

CREDIT APPLICATION AND AGREEMENT

BURNCO TEXAS LLC

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Mailing Address: 8505 Freeport Pkwy, Suite 150
Irving, Texas, 75063
Phone #: 1-866-315-8725
accounts.receivable@burnco.com

PLEASE PRINT FULL LEGAL NAME

CUSTOMER NAME: _____ ("Customer") DATE: _____

MAILING ADDRESS _____ CITY _____ STATE _____ ZIP CODE _____

STREET ADDRESS (if different from above) _____ TELEPHONE NO. () _____

CITY _____ STATE _____ ZIP CODE _____ FAX NO. () _____

E-MAIL _____ CELL PHONE NO. () _____

ACCOUNTS PAYABLE CONTACT: _____ TELEPHONE NO. () _____

EMAIL: _____ **Email - Invoices** YES _____ NO _____

Email -Statements YES _____ NO _____

CUSTOMER is a: (check one) " " CORPORATION (State of Incorp. _____) _____ PARTNERSHIP _____ PROPRIETORSHIP _____ PRIVATE INDIVIDUAL _____ JOINT VENTURE

OWNERSHIP OF BUSINESS

NAME ADDRESS TITLE PHONE

NAME ADDRESS TITLE PHONE

NAME ADDRESS TITLE PHONE

NAME ADDRESS TITLE PHONE

ANY INVOLVEMENT OF OWNERS IN PREVIOUS BANKRUPTCIES OR DISSOLUTIONS? YES _____ NO _____ PREVIOUSLY DEALT WITH BURNCO? YES _____ NO _____

IF YES TO EITHER, PLEASE LIST NAME & ADDRESS OF RELEVANT COMPANIES

AFFILIATED COMPANIES

IF OWNERS HAVE OPERATED UNDER OR HAVE BEEN INVOLVED WITH ANOTHER BUSINESS ENTITY PLEASE PROVIDE THE FOLLOWING INFORMATION

OTHER BUSINESS NAME _____

ADDRESS _____

TYPE OF BUSINESS DATE STARTED DATE OF INCORPORATION

IF LESS THAN TWO YEARS IN BUSINESS PLEASE GIVE (1.) NAME AND ADDRESS OF OWNERS' LAST EMPLOYER (2.) OWNERS' BIRTHDATES (3.) OWNERS' SOCIAL SECURITY NUMBERS

BILLING INSTRUCTIONS

IS STATEMENT REQUIRED? YES _____ NO _____

BURNCO LOCATION (REQUIRED) _____ ARE PURCHASE ORDERS REQUIRED? YES _____ NO _____

ARE SIGNED TICKETS REQUIRED? YES _____ NO _____

CREDIT LIMIT REQUESTED \$ _____ ARE JOB NUMBERS REQUIRED? YES _____ NO _____

IF CUSTOMER IS AN INDIVIDUAL

NAME OF EMPLOYER PHONE NO. OCCUPATION YRS. EMPLOYED SOCIAL SECURITY NO. BIRTHDATE

SPOUSE'S NAME: SPOUSE'S EMPLOYER: SPOUSE'S WORK NO.:

IF LESS THAN TWO YEARS AT ABOVE ADDRESS, PLEASE GIVE PREVIOUS ADDRESS

GENERAL CREDIT INFORMATION

CUSTOMER BANK _____

BANK ADDRESS _____

BANK ACCOUNT NUMBER _____ BANK PHONE NUMBER () _____

BANK CONTACT _____ BANK EMAIL ADDRESS _____

BONDING COMPANY _____

PHONE NUMBER () _____ BANK FAX NUMBER () _____

TRADE CREDIT SUPPLIER REFERENCES	ADDRESS	TELEPHONE NO.
1)		
2)		
3)		

BURNCO Sales Representative: _____

CREDIT TERMS & AGREEMENT

All sales are subject to the terms and conditions outlined in this Credit Application and Agreement ("Agreement"). "BURNCO" means BURNCO Texas LLC and its successors in interest, affiliated companies, subsidiaries, and/or assigns with whom you may do business now and/or in the future. "CUSTOMER" means the entity(s) or person(s) acquiring concrete and/or other materials from BURNCO. Customer acknowledges it has read these terms and conditions and agrees to be bound thereby. The terms and conditions are as follows:

