

PURCHASE ORDER

Vendor:

TOP ARMADA CEMENT CORPORATION
Philippines

Project:

ZMEG62 Batching Plant Apalit

SubProject: Megawide - Batching Plant MCRP P1

PO Number:
800010665

Terms : 90 Days

Date:
August 21, 2024

Delivery Date:
July 17, 2024

Class: BP-DM - Cement

Warehouse:

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Currency: PHP

DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
➡ MASCEME-FE-001 CEMENT.FEDERAL.FORTEM.TYPE 1 FOR BATCHING PLANT APALIT CONSUMPTION DELIVERED Class: BP-DM - Cement NOTeditable: 1. STAGGERRED DELIVERY AS PER ADVISED 2. DELIVER TO BATCHING PLANT APALIT PAMPANGA ADDREshowSummary: MACABEBE MASANTOL ROAD, BRGY. SAN VICENTE APALIT PAMPANGA 3. ACTUAL BILLING AS PER ACTUAL QUANTITY DELIVERED AT SITE LOCATION USING CALIBRATED TRUCK SCALE	10,000	BAG	190.00	1,900,000.00
➡ MASCEME-FE-001 CEMENT.FEDERAL.FORTEM.TYPE 1 FOR BATCHING PLANT APALIT CONSUMPTION PICK UP Class: BP-DM - Cement	14,000	BAG	179.00	2,506,000.00
Carry Over				4,406,000.00

PREPARED BY:



AM. Estipona

CHECKED BY:



MELONA DABLO

RECOMMENDING
APPROVAL BY:



REXFORD ILAGAN

APPROVED BY:



MARKUS HENNIG

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Page 2/5 Currency: **PHP**

Carry Over 4,406,000.00

DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
NOTE: 1. PICK UP AT SAN SIMON PAMPANGA WAREHOUSE 2. STAGGERRED PICK UP AS PER ADVISED 3. HAULER WILL BE ASSIGNED AS PER ADVISED 4. BILLING AS PER ACTUAL QUANTITY DELIVERED/WEIGHED AT SITE LOCATION USING CALIBRATED TRUCKSCALE BACKUP CEMENT FOR BATCHING PLANT APALIT BACKUP CEMENT FOR BATCHING PLANT APALIT Based On Purchase Request 800004394.				

GRAND TOTAL **PHP 4,406,000.00**

PREPARED BY:

CHECKED BY:

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APPROVAL BY:**

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TERMS AND CONDITIONS

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1. **Term.** Unless otherwise stated in the Purchase Order (**800010665**) or Job Order (JO) or earlier terminated or extended in accordance with the terms of this PO/JO, this PO/JO shall be effective from the date of issuance by Company of this PO/JO () until the end of the Defects Liability Period ().

2. **Pricing.** For and in consideration of the delivery of the Materials or performance of the Works, Company shall pay the Supplier the Price indicated in the PO/JO (Price). The Price is fixed and inclusive of all applicable taxes. By signing the PO/JO, Supplier shall be deemed to have satisfied itself as to the correctness and sufficiency of the Price, and have based the Price on the data, interpretations, necessary information, inspections, examinations, and satisfaction as to all matters relevant to the scope of supply of materials or scope of works and specifications. Further, the Price covers all the Supplier's obligations under this PO/JO and all things necessary for the proper execution and completion of its obligations, including the provision for any contingencies, the conduct of the various tests provided in this PO/JO, the repairs or replacements of Materials, and/or the re-performance of the Works. Unless otherwise agreed by the Parties in writing, the Price is fixed and no adjustments or changes thereto shall be permitted.

3. **Taxes.** If Company is required by Philippine laws to withhold taxes from any amounts payable to Supplier under this PO/JO, Company shall so withhold the required amounts and remit on a timely basis the amounts so withheld over to the applicable taxing authority. Company shall provide Supplier with evidence of payment issued by the taxing authority and shall pay to Supplier the remaining net amount after the taxes have been withheld.

4. **Advance Payment.** Should Company agree to pay an advance payment, the advance payment shall be recouped by Company on Supplier's successive invoices/billing statements in the amount equivalent to the percentage of the advance payment. Any advance payments made by Company shall be refunded to Company, within fifteen (15) days from Company's notice to Supplier, in the event that the supply of Materials or performance of the Works cannot proceed or is halted for whatever reason. Any delay in the refund shall entail a delay charge of twenty percent (20%) of the amount of the advance payment plus delayed payment interest based on the prevailing interest rate of Philippine Dealing System Treasury. In the event of failure of Supplier to refund such advance payment, Company shall, in addition to other available remedies under this PO/JO or Applicable Laws, be entitled to deduct the refundable amount, including delay charge and interest, from the amounts payable by Company to Supplier, or draw the same from the Performance Security.

