



Remit to: **P.O. Box 725569**  
**Atlanta, GA 31139**  
 Offices: 2500 Cumberland Parkway, Suite 200  
 Atlanta, GA 30339  
 Phone: (770) 431-3300 Fax: (770) 431-3305  
 Email: TC\_creditapp@thomasconcrete.com

Thomas Concrete of Georgia, Inc. | Thomas Concrete of South Carolina, Inc. | Thomas Concrete of Carolina, Inc.

ACCOUNT NAME			DATE		
BILLING ADDRESS				CITY	STATE ZIP
OFFICE PHONE	HOME PHONE	FAX NUMBER	CELL NUMBER	AMOUNT OF CREDIT REQUESTED	
<b>CORPORATE:</b>	PRESIDENT	SECRETARY	FEDERAL TAX I.D. NUMBER		
	SOCIAL SECURITY NO.	SOCIAL SECURITY NO.	COMPANY START-UP DATE		
<b>NON-CORPORATE:</b>	OWNER	PARTNER	P.O. NUMBER REQUIRED?		
	SOCIAL SECURITY NO.	SOCIAL SECURITY NO.	EMAIL or WEBSITE ADDRESS:		

**BUSINESS TYPE:**  Commercial  Residential  Subcontractor      **ACCOUNT TYPE:**  Corporate  Partnership  Sole Proprietor  Other

**EMAIL ADDRESS FOR BILLING:**

**THOMAS CONCRETE DIVISION:**  Charlotte  Raleigh  Georgia  Coastal  Upstate (SC)

**BANKING REFERENCES:**

BANK - CONSTRUCTION LOAN	ACCOUNT NUMBER	PHONE	EMAIL
		( )	
BANK - CHECKING / SAVINGS	ACCOUNT NUMBER	PHONE	EMAIL
		( )	

**TRADE REFERENCES:**

NAME	ACCOUNT NUMBER	PHONE	EMAIL
		( )	
		( )	
		( )	
		( )	

**FOR PERSONAL HOME BUILDERS, PLEASE COMPLETE BELOW:**

STREET ADDRESS OF BUILDING:			
SUBDIVISION:	COUNTY:	LOT NO.:	BLOCK NO.:
LOT OWNED BY:	ADDRESS OF OWNER:		
IS LOT PAID IN FULL? <input type="checkbox"/> ) YES ( <input type="checkbox"/> ) NO	IF NOT PAID IN FULL, NAME OF ENTITY OWED:		
IF PRESOLD, NAME OF PURCHASER:			
CONSTRUCTION LENDER:	LOAN OFFICER:	PHONE NO.:	

BY AFFIXING THE SIGNATURE BELOW, APPLICANT HEREBY ACKNOWLEDGES AND AFFIRMS THAT HE/SHE HAS READ THE TERMS AND CONDITIONS / PERSONAL GUARANTY AGREEMENT CONTAINED IN THIS APPLICATION AND THAT HE/SHE UNDERSTANDS AND AGREES TO BE BOUND BY THE LANGUAGE CONTAINED THEREIN. APPLICANT'S SIGNATURE BELOW AUTHORIZES THE ABOVE-NAMED FINANCIAL INSTITUTIONS TO FURNISH CREDIT INFORMATION TO THOMAS CONCRETE, INC. FAX OR PHOTOCOPIES MAY BE DEEMED TO BE THE EQUIVALENT OF ORIGINAL SIGNATURE.

\_\_\_\_\_(SEAL) \_\_\_\_\_  
**APPLICANT'S SIGNATURE** **DATE**  
**Salesperson:** \_\_\_\_\_

## **TERMS & CONDITIONS / PERSONAL GUARANTY AGREEMENT**

In order to induce Thomas Concrete of Georgia, Inc., Thomas Concrete of Carolina, Inc. and/or Thomas Concrete of South Carolina, Inc. (all three entities hereafter referred to collectively as "Thomas") to consider providing goods on credit to Applicant, Applicant hereby agrees for itself, its successors and permitted assigns that the following terms and conditions shall apply to all sales of goods on open account by Thomas to Applicant:

**1. Credit Review and Approval.** Applicant is applying for credit for business purposes. Applicant authorizes Thomas to investigate Applicant's credit history and capacity and to furnish information on Applicant's payment performance to credit reporting agencies and other proper persons. Applicant authorizes all financial institutions and business entities of which Thomas may from time to time make inquiry to provide to Thomas such financial information as Thomas deems necessary to make credit decisions. Thomas has no obligation to extend credit to Applicant and may, in its sole discretion, suspend, terminate, or reduce the limits of any extension of credit at any time and may withhold shipments of Goods ordered, or require cash in advance, in the event that Thomas, in its sole discretion, finds Applicant's financial condition to be unsatisfactory. Applicant agrees that any line of credit desired or approved is not a limitation of liability, and Applicant expressly agrees that Applicant will be responsible for valid charges in excess of a credit limit. The sale and delivery of concrete and/or grout shall at all times be subject to the approval of Seller's management, and Seller may at any time decline to make any delivery of such materials except upon receipt of payment or upon terms and conditions or security satisfactory to Seller's management. If Buyer has not been approved for credit, it must pay the ready-mix concrete or grout truck driver in full at the point of delivery (e.g., cash on delivery).

**2. Ready Mix Concrete/Grout.** Seller has available certain standardized concrete and grout mixtures (the "Goods"). Information on these standardized concrete and grout mixtures is available at the offices of Seller or upon request. If Buyer desires a different concrete or grout mixture, it shall provide in writing the design and proportioning of the concrete or grout mixture to Seller, specifying materials readily available to Seller, and Seller will assign a unique mix code name for such concrete or grout mixture. Seller shall not be responsible for the performance of the concrete or grout mixtures specified by Buyer or others, including the 28-day strength. The ready-mix concrete and grout mixtures will be batched, mixed, and delivered to Buyer in accordance with ASTM C94. The ready-mix concrete and grout are being provided by the cubic yard. Any verification of yield shall be in accordance with ASTM C 94 using fresh concrete unit weight method. Buyer acknowledges that the amount of concrete and grout ordered has been determined by the Buyer, and the Buyer assumes full responsibility therefor and shall hold Seller harmless regarding the adequacy of the amount of ready-mix concrete and grout ordered. Buyer further acknowledges that Seller is not responsible and has no control over the placing and handling of the concrete and grout during and after unloading the delivery truck, and Buyer assumes full responsibility therefor and shall hold Seller harmless regarding the placement, curing, and finishing of the concrete and grout.

**3. Purchase Orders.** Buyer will initiate all purchase orders ("Purchase Orders") in written form via facsimile, e-mail, or U.S. mail and cause all Purchase Orders to contain the basic business terms (identity and quantity, quoted price, delivery date, delivery location, etc.). Buyer, by submitting a Purchase Order, agrees that the Purchase Order, concrete to be delivered by Seller, and any other obligations of the Purchase Order will be governed by this Agreement. Seller expressly limits acceptance of any Purchase Order to this Agreement. Seller objects to and rejects any different terms contained in any Purchase Order submitted by Buyer or any subsequent communication from Buyer. Seller has the right, in its sole discretion, to accept or reject any Purchase Order. Seller may accept any Purchase Order by confirming the order in writing or by delivering concrete, whichever occurs first. No Purchase Order is binding on Seller unless accepted by Seller as provided in this Agreement. This Agreement, together with the business terms of any Purchase Order accepted by Seller, constitute the final agreement between Seller and Buyer and may not be modified, waived, or superseded, except by written agreement signed by Seller.

**4. Notice and Delivery.** Seller will make commercially reasonable efforts to deliver ready mix concrete and grout to the locations at the times and quantities requested by Buyer, provided Buyer schedules with Seller the deliveries during normal working hours and not less than twenty-four hours in advance of the requested deliveries. Seller is authorized to make deliveries requested by Buyer's personnel and agents, including its purchasing managers, project managers, superintendents, foremen, subcontractors, and concrete placers and finishers. Seller has no liability whatsoever resulting from delay regardless of the reasons. Buyer will be charged for each delivery request and will not be entitled to a credit unless the delivery is cancelled prior to the batching and loading operations occurring. The quantity of any installment of concrete as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Buyer on delivery, unless Buyer can provide conclusive evidence proving the contrary. Seller shall not be liable for any non-delivery of concrete unless Buyer gives written notice to Seller of the non-delivery within ten (10) days of the date when the concrete would have been received. Any liability of Seller for non-delivery of the concrete shall be limited to delivering the concrete within a commercially reasonable time or adjusting the invoice respecting such concrete to reflect the actual quantity delivered. Buyer shall be liable for damage to sidewalks, driveways, other property, and persons incurred as a result of deliveries beyond the curb line, except to the extent caused by Thomas's sole gross negligence.