1. BURNCO shall determine in its sole discretion the amount and whether to grant credit to the Customer. BURNCO has no obligation to grant such credit and any granting of credit is without commitment to provide future credit. The Customer shall be responsible for all credit it receives from BURNCO, whether or not such credit exceeds authorized credit limits.
2. Customer will pay BURNCO for the all purchases on the Customer's account **within thirty (30) days of the invoice date (Net 30 Days)** and will be responsible for the delivery of all payments to BURNCO's office by *that* date.
3. In the event Customer's Account becomes overdue or the Customer is in default of its obligations hereunder, BURNCO may, in its sole discretion, suspend Customer's account and/or credit privileges without prior notice.
4. Interest will be charged at the rate of 1.5% per month (18% per annum) or the maximum rate permitted by law, whichever is less, on overdue accounts, calculated daily, commencing on the 1st day that the Customer's account is overdue. The Customer agrees that interest on this account shall accrue in accordance with the terms of this agreement both before and after judgment. In no event will Customer ever be charged or required to pay any amount deemed to be interest which is greater than the amount permitted by law.
5. The Customer authorizes BURNCO, its agents and affiliates, to conduct any credit investigations it deems appropriate, including but not limited to obtaining financial statements, credit reports, or other credit information, and authorizes the release to BURNCO of any information, financial, personal or otherwise, as required for the purposes of the credit investigations, from any financial institution, credit reporting organization, reference, supplier, governmental authority, or any institution providing credit information that the Customer deals with. The Customer hereby directs any such financial institution, credit reporting organization, reference, supplier, governmental authority, or any institution providing credit information to provide all information requested to BURNCO in relation to the Customer. For the purposes of any applicable statute pertaining to the privacy of information this clause shall constitute full and sufficient consent for the collection, use and disclosure of information, as required for a credit investigation.
6. BURNCO may disclose information related to the Customer's credit history with BURNCO to any financial institution, credit reporting organization, supplier, governmental authority, or any institution providing credit information that the Customer deals with or to any other third parties. The Customer's signature on this form is express consent for the disclosure of such information.
7. The Customer agrees to provide BURNCO with copies of up-to-date financial statements and financial records, upon request. Customer agrees to provide BURNCO with an updated Credit Application and Agreement upon request.
8. Customer agrees to pay all reasonable charges for collection, including attorney fees and court costs, if the account is placed with an attorney and/or third party for collection.
9. This Agreement shall be binding upon and inure to the benefit of Customer and BURNCO, their successors, assigns and personal representatives, provided that the Customer shall not assign or delegate its rights and obligations herein without the prior written approval of BURNCO. BURNCO may assign, transfer or delegate its rights under this Agreement to any party at any time without notice to Customer.
10. In the event Customer is comprised of more than one party, such parties hereby agree that they shall be jointly and severally liable for: i) payment of all accounts; and ii) for all liability resulting from an event of default hereunder. The Customer and or the owners of the Customer shall notify BURNCO in writing of any changes of control of the Customer and/or any changes in ownership of the Customer.
11. Customer agrees that the terms of credit as set forth herein shall constitute the entire agreement between Customer and BURNCO and that all sales and/or transactions between Customer and BURNCO shall be governed solely by these terms and condition. These terms and conditions may not be modified except by prior written consent of BURNCO. BURNCO reserves the right to change any of the terms of this agreement on 30 days advance notice.
12. **EXPRESS LIMITED WARRANTY.** BURNCO will supply concrete in accordance with the relevant A.C.I. Code and Standards, and unless otherwise stated on the face of the delivery ticket, the A.C.I. Standard 304 will apply. BURNCO will not perform testing automatically. However, upon Customer's request, a testing program will be arranged at the Customer's expense. Charges for the testing service will be in accordance with BURNCO's scale of rates. BURNCO does not recognize and will not be bound by test results performed by persons other than BURNCO. The strength characteristics of the concrete supplied by BURNCO are those shown on the face of each delivery ticket. By signing the delivery ticket, Customer expressly accepts the strength characteristics shown thereon and waives all claims for refund or damages as a result of nonconformance of the strength characteristics shown on the delivery ticket with the strength characteristics required for the particular purpose for which the concrete was ordered. BURNCO's guaranty of the strength of the concrete becomes inoperative and void if the concrete is not poured in place within one and one-half hours of leaving the plant or if the concrete is materially altered as described in section 13. Although BURNCO undertakes to supply concrete in accordance with A.C.I. Code and Standards, if to do so require an addition of a cooling or heating agent, the cost thereof will be charged to Customer. Unless otherwise stated on the quotation, prices are based on slumps of 4". Slumps in excess of 4" are subject to an extra charge where specified strength is still required.
13. BURNCO's limited warranty is hereby expressly disclaimed with regard to any concrete which is materially altered by any person who is not an authorized agent of BURNCO. If the concrete is materially altered as described in this section, then BURNCO's express limited warranty will be void. Customer agrees to indemnify and hold harmless BURNCO from and against any claims, demands, causes of action, losses or costs of whatever kind or nature, foreseeable or unforeseeable, incident to or arising from the material alteration of any concrete by Customer, its employees, its subcontractors or any other third party other than an authorized agent of BURNCO. For purposes of this section, an "authorized agent" is defined as any Plant Manager or person in a higher position of authority than a Plant Manager. For purposes of this section, a "material alteration" is defined as (a) faulty handling, placing or curing of the concrete, (b) the addition of any water or any other material to the concrete either before or after discharge from the delivery unit without the express instructions of an authorized agent of BURNCO, or (c) the addition of any additives to the concrete after request or specification of the Customer, unless an authorized agent of BURNCO confirms the same in writing. Customer must notify BURNCO in writing of any breach of warranty claim within forty five (45) days after such breach is discovered or should have been discovered. If Customer fails to notify BURNCO within this specific time frame then Customer waives its claim for breach of warranty. Any lawsuit for breach of BURNCO's limited warranty must be commenced by Customer within one (1) year after the breach is discovered or should have been discovered or it is forever barred.
14. **BURNCO DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**
15. **BURNCO SHALL NOT UNDER ANY CIRCUMSTANCE BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES OF CUSTOMER FOR ANY TRANSACTION ARISING FROM OR RELATED TO THIS AGREEMENT. THE MAXIMUM LIABILITY IN DAMAGES RECOVERABLE AGAINST BURNCO SHALL NOT EXCEED THE AMOUNT ACTUALLY RECEIVED BY BURNCO FOR THE TRANSACTION THAT FORMS THE BASIS OF CUSTOMER'S COMPLAINT.**
16. BURNCO will not be liable in any manner whatsoever for delay in delivery or non-delivery which is attributable to transport delays, plant or equipment breakdowns, unavailability of materials, or any other cause whatsoever which is beyond the control of BURNCO. Delivery must be accepted by the Customer as soon as possible from the time of arrival of the delivery vehicle on site. If delivery is not accepted in a timely manner, the Customer will pay to BURNCO compensation at the then current waiting time rate charged by BURNCO. No charge shall be made for waiting time if the discharge is completed within twenty minutes or at the rate of seven (7) minutes per cubic yard, whichever period is greater. Delivery will be made only to the curb side. If Customer requests the delivery vehicle to enter the job area, the Customer will indemnify and hold BURNCO harmless from any claims, demands, causes of action, losses or costs of whatever kind or nature, foreseeable or unforeseeable, which arise from such entry or the presence of the vehicle in the job area, including, but not limited to the negligence of BURNCO or

