



CREDIT AGREEMENT APPLICATION

Applicant (Company) Name _____ Date: _____
Mailing Address: _____ City: _____ State: _____ Zip: _____
Physical Address: _____ City: _____ State: _____ Zip: _____
Email Address: _____
Telephone/Fax No.: _____ How long at current address: _____
Fed. Emp. I.D.# _____ Year Established: _____
Class of Business: _____ Proprietorship _____ Partnership _____ Corporation
_____ Joint Venture _____ Limited Liability Co. _____ Individual

Former Businesses/Associated Companies _____

Person to Contact: _____ Purchase Order Required: Yes _____ No _____

OFFICERS/OWNERS/PARTNERS/INDIVIDUALS

Name: _____ Title: _____ Home Phone: _____

Address: _____ SSN: _____

Any ownership with other businesses? _____

Name: _____ Title: _____ Home Phone: _____

Address: _____ SSN: _____

Any ownership with other businesses? _____

CREDIT REFERENCES

| Name | Address | Phone | Email/Fax |
|----------|---------|-------|-----------|
| 1. _____ | _____ | _____ | _____ |
| 2. _____ | _____ | _____ | _____ |
| 3. _____ | _____ | _____ | _____ |

BANK REFERENCE

Bank: _____ Account# _____

Telephone Number: _____ Email/Fax Number: _____

Mailing Address: _____ City: _____ State: _____ Zip: _____

Terms: Applicant acknowledges that this application is submitted to obtain credit for commercial purposes. Credit, if approved, will be on open account. Applicant represents that the information provided herein by Applicant is complete and correct. TMC may investigate such information and the general credit history of Applicant, its authorized signatory, and its owners and officers and the guarantor at any time, including, but not limited to, by obtaining credit reports about Applicant, its authorized signatory, and its owners and officers and the guarantor, and by obtaining credit information from banks or others with whom Applicant does business. Applicant authorizes all references named herein to release credit information to TMC. Applicant further acknowledges that TMC may, for any reason and at any time, elect to terminate any credit that is extended to Applicant or modify the conditions under which credit is to be extended. Applicant agrees that all purchases made from TMC will be subject to the Terms and Conditions of Sale on the reverse side of this Credit Agreement Application.

Authorized Signature: _____

Printed Name, Title: _____

Date: _____

IN CONSIDERATION OF GOODS BEING SOLD ON OPEN ACCOUNT TO THE ABOVE NAMED FIRM, I PERSONALLY GUARANTEE ALL INDEBTEDNESS OF SAID FIRM. I FURTHER AGREE THAT THIS GUARANTEE IS AN ABSOLUTE, COMPLETE AND CONTINUING ONE, AND NO NOTICE OF THE INDEBTEDNESS ALREADY OR HEREAFTER CONTRACTED NEED TO BE GIVEN. THE TERMS MAY BE REARRANGED, EXTENDED AND/OR RENEWED WITHOUT NOTICE TO ME. I WILL, WITHIN (5) DAYS FROM THE DATE OF NOTICE THAT THE ACCOUNT IS PAST DUE, PAY THE AMOUNT DUE.

