenses of its administration or by becoming a member of the Institute. The reasonable share of expenses of administration shall be determined by the Code Authority subject to review by the Administrator on the basis of volume of business and/or such other factors as may be deemed equitable to be taken into consideration.

ARTICLE V—SAFETY WORK

As an evidence of the general attitude of the industry toward its employees, the industry points with pride to its achievements in the field of safety. For many years the industry has occupied the premier position in safety accomplishments. It has been regarded as an exemplar in safety technic; it received the Joseph A. Holmes awards for the years 1930 and 1932, which is more notable because during those declining and depression years, great difficulties were experienced in maintaining normal safety morale in plant organizations. Such results, in the opinion of the industry, can be attained only by the cooperative effort of constructive management and satisfied, intelligent employees. The safety movement in the industry is conducted by, and for many years has been one of the constructive activities of, the Portland Cement Association, an organization of the industry which is devoted to research, education and improvement and extension of the use of concrete. So far as practicable, the safety movement will be continued.

ARTICLE VI—PLAN FOR SHARING AVAILABLE BUSINESS

1. The Board is hereby authorized to formulate a plan or plans, within thirty (30) days after the effective date of this Code, unless

such time shall be extended by the Administrator, for the equitable allocation of available business among all members of the industry or among members of the industry operating in one or more Districts, and for the control of cement inventory and to submit the same either to a meeting of all members of the industry or to meetings of members in the Districts affected, as the Board may determine, for approval, modification or rejection. Each member of the industry shall be entitled to receive notice of any such plan and to participate in any meeting or meetings of all members of the industry or of members in the District in which such member operates and, further, shall have the right to appear before the Board at any meeting at which any such plan is being considered for the purpose of presenting any facts or arguments relative thereto.

When any such plan shall have been formulated by the Board, the Code Authority shall present the same to the Administrator for consideration and the Code Authority shall represent the industry and the Board in conference with the Administrator with respect to any such plan; provided, however, that as regards any such plan the Code Authority shall have only such power to bind the industry or any subdivision thereof as shall have been conferred upon it by majority vote of the industry or of any subdivision thereof, and each member shall have the right to present his objections, if any, to the Administrator. The Code Authority shall collect and present to the Administrator such data and statistics as may be required in connection with any such plan together with a statement of the names of those members of the industry that approve and of those that disapprove such plan in whole or in part.

2. Any such plan shall be based on the following principles:

(a) It shall be fair and its benefits shall be equitably apportioned to all plants.

(b) It shall give due consideration to all pertinent factors including demonstrated productive capacity based on the clinker and/or cement production performance of non-obsolete plants and equipment.

(c) It shall in no way reduce the total production of all plants below what is necessary amply to supply demand.

(d) It shall not promote monopoly or monopolistic practices or oppress small enterprises.

ARTICLE VII—INCREASE IN PRODUCTIVE CAPACITY

Prior to the construction or operation of a new plant, or the increase in the productive capacity of an existing one, or the movement of all or part of such a plant from one place to another, The Cement Institute, on receipt of such information, shall promptly collect complete information concerning existing productive capacity in the area in which the proposed new plant is to be located, together with data concerning consumption of cement in that area. If these data disclose that such new plant will result in further increasing the problem of over-production or over-capacity in such area, The Cement Institute may petition the President to prohibit the construction, or operation, of the proposed new plant, or the increase in manufacturing capacities of such existing plants. The provisions

hereof shall not be construed to prevent the modernization of existing plants to improve quality of product and/or operating efficiency.

The Board may study the problem of permanent excess of productive capacity in any area and may from time to time prepare and submit to the Administrator for consideration plans for the closing down or amortization of the less economical plants.

ARTICLE VIII—COST PROTECTION

1. It shall be an unfair method of competition for any member of the industry to sell or offer to sell cement at less than his expenses of manufacture, provided, however, that any member of the industry may sell or offer to sell cement at below his own expenses to meet the competition of any other member of the industry whose price is not less than the expenses of manufacturing of such other member.

Manufacturing expenses as used herein, shall include all direct labor and material (which do not greatly vary per unit of production with volume of output), at cost or market whichever is lower, plus a proportionate share of all indirect expenses, inclusive of maximum depreciation and/or depletion allowances computed according to Federal Income Tax procedure, but exclusive of any capital reserves, for purposes other than depreciation and/or depletion, and exclusive of interest paid and development expenses. Provided, that the distribution of such indirect expenses per unit of product produced shall be on the basis of an average rate of utilization of plant facilities by efficient producers.

Unless and/or until some other formula is submitted to, and approved by the Administrator, the average rate of utilization of plant facilities shall be determined as follows, to wit:

Each member of the industry shall send to an impartial agency appointed by The Institute, a consolidated income-tax return for that portion (or all) of his operations, devoted to the manufacture of Portland Cement for each of the years 1927-1932, or such other period as, upon presentation of official data, may be determined to be fair and as will better effectuate the purpose hereof and be approved by the Administrator, together with a record of physical production, productive capacity, and sales in each of these years.

From these reports will be calculated the average rate of utilization of productive capacity by the one third ($\frac{1}{3}$) portion of the industry which reported the lowest average per unit cost of production for such period.