the drivers of BURNCO's vehicles. In connection with any return of concrete, Customer shall be billed and agrees to pay for transportation of the concrete, both to and from BURNCO's plant at BURNCO's then effective rate of cartage per mile, with a minimum rate of cartage equivalent to the charge per mile for six (6) cubic yards of concrete.

- 17. By signing a delivery ticket, or otherwise accepting the concrete, Customer acknowledges it has independently verified the amount of concrete delivered, agrees to be bound by the information shown on the delivery ticket, and agrees to waive any claim(s) for short delivery. In the event the Customer places an order and then cancels it, Customer agrees to pay to BURNCO all costs incurred by BURNCO up to the time of cancellation.
- 18. If any clause or provision of this Agreement is found to be invalid by a court of competent jurisdiction, the remaining provisions shall, nevertheless, remain in full force and effect. Failure to exercise, or delay in exercising, any right or remedy under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.
- 19. This Agreement shall be governed by the laws of the state of Texas. To the fullest extent permitted by law, Customer consents to the jurisdiction of the courts of the state of Texas in connection with any action or proceeding arising from or related to this Agreement. The venue for all suits, counterclaims, causes of action and/or legal proceedings arising from or related to this Agreement shall be instituted in any court of competent jurisdiction in Dallas County, Texas or any other county in Texas at BURNCO's discretion.
- 20. Customer and BURNCO hereby knowingly, voluntarily **WAIVE ANY RIGHT TO TRIAL BY JURY** in any suit, action, proceeding, or counterclaim from any

transaction which arises from or is related to this Agreement. Customer and BURNCO agree that any such suit will be tried before a court and not before a jury. This provision is a material inducement for BURNCO to enter into this Agreement.

