

**CREDIT APPLICATION**

**SALES REPRESENTATIVE:** \_\_\_\_\_ BAMA CONCRETE PRODUCTS CO., INC.  
BAMA CONCRETE BIRMINGHAM INC. -- DAVIS HAULING LLC -- DAVIS SAND & GRAVEL LLC

Credit Amount Requested \$ \_\_\_\_\_ Date \_\_\_\_\_, 20\_\_\_\_

Company Name \_\_\_\_\_

Billing Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_

Delivery Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_

Accounts Payable Contact \_\_\_\_\_ AP Payable email \_\_\_\_\_

Main Phone \_\_\_\_\_ Fax \_\_\_\_\_

How long at current address? \_\_\_\_\_ Type of Business? \_\_\_\_\_ Annual Sales Volume? \_\_\_\_\_

Type of business: \_\_\_\_\_ Person who will place orders: \_\_\_\_\_

TERMS & CONDITIONS BELOW- "BAMA-DAVIS" REFERS TO ALL FOUR COMPANIES LISTED ABOVE\* CUSTOMER OR PURCHASER OF CONCRETE OR RELATED MATERIALS WILL BE REFERED TO AS "BUYER"

TERMS AND CONDITIONS

1. The undersigned acknowledges and understands that BAMA-DAVIS relies on the information provided herein in deciding to grant or to continue credit or to accept the guarantee.
2. The undersigned agrees to notify BAMA-DAVIS immediately and in writing of any changes in names, address or legal entity and of any material adverse change (1) in any of the information contained in this application or (2) in the financial condition of the BUYER seeking credit.
3. BAMA-DAVIS is authorized to make all inquiries it deems necessary to verify the accuracy of the information contained herein, and to determine the credit worthiness of the BUYER seeking credit and or the undersigned.
4. BAMA-DAVIS is authorized to answer questions about its credit experience with the BUYER seeking credit and or the undersigned.
5. For valuable consideration received, and to induce BAMA-DAVIS to extend credit to the BUYER seeking credit, the **PERSONAL GUARANTY** undersigned, jointly and severally guarantee and promise to pay any and all indebtedness of the BUYER seeking credit and they each severally agree to pay all costs of collecting or securing or attempting to collect or secure under this personal guarantee, including reasonable attorney's fees, whether the same be collected or secured by, or any attorney consulted with reference to, suit or otherwise. This is a continuing guarantee relating to any indebtedness including that arising under successive transactions. BAMA-DAVIS has the authority to extend the time of payment of any indebtedness hereby guaranteed and to renew, modify or accelerate the terms or provisions of the indebtedness or any part thereof, without notice and without releasing the liability of the BUYER or **PERSONAL GUARANTY** undersigned. The **PERSONAL GUARANTY** undersigned waives any rights to BAMA-DAVIS to give notice of indebtedness or default of payment. Nor will it be necessary for BAMA to procure a judgment against the BUYER or **PERSONAL GUARANTY** undersigned seeking credit before demanding the payment which is hereby guaranteed. This guarantee shall be continuing, absolute and unconditional and shall remain in full force and effect as to the undersigned and his/her estate. Execution is notice to the undersigned of his/her acceptance and no further notice of acceptance is required.
6. Any endorsement placed on a check tendered for payment that purports to be an accord and satisfaction or a partial or full release of BAMA-DAVIS rights shall be without effect.
7. BUYER agrees to furnish BAMA-DAVIS on request, with copies of all "Bonds", "Contracts", purchase order(s), job numbers, job addresses and other information it deems necessary to protect BAMA-DAVIS interest.