This percentage of productive capacity (rather than full capacity) shall become standard for the distribution of indirect expenses and fixed charges for the purpose of determining the per unit manufacturing expenses, by every member of the industry.

2. In case of any complaint that a member of the industry has violated the above provisions of this Code, the Code Authority shall give to such member of the industry not more than seven (7) days, or such other reasonable time as may be fixed by the Code Authority, in which to present evidence of its compliance with the foregoing provisions. If the Code Authority is not satisfied by the proof furnished by such member, the matter shall be promptly referred to the Administrator who shall immediately select a certified public ac-

countant to examine the cost accounting of the member of the industry complained against and notify such member of the selection made and request the consent of such member to the examination of its cost accounting by the certified public accountant so selected. If such member shall not, within two (2) days after receipt of notice from the Administrator, as above provided, furnish to the Administrator written consent to such examination or shall not thereafter make available to such certified public accountant all books and records necessary to complete the examination of the cost accounting of such member of the industry, then, and in either event, the Administrator shall forthwith refer the matter to the Federal Trade Commission which shall audit the cost accounting of such member of the industry and report to the Administrator, who may transmit a copy of such report to the Code Authority and to the member of the industry complained against, with the least practicable delay. In the event that the member of the industry complained against shall consent to the examination of its cost accounting by the certified public accountant selected by the Administrator after such accountant shall complete his report, such accountant shall report his findings to the Administrator and transmit a copy thereof to the Code Authority and to the member of the industry complained against. If, in the opinion of the Administrator, the report of such accountant shall sustain the contention of the Code Authority but is not acceptable to the member of the industry complained against, then the matter shall be referred by the Administrator to the Federal Trade Commission, as above provided. The decision of the Administrator on the report of the accountant selected by him or on the report of the Federal Trade Commission shall be final regarding the costs of the member of the industry complained against.

3. *Uniform Cost Accounting.*—The Code Authority shall prepare and adopt for general use throughout the industry, and submit to the Administrator for approval within thirty (30) days of the effective date hereof, a standard method or system of uniform cost accounting which shall specify all items and include all elements of manufacturers cost. When so prepared, adopted, and approved, all members of the industry shall apply the principles and include all the elements thereof in determining their respective costs.

ARTICLE IX—OPEN PRICE—MARKET STABILIZATION

1. Each member of the industry shall file its prices and all terms and conditions of sale with the Code Authority within five (5) days after the effective date of this Code and make same public by broadcast quotations to the trade, so that competitors, the trade, and the buying public may at all times have accurate information relative thereto, and no member of the industry shall deviate therefrom except in the manner hereinafter provided.

2. Any member of the industry may from time to time change or revise its prices by filing notice thereof with the Code Authority; and no member of the industry shall anticipate, by quotation, sale, contract, or otherwise, any change or revision until after the same shall have been on file at least five (5) days at the office of the Code

Authority. At the expiration of such five (5) day period the said changes or revisions may, unless the effective date thereof shall be extended, be made effective, and thereupon shall be made public in the manner provided in Section 1 hereof.

3. Any member of the industry may meet the prices, terms, and conditions of sale, established by the above method, as of their effective date, and no member of the industry shall deviate from the prices, terms, and conditions of sale, so established, except in the manner above stated, and all members meeting such changes shall make same public in the manner provided in Section 1 hereof.

4. *Manner of Procedure on Price Changes.*—(a) (1) Declines shall be retroactive on all shipments made within five (5) calendar days before the effective date thereof.

(2) Advances shall be made effective five (5) calendar days after expiration of the notice period and the trade shall be given such notice.

(b) During the five (5) days prior to the effective date of an advance, current market orders may be booked at the prior price for shipment not more than 15 days from the date the advance becomes effective.

(c) Each specific work quotation shall contain a provision permitting withdrawal on five days' notice.

(d) After an advance in price all outstanding quotations on work for which bids have been opened, which quotations extend longer than fifteen days from the effective date of the new price, shall be withdrawn or revised to expire on such fifteenth day.

(e) All quotations at the prior price, made during the five-day notice period shall be confined to jobs on which bids are to be opened prior to ten days from the effective date of the new price. Such quotations may be closed by contract not later than fifteen days from the effective date of the new price.

(f) All quotations outstanding on jobs on which bids are to be opened later than ten days from the effective date of the new price shall be withdrawn, and any quotations made on such jobs during the five-day-notice period shall be at the new price.

5. If the Code Authority has reasonable cause to believe, and the member filing same shall have been so notified, that any price filed at its office, as above provided, represents a price made pursuant to a violation of any provision of this Code, the Code Authority may, by notice to such member, extend the effective date of such price for a period of not more than ten (10) days in order that investigation may be made by the Code Authority pursuant to the provisions of Section 2, Article VIII.

ARTICLE X—UNFAIR COMPETITION

For the purposes of this Code, the following acts shall constitute unfair trade practices and a violation of this Code:

1. Making or promising any bribe, gratuity, gift, or other remuneration, not filed and published in accordance with Article IX hereof, directly or indirectly to any purchaser or prospective purchaser or to any officer, employee, or representative thereof, for the purpose or with the effect of making a sale of cement; imitating any

brand or trademark used by any competitor; inducing or attempting to induce in any manner the violation of any existing future sales order or future sales contract, or other existing contract between a member of the industry and his customer, with the purpose or effect of inducing or causing a breach of any such contract; circulating or disseminating false or misleading information by words or acts relative to the prices, credit standing, business integrity, or ability to perform contracts, of any competitor or the grade, quality, count, character, nature, origin, manufacture, weight, or preparation of his products.