**5. Title and Risk of Loss.** Title and risk of loss passes to Applicant upon delivery of the Goods to the delivery location designated by Applicant.

**6. Unloading.** Buyer shall provide suitable roadways and approaches to points of delivery beyond the public roads. Buyer shall provide safe areas for the ready-mix concrete trucks to be unloaded as well as adequate locations and contained areas where Seller may wash out and clear delivery trucks to avoid tracking mud, dirt, rocks, debris, or concrete onto public roads. Buyer shall be responsible for complying with all environmental laws regarding the washout of the ready-mix concrete and grout delivery trucks and shall indemnify Seller from any and all liabilities arising from such environmental laws. Buyer shall pay for any wrecker or similar charges associated with getting the delivery truck into and out of the jobsite or delivery location. Seller may charge Buyer an hourly unloading fee of \$200 should any delivery truck not be unloaded within sixty (60) minutes or ten (10) minutes per cubic yard, after arriving at the place of delivery or jobsite, whichever

is the shortest duration. Seller may also charge an additional load charge of \$350 for each ready-mix concrete truck hauling less than six (6) cubic yards of ready-mix concrete or grout.

**7. Quality and Inspection.** Buyer shall inspect the ready-mix concrete and/or grout at the time of delivery. Failure of Buyer to identify and notify Seller's home office of any and all suspected or known defects and/or nonconformities, in addition to noting such on the delivery ticket, shall be an unqualified acceptance of the concrete and/or grout. Applicant acknowledges and understands that the addition of water or any other material to the Goods may significantly reduce the specified strength and other properties of the Goods. Applicant accepts full responsibility for such reduction in strength or other properties and will indemnify and hold harmless Thomas from the same. Use of material by Applicant constitutes waiver of any error in shipment or defect in material which may have been determined by a prompt, diligent inspection thereof.

**8. Pricing.** The prices quoted to Buyer are based upon current costs and conditions as of the date of Seller's quotation. Also, pricing is based upon delivery locations being within 25 miles of one of Seller's concrete plants and deliveries occurring during normal operating hours (7 a.m. to 6 p.m.), Monday through Friday, excluding federal and state holidays. Also, a unit price will be set by Seller for any nonstandard concrete and grout mixtures, upon receipt by Seller of the design and proportioning of the concrete or grout mixture provided by Buyer. All sales and use taxes shall be in addition to the prices quoted. The prices quoted do not include cost of inspection or tests. Prices and availability are subject to change without notice and may increase as a result of force majeure events defined in this Agreement.

**9. Invoicing.** Thomas will provide to Applicant an itemized invoice of each sale. Applicant agrees to examine all invoices and statements promptly upon receipt and to notify Thomas immediately of any failure of delivery, shortage, discrepancy, or error. If Applicant does not give written notice to Thomas within thirty (30) calendar days from the date of such invoice of any objection to the Goods listed, or the receipt thereof, or that such purchase was unauthorized, or any other objection, all such objections shall be deemed waived. Applicant waives any and all right to set off claims which it may assert against Thomas and/or to withhold payment to Thomas based on a claim that Thomas is indebted to Applicant. No claim asserted by Applicant against Thomas shall relieve Applicant of its obligation to make timely payments to Thomas.

**10. Payment.** Except as otherwise set forth in a Thomas invoice, payment is due within twenty (20) calendar days after the last day of the month in which the invoice is rendered. If timely payment is not made, the account shall be past due. Applicant agrees that discounts, if offered in Thomas invoices, will not be allowed if a past due amount exists on the account. Applicant agrees that all past due amounts shall bear interest at one and one-half per cent (1½%) per month (18% per annum) until paid. Applicant shall pay all costs and expenses incurred in collecting sums due or owing, including court fees and costs, attorneys' fees, and expert witness fees, arising before, during, or after trial, including any costs, attorneys' fees, or expenses incurred in any appeal therefrom. Thomas reserves the right, in its sole discretion, to: (a) withhold shipments and/or suspend and cancel deliveries, (b) require prepayment, and/or (c) impose or revise any credit terms or credit limits on Applicant's purchases when Thomas deems itself insecure with respect to Applicant's ability to pay for any amount due. A \$30.00 fee, or 5% (five percent) of the face amount of the check, whichever is greater, will be charged to Applicant's account for each dishonored check tendered. Applicant agrees that all payments shall be applied to Applicant's account as designated in writing; if not designated in writing, then Thomas shall apply said payment at its discretion.

