

# NETTLETON CONCRETE, INC.

2318 Moore Rd. • Jonesboro, AR 72401 • FAX 870.932.4079 • Ph 870.932.4400 or 800.382.2462

**I/We certify that all the information on this form is correct. I/We fully understand your credit terms of payment in full by 10th of the month following purchase, and agree to the proper payment in consideration of extended credit. By signing, I/We each agree to be, individually and as officers of the corporation, jointly and severally liable for all credit extended. I/We agree to advise promptly of any change in ownership, address, or other information provided on this application.**

Name of Firm or Individuals				Today's Date		
Current Street Address		City	State	Zip Code	Years at this address	
Social Security # (Applicant)	—	—	Social Security # (Spouse)	—	—	
Other Tax ID Number	If a business, please state the number of years in operation.					
Employment (Applicant)	Employment (Spouse)					
Work Phone (Applicant)	Work Phone (Spouse)					
Mobile Phone (Applicant)	Mobile Phone (Spouse)					
Construction Loan is with:	E-Mail Address:					
Name of Bank Loan Officer (please provide full name)						
Tax Exempt? (If yes, please attach a copy of exemption certificate)	Yes		No			
Ownership Status	Corporation	Date of Incorporation	—	—	Partnership	Individual
Name(s) of Principal(s)	Complete Address		City	State	Zip Code	

Bonding Company (if applicable)						
Job Name	Property Owner of Job					
Credit References	Complete Address		City	State	Zip Code	

**The undersigned hereby agrees to the extent permitted by law, to waive the Homestead exemption, notice of acceptance hereof, notice of presentment, demand, nonpayment, dishonor and protest, and consents to and waives notice of any modification, amendment, or extension of the terms of the credit agreement hereby guaranteed. If payment is not made according to terms, the undersigned agree(s) to pay interest of 17% per annum or the highest rate allowable by applicable law, all collection costs, including attorney's fees, and a late fee of up to \$200.**

**By signing below I/We authorize representatives of Nettleton Concrete, Inc. to make inquiries about my present and past credit history and to request any documentation or information relating to same.**

**As part of the consideration of gaining credit, the undersigned agree(s) that the Terms and Conditions on the back of this page or accompanying this document during transmission are incorporated herein by reference and warrants that he has read and understands the DISCLAIMER OF WARRANTIES, EXCLUSIVE REMEDY, and VENUE AND CHOICE OF LAW provisions.**

(For spouse, co-applicant or additional principal)

Printed Name	Printed Name
Signature, Individually, and as	Signature, Individually, and as
Title of	Title of
Name of company or corporation	Name of company or corporation

## TERMS AND CONDITIONS OF SALE

(Applicable to all purchases and sales of Seller's product ("Product(s)"), services ("Service(s)"), and any equipment used therein ("Equipment"))

1. **ACCEPTANCE.** This agreement contains the full understanding of the Parties and supersedes all other agreements, written or oral, regarding its subject matter. Except as otherwise provided by written agreement subsequently executed by both Buyer and Seller, these Terms and Conditions shall supersede the terms and conditions of Buyer's order, and no prior or subsequent understanding, agreement, term, condition, or trade custom at variance with or supplemental to these Terms and Conditions shall be binding on the Seller. Acceptance or delivery of the Products/ Services hereunder shall constitute acceptance of these Terms and Conditions. Products/ Services will be deemed accepted by Buyer unless Seller is notified in writing of non-acceptance within ten (10) days after receipt by Buyer. Any claim with respect to a Products/ Services sold hereunder, including claims based on shortages of Products will be waived if not brought in writing within ten (10) days of receipt of that shipment or delivery. Buyer's rights with respect to Products/ Services rightly rejected will be limited to the rights set forth in Article 7 below. No Product may be returned without Seller's written consent.
2. **RISK OF LOSS.** Title to and risk of loss of the Products purchased hereunder shall pass to Buyer upon delivery to Buyer's carrier at Seller's designated facility or if transported by the Seller, upon delivery by Seller to Buyer's designated address.
3. **TERMS OF PAYMENT.** Upon approval of Buyer's credit, all invoices will be due the 10<sup>th</sup> of the month following date of purchase. Purchase orders are required for Special Order Products or Services. Payment for Special Order Products or Services will be due 90 days after placing order, or on 10<sup>th</sup> of the month following delivery of Products or performance of Service whichever occurs first. Storage for non-delivered Special Order Products will be charged at 2% per month beginning 90 days after items are placed in inventory. If payment is not made according to terms, the undersigned agree(s) to pay interest of 17% per annum or the highest rate allowable by applicable law, all collection costs, including attorney's fees, and a late fee of up to \$200. In addition to the interest, upon breach or default, Seller shall be entitled to all rights under the Uniform Commercial Code, all rights of law and equity. If at any time, financial responsibility of the Buyer becomes impaired or unsatisfactory to the Seller, cash payment or security satisfactory to the Seller may be required in advance of shipment of Products or performance of Services. Each shipment of Products or Service rendered shall be considered a separate and independent transaction and payment therefore shall be made accordingly. Prompt payment discounts may be offered for certain sales. In these instances, the discount listed on the invoice may be deducted from the total amount of the invoice, provided the invoice is paid in full with cash or certifiable check on or before the 10<sup>th</sup> day of the month following the month of shipment or performance and provided no previous invoices or charges remain unpaid.
4. **SECURITY INTEREST.** Seller shall have the right, at its option, to retain a security interest in the Products sold, shipped, or stored or for Services rendered and to require Buyer to execute a security agreement and financing statement to be filed under the applicable filing provisions of the Uniform Commercial Code of the state in which the Products are located or Services are performed. Buyer hereby grants such security interest to Seller.
5. **ADDITIONALLY.** Buyer assumes all responsibility for the condition of the Product upon delivery to Buyer and further agrees that all charges incident to inspection or testing made by or on behalf of the Buyer to determine compliance with specifications shall be paid for by the Buyer.
6. **DISCLAIMER OF WARRANTIES.** The Seller makes no warranties of any kind, Express or Implied including, but not limited to, the Implied Warranty of Merchantability or the Implied Warranty of Fitness for a Particular Purpose, all of which warranties are hereby disclaimed and excluded pursuant to A.C.A §4-2-316.
7. **EXCLUSIVE REMEDY.** The Buyer's exclusive remedy shall be replacement of such Products sold or Service rendered herewith, F.O.B. Seller's plant or terminal or utility; or at Sellers' option, refund of the purchase price paid for the Product or Service rendered. See A.C.A § 4-2-719. Therefore without limitation, Buyer waives to the fullest extent provided by law all claims for direct, indirect, special, incidental, consequential, punitive or exemplary damages, or any other causes of action for damages of whatsoever kind, nature, or description either in contract or in tort against the Seller, its affiliates, predecessors and successors in interest including, but not limited to, Seller's owners, directors, officers, agents, employees, servants, shareholders and their personal representatives, agents, and assigns, as well as its insurers.
8. **VENUE SELECTION & CHOICE OF LAWS.** As part of the consideration of gaining credit and/or obtaining the subject products and/or service the Buyer agrees that the proper venue for any litigation of any dispute between the parties shall be the courts of the Western District of Craighead County at Jonesboro, Arkansas, and the Buyer further agrees that the substantive law of the State of Arkansas shall apply to any such litigation.
9. **FORCE MAJEURE AND ALLOCATIONS.** Seller shall not be liable for any expense, loss or damage resulting from any delays in manufacturing, shipping or delivering Products/ Services caused by Government actions, regulations, orders or rulings, acts of God, acts of war, acts of public enemy, fire, strikes, lockouts, breakdowns, accidents, inability to secure rail cars, trucks, barges or other materials, delays in transportation, acts or omissions of Buyer, or any other events or other conditions beyond Seller's control, whether similar or dissimilar to the above-mentioned acts or occurrences. During times of shortage, Seller shall have the right to prorate among its customers in accordance with the provisions of Section 2-615 of the Uniform Commercial Code.
10. **GENERAL.**
  - a. Invalidity or unenforceability of one or more provisions of this Agreement shall not affect any other provision of this Agreement.
  - b. Failure of Seller to exercise any right shall not be deemed a waiver of any rights of Seller.
  - c. Any oral statements made by Seller's salespersons about the Product/ Services do not constitute warranties, shall not be relied upon by Buyer, and are not part of the contract for sale. All of the terms and conditions of purchase and sale are embodied in this writing.
  - d. If Buyer fails to comply with the terms of payment or with any other terms of sale, Seller shall have the right, in addition to all other rights hereunder and at law, to terminate any unfilled orders without liability.
  - e. Buyer authorizes Seller to release account information for a specific job(s) to party or parties that have financial responsibility for the specific job(s). Said party or parties being, but not limited to, general contractors, owners, bonding companies or lending institutions.
11. **JOBSITE OPERATIONS.**
  - a. **ACCESS TO PRIVATE PROPERTY.** Access to private property for the purposes of delivery of Product or the performances of Services is at the direction of the Buyer or his agent. Buyer accepts responsibility for damage or loss to the property resulting from delivery of the Product or the performance of Services. Buyer agrees to provide a suitable roadway to the point of delivery of Products or performance of Services. Buyer agrees to pay wrecker fees to return the Equipment to public roadways. It is the responsibility of the Buyer or his agent to clean up, remove, and dispose of material that may adhere to the tires or Equipment and transfer from Buyer's property to other private or public property. Buyer agrees to provide a suitable site to wash-down fresh concrete from Equipment and for the containment and disposal of washed-out concrete.
  - b. **BUYER HAS ABSOLUTE CONTROL OF SITE CONDITIONS.** When Equipment is on the job site, control of the Equipment and the Equipment operator passes to the Buyer or his agent and such control will terminate only when the Equipment operator and the Equipment have departed and vacated the job site. At all times when Buyer retains control of the Equipment and the Equipment operator, Buyer shall have the duty of, and assume the liability for, ensuring that the condition of the job site is safe for the operation of the Equipment by the Equipment operator. In addition, Buyer agrees that he has proper training, or has in his employ, persons who are properly trained to (i) use the Equipment and operate the jobsite in a safe and careful manner and in compliance with all federal, state, and municipal laws and ordinances; and, (ii) instruct all jobsite personnel on safety practices when working around the Equipment. Buyer further agrees to indemnify Seller and the Equipment operator from all claims, losses, or liabilities arising from the handling of the Equipment if such claims, losses, or liabilities result from Buyer's failure to maintain a safe working environment.
  - c. **BUYER'S RISK.** When the Buyer directs Seller's Equipment to enter the property or operate in proximity to, over, or through property improvements, structures, fixtures, overhead obstruction, & etc. Buyer assumes all risk and liability for and indemnifies Seller, Seller's agents, and Seller's operators against all claims, suits, actions, penalties, expenses, and liabilities, including attorney's fees, whether or not covered by insurance, for (i) loss or damage to the Equipment; (ii) injuries or death of any person; and (iii) damage to any property, however arising, or incurred from or incident to the use, operation of the Equipment, unless such causes of loss or damage are caused solely by the intentional conduct of the Seller or his agent.

## **DANGER**

Portland cement and products containing Portland cement, silica (sand), slag, or fly ash require precautions in handling and exposure

**SEE MATERIAL SAFETY DATA SHEETS OF PRODUCTS FOR FURTHER INFORMATION**