2. To compensate salesmen in any manner other than upon a fixed salary and full-time basis.

3. To divert or permit purchasers or users of cement to divert shipments of cement from one destination to another destination, the result of which will enable the purchaser or user to secure cement at less than the member of the industry's published market price at the point of final destination.

4. The following practices, undertaken for the purpose or with the effect, directly or indirectly, of furthering the sale or use of a particular brand of cement shall constitute unfair trade practices and a violation of this Code:

(a) Except with permission of the Code Authority (and such permission, when given, shall apply to all companies in the marketing area affected) the purchase, by any member of the industry, of bonds, or other securities, issued for the financing of constructive work, either in the name of the member of the industry, its subsidiaries, or of individuals, or officers, connected therewith, or the acceptance of such bonds, or other securities, in payment, wholly or in part, for cement, or the advance, loan, or payment of any monies by a member of the industry for the purpose of inducing the purchase of cement, or to assume cost of Bidders' Bonds or to endorse or guarantee or in any way relieve a Bidder of the responsibility for or the expense of providing such bonds, unless such conditions shall have been filed and published in accordance with Article IX.

(b) For the purpose or with the effect of evading the provisions of Article IX of this Code, the purchase of fuel or other supplies, either directly or indirectly, or in the name of the company, or its subsidiaries, or of individuals, or officers connected therewith at prices above the market price thereof at the time of purchase.

(c) To make or permit to be made, either directly or indirectly, any secret payment or allowance of rebates, refunds, commissions, credits, or unearned discounts in the form of money or otherwise, or to secretly extend to certain purchasers special services or privileges not extended to all purchasers on like terms and conditions.

(d) The prepayment of transportation charges on shipments consigned to other than the member of the industry itself, except in the case of railroad freight charges to stations to which regulations require prepayment from any shipping point, or the payment of demurrage charges by any member of the industry on such shipments; provided, however, that the foregoing provision, except as to demurrage charges, shall not apply to shipments purchased directly by and consigned to departments of the United States or State Govern-

ments, unless such conditions shall have been filed and published in accordance with Article IX.

(e) Knowingly diverting or permitting to be diverted to other uses, cement shipped for a specific work project nor knowingly shipping on a specific work order or contract, an amount of cement in excess of the actual needs of such work.

(f) To entice maliciously the employees of a competitor with the intent or effect of interfering with the conduct of the business of such competitor.

(g) Knowingly to ship cement by any transportation agency which, for the purpose or with the effect of inducing or influencing the sale or purchase of cement, makes payments or concessions by rebates or otherwise.

(h) The payment, or offer to pay, directly or indirectly, any advertising expenses of purchasers or users of cement.

(i) Lavish, excessive, or undignified entertainment of purchasers or users of cement, or others connected therewith; donating funds, or providing banquets or other similar lavish entertainment for purchasers or users, or associations thereof; giving or offering to give premiums, personal gifts, gifts of cement, or gifts of any other commodity of substantial value to purchasers or users of cement.

(j) The sale by any member of the industry, directly or indirectly, of any commodity at a discriminatory price.

(k) Services to purchasers or users are proper under fair competition, if confined within the limits of advice and consultation. The furnishing of articles or facilities of a definite physical nature, whether by way of loan, lease, gift, or otherwise, resulting in monetary benefit to purchasers or users is discriminatory and shall constitute unfair competition.

(l) No member of the industry shall maliciously refuse to sell to, or maliciously interfere with the business of, dealers or users of portland cement purchased from a competitor, for the purpose of interfering with the conduct of the business of such competitor.

ARTICLE XI—METHOD OF SELLING AND MARKETING CEMENT

The Code Authority may, after the approval of the Administrator has been secured, authorize and approve such exceptions to or modifications of any of the following provisions as it may see fit for all members of the industry in the marketing area affected.

No member of the industry shall discriminate in prices, terms, and conditions of sale at the same time and place of delivery between purchasers or users of cement in the same class and similarly situated.

1. Except as otherwise specified, portland cement shall be marketed in each community through the building material dealers regularly serving such community.

2. Except as otherwise specified, the following buyers shall be sold direct by members of the industry at the same price and under the same terms and conditions of sales as to dealers:

United States Government.

State Governments, Counties, and Parishes when properly authorized to purchase cement for public improvements or maintenance.

Contractors doing any of the foregoing classes of work, except where such work is located entirely within cities, towns, or villages.

Railroads filing tariffs with State or Interstate Commissions, and contractors doing work for such railroads.

Owners or contractors buying for power development, flood control, and water-supply projects that do not require dealer service.

Concrete Products Manufacturers, including block, tile, roofing, pipe, piling, and all other precast concrete units when for their own manufacturing operations, but not for resale.

Commercial concrete mixing plants for their own processing operations, but not for resale.

