



Hercules Materials Holdings, LLC
12225 Stephens Rd
Warren, MI 48089
586-939-7000

Credit Application Form

Billing Address:	Office/Shipping Address
Company Name	Company Name
Attention	Attention
Street Address	Street Address
Residential: Yes <input type="checkbox"/> No <input type="checkbox"/>	Residential : Yes <input type="checkbox"/> No <input type="checkbox"/>
City, State, Zip	City, State, Zip
Telephone	Telephone
Email	Email

General Information

Federal Tax ID No	Company Composition: <input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> LLC	Corporation State of:
Dun & Bradstreet (D&B) No.	At present location since date:	Are premises leased? Yes <input type="checkbox"/> No <input type="checkbox"/>
		Amount of credit desired:
Principal/Contact:	Title:	Email:
		Phone # and Extension:

Bank Information

Bank Name	Branch Name	Bank Contact Officer	Phone no and extension:
Bank address:	City	State	Zip
			Type and account #

Terms and Conditions

All invoices are to be paid within 30 days from the date of the invoice.

By submitting this application, you authorize Hercules Materials Holdings, LLC to make inquiries into the banking and business/trade references that you have supplied.

I agree to the terms as stated above. **Customer Signature:** _____ **Date:** _____

Acceptance and Approval

CREDIT APPROVAL SIGNATURES

Name:	
Date:	Credit Limit Approved:

CREDIT REFERENCES (Please provide (4) supplying references with addresses & phone numbers)

Name	Address	Phone
------	---------	-------

Name	Address	Phone
------	---------	-------

Name	Address	Phone
------	---------	-------

Name	Address	Phone
------	---------	-------



Personal Information:

Personal Guaranty: If the Buyer is a Corporation or Limited Liability Company other than those signing this Agreement, a personal guaranty by a responsible Individual is required. The individual who signs this Agreement as Personal Guarantor, acknowledges that they are a responsible as required, and hereby personally guarantees payment for any and all obligations of Buyer to Seller arising under this Agreement Such guaranty is absolute and unconditional.

Seller would not enter into this Contract for Materials on Open Account, extend credit to Buyer, or provide materials on account, without the Personal Guaranty, which is an express inducement to Seller to supply The materials to be supplied here under.

Principal's Name _____

Address: _____

Principal's SS# _____

Home Phone: _____

Signature of Personal
Guarantor:

Guarantor Signature: _____

Printed Name of Guarantor: _____

1. **Governing terms:** Buyer acknowledges that any written or verbal order for concrete materials is expressly limited to the terms hereof and the Special Purchase Contract, if applicable, and in the event that the purchase order from the buyer states terms additional two or different from those set forth herein or in the Special Purchase Contract, if applicable, this shall be deemed a notice of objection to such additional or different terms and rejection thereof. Any acknowledgment sent by the seller to the buyer subsequent to the seller's receipt of a purchase order from the buyer should not be deemed to be an acceptance by the seller of any offer by the buyer, and shall not alter these terms and conditions or of the Special Purchase Contract. Buyer further agrees that all of buyer's orders will state specific quantities desired and buyer agrees to pay seller's current establish unit price for the material supplied as indicated on the seller's invoice for such materials. Buyer has read and understands these terms and conditions and agrees that seller's shipment of any goods or performance of any service under this order shall constitute buyer's acceptance of these terms and conditions and the terms and conditions of the Special Purchase Contract, as applicable, only.

2. **Proof of delivery:** Proof of delivery shall be verified by (a) the signing of the delivery ticket by any person at the delivery site representing the buyer, (b) the signing of the delivery ticket by the driver of the concrete truck (employee of the seller) with notations of dates and time or (c) other written instructions agreed-upon to by both buyer and seller prior to delivery. Upon discharging any portion of the delivered load of concrete the buyer accepts these terms and conditions. Seller's printed delivery ticket shall constitute prima facie evidence of the product and quantity delivered, and the date and time of delivery.

3. **Volume and delivery:** No cancellation of an order will be accepted after the product has been loaded at seller upon delivery. Any claim for a shortage of product must be made to seller within 24 hours after delivery. The buyer's rights with respect to products rightfully rejected are limited to the rights set forth in paragraph 12 below. Delivery charges based on load size may apply. Seller reserves the right to add other charges upon prior written to the buyer, including but not limited to cancellation or evening or weekend delivery charges. The buyer agrees to provide suitable roadways and entrances to the point of delivery for seller's vehicles if other than paved public streets. If in seller's opinion, such suitable roadways or approaches are not provided or available, seller reserves the right to stop deliveries until conditions are remedied and suitable roadways or approaches are available. In the event the buyer orders delivery beyond the curb line, seller assumes no liability for any damage to sidewalk, driveways, roadways or other property and the buyer hereby agrees to indemnify seller, its directors, officers, employees, shareholders, successors and assigns harmless against all claims, liability, loss or expense incurred as a result of such damage that may occur. The buyer agrees to provide suitable facilities to allow for washing of the seller's truck mixer.

4. **No added materials:** The buyer shall not add or instruct the driver to add any materials into the products. Concrete shall be batched in accordance with recognized in accordance with recognized industry acceptable standards such as ACI and ASTM specifications. Seller will provide batch weights reflecting tolerances and constituents and all available water to meet design water cement ratio. Additional water added by or on behalf of

the buyer that exceeds the water cement ratio for this load can result in lower strength and overall quality of concrete.

5. **Uniformity of finish or color:** Concrete is produced from naturally occurring materials; natural variations – color, efflorescence, and other variations may occur. Because there are too many variables during both the manufacture of raw materials, concrete production, and those encountered during placement and finishing, seller hereby disclaims any responsibility or liability whatsoever for any alleged lack of uniformity in the color or efflorescence of the concrete.

6. **Limited warranty:** Product supply hereunder shall conform to applicable specifications for compressive strength, durability and workability in the ACI and ASTM specifications or such other alternative specifications as may be required for a particular order, all as may be amended from time to time. It is the buyer's responsibility to provide any alternative applicable specifications to seller. The buyer acknowledges that seller has no responsibility for the product after the product leaves seller's custody and control; and, in particular, the seller has no control over placing, finishing or curing of products. Seller does not guarantee the finished results obtained from this load of concrete. Seller will repair or replace any good supplied by seller that failed to meet this limited warranty, subject to the limitation of liability below.

7. **Concrete strength:** When strength, quality or character of material is to be determined, the current edition of ATSM C94 shall govern all quality control, testing, measuring and acceptance of materials. Seller is not responsible for slump, strength, or quality of any concrete to which water or other material has been added by or on behalf of the buyer. Buyer is responsible to see that the concrete is handled in accordance with the best construction practices. Seller has no control over the placing or handling of concrete after unloading and expressly disclaims any responsibility for the finished work in which it is used. Buyer is responsible to prevent unloaded concrete from coming into contact with any material which may adversely impact concrete strength.

8. **Concrete temperature:** Concrete temperature will be dictated by the environmental and material conditions at the time of delivery. Any requirement beyond these conditions will require the implementation of control measures during production at the expense of buyer. Buyer is responsible for the requirements of ACI 305R and 306R.

9. **Exclusions from agreement:** The agreement shall not apply and seller has no liability under this agreement if: (a) sampling and testing of products is not in strict accordance with the above noted ACI standards or if results are not interpreted in strict accordance with current ASTM test methods, (b) placing, finishing, and curing of products or addition of water results in the slump exceeding the maximum specified slump, (c) the buyer adds any materials to the products, (d) the buyer specifies any of the proportions of the product mix. In order for the limited warranty to apply, the proportions of the consistent materials comprising the products must be within seller control, (e) placement of products is not completed within the timeframe specified for delivery or in the applicable specifications, (f) the buyer fails to supply

any alternative applicable project specifications, supplies incorrect project specifications or orders products that are not within applicable project specifications, (g) product is concrete blocks.

In addition with respect to any use of seller ready – mixed concrete products in sidewalks, curves, gutters or other exterior expose flat work applications, product durability is not warranted where the installed concrete is exposed to any non-traditional or alternative chemical deicing materials, application techniques, or application rates. Non-traditional or alternative chemical deicing materials include, without limitation, calcium chloride, calcium magnesium acetate, potassium chloride, magnesium chloride, and any and all combinations thereof.

10. **Buyers responsibilities respecting delivery:** Buyer agrees to provide suitable roadways or approaches to points of delivery if other than on public roadways in alleyways. If such suitable roadways are not provided, seller reserves the right to stop deliveries until conditions are remedied. Buyer is responsible for and agrees to indemnify the seller against all liability, loss and expense incurred as a result of deliveries beyond public roadways or alleyways.

11. **Delays:** All agreements made and orders taken are subject to the contingencies of and delays in production and delivery. Seller shall not be responsible, nor will allowances be made for, delays resulting from fire, strikes or other labor troubles, accidents, delays in transportation, equipment failure, shortage of trucks, fuel or material, governmental interference or regulation, weather conditions or any other contingencies beyond seller's control. In the event of inability to perform fully, seller shall have the right to allocate shipments in any manner it deems fit and reasonable. Seller reserves the right to refuse to make delivery where it believes delivery unsafe or impractical by reason of any existing or threatened strike, picketing or other labor dispute.