5. **Performance Security.** As a condition precedent for the commencement of the supply of Materials and performance of the Works, Supplier, at its own cost and expense, shall provide Company a performance security with an amount equivalent to thirty percent (30%) of the Price in the form of a standby letter of credit or bank guarantee (in accordance with the form prescribed by Company) or manager's check issued by a banking or financial institution acceptable to Company (Performance Security). The Performance Security shall be valid until sixty (60) days from complete delivery of Materials or performance of the Works. Company shall return the Performance Security or any undrawn portion thereof, without interest, within thirty (30) days thereafter. The Performance Security shall at all times be callable upon demand by Company and payable on-sight by the issuer thereof.

6. **Advance Payment Security.** Should Company agree to pay an advance payment, the advance payment shall only be released by Company to Supplier upon submission by Supplier of a security with an amount equivalent to the amount of advance payment and in the form of a standby letter of credit or bank guarantee issued by a banking or financial institution acceptable to Company (Advance Payment Security). The Advance Payment Security shall at all times be callable upon demand by Company and payable on-sight by the issuer thereof in the event the supply of Materials or performance of the Works cannot proceed or is halted for whatever reason.

7. **Invoicing and Payment.** Supplier shall submit to Company original copies of valid and accurate invoices and billing statements accompanied by copy of the Performance Security (for first invoice/billing statement), project accomplishment report, and other supporting documents as may be required by Company (Billing Documents). Company shall notify Supplier in writing of any disputed amounts specifically identifying the reason for the dispute. Any payment of, objection to, or failure to object to an invoice/billing statement shall not constitute acceptance by Company of the invoice/billing statement or any entry therein. Such payment shall neither constitute a waiver by Company

of defective materials, defective workmanship or breach of this PO/JO nor a relief from the performance of any obligation on the part of Supplier.

8. **Right to Set-Off.** Notwithstanding anything to the contrary contained in this PO/JO, in the event that Supplier has to make any payment to Company, whether by way of refund, rebate, indemnity or otherwise, Company may, at its sole discretion, deduct or set-off such amount from any amount due or to become due to Supplier. Moreover, it is expressly agreed that in the event of breach of any provision of this PO/JO, Company shall have irrevocable authority to automatically set off and apply without prior notice to Supplier all funds, credits, monies, securities, and/or account receivables in control and possession of Company that may be due or owing to Supplier.

9. **Retention Money.** For PO/JO requiring performance of the services and works, Company shall have a right to deduct and retain from each payment an amount equivalent to ten percent (10%) of the applicable invoice/billing statement (Retention Money). The Retention Money shall be released to Supplier after ninety (90) days from complete delivery of Materials and/or performance of the Works and only upon submission by Supplier of a security with an amount equivalent to ten percent (10%) of the Price in the form of a standby letter of credit or bank guarantee (in accordance with the form prescribed by Company) or manager's check issued by a banking or financial institution acceptable to Company (Warranty Security). The Warranty Security shall (i) serve as security that the Materials and/or the work product shall, during the Defects Liability Period (as defined below), function in accordance with the specifications or requirements of this PO/JO, be fit for their intended purpose, and be free from defect, damage or non-conformance, and (ii) guarantee the complete, timely, and faithful performance by Supplier of any remedial works relating to the defects, damage or non-conformance. The Warranty Security shall be valid from its issuance and for a period of ninety (90) days from the expiration of Defects Liability Period. Company may deduct from the Retention Money and/or Warranty Security, without need of prior notice, costs arising from or in connection with defects or damage on the Materials or the work product, and all claims, demands, suits, actions, losses, liabilities, assessments, judgments, damages, payments, fines, and penalties and all related costs, expenses, and other charges, including all reasonable attorneys' fees and reasonable costs of investigation, litigation, settlement, judgment, interest, and penalties (Claims) which Company may incur for failure by Supplier to perform its obligations during the Defects Liability Period.

10. **Inspection and Acceptance.** Company reserves the right to inspect and/or test all delivered Materials and work product and to accept or reject any or all such Materials and work product. Supplier shall bear all risk of loss of or damage to the Materials or work product until the same have been completely delivered and accepted by Company. Upon a finding by the Company that the Materials and work products completely conform to the requirements of the PO/JO, Company shall issue to Supplier a Completion Certificate (for work products) or Acceptance Certificate (for materials). The issuance of the Completion Certificate or Acceptance Certificate, as the case may be, shall not be construed as an acceptance or waiver of defective work or improper materials or defective Materials or other breach of this PO/JO, and Company shall not be considered to have waived, nor shall it be considered in estoppel, in respect of any claims it may have against Supplier by the issuance of the Completion Certificate or Acceptance Certificate. All Materials and work product that

fail to satisfy the quality, quantity, and specifications ordered by Company shall be rejected at no expense to Company. In the event of rejection of the Materials or work product, Company may, at its option, upon written notice to Supplier: (i) direct Supplier to repair or replace such Materials or work product within the period specified in Company's notice, at Supplier's sole risk and expense; (ii) terminate this PO/JO and require Supplier to reimburse Company for any payment made by Company under this PO/JO; and/or (iii) purchase the Materials or work product from other sources and charge Supplier for the excess in Price, if any.

11. **Liquidated Damages.** Supplier undertakes to completely deliver the Materials by the agreed delivery date () and/or completely perform the Works by the agreed completion date (). Supplier acknowledges and agrees that any failure of Supplier to complete delivery of the Materials or perform the Works by the Guaranteed Delivery Date or Guaranteed Completion Date will cause material/significant harm, injury, or claims to the Company and entitles Company the right to recover from Supplier liquidated damages at the rate of one tenth of one percent (1/10 of 1%) for each day of delay from the relevant Guaranteed Delivery Date or Guaranteed Completion Date until actual

TERMS AND CONDITIONS

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complete delivery of the Materials and/or actual completion of the Works (Delay Liquidated Damages). Company may, without prejudice to any other method of recovery, deduct the amount of such Delay Liquidated Damages from any amounts due to, or to become due to, Supplier. The payment or deduction of such Delay Liquidated Damages shall not relieve Supplier from any of its obligations under this PO/JO.

12. Defects Liability Period. For a period of twelve (12) months from the date indicated in the Completion Certificate or Acceptance Certificate (Defects Liability Period), Supplier warrants that: (i) the Materials delivered and/or the work product shall function in accordance with the specifications or requirements of this PO/JO and are fit for their intended purpose and (ii) the Materials and work product shall comply with all implied conditions, warranties and terms of applicable laws. In case of defects or damage in the Materials or on the work product during the Defects Liability Period, Supplier shall, at its own cost and expense, promptly rectify or remedy the same by repair or replacement.

13. Suspension. Company has the absolute right and prerogative to suspend any obligation under this PO/JO, by written notice and for such period as it deems necessary, if it finds that performance of such obligation will bring imminent danger to life or health or damage to any property or the environment. No claim for any losses incurred or suffered by Supplier arising from the suspension by Company under this Section 13 shall lie against Company and Supplier shall not be entitled to claim an increase in the Price, compensation or reimbursement for any expenses incurred, or other payment of any kind whatsoever by reason of such suspension by Company.

14. Termination. Company may, by written notice to Supplier, terminate this PO/JO with immediate effect in the event that: (i) Supplier commits a material breach of its obligations which by their nature can no longer be remedied, or fails to remedy any material breach of its obligations under this PO/JO within the period stated in Company's written notice; (ii) the liability of the Supplier for Delay Liquidated Damages reached fifteen percent (15%) of the Price; (iii) Supplier applies for or consents to the appointment of a receiver, trustee or liquidator of assets, or files a voluntary petition in bankruptcy; (iv) there is prolonged force majeure event pursuant to Section 16; or (v) where continued performance of this PO/JO on the part of either Party becomes impossible or illegal under applicable laws. Upon such termination, Company shall have the option to exercise any or all of the following remedies, which are deemed to be cumulative and not mutually exclusive: (i) require the return of any and all payments made by Company to Supplier in connection with the supply of Materials and/or work product; (ii) cause the Materials to be supplied, or the Works to be performed and completed, by a third party at Supplier's cost and expense; (iii) accept any Material and/or work product, wholly or partially, and pay only for the reasonable costs of such accepted Material and/or work product; and/or (iv) forfeit the Retention Money, the Performance Security, and/or Warranty Security. Company may, in its sole and absolute discretion and for any reason whatsoever, terminate this PO/JO by written notice to Supplier at least five (5) days prior to the intended date of termination. In such case, Company shall pay for all reasonable costs relating to the delivery of Materials or the work product already accepted by Company in accordance with this PO/JO. Within five (5) days from receipt of the notice of termination from Company, Supplier shall submit a detailed list of such Materials and/or work product, along with their supporting documents, to enable Company to reasonably determine the validity of Supplier's claim for such payment. Sections of this PO/JO which by their nature should survive the expiration or termination of this PO/JO shall survive the termination or expiration of this PO/JO and are enforceable at any time under applicable laws or in equity.

15. Representations and Warranties. In addition to the other representations and warranties stated in this PO/JO, Supplier represents and warrants to Company as of the date of this PO/JO that: (i) it has all requisite corporate power and authority to execute, deliver and perform its obligations under the PO/JO; (ii) it has obtained all the permits and consents from third parties required to be obtained as of the Effective Date for the issuance of this PO/JO and the performance of its obligations under this PO/JO and such permits and consents are in full force and effect and shall remain in full force and effect throughout the Term; (iii) it shall comply with all applicable laws, rules and regulations related to the performance of its obligations under this PO/JO; (iv) it undertakes to adopt as its own and abide by all Company rules and regulations, including, but not limited to, rules on security, access, safety, health, and hazardous material management, including any amendments or

supplements thereto; (v) it shall take all reasonable precautions to ensure safe working procedures and conditions for the performance of its obligations under this PO/JO and shall keep the work site clean and free from debris and obstructions; (vi) Materials delivered to Company, methods used, and/or Works performed for Company shall not infringe any third party's intellectual property rights; (vii) Materials and/or work product are free from defects, conform to the specifications of this PO/JO, and are performed in accordance with best industry standards; (viii) no improper, corrupt or unlawful acts were employed by Supplier, its directors, officers, employees, subcontractors or agents in all its transactions or dealings with the concerned government instrumentalities or its public officers or employees or with its client, including the client's agents, employees and representatives; and (ix) it is familiar with any location where the Works are to be performed and/or the Materials are to be delivered, as well as hazards which might be encountered, and shall take all precautions necessary to protect the health and safety of all of its personnel and any other persons who are at any time directly or indirectly affected thereby.

16. Force Majeure Neither Party shall be in default under this PO/JO, nor shall they be liable to the other for any delay in or failure to perform according to the terms of this PO/JO (excluding the obligation to pay any sums due or to indemnify under this PO/JO) if and to the extent such delay or failure is attributable to a force majeure event. Each Party shall be liable for and shall bear all of its own losses suffered and incurred as a result of an occurrence of a force majeure event. If a Party is or will be prevented from performing any of its obligations under this PO/JO by a force majeure event, then it shall give notice to the other Party of the event or circumstances constituting the force majeure event and shall specify the obligations the performance of which is or will be prevented. The notice shall be given within reasonable time after the affected party becomes aware or ought to have become aware of the relevant event or circumstance constituting a force majeure event. Each Party shall use reasonable endeavors to minimize any effects, including delay or disruption in the performance of this PO/JO, as a result of a force majeure event. A Party shall promptly give written notice to the other Party when it ceases to be affected by the FM. If the execution of the Works or the delivery of the Materials is prevented for a prolonged period as reasonably determined by Company, Company may give to Supplier a notice of termination of this PO/JO.

17. Independent Contractor. In performing its obligations under this PO/JO, Supplier is an independent contractor and its personnel and other representatives shall neither act nor be regarded as agents or employees of Company. Supplier acknowledges, represents, warrants, and covenants that it is the direct employer of its employees, personnel, officers, consultants, agents, subcontractors, and other personnel and no employer-employee relationship is created between such persons and the Company.

18. Intellectual Property. Where the Materials or the work products are made to Company's specifications, models or plans and Supplier's documents are prepared for Company under this PO/JO, the intellectual property rights in the Materials or the work product in so far as they relate to the said specifications, models or plans (including improvements or developments thereof) and Supplier's documents shall be the absolute property of Company and shall remain the property of Company at all times.

19. Insurance. Other than the insurances that are customarily required by applicable laws for the supply of Materials or performance of Works covered by this PO/JO, Company may require Supplier to secure and maintain during the Term the insurance policies from duly registered insurance companies, which may include the following: (i) Contractor's All Risk Insurance; (ii) Third Party Liability Insurance; (iii) Voluntary Third-Party Motor Vehicle Liability Insurance; and/or (iv) Professional Liability Insurance. Each policy and all corresponding endorsements shall contain a waiver of subrogation against Company. Failure of Supplier to obtain and maintain the insurances required by this PO/JO shall be deemed a material breach of this PO/JO. Supplier shall pay Company any deductibles or excess payable under any insurance policy required to be secured and maintained under this PO/JO.