3. Definition of a dealer: A cement dealer as used herein is one who has an established place of business where he is regularly engaged in selling portland cement and other building materials to the public, with facilities to serve the retail trade in a given territory and able and willing to perform all functions devolving upon him in securing, performing, and protecting contracts for the delivery of portland cement for specific work on his account.

No member of the industry shall pay to any dealer any commissions or other remunerations for the sale of such member's cement.

4. Cement shall be marketed on the basis of a barrel, weighing 376 pounds net; and shall be delivered in the following manner:

(a) In cloth or paper sacks, four (4) sacks of 94 pounds net each constitute a barrel, or

(b) In bulk computed on weights on scales at the plants or en route.

5. Cement shall be marketed either on current or market orders for delivery within fifteen days, or on orders or contracts for future delivery beyond fifteen days.

Orders entered for fifteen days' shipment shall be subject to shipment on the fifteenth day without notice to the purchaser. Quotations on current orders shall be for immediate acceptance.

Cement purchased for delivery beyond fifteen days from date of purchase shall be sold either to cover "specific work" or for period requirements.

6. Application of Exhibits B and C. The booking of either specific work orders or period requirement contracts from the various groups of purchasers listed in sections 1 and 2 of this article shall be as follows:

(a) United States Government: Sell under contracts for delivery periods as specified in formal requests for bids.

(b) States: Projects on which construction contracts are awarded. Sell under specific work contracts. Such contracts shall be closed only after definite award of construction contracts. On request from States for cement prices on such projects; the prices quoted shall be not higher than the prices in effect fifteen days prior to the date on which such States receive construction bids and such prices shall be good for acceptance within fifteen days after such date for receiving construction bids.

Purchases for use by State Forces: If any department of the State undertakes construction work conforming to the general definition of a specific work project, sell under specific work contract. For

requirements of the character of repairs and maintenance, sell under calendar quarterly contracts.

(c) Counties, Parishes, and Cities: Sell on calendar quarterly requirement contracts.

(d) Railroads: Sell on calendar quarterly basis for general requirements. Specific jobs requiring extended delivery may be sold under the plan outlined below for specific work contracts, provided the jobs are covered by appropriations, plans prepared and it is possible to definitely check the job for location and quantity. Contracts for such specific job shall be limited to shipment for such work only and shall be closed for a period of not to exceed one year from date of contract. Cement under such specific job contracts shall not be shipped to any town other than that provided in the contract nor shall it be diverted for use in general repair or maintenance work.

(e) Owners and Industrials: This title includes industrial projects and owners thereof, such as coal companies, manufacturing companies, street railways, packing houses, stockyards, cemeteries, light and power companies, and all public utilities except railroads having published tariffs and recognized by public service commissions as common carriers.

Sell for fifteen days' shipment only, on current or market orders; when work is done by the owner or industrial specific contracts shall not be made; when an owner or industrial awards a specific job to a contractor and the contractor buys the cement requirements, specific work contract shall be closed provided the job may be checked definitely as to location and quantity.

(f) Conduit construction or repair work by public utilities shall not be sold for extended delivery but shall be sold for fifteen day shipment only on current or market orders.

(g) Speculative residential work shall be sold for current delivery only. Any project involving more than one residence for one owner constitutes a speculative operation.

(h) Products Manufacturers: (1) Manufacturers of blocks, tile, roofing, and all Products manufacturers not included in (2) below, shall be sold on calendar quarterly contracts.

(2) Pipe manufacturers and concrete pile manufacturers: For specific jobs which can be definitely checked for quantity and location, sales shall be made on specific contract basis. In general such specific contracts shall be confined to public work awarded by contract where the cement requirements can be accurately figured.

An order held by a pipe manufacturer for the year's requirements of a city, county, state, industrial, or contractor shall not constitute a specific job. Such orders as well as general requirements of the plant shall be sold only on calendar quarterly contracts.

(i) Commercial Concrete Mixing Plants: Shall be sold for fifteen days delivery or for specific job requirements as herein provided; but shall not be sold for general or period requirements.

7. Time of closing calendar requirement contracts. Contracts for any quarter shall be quoted or closed not earlier than the first day of the last month of the preceding quarter.

The basis of a contract (except on sales direct from member of the industry to user) shall be a binding order placed by the user with a dealer and a corresponding order placed by the dealer with the member of the industry.

8. Time and Manner of Closing Specific Work Orders. When a contractor has an order with a building material dealer for a specific work project, the member of the industry shall book from the dealer a purchase order for the required amount of cement to be invoiced at the member's market price at time of shipments. This order shall be binding on both parties. The parties shall agree in this order that if the member's price should advance, a specific work contract shall be entered into at the price prevailing prior to such advance, for the quantity of cement then required to complete the project. The dealer shall furnish the member of the industry, as the basis for such contract, his record of the amount of cement delivered to the contractor prior to the advance in price, together with a verified written estimate from a responsible representative of the contractor of the amount of cement still required to complete the work.

Specific work orders at prices prior to an advance in prices, but closed during the period immediately following an advance, as described in paragraph 8, shall be covered immediately by specific work contracts, but such contracts shall be supported by the dealer's record of prior deliveries and the contractor's written estimate of requirements as above stated.

9. The provisions of this Article XI are designed to meet present industrial and social conditions as they relate to the cement industry. But the Administrator and the Code Authority with the approval of the Administrator reserve the right from time to time, and after such hearing as they or either of them may deem necessary, to modify the foregoing provisions of this Article as conditions and circumstances may indicate to be necessary to effectuate the policy and provisions of the Act.

ARTICLE XII—TERMS AND CONDITIONS OF SALE

1. All future sales orders and future sales contracts for the sale of portland cement shall contain a definite statement of price, quantities, terms of payment, time and place of delivery, and all other terms of sale necessary to form a complete and unambiguous contract.

2. No member of the industry shall substitute for a contract or purchase order already executed and in force, a new contract or purchase order for the same requirements at a lower price or on more favorable terms to the purchaser than are contained in the original contract or purchase order.

3. Attached hereto and marked Exhibits B and C are forms of future specific sales orders, and contracts, the provisions, terms, and conditions of which have been agreed to by members of the industry as representing in substance the best practices within the industry.

4. Terms of payment shall be as follows: A cash discount of not in excess of 10¢ per barrel may be deducted from invoices paid in full within fifteen days from date of issue. Invoices not discounted are payable net thirty days from date of issue.

(a) Where purchases involve frequent shipments, a plan of semi-monthly remittance, based on a fifteen-day average, may be used as follows:

All invoices dated from first day of month to fifteenth day of month, inclusive, to be paid by the 22d of that month; and all in-

voices dated 16th to 31st, inclusive, to be paid by the 7th day of the following month.

(b) Cash discount shall not be allowed if remittance is forwarded after the expiration of the 15-day period, or semimonthly period; or if deduction is made in the remittance for cloth sacks to be returned or in transit and not yet credited; or if the remittance consists in whole or in part of notes, trade acceptances, scrip, warrants (whether interest bearing or not), or any medium other than cash or bankable check for the full amount of the invoices upon which cash discount is deducted.

(c) The postmark date at point of mailing shall determine the date of remittance.

(d) No unearned discounts shall be allowed.

5. Package charges and allowances:

(a) When cement is shipped in cloth or paper sacks the price shall include the member of the industry's published deposit or leasing charges for cloth sacks or the selling charge for paper sacks and payment of such charges shall be required at the same time as the cement.

(b) When used cloth sacks are returned empty to the member of the industry the credit or allowance shall at all times be in accordance with the member's published terms and conditions of sale.

6. Invoices: Invoices shall be dated as of the date of shipment (provided where special and unusual conditions prevail, the members of the industry in the district or districts concerned, may, subject to the approval of the Code Authority, change this provision to conform to such special and unusual conditions) and shall contain full information as to price, quantity, kind of package, terms of payment, place of deliveries, routing, amount of freight allowed, and any other data necessary to show fully all conditions entering into the sale. Any deviation or concession from these conditions is an unfair practice.

ARTICLE XIII—STANDARDIZATION OF PRODUCTS

1. All Portland Cement marketed by members of the industry shall comply with the standard specifications for Portland Cement of the American Society for Testing Materials, and the American Standards Association, and/or the Federal Specification Board. Members of the industry may sell cement under modified Portland Cement specifications that are designed to meet special or unusual conditions not adequately or properly covered by the specifications hereinabove referred to, provided, however, that the price at which such modified Portland Cements are sold shall be filed with the Code Authority.

2. Every member of the industry shall guarantee his products to comply with all of the conditions of the specifications under which they are sold, but shall not be responsible for the improper use of cements and therefore shall not guarantee finished work, nor shall the member of the industry be responsible for condition of product after delivery.

3. No member of the industry shall pay or absorb, directly or indirectly, any charges for inspection or tests made by or on behalf of the purchaser to determine compliance with specifications therefor.

ARTICLE XIV

It is the consensus of opinion of the industry that each member thereof should bear his proportionate share of the burden of the cost of constructive cooperative activities approved and supported by the majority of the Industry and whose benefits are common to all manufacturers.

ARTICLE XV

Nothing in this Code contained, excepting, however, the provisions of Article III, shall be deemed to apply to or affect the sale by any member of the industry of any products of the industry for direct shipment in export trade.

ARTICLE XVI—MODIFICATION

1. This Code and all the provisions thereof are expressly made subject to the right of the President, in accordance with the provisions of subsection (b) of Section 10 of N.I.R.A. from time to time to cancel or modify any order, approval, license, rule or regulation issued under Title I of said Act and specifically but without limitation to the right of the President to cancel or modify his approval of any provision of this Code or any conditions imposed by him upon his approval thereof.

2. Whenever the Administrator shall determine such action by him to be necessary to effectuate the policy of the Act, he may modify or cancel any action pursuant to this Code by any agency established thereunder.

3. Except as to the provisions required by the Act, this Code may be modified on the basis of experience or changes in circumstances, such modifications to be based upon application to the Administrator, on such notice and hearing as he shall specify and to become effective on approval by the President.

ARTICLE XVII—MONOPOLIES

No provision of this Code shall be so construed or applied as to permit or promote monopoly or monopolistic practices, or to eliminate, oppress, or discriminate against small enterprises.

ARTICLE XVIII—EFFECTIVE DATE

The effective date of the Code shall be ten days after approval thereof by the President.

Approved Code No. 128.
Registry No. 1010-1-02.

EXHIBIT A

DISTRICTS

The twelve (12) geographical districts as described by the United States Bureau of Mines are as follows:

- District No. 1—Eastern Pennsylvania, New Jersey, Maryland.**
- No. 2—New York, Maine.**
- No. 3—Western Pennsylvania, Ohio, West Virginia.**
- No. 4—Michigan.**
- No. 5—Wisconsin, Illinois, Indiana, Kentucky.**
- No. 6—Virginia, Tennessee, Alabama, Georgia, Florida, Louisiana.**
- No. 7—Eastern Missouri, Iowa, Minnesota, South Dakota.**
- No. 8—Western Missouri, Nebraska, Kansas, Oklahoma, Arkansas.**
- No. 9—Texas.**
- No. 10—Colorado, Montana, Utah, Wyoming, Idaho.**
- No. 11—California.**
- No. 12—Oregon, Washington.**

EXHIBIT B

(Specific sales order)

To _____
Name and Address of Cement Company

We have sold to _____ Contractor _____
Barrels of (Brand) _____ Portland Cement for _____
(Fraction or all)

_____ of his requirements on the following specific work awarded him:
(Character, description, and location of work, and name of owner)

We hereby place with you our order for the above quantity of (Brand) _____
Portland Cement, to be packed in _____ (sacks),
for use on the above work, at your prevailing market price at time of shipment,
subject to the conditions stated on both sides hereof.

We will desire delivery made, as the work requires, upon our instructions in
carload lots, F.O.B. cars _____ deliveries to be complete prior
to _____.

It is expressly understood and agreed:

1. That if you advance your market price prior to the completion of ship-
ments on this order, you will, within ten (10) days of the effective date of such
advance, enter into your standard form of specific work contract with us, at
the price prior to such advance, for the quantity of cement that may at that
date be required for the completion of the work covered by this order.

2. That as a basis for such specific work contract, we will supply you with
our record of cement delivered to the contractor prior to the time of your
advance in price, together with a written estimate from the contractor, or a
responsible employee of the contractor, of the quality of cement then required
to complete the work.

Signed: _____
Date: _____

Accepted:

_____ Cement Company.
(Officer)

Date: _____

Terms of Payment.—On approved credit net cash 30 days, from date of in-
voice, or 10 cents per barrel discount for cash in 15 days from date of invoice.

If at any time the financial responsibility of Buyer becomes impaired or
unsatisfactory to Seller, it reserves the right to require payments in advance or
satisfactory security or guarantee that invoices will be promptly paid when due.

If Buyer fails to comply with terms of payment, or with any of the other
terms of sale, Seller reserves the right to cancel unfilled portion of this order,
without notice, Buyer remaining liable for all unpaid accounts. No waiver of
such right shall be implied from any failure by Seller to exercise the same.

Package.—Cloth sacks bearing Seller's brands, in which cement herein con-
tracted for is packed, are the property of Seller and are for a period of 90 days
from the delivery by Seller of the said cement, leased by it to Buyer at a charge
of 10 cents each, which charge is included in price for cement packed in cloth
sacks and which charge Buyer agrees to pay at same time and on same terms
as payment for cement is made.

Buyer agrees within 90 days of delivery of the cement to deliver to Seller,
the owner, at its nearest plant, freight charges collect, as provided by railroad
classifications and tariffs, properly bundled and so marked as to insure complete
identification, the cloth sacks bearing Seller's brands, in which the said cement
is packed, and Seller agrees to refund to Buyer 10 cents for each said cloth
sack so delivered in good condition, subject to Seller's count and inspection, and
to assume freight charges thereon. If for any reason freight charges (per
railroad tariffs) are prepaid, they will be refunded by Seller upon presentation
of Railroad Company's receipted freight bill or bill of lading.

For useless cloth sacks which have been wet, no refund will be made. Cloth sacks bearing other than Seller's brands will be held by Seller for 30 days subject to Buyer's order.

In the event that any of the said empty cloth sacks bearing Seller's brands are sold or otherwise disposed of by Buyer to any person other than Seller, the owner. Buyer agrees to pay Seller, as liquidated damages, 10 cents for each cloth sack so sold or disposed of.

If during the life of this order, Seller shall change its present charge for the lease of cloth sacks, or the liquidated damages, or both, it is expressly agreed that the said amount or amounts in the preceding paragraphs shall be changed accordingly, and the gross price specified herein for cement packed in cloth sacks shall be changed in accordance with the change in charge for lease of cloth sacks.

Price on cement packed in paper bags includes the paper bags, which are not returnable. Shipments in paper bags are made at Buyer's risk of breakage and resultant loss of cement.

(If cement company requires a deposit for cloth sacks, instead of leasing them, the following clauses are suggested):

Package.—The cloth sacks, bearing Seller's brand, containing the cement are not sold, but remain the property of Seller. Buyer agrees to return said cloth sacks, properly bundled and marked so as to secure complete identification, to Seller's nearest mill, within ninety (90) days from the date shipment of cement has been made.

Seller agrees to refund to Buyer the deposit of ten cents for each cloth sack so returned. This deposit has been included in the price herein stated and Buyer agrees to include it when payment for the cement is made.