Guarantor Signature: _____

Printed Name, Title: _____

Date: _____

TERMS AND CONDITIONS OF SALE

1. **ACCEPTANCE.** It is expressly understood and agreed that these Terms and Conditions of Sale ("Terms") govern all sales of products and concrete (the "Concrete") by Tex Mix Partners, LLC, d/b/a Tex Mix Concrete ("Seller") to the credit applicant or any other purchaser ("Buyer") pursuant to the Credit Agreement Application (the "Credit Agreement"). Any terms and conditions of Buyer, which conflict with or are in addition to these Terms, are hereby rejected, unless Seller expressly agrees otherwise in writing.
2. **PRICE AND TAXES.** The price of the Concrete will be as set forth in any purchase order, quote, Tickets (as defined below), submittal documents or other written material provided by Seller to Buyer ("Written Quotation"), at point of discharge at Buyer's job site, unless Seller expressly agrees otherwise in writing. Buyer shall pay all applicable sales, use, excise or any other taxes or assessments levied by any federal, state, municipal or other governmental authority, unless Seller expressly agrees otherwise in writing. In case of any conflict in terms between any verbal quotation and a Written Quotation, the Written Quotation shall control, which shall be construed together with these Terms.
3. **PAYMENT AND INTEREST.** Payments must be made to Seller in U.S. dollars within thirty (30) days of Buyer's receipt of the Concrete or invoice, whichever is sooner. All accounts shall be payable to Seller at P.O. Box 830, Leander, TX 78646. In the event of a conflict between the payment terms set forth in a Written Quotation and this paragraph, the Written Quotation shall control. Payment on invoices not received when due will bear interest from their due date at 18% per annum or the maximum rate allowed by law, whichever is lower. If placed for collection, Buyer and its Guarantor(s) will be liable for and agree to pay any and all related court costs, reasonable attorney's fees, and expenses of Seller.
4. **WARRANTIES.** Seller warrants that the Concrete will be in substantial conformity with the specifications set forth in the Written Quotation. **EXCEPT AS EXPRESSLY SET FORTH HEREIN, SELLER DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND (WHETHER ARISING BY IMPLICATION OR BY OPERATION OF LAW) WITH RESPECT TO THE CONCRETE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OR REPRESENTATIONS AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER MATTER. THIS PARAGRAPH SURVIVES THE TERMINATION OR CANCELLATION OF THE CREDIT AGREEMENT.**
5. **TITLE AND RISK OF LOSS.** Title to the Concrete, and all risk of loss or damage, passes to Buyer at the time the Concrete is discharged at Buyer's job site.
6. **DELIVERIES:** All Concrete ordered by Buyer, whether used or not, will be billed to Buyer. Prices and quantities are based upon the wet volume at the time of discharge from the delivery trucks. Receipted delivery tickets ("Tickets") shall be binding unless immediately disputed. The strength characteristics of Concrete are those shown on the Ticket. Upon signing the Ticket, Buyer expressly accepts the strength characteristics shown thereon. Buyer is solely responsible for ensuring the strength characteristics are sufficient for Buyer's requirements.
7. **POINT OF DELIVERY:** Delivery by trucks is dependent upon accessibility to the delivery point. Roads shall be deemed inaccessible if, in Seller's sole judgment, trucks cannot proceed with the full load (unless part loads are specifically ordered by Buyer and agreed to by Seller) under their own power without damage to property or equipment. If Buyer orders delivery beyond curb line, Seller shall not be liable for damage to sidewalk, driveways, or other property. **BUYER SHALL INDEMNIFY AND HOLD SELLER HARMLESS AGAINST ANY AND ALL LIABILITY, LOSS, AND EXPENSE INCURRED RESULTING FROM DELIVERY BEYOND CURB LINE.**
8. **LIMITATION OF LIABILITY.** If the Concrete does not conform to the limited warranty in Paragraph 4, then Buyer must promptly notify Seller. If Buyer fails to notify Seller of any alleged breach of warranty or of the terms of this Credit Agreement within forty-five (45) days after such alleged breach is, or should have been, discovered by Buyer, Buyer waives the right to assert any claim whatsoever concerning said alleged breach. Upon receipt of such notice, Seller must either ask Buyer for a sample of the Concrete or schedule an inspection of the Concrete. If Seller determines that the Concrete does not comply with the limited warranty provided in Paragraph 4, Seller's liability is limited to the return of the purchase price. Seller shall not be liable for any incidental and/or consequential damages, including, but not limited to damages defined in the Uniform Commercial Code, which may result from any breach of warranty contained herein. **IN NO EVENT IS SELLER RESPONSIBLE TO BUYER FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, ALL DIRECT AND INDIRECT LOST PROFITS, REGARDLESS OF WHETHER THOSE DAMAGES WERE FORESEEABLE.**