12. **Defects/limitation of liability:** Notice of any defect in materials or non-conformity to specification shall be made in writing within 10 days from receipt of such materials, after which any such claim for such defect or non-conformity shall be deemed waived, except that yield complaints must be made in writing no later than 48 hours after receipt of materials. Seller's liability for such defective or non-conforming materials shall be limited, under any theory of law, to their replacement or refund of the purchase price. Seller shall have the right to inspect and satisfy itself as to the validity of any such claims. Seller shall have no responsibility for damage or shortage of any materials unless such damage or shortage is noted on the delivery ticket and materials claimed to be damaged are held and made available for seller's inspection. IN THE CASE OF ALL CLAIMS MADE AGAINST SELLER, INCLUDING BUT NOT LIMITED TO CLAIMS FOR FAILURE OR DELAY IN DELIVERY, SELLER SHALL IN NO EVENT BE LIABLE FOR ANY LOST PROFITS, SPECIAL, OR CONSEQUENTIAL DAMAGES. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF THE TRANSACTIONS UNDER THIS AGREEMENT MAY BE BROUGHT BY BUYER MORE THAN ONE YEAR AFTER THE MATERIAL SUPPLIED

PURSUANT TO ANY ORDER UNDER THIS AGREEMENT HAS BEEN DELIVERED. SELLER WILL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES INCLUDING, WITHOUT LIMITATION, ANY DAMAGES RELATED TO DELAY, WHETHER BASED ON STATUTE, TORT, CONTRACT, OR OTHERWISE, AND WHETHER OR NOT A RISING FROM THE SELLER'S NEGLIGENCE, STRICT LIABILITY OR FAULT. IN NO EVENT WILL SELLER BE RESPONSIBLE FOR DAMAGES DUE TO THE ACTIONS OF OTHERS OR THE FAILURE OF BUYER TO COMPLY WITH ITS OBLIGATIONS. SELLER'S LIABILITY FOR ANY CLAIMS WILL BE LIMITED TO THE PURCHASE PRICE OF THE GOODS SOLD UNDER THIS CONTRACT. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY EXPRESSLY EXCLUDED. THE REMEDY SET FORTH IN THESE TERMS AND CONDITIONS WILL CONSTITUTE THE SOLE REMEDY OF BUYER UNDER THE LIMITED WARRANTY PROVIDED HEREIN EXCEPT AS OTHERWISE PROVIDED, UNLESS MADE SPECIFICALLY IN WRITING, SIGNED BY AN OFFICER OF SELLER, AND ATTACHED TO AND MADE PART OF THIS CONTRACT. SELLER SHALL NOT BE RESPONSIBLE FOR ANY DELAYS, POSTPONEMENTS OR FAILURES TO DELIVER RESULTING FROM WEATHER, FIRE, NATURAL DISASTERS, FAILURE OF TRANSPORTATION EQUIPMENT OR FACILITIES, STRIKES, ACCIDENTS, OTHER PARTIES' NEGLIGENCE OR ERROR, OR ANY REASON OR CAUSE BEYOND THE CONTROL OF SELLER. BUYER AGREES TO PROTECT SELLER AND HOLD SELLER HARMLESS FROM ANY LOSS OR CLAIM ARISING OUT OF THE NEGLIGENCE OF BUYER, BUYER'S AGENTS, EMPLOYEES OR REPRESENTATIONS IN THE INSTALLATION OF ANY OF SELLER'S MATERIALS.

13. **Seller is supplier:** Buyer acknowledges and agrees that seller is a supplier of materials within the meaning of applicable laws and regulations and is not to be deemed a subcontractor. Seller provides no concrete installation services.

14. **Waiver:** No waiver of the seller's rights shall be valid unless in writing and signed by an officer of seller.

15. **No third-party beneficiary:** This agreement is not intended to confer in or on behalf of any person or entity not a party to this agreement (and their successors and assigns) any rights, benefits, causes of action, or remedies with respect to the subject matter or any provision of this agreement. No provision of this agreement shall in anyway inure to the benefit of any such third person (including the public at large) so as to constitute any such person as a third-party beneficiary of this supply agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party here too.

16. **Construction with terms on Special Purchase Contract:** The parties agree that the terms and conditions contained on this delivery ticket shall govern the sale and supply of concrete reflected on the front side of this delivery ticket. In the event however, that the buyer is a credit customer of seller and subject to the Special Purchase Contract then the parties agree

that the terms of this delivery ticket shall be read together, harmonized and construed to supplement whenever possible the terms and conditions set forth in the Special Purchase Contract or in any quotation submitted by seller to buyer; provided, however, in the event of a conflict between the terms of this delivery ticket and the terms of the Special Purchase Contract, the provisions contained in the Special Purchase Contract shall prevail.

17. **Payment terms and collection costs:** Unless otherwise stated, buyer shall pay to seller all amounts due under this contract, including all taxes applicable to the sale and delivery of such products and services, within 30 days of the delivery date. All such amounts not paid within these terms will be subject to a lien, or a bond claim, and bear interest up to the maximum rate allowed by applicable law. Buyer agrees to pay all collection costs, including attorney fees, sheriff fees and other court costs, incurred by seller in connection with any attempt by seller to collect any amounts due under this contract.

18. **Entire agreement:** These terms and conditions and any terms and conditions set forth on the seller's quotations, if applicable, the Special Purchase Contract, if applicable, or otherwise provided by a supplementary written agreement between the parties executed by both seller and the buyer, comprise the entire agreement between the parties respecting the seller's sale and delivery of concrete materials to the buyer and supersede all other agreements, written or oral, regarding the subject matter of this agreement, and no prior or subsequent understanding, agreement, term, condition or trade custom that conflicts with or is supplementary to these terms and conditions is binding on seller.

Effective: May 5, 2020