- BUYER agrees that BAMA-DAVIS may send out any necessary notices required to secure available lien and/or bond rights.
8. BAMA-DAVIS does not guaranty or warrant that the ready-mix concrete or grout shall be (a) in compliance with applicable building codes, (b) in compliance with any specifications, or (c) sufficient for any conditions. BUYER shall be solely responsible for verifying and obtaining approval that the ready mix concrete or grout mixes are in full compliance with (a) all applicable building or similar codes, (b) all applicable contract documents, including specifications, and (c) are fit for their intended purpose(s), including any condition.
9. **Notice and Delivery.** BAMA-DAVIS will take reasonable steps to deliver ready mix concrete and grout to the locations at the times and quantities requested by BUYER, provided BUYER schedules with BAMA-DAVIS the deliveries during normal working hours and not less than twenty-four hours in advance of the requested deliveries. BAMA-DAVIS is authorized to make deliveries requested by BUYER'S personnel and agents, including its purchase managers, project managers, superintendents, foremen, builders, subcontractors and concrete placers and finishers. Under no circumstances shall BAMA-DAVIS have any 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.
10. **Ready Mix Concrete/Grout.** BAMA-DAVIS has available a few concrete and grout mixtures. Information on these concrete and grout mixtures is available at the offices of BAMA-DAVIS or upon request. Strengths are based on a maximum of a 4-inch slump. If BUYER desires a different concrete or grout mixture, it will need to provide in writing the design and proportioning of the concrete or grout mixture to BAMA-DAVIS, specifying materials readily available to BAMA-DAVIS and BUYER will assign a unique mix code name for the concrete or grout mixture. BAMA-DAVIS shall not be responsible for the performance of the concrete or grout mixtures provided 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; provided, however, BAMA-DAVIS shall not be responsible for the temperature of the concrete or take any cold or hot weather precautions without BUYER first requesting and agreeing in writing to pay the additional pricing for such precautions. The ready-mix concrete and grout are being provided by the cubic yard. 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 BAMA-DAVIS harmless regarding the adequacy of

the amount of ready-mix concrete and grout ordered. BUYER further acknowledges that BAMA-DAVIS is not responsible and has no control over the placing or handling of the concrete and grout during and after unloading the delivery truck, and BUYER assumes full responsibility therefor and shall hold BAMA-DAVIS harmless regarding the placement, curing, and finishing of the concrete and grout.

11. **Inspection.** BUYER shall inspect the Materials (i.e., the ready mix concrete and/or grout) at the time of delivery, and failure of BUYER to identify and notify BAMA-DAVIS 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 Materials.

12. **Pricing.** The prices quoted to BUYER are based upon current costs and conditions. Pricing is based upon delivery locations being within 25 miles of BAMA-DAVIS concrete plants and deliveries occurring during normal operating hours (7 a.m. to 6 p.m.), Monday through Friday, excluding federal and state holidays. A unit price will be set by BAMA-DAVIS for any different concrete and grout mixtures, upon receipt by BAMA-DAVIS of the design and proportioning of the concrete or grout mixture provided by BUYER, including cold and hot weather precautions. All sales and use taxes shall be in addition to the prices quoted. The prices quoted do not include cost of inspection or tests.

13. **Warranty and Limitation of Liability.** BAMA-DAVIS warrants that the concrete and grout mixtures, when sampled and tested by BUYER, will meet the 28-day strengths, provided the concrete mixtures are sampled and tested in accordance with ASTM C172 and ASTM C31 and the grout mixtures are sampled and tested in accordance with ASTM C1019, by a certified American Concrete Institute Grade 1 Concrete Field Testing Technician.

BAMA-DAVIS SHALL NOT BE LIABLE FOR ANY LOSS OF PROFITS, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR OTHER DAMAGES. THIS WARRANTY IS GIVEN AND ACCEPTED IN LIEU OF ALL OTHER LIABILITY OR WARRANTIES ON THE PART OF SELLER, EXPRESS OR IMPLIED, IN FACT OR IN LAW. ALL IMPLIED WARRANTIES AND SPECIFICALLY THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED AND DISCLAIMED.

This warranty shall constitute BUYER'S sole and exclusive remedy and BAMA-DAVIS sole and exclusive liability. BAMA-DAVIS liability to BUYER arising out of the manufacturing or delivery of the Materials, whether based on warranty, contract, negligence (including strict liability) or otherwise, shall not (in any case) exceed the cost of correcting defects in the Materials, but shall, in all events, be limited to the purchase price of the Materials. BAMA-DAVIS does not warrant and shall have no liability for any ready-mix concrete or grout that has materials or water added to it by or at the direction or request of BUYER'S personnel and agents.