It is, however, expressly understood that such cloth sacks must be delivered to Seller's mill in good condition and will be subject to mill count and inspection, and that no refund will be made for useless cloth sacks, nor for cloth sacks not of Seller's brand. Such cloth sacks, if received, will be held by Seller for thirty (30) days subject to Buyer's order and risk.

Seller agrees to pay carrier's freight charges on returned empty cloth sacks of Seller's brand after delivery to its nearest mill or to refund Buyer for freight charges prepaid on such shipments upon presentation of original bill of lading properly executed or original receipted freight bill.

If Seller shall change its present deposit required for cloth sacks, it is expressly agreed that the said amounts in the preceding paragraphs shall be changed accordingly and the gross price specified herein for cement packed in cloth sacks shall be changed in accordance with the change of deposit required.

Price on cement packed in paper bags includes the paper bags which are not returnable. Shipments in paper bags are made at Buyer's risk of breakage and resultant loss of cement.

Claims.—Claims for loss or damage will not be considered unless supported by seal record and railroad agent's acknowledgment on freight bill. Freight overcharge claims must be accompanied by original receipted freight bill.

Time of delivery.—Buyer shall give Seller shipping instructions in writing a reasonable time before shipments are to be made. If Buyer fails to order shipment within the time specified Seller shall have the right to extend the time for delivery of such cement, but shall not be obligated to do so, except at its option.

The Seller reserves the right to select the route and method by which shipments shall be forwarded, but no Seller can be required to favor any one route or method of transportation as against another by any joint action of the members of the industry or the Code Authority. Transportation charges per tariff applying from shipping point to place of delivery for route and method of shipment used, will be paid by the Buyer for the account of the Seller.

Seller shall not be liable to Buyer for any delays in manufacturing, shipping, or delivering said cement, caused by fire, strikes, lockouts, differences with workmen, accidents, war, insurrection, inability to secure cars, coal, or other material, governmental interference or regulation, delays in transportation or contingencies beyond Seller's control; and during the time of such delays Seller shall have the right to pro rate among its various customers such cement as it may be able to manufacture and ship.

Specifications.—The cement shipped under this order shall conform to the present standard specifications for Portland Cement of the American Society

for Testing Materials and the American Standards Association and/or the Federal Specification Board, and no other warranty is made in respect thereof. Seller having no control over the use of cement will not, therefore, guarantee finished work in which it is used, nor shall the Seller be responsible for the condition of cement after delivery to Buyer. Any charges incident to inspection or tests made by or on behalf of Buyer to determine compliance with specifications shall be paid by Buyer.

Seller's prevailing market price may be advanced by the amount of any increase in freight rates and/or any additional Government tax on freight and/or the amount of any tax on sales or contracts of sale effective after the date hereof without imposing on Buyer the obligation to enter into Seller's standard form of specific work contract, as provided in paragraph 1 hereof.

EXHIBIT C

(Form of future specific sales contract)

Agreement made this _____ day of _____ 193____,
between _____ Cement Company, hereinafter called
Seller and _____ of _____
hereinafter called Buyer:

Seller hereby sells and agrees to furnish and deliver and Buyer hereby buys and agrees to receive and pay for Portland Cement in the quantity and on the terms and conditions hereinafter and on the back hereof set forth.

Description and quantity.—The purpose of this contract is to cover the purchase and sale of all the Portland Cement required to complete the work hereinbefore described, whether more or less than the quantity stated herein.

Buyer represents that the aforesaid number of barrels of cement will be used in the construction of the above-described work and agrees that no portion of such cement will be used for any other purpose without the written consent of Seller. If any of the cement shipped hereunder is reconsigned or diverted by Buyer from the place of delivery specified herein or used for any other purpose, Seller may cancel this contract and refuse to ship any more cement and Buyer agrees to pay Seller's market price at the place of final destination for such cement as has been diverted by Buyer from the place of delivery specified herein or has been used by Buyer for any other purpose than the purpose above specified; Buyer remaining liable for all unpaid accounts.

Place of delivery.—F.O.B. _____

Time of delivery.—Prior to _____
as required by the progress of the work. Buyer shall give Seller shipping instructions in writing a reasonable time before shipments are to be made. If Buyer fails to order shipment within the time specified Seller shall have the right to extend the time for delivery of such cement, but shall not be obligated to do so, except at its option.

Price.—

Per standard barrel, in cloth sacks	_____	\$_____
Per standard barrel, in paper bags	_____	\$_____
Per standard barrel, in bulk	_____	\$_____

Price includes freight at present rates and will be increased by the amount of any increase in freight rate and/or any additional Government tax on freight and/or by the amount of any tax on sales or contracts of sale effective during the life of this contract. All shipments made on this contract will be at the current destination price of Seller on the date of shipment, if this price is below the contract destination price mentioned herein.

Terms of payment.—On approved credit net cash 30 days from date of invoice, or 10 cents per barrel discount for cash in 15 days from date of invoice.

If at any time the financial responsibility of Buyer becomes impaired or unsatisfactory to Seller, it reserves the right to require payments in advance or satisfactory security or guarantee that invoices will be promptly paid when due.

If buyer fails to comply with terms of payment, or with any of the other terms of sale, Seller reserves the right to cancel unfilled portion of this contract, without notice, Buyer remaining liable for all unpaid accounts. No waiver of such right shall be implied from any failure by Seller to exercise the same.