- 21. Customer acknowledges receipt of the following notice: The Federal Equal Credit Opportunity Act prohibits creditors from discrimination against credit applicant on the basis of race, color, religion, national origin, age, sex, or marital status, the fact that all or part of the applicant's income is derived from a public assistance program, or the fact that the applicant has exercised any right under the consumer protection act. The federal agency that administers compliance with this law concerning this creditor is the Federal Trade Commission, Pennsylvania and 6th Street, N.W., Washington, DC 20580.

22. WAIVER OF CONSUMER RIGHTS: I, THE UNDERSIGNED WAIVE MY RIGHTS UNDER THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT, SECTION 17.41 ET SEQ., BUSINESS & COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTING WITH AN ATTORNEY OF MY OWN SELECTION, I VOLUNTARILY CONSENT TO THIS WAIVER.

The undersigned certifies that all of the information in this Agreement is complete, factual, correct, and understands that BURNCO will rely on the accuracy of this information in determining whether any credit may be extended. By signing below, the undersigned agrees to the terms and conditions stated herein and represents that he/she is authorized by the Customer to execute this legally binding agreement.

Signature _____ Position _____
 Please Print Name _____ Date _____

PERSONAL GUARANTY

In consideration of credit extended by BURNCO to Customer, I assume personal and individual responsibility and liability, and unconditionally guaranty, without offset, the payment of all indebtedness due and payable to BURNCO by the Customer which is now existing or hereafter incurred in the future including payment of interest, attorney's fees and court costs. This guaranty is open, continuous and not limited in time. BURNCO shall not be required to exhaust its remedies against Customer prior to enforcing its rights against the undersigned under this personal guaranty. The undersigned waives notice of default, demand, non-payment, presentment, and notice of intent to accelerate or acceleration.

I understand that this guaranty shall remain in force until BURNCO receives written notice from me that this guaranty is terminated. In the event that it becomes necessary to place any account guaranteed by this personal guaranty with an attorney and/or third party for collection, the undersigned agrees to pay all costs of collection including interest, attorney fees and court costs.

The undersigned hereby waive all defenses to payment except payment in full. The undersigned KNOWINGLY AND VOLUNTARILY **WAIVE ANY RIGHT TO TRIAL BY JURY** IN ANY ACTION OR SUIT ARISING IN CONNECTION WITH, OUT OF OR OTHERWISE RELATED TO THIS AGREEMENT.

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I hereby consent and authorize the use of my consumer credit report in the credit evaluation process by BURNCO. Undersigned grants to BURNCO the right and authority to make credit inquiries regarding Undersigned and to obtain financial statements, credit reports, or other credit information about Undersigned. Undersigned does hereby release all claims in favor of Undersigned against BURNCO and third parties related to the request and/or providing of credit information and instruments.

SIGNATURE _____ **SSN:** _____
 Please Print Name _____ **Date** _____

SIGNATURE _____ **SSN** _____
 Please Print Name _____ **Date** _____

JOB INFORMATION SHEET

DATE: _____

TYPE OF JOB: (check one) ___Private Work ___Public Work ___Federal Work

TAXABLE: (circle one) Yes/No (If no, attach exemption certificate or tax will be charged)

JOB # (if available) _____ (required on state & federal jobs)

CUSTOMER

Name: _____ Tel No.: _____

Address: _____

Contact Person: _____ Email Address: _____

Customer P.O. No.: _____ Date: _____ Amount: _____

PROJECT

Name: _____ Tel No.: _____

Project Address: _____

Address where materials are to be delivered: _____

Legal description of property: [**MUST ATTACH COPY!**]

Type of project and type of structure: _____

Date work commenced: _____ Expected date work completed/terminated: _____

PROJECT OWNER

Name: _____ Tel No.: _____

Address: _____

Contact Person: _____ Email Address: _____

GENERAL CONTRACTOR

Name: _____ Tel No.: _____

Address: _____

Contact Person: _____ Email Address: _____

BANK FUNDING JOB

Name: _____ Tel No.: _____

Address: _____

Contact Person: _____ Email Address: _____

BONDING INFORMATION - IF A PAYMENT BOND EXISTS, ATTACH A COPY TO THIS FORM.

Name of Surety: _____ Tel No.: _____

Address: _____

Payment Bond No.: _____ Email Address: _____

Name of Bonding Agent: _____ Tel No.: _____

Address: _____

Contact Person: _____ Email Address: _____

IS THIS A CONTROLLED PROJECT? Yes/No If yes, do we have specs? Yes/No Name of Lab: _____

PAY SCHEDULE: _____

COMPLETED BY: _____

COMMENTS: _____