14. **Additional Charges.** BAMA-DAVIS may charge BUYER an hourly unloading fee of \$85 should any delivery truck not be unloaded within thirty (30) minutes after arriving at the place of delivery or jobsite. BAMA-DAVIS may also charge an additional load charge of \$100 for each ready-mix concrete truck hauling less than six (6) cubic yards of ready-mix concrete or grout.

15. **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 provide adequate locations and contained areas where BAMA-DAVIS may washout and clean 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 BAMA-DAVIS from any and all liabilities arising from the environmental laws. BUYER shall be responsible for all liability for damage to sidewalks, driveways, other property, and person incurred as a result of deliveries beyond the curb line. BUYER shall pay for any wrecker or similar charges associated with getting the delivery truck into and out of the jobsite or delivery location.

16. **Payment.** Sellers payment terms are NET 10<sup>TH</sup> PROX. If requested, BAMA-DAVIS will provide an applicable lien waiver in exchange for

contemporaneous payment. There shall be no recoupment or setoff or other condition precedent of payment.

17. **Interest and Collection.** Any payment not made when due shall be subject to a charge of one and one-half percent (1-1/2%) finance charge per month or the highest allowed finance charge, whichever is less, on the unpaid balance. BUYER shall pay all costs and expenses incurred in collecting sums due or owing, including court or arbitration 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.

18. **Insurance.** BAMA-DAVIS shall be only obligated to obtain and maintain the minimum insurance requirements as mandated by the State of Alabama.

19. **Shipments Subject to Payment.** If BUYER fails to make full and timely payments on this or any other agreement between BUYER and BAMA-DAVIS in accordance with BAMA-DAVIS terms, BAMA-DAVIS may defer further deliveries of Materials until such payments are made, or may, at its option, cancel in whole or part any further deliveries.

20. **Credit Approval.** The sale and delivery of Materials shall at all times be subject to the approval of BAMA-DAVIS management and BAMA-DAVIS may at any time decline to make any delivery of Materials except upon receipt of payment or upon terms and conditions or security satisfactory to BAMA-DAVIS management.

21. **Indemnification.** To the fullest extent permitted by law, BUYER shall defend, indemnify, and hold BAMA-DAVIS and its officers, directors, employees and agents wholly harmless from any claims, demands, liabilities, damages, costs, suits by any person or persons, losses, and expenses, including attorneys' fees, arising out of or resulting from the execution of or in connection with the sale, delivery and use of the Materials, including liability for any negligence of a party indemnified hereunder, provided the negligent act was not the sole negligence of a party indemnified hereunder.

22. **Waiver, Alteration or Modification.** No waiver, alteration, or modification of these terms and conditions shall be binding on BAMA-DAVIS unless in writing and signed by an officer of BAMA-DAVIS.

23. **Applicable Law.** This Agreement is made in and shall be governed by the laws of the State of Alabama, without giving effect to the conflict of law provisions of the laws of the State of Alabama.

24. **Disputes.** At the discretion and sole election of BAMA-DAVIS, BAMA-DAVIS may require that any controversy, dispute or claim, of whatever kind, arising out of or relating to the sale, delivery or use of the Materials, be resolved by and in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as from time to time amended and in effect. Any litigation or arbitration arising out of the sale, delivery or use of the Materials shall be brought, maintained and administered in Tuscaloosa County, Alabama. Should BAMA-DAVIS be successful, in whole or part, in prosecuting or defending any lawsuit or arbitration, then BAMA-DAVIS shall be entitled to recover its litigation or arbitration expenses, including expert and attorneys' fees, as well as any expenses incurred in any appeal therefrom. Any controversy, dispute, or claim that BUYER may have against BAMA-DAVIS must be initiated no later than one (1) year after the Materials were delivered. Any judgment or arbitration award entered in favor of BAMA-DAVIS shall bear interest at the rate of 18% per annum, until paid in full, in lieu of the statutory rate of interest.