9. **INDEMNIFICATION.** To the maximum extent allowed by law, Buyer shall defend and indemnify Seller, its employees and agents against all sums, costs, liabilities, losses, obligations, suits, actions, damages, penalties, fines, interest and other expenses (including investigation expenses and attorneys' fees) that Seller may incur or be obligated to pay as a result of (i) Buyer's negligence or Buyer's use, ownership, maintenance, transfer, transportation or disposal of the Concrete; (ii) Buyer's violation or alleged violation of any federal, state, county or local laws or regulation, including without limitation, the laws and regulations governing transportation, product safety, labeling, packaging and labor practices; or (iii) Buyer's breach of the Credit Agreement, including these Terms. The indemnification obligations of Buyer under these Terms are intended to, and shall, apply even if caused, in whole or in part, by the **JOINT, SOLE, OR CONCURRENT NEGLIGENCE, STRICT LIABILITY, PRODUCT LIABILITY, CONTRACTUAL LIABILITIES TO THIRD PARTIES, OR OTHER FAULT, WHETHER PASSIVE OR ACTIVE, OF ANY PERSON OR ENTITY, INCLUDING SELLER.**
10. **EXCUSABLE DELAYS.** Seller is not liable or responsible for delay or failure to perform any of Seller's obligations under the Credit Agreement, a Written Quotation or these Terms occasioned by (i) any cause beyond its reasonable control, including, but not limited to, a labor dispute, industry disturbance, fires, unusually severe weather conditions, earthquakes, floods, declared or undeclared war, epidemics, computer malfunctions, civil unrest, riots, lack of supplies, delay in transportation, governmental, regulatory or legal action, or an act of God, or (ii) by acts or omissions of Buyer, including, but not limited to, Buyer's failure to promptly comply with the terms of payment under the Credit Agreement.
11. **GOVERNING LAW, JURISDICTION AND VENUE.** The Credit Agreement, and all the rights and duties of the parties arising out of, in connection with, or relating in any way to the subject matter of the Credit Agreement or the transactions contemplated by it, shall be governed by, construed, and enforced in accordance with the laws of the State of Texas (excluding its conflict-of-laws rules which would refer to and apply the substantive laws of another jurisdiction). Any suit or proceeding hereunder shall be brought exclusively in the state or federal courts located in Williamson County, Texas. Each party consents to the personal jurisdiction of the state and federal courts of said county and waives any objection that such courts are an inconvenient forum.
12. **WAIVER.** The waiver by Seller of any breach by Buyer of any provision of the Credit Agreement, including any of these Terms, may not be construed to be either a waiver of the provision itself as to subsequent application or any other provision of the Credit Agreement or these Terms.
13. **SUCCESSORS AND ASSIGNS.** The Credit Agreement binds and inures to the benefit of Buyer and Seller and their respective successors and permitted assigns. Buyer may not assign any interest in, nor delegate any obligation under, the Credit Agreement, without Seller's prior written consent.
14. **NOTICES.** No notice or other communication under the Credit Agreement is sufficient to affect any rights, remedies or obligations of either party unless the notice or communication is in writing and is (i) personally delivered, (ii) transmitted by a recognized courier service, or (iii) mailed in registered or certified form, to the party to which notice or communication is being given at the following address: (a) if to Seller, at its address designated on the face of the Written Quotation, ATTN: SALES DEPARTMENT; and (b) if to Buyer, at its address designated on the face of the Written Quotation. Notices or communications shall be deemed to have been duly given (i) on the date of receipt if delivered personally, (ii) one day after delivery by courier if delivered by courier, or (iii) five days after mailing if delivered by registered or certified mail.
15. **GENERAL.** The Credit Agreement, these Terms and any Written Quotation, comprises the complete and final agreement between Seller and Buyer on the subject hereof and supersedes all prior negotiations, proposals, representations, commitments, understandings or agreements between Seller and Buyer, either written or oral. No other agreement or writing in any way purporting to modify any of the Terms or the Credit Agreement is binding upon Seller unless made in writing and signed by Seller's authorized agent. If any provision of the Credit Agreement is, for any reason, held invalid or unenforceable, the remainder of the Credit Agreement shall remain in full force and effect. Each party to this Credit Agreement (i) understands that it contains legally binding provisions and (ii) has had the opportunity to consult with an attorney and have this Credit Agreement reviewed by an attorney of its choice. Thus, in the event of any conflict or ambiguity in the provisions of this Credit Agreement, there shall be no presumption in favor of either party with respect to the interpretation or construction hereof. Buyer shall comply with all applicable laws, ordinances or governmental rules or regulations and will obtain and maintain in effect all licenses, certificates, permits, franchises and other governmental authorizations necessary with respect to Buyer's ownership, maintenance, transfer, transportation or disposal of the Concrete.
16. **SURVIVAL.** The terms of this Credit Agreement that by their nature are reasonably intended by the parties to survive the Credit Agreement's expiration or earlier termination, including, but not limited to, Paragraphs 3, 4, 5, 6, 7, 8, 9, 11, 12 and 15, and this Paragraph 16, shall survive the expiration or termination of the Credit Agreement.

CUSTOMER INITIALS _____