20. Liabilities and Indemnification. Supplier shall bear all risk of loss of or damage to the Materials or work product until the same have been completely delivered and accepted by Company. Risk of loss and damage to the Materials or work product and title thereto shall thereafter transfer to Company and upon payment therefor in accordance with the terms of this PO/JO. Supplier shall protect, defend, indemnify, and hold Company harmless from and against any and all Claims which Company may incur, become responsible for, or pay out as a result of any death or personal injury (including bodily injury) to

TERMS AND CONDITIONS

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any person, destruction, loss or damage to any real or personal property, contamination of or adverse effects on the environment, and any clean-up costs in connection therewith, or any violation of applicable laws or permits to the extent caused by: (i) Supplier's performance of its obligations under this PO/JO; (ii) any acts, errors, or omissions by Supplier; (iii) defects in any of the Materials and/or work product; or (iv) actual or alleged infringement of any intellectual property rights arising out of the use by Company of the Materials and/or work product. If an injunction or restraining order is issued as a result of any claim or action of infringement, Supplier agrees, at its expense and Company's option, to: (i) procure for Company the right to continue using the Materials or the work product; (ii) replace such Materials or work product with non-infringing materials or work product; (iii) modify such Materials or work product so they become non-infringing; or (iv) refund to Company the amount paid for any Materials or work product returned or destroyed or Company is unable to use. Regardless of any such remedies, Supplier shall pay to Company any rework expenses and incremental costs incurred by Company to procure alternative products or services, as well as any losses suffered by Company.

21. Miscellaneous.

21.1. This PO/JO is to be construed and interpreted according to the laws of the Republic of the Philippines. Unless otherwise stated, disputes or differences between the Parties relating to their rights or obligations under this PO/JO shall first be resolved through arbitration in accordance with Republic Act (RA) No. 9285 (Alternative Dispute Resolution Act of 2004), R.A. No. 876 (The Arbitration Law), and A.M. No. 07-11-08 SC (Special Rules of Court on Alternative Resolution).

21.2. Supplier shall not subcontract, assign or transfer this PO/JO or any of its rights, interests or obligations under this PO/JO without the prior written consent of Company. Any attempt by Supplier to make an unauthorized assignment of this PO/JO or any of Supplier's rights, interests or obligations hereunder shall be deemed a material breach of this PO/JO. Company may assign, subcontract or transfer this PO/JO or any of its rights, interests or obligations under this PO/JO.

21.3. In the absence of a signed contract, this PO/JO shall operate as contract binding to the Parties. If a contract is signed by the Parties for the supply of Materials or performance of Works covered by this PO/JO, the terms of this PO/JO shall be superseded by the terms and conditions of the signed contract.

21.4. Supplier shall treat all information it received by virtue of the PO/JO (Confidential Information) as private and confidential, and shall not disclose or make available such information to any person except that Supplier may disclose Confidential Information: (i) with the prior written consent of Company, or (ii) to any governmental authority having regulatory authority over the activities relating to this PO/JO. Supplier shall indemnify Company in respect of any Claims which Company suffers in respect of Supplier's breach of the terms of this section.

21.5. Supplier waives, to the fullest extent permitted by applicable laws, any and all rights (arising by operation of applicable law or otherwise) to set-off any amount claimed by Supplier to be due and owing to Supplier from Company under the terms of this PO/JO against amounts claimed by Company to be due and owing to Company by Supplier under the terms of this PO/JO.

21.6. No waiver of any breach hereof shall be held to be a waiver of any other or subsequent breach. Any failure by any Party to exercise, or any delay in exercising, any of such Party's rights shall not operate as a waiver of that or any other right of such Party, and a defective or partial exercise of any of such rights shall not preclude any other, or the further exercise of that or any other right, and no act or course of conduct or negotiation on its part or on its behalf shall in any way preclude it from exercising such right.

21.7. Any provision of this PO/JO which is deemed illegal or unenforceable shall be ineffective to the extent of such illegality or unenforceability but shall not invalidate the remaining provisions of this PO/JO. In the event of such illegality or unenforceability, this PO/JO shall be construed in a manner that shall give full effect to the intent of the Parties. The Parties shall negotiate in good faith, new provisions to restore, the original intent and effect of this PO/JO with all its provisions legal and enforceable.

Signature: _____

Name: _____

Designation: _____

Name of Vendor: _____

TOP ARMADA CEMENT CORPORATION

Date: _____