**11. Force Majeure.** In the event of war, flood, strike, labor trouble, accident, riot, act of government authority, terrorism, explosion, embargo, civil or military authority, changes in market conditions relating to costs or availability of raw materials, commercial impracticability, or other contingencies beyond the control of Seller interfering with or affecting the production or transportation of the concrete and/or grout or with the supply of any raw material used in connection therewith, the time for Seller's delivery and price related to the goods shall be amended to provide a day-for-day extension of time and an increase in the price to reflect the changed conditions. Seller may also, at its option, delay or cancel, in whole or part, any unshipped balance of the concrete and/or grout due to events of force majeure.

**12. Indemnification.** To the fullest extent permitted by law, Buyer shall defend, indemnify, and hold Seller and its affiliates, officers, directors, employees and agents wholly harmless from any claims, damages, costs, suits by any person or persons, losses, and expenses, including attorneys' fees, arising out of or resulting from Seller's use of the concrete and/or grout, provided that Seller has complied with the terms of this Agreement and applicable Purchase Order and such claims are not due to the sole negligence of Seller.

**13. Non-Waiver.** Any waiver or non-enforcement by Thomas of a breach, default or term under this Agreement shall not be deemed a waiver of any subsequent breach or default of enforcement of such term, and Thomas shall only be deemed to have given such waiver when in writing executed by Thomas providing for such waiver. If any provision of this Agreement is waived by Thomas or is held to be invalid or unenforceable, all other provisions shall nevertheless continue in full force and effect as if such provision were not contained herein.

**14. Entire Agreement.** This Agreement contains the entire agreement and understanding between Thomas and Applicant with respect to the sale of Goods by Thomas to Applicant (other than payment terms and delivery dates, which are set forth in Thomas invoices). All other prior agreements, commitments, representations and discussions between Thomas and Applicant are null and void. This Agreement is not assignable by Applicant without the prior written consent of Thomas. No modification, amendment or addition to this Agreement will be binding on Thomas unless such modification, amendment or addition is executed by Thomas in writing. Without limitation of the foregoing, the terms hereof shall not be altered or interpreted by reference to any course of dealing between Thomas and Applicant or industry practice.

**15. Applicable Law.** Each Purchase Order (and the application of this Agreement to the Purchase Order) shall be governed by the law of the State where the delivery point is located.

**16. Personal Guaranty.** The below Guaranty is given by \_\_\_\_\_ for the purpose of inducing Thomas to extend credit to  
(GUARANTOR'S NAME - NO TITLES)  
 \_\_\_\_\_ (Applicant). Guarantor assert(s) that he/she/they will personally benefit if  
(COMPANY or CORPORATE NAME)  
 credit is extended to Applicant. The undersigned unconditionally personally guarantee(s) the timely payment of all amounts due from Applicant to Thomas and agree(s) to be jointly and severally liable with Applicant to Thomas for any debt owed by Applicant. The obligation of the Guarantor(s) is a primary and unconditional obligation and covers all existing and future indebtedness of the Applicant to Seller. The undersigned agree(s) to pay reasonable attorneys' fees equal to fifteen percent (15%) of the outstanding principal and interest, or the maximum amount allowed by law, whichever is greater, owed by the Applicant in the event that Applicant's account is placed with an attorney for collection. This personal guaranty may only be revoked in writing sent by certified mail to Thomas. Said revocation shall not be effective as to any balance owed prior to receipt of said revocation. The undersigned hereby expressly waive(s) notice of acceptance of this instrument, notice of any default, non-payment, partial payment, presentment, protest, demand and any and all other notices whatsoever. The undersigned further consent(s) to any extensions of credit, accelerations, modifications, amendments or terms changes of any agreement concerning obligations of Applicant.

\_\_\_\_\_  
 SIGNATURE OF GUARANTOR (**NO TITLES**)                      PRINT NAME                      SOCIAL SECURITY NUMBER      DATE