This contract is not assignable by Buyer without the consent of Seller in writing.

_____ CEMENT COMPANY.

By _____ By _____
(Buyer) (Seller)

Package.—Cloth sacks bearing Seller's brands, in which cement herein contracted for is packed, are the property of Seller and are for a period of 90 days from the delivery by Seller of the said cement, leased by it to Buyer at a charge of 10 cents each, which charge is included in price of cement packed in

cloth sacks and which charge Buyer agrees to pay at same time and on same terms as payment for cement is made.

Buyer agrees within 90 days of delivery of the cement to deliver to Seller, the owner, at its nearest plant, freight charges collect, as provided by railroad classifications and tariffs, properly bundled and so marked as to insure complete identification, the cloth sacks bearing Seller's brands, in which the said cement is packed, and Seller agrees to refund to Buyer 10 cents for each said cloth sack so delivered in good condition subject to its count and inspection, and to assume freight charges thereon. If for any reason freight charges (per railroad tariffs) are prepaid, they will be refunded by Seller upon presentation of Railroad Company's receipted freight bill or bill of lading.

For useless cloth sacks which have been wet, no refund will be made. Cloth sacks bearing other than Seller's brands will be held by Seller for 30 days subject to Buyer's order.

In the event that any of the said empty cloth sacks bearing Seller's brands are sold or otherwise disposed of by Buyer to any person other than Seller, the owner, Buyer, agrees to pay Seller, as liquidated damages, 10 cents for each cloth sack so sold or disposed of.

If during the life of this contract, Seller shall change its present charge for the lease of cloth sacks, or the liquidated damages, or both, it is expressly agreed that the said amount or amounts in the preceding paragraphs shall be changed accordingly, and the gross price specified herein for cement packed in cloth sacks shall be changed in accordance with the change in charge for lease of cloth sacks.

Price on cement packed in paper bags includes the paper bags, which are not returnable. Shipments in paper bags are made at Buyer's risk of breakage and resultant loss of cement.

(If cement company requires a deposit for cloth sacks, instead of leasing them, the following clauses are suggested) :

Package.—The cloth sacks, bearing Seller's brand, containing the cement are not sold, but remain the property of Seller. Buyer agrees to return said cloth sacks, properly bundled and marked so as to insure complete identification, to Seller's nearest mill, within ninety (90) days from the date of shipment of cement has been made.

Seller agrees to refund to Buyer the deposit of ten cents for each cloth sack so returned. This deposit has been included in the price herein stated and Buyer agrees to include it when payment for the cement is made.

It is, however, expressly understood that such cloth sacks must be delivered to Seller's mill in good condition and will be subject to mill count and inspection, and that no refund will be made for useless cloth sacks nor for cloth sacks not of Seller's brand. Such cloth sacks, if received, will be held by Seller for thirty (30) days subject to Buyer's order and risk.

Seller agrees to pay carrier's freight charges on returned empty cloth sacks of Seller's brand after delivery to its nearest mill or to refund Buyer for freight charges prepaid on such shipments upon presentation of original bill of lading properly executed or original receipted freight bill.

If Seller shall change its present deposit required for cloth sacks, it is expressly agreed that the said amounts in the preceding paragraphs shall be changed accordingly and the gross price specified herein for cement packed in cloth sacks shall be changed in accordance with the change of deposit required.

Price on cement packed in paper bags includes the paper bags which are not returnable. Shipments in paper bags are made at Buyer's risk of breakage and resultant loss of cement.

Claims.—Claims for loss or damage will not be considered unless supported by seal record and railroad agent's acknowledgement on freight bill. Freight overcharge claims must be accompanied by original receipted freight bill.

The Seller reserves the right to select the route and method by which shipments shall be forwarded, but no Seller can be required to favor any one route or method of transportation as against another by any joint action of the members of the industry or the Code Authority. Transportation charges per tariff applying from shipping point to place of delivery for route and method of shipment used, will be paid by the Buyer for the account of the Seller.

Specifications.—The cement shipped under this contract shall conform to the present standard specifications for Portland Cement of the American Society for Testing Materials and the American Standards Association and/or the Federal Specifications Board, and no other Warranty is made in respect thereof.

Seller having no control over the use of cement will not, therefore, guarantee finished work in which it is used, nor shall the Seller be responsible for the condition of cement after delivery to Buyer. Any charges incident to inspection or tests made by or on behalf of Buyer to determine compliance with specifications shall be paid by Buyer.

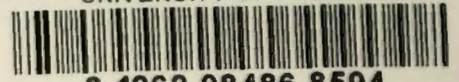
Seller shall not be liable to Buyer for any delays in manufacturing, shipping, or delivering said cement, caused by fire, strikes, lockouts, differences with workmen, accidents, war, insurrection, inability to secure cars, coal, or other material, governmental interference or regulation, delays in transportation, or contingencies beyond Seller's control; and during the time of such delays Seller shall have the right to prorate among its various customers such cement as it may be able to manufacture and ship.

Seller shall have the right, but shall not be obligated, to ship from any plant other than the one normally supplying the delivery point specified herein.

Bulk cement.—Shipments of bulk cement shall be invoiced and collected for on a basis of track scale weights nearest to point of origin.



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