25. **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 contingencies beyond the control of BAMA-DAVIS interfering with or affecting the production or transportation of the Materials or with the supply of any raw material used in connection therewith, BAMA-DAVIS may, at its option, cancel, in whole or part, any unshipped balance of the Materials.

26. **Disposal Fee.** An environmental fee for the disposal or returned concrete will be assessed per load.

INITIAL AGREEMENT TO TERMS & CONDITIONS \_\_\_\_\_

Officer(s)/Owner(s) Information: Name \_\_\_\_\_ Phone \_\_\_\_\_ email address \_\_\_\_\_

Authorized signers accepting deliveries \_\_\_\_\_

Trade References:

1. \_\_\_\_\_ 3. \_\_\_\_\_

Phone (\_\_\_\_) \_\_\_\_\_ Fax (\_\_\_\_) \_\_\_\_\_ Phone (\_\_\_\_) \_\_\_\_\_ Fax (\_\_\_\_) \_\_\_\_\_

2. \_\_\_\_\_ 4. \_\_\_\_\_

Phone (\_\_\_\_) \_\_\_\_\_ Fax (\_\_\_\_) \_\_\_\_\_ Phone (\_\_\_\_) \_\_\_\_\_ Fax (\_\_\_\_) \_\_\_\_\_

BUYER-AGREEMENT

This credit application and agreement is submitted by the BUYER to BAMA-DAVIS to obtain **trade credit**. BUYER agrees to make payment in full to BAMA-DAVIS for all amounts due according to BAMA-DAVIS TERMS & CONDITIONS. BUYER agrees to pay BAMA-DAVIS, as interest, an amount equal to one and one-half percent (1.5%) per month, or the maximum provided by law (whichever is less) for invoice amounts that are considered past due. Past due invoices are those invoices that do not meet terms of NET 10<sup>TH</sup> PROX. Should BUYER default in any such payment(s), BAMA-DAVIS shall have the right, without notice to BUYER, to declare all invoice amounts due and payable and to close BUYER'S account with BAMA-DAVIS. In the event BAMA-DAVIS should commence any action or actions or otherwise seek to enforce this agreement against BUYER, BUYER agrees to pay reasonable attorney(s) fees, court costs, and other expenses incurred by BAMA-DAVIS, whether or not suit is filed. This agreement is not transferable or assignable without the prior written consent of BAMA-DAVIS. This agreement shall become effective upon acceptance of credit application by BAMA-DAVIS.

I/We (BUYER) agree to adhere to the credit/service policies and procedures established by BAMA-DAVIS and authorize the release of all credit information requested by BAMA-DAVIS. This agreement signed and agreed to this the \_\_\_\_\_ day of \_\_\_\_\_ 2019

\_\_\_\_\_

\_\_\_\_\_  
Authorized Signer

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Typed/Printed Name

**INDIVIDUAL PERSONAL GUARANTY**

I, \_\_\_\_\_, residing at \_\_\_\_\_, for and in consideration of BAMA-DAVIS extending credit at my request to BUYER>>>\_\_\_\_\_. I hereby personally guarantee the payment to BAMA-DAVIS in the State of Alabama of any obligation of the BUYER and I hereby agree to bind myself to pay BAMA-DAVIS, on demand, any sum which may become due to BAMA-DAVIS by the BUYER, whenever the BUYER shall fail to pay the same. It is understood that this Guaranty shall be a continuing and irrevocable guaranty and indemnity for such indebtedness of the BUYER. I do hereby waive notice of default, non-payment, and notice hereof and consent to any modification of renewal or the credit agreement hereby guaranteed. I authorize BAMA-DAVIS to obtain credit reports from any credit reporting agency.

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Individual

\_\_\_\_\_  
Social Security #

**PERSONAL GUARANTY**

**When signing the above section, please include copy of driver license of the signer. A text photo can be sent to the Bama-Davis cell number below.**  
**Credit Department Cell-205.281.5202**

**Mail: 2180 Highway 87 Alabaster, AL 35007 - Fax: 205.664.4210 or [tpearson@bamaconcrete.com](mailto:tpearson@bamaconcrete.com)**