

# Fowler Flemister Concrete, Inc.

P.O. Box 923, Milledgeville, Georgia 31059  
 711 North Wilkinson Street  
 Milledgeville Main Office: 478-452-0541 | Fax: 478-452-6734  
 Madison: 706-342-2172 Lake Oconee: 706-485-6162  
 Greensboro: 706-453-7725 Monticello: 706-468-1638

## CREDIT APPLICATION AND AGREEMENT

APPLICATION DATE: \_\_\_\_\_ SALESPERSON: \_\_\_\_\_ PLANT: \_\_\_\_\_

ACCOUNT NAME / BUYER: \_\_\_\_\_

D/B/A: \_\_\_\_\_

JOB ADDRESS: \_\_\_\_\_

BILLING ADDRESS: \_\_\_\_\_ CITY/STATE/ZIP: \_\_\_\_\_

STREET ADDRESS: \_\_\_\_\_ CITY/STATE/ZIP: \_\_\_\_\_

PHONE: \_\_\_\_\_ FAX: \_\_\_\_\_ MOBILE: \_\_\_\_\_

TYPE OF BUSINESS: SOLE PROPRIETOR \_\_\_\_\_ PARTNERSHIP: \_\_\_\_\_ CORPORATION: \_\_\_\_\_ LLC: \_\_\_\_\_

FED ID#: \_\_\_\_\_ YEARS IN BUSINESS: \_\_\_\_\_ STATE TAX ID IF EXEMPT: \_\_\_\_\_

\*PLEASE COMPLETE AND ATTACH EXEMPTION FORM

**OWNER/OFFICER**

\_\_\_\_\_  
 FULL NAME TITLE

\_\_\_\_\_  
 HOME ADDRESS HOME PHONE SOC. SECURITY # DATE OF BIRTH

\_\_\_\_\_  
 FULL NAME TITLE

\_\_\_\_\_  
 HOME ADDRESS HOME PHONE SOC. SECURITY # DATE OF BIRTH

BANK REFERENCE: \_\_\_\_\_ ADDRESS: \_\_\_\_\_

PHONE: \_\_\_\_\_ ACCOUNT #: \_\_\_\_\_ CONTACT: \_\_\_\_\_

**TRADE REFERENCES:**

NAME	PHONE	ADDRESS	CITY	STATE	ZIP
_____	( )	_____	_____	_____	_____
_____	( )	_____	_____	_____	_____
_____	( )	_____	_____	_____	_____
_____	( )	_____	_____	_____	_____

### Terms and Conditions

1. The undersigned acknowledges and understands that Fowler Flemister Concrete is relying on the information provided herein in deciding to grant or to continue credit or to accept the guarantee provided below.
2. The undersigned agrees to notify Fowler Flemister Concrete 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 company seeking credit.
3. Fowler Flemister Concrete 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 company seeking credit and the undersigned guarantor.
4. Fowler Flemister Concrete is authorized to answer questions about its credit experience with the company seeking credit and the undersigned.
5. For valuable consideration received, and to induce Fowler Flemister Concrete to extend credit to the company seeking credit, the undersigned, jointly and severally guarantee and promise to pay any and all indebtedness of the company 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. Fowler Flemister Concrete 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 undersigned. The undersigned waives any rights to Fowler Flemister Concrete to give notice of indebtedness or default of payment. Nor will it be necessary for Fowler Flemister Concrete to procure a judgment against the company 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 Seller's rights shall be without effect.
7. Buyer agrees to furnish Fowler Flemister Concrete (the "Seller"), on request, with copies of all "Bonds", "Contracts", "Notices of Commencements", purchase order(s), job numbers, job addresses and other information it deems necessary to protect Seller's interest. Buyer agrees that the Seller may send out any necessary notices required to secure available lien and/or bond rights.
8. Concrete block delivery prices include unloading of ground only at nearest accessible location.
9. Seller shall not be responsible for the temperature control of concrete or grout from the batch plant to the point of unloading unless specific provisions are made 24 hours in advance and Buyer shall pay for all additional costs.
10. **Notice and Delivery.** Seller 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 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 purchase managers, project managers, superintendents, foremen, builders, subcontractors and concrete placers and finishers. Under no circumstances shall Seller 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.

11. **Ready Mix Concrete/Grout.** Seller has available a few concrete and grout mixtures. Information on these concrete and grout mixtures is available at the offices of Seller 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 Seller, specifying materials readily available to Seller, and Seller will assign a unique mix code name for the concrete or grout mixture. Seller 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. 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 therefore 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 or handling of the concrete and grout during and after unloading the delivery truck, and Buyer assumes full responsibility therefore and shall hold Seller harmless regarding the placement, curing, and finishing of the concrete and grout.
12. **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 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 Materials.
13. **Pricing.** The prices quoted to Buyer are based upon current costs and conditions. Also, pricing is based upon delivery locations being within 25 miles 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 different 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.
14. **Warranty and Limitation of Liability.** Seller 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. SELLER 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 Seller's sole and exclusive liability. Seller's 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. Seller 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.
15. **Additional Charges.** Seller may charge Buyer an hourly unloading fee of \$100 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 \$50 for each ready mix concrete truck hauling less than six (4) cubic yards of ready mix concrete or grout.
16. **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 Seller 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 Seller 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 persons 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.

17. **Payment.** Buyer shall make payment by the 10<sup>th</sup> of the month, following the date of batching and loading of each concrete ready mix truck. If requested, Seller will provide an applicable lien waiver in exchange for contemporaneous payment. There shall be no recoupment or setoff or other condition precedent of payment.
18. **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 there from.
19. **Insurance.** Seller shall be only obligated to obtain and maintain the minimum insurance requirements as mandated by the State of Georgia.
20. **Shipments Subject to Payment.** If Buyer fails to make full and timely payments on this or any other agreement between Buyer and Seller in accordance with Seller's terms, Seller may defer further deliveries of Materials until such payments are made, or may, at its option, cancel in whole or part any further deliveries.
21. **Credit Approval.** The sale and delivery of Materials 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 Materials except upon receipt of payment or upon terms and conditions or security satisfactory to Seller's management. Buyers that have not been approved for a charge account must pay in full prior to the Materials being delivered.
22. **Indemnification.** To the fullest extent permitted by law, Buyer shall defend, indemnify, and hold Seller 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.
23. **Waiver, Alteration or Modification.** No waiver, alteration, or modification of these terms and conditions shall be binding on Seller unless in writing and signed by an officer of Seller.
24. **Applicable Law.** This Agreement is made in and shall be governed by the laws of the State of Georgia, without giving effect to the conflict of laws provisions of the laws of the State of Georgia.
25. **Disputes.** At the discretion and sole election of Seller, Seller 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 amend 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 Baldwin County, Georgia. Should Seller be successful, in whole or part, in prosecuting or defending any lawsuit or arbitration, then Seller shall be entitled to recover its litigation or arbitration expenses, including expert and attorneys' fees, as well as any expenses incurred in any appeal there from. Any controversy, dispute, or claim that Buyer may have against Seller must be initiated no later than one (1) year after the Materials were delivered. Any judgment or arbitration award entered in favor of Seller shall bear interest at the rate of 18% per annum, until paid in full, in lieu of the statutory rate of interest.
26. **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 Seller interfering with or affecting the production or transportation of the Materials or with the supply of any raw material used in connection therewith, Seller may, at its option, cancel, in whole or part, any unshipped balance of the Materials.

THE INFORMATION IN THIS CREDIT APPLICATION AND AGREEMENT IS SUBMITTED FOR THE PURPOSE OF OBTAINING CREDIT AND IS CERTIFIED TO BE TRUE, COMPLETE AND CORRECT. THE UNDERSIGNED REPRESENTS AND WARRANTS THAT HE/SHE IS DULY AUTHORIZED TO EXECUTE THIS CREDIT APPLICATION. SELLER IS AUTHORIZED TO INVESTIGATE REFERENCES PERTAINING TO YOUR CREDIT AND FINANCIAL HISTORY. THE UNDERSIGNED AUTHORIZES THE RELEASE OF CREDIT AND BANKING INFORMATION ON THE BUSINESS. IF THIS APPLICATION IS FOR A PARTNERSHIP OR PROPRIETORSHIP, AUTHORIZATION IS GRANTED TO OBTAIN CONSUMER CREDIT REPORTS ON THE PARTNERS OR PROPRIETORS.

DATE \_\_\_\_\_ SIGNATURE \_\_\_\_\_ CORPORATE TITLE \_\_\_\_\_

THE UNDERSIGNED, JOINTLY AND SEVERALLY GUARANTEE FULL PAYMENT OF THIS ACCOUNT ON DEMAND AND IN ACCORDANCE WITH ITS TERMS, UNTIL AND UNLESS REVOKED IN WRITING VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED, ADDRESSED TO FOWLER FLEMISTER CONCRETE, INC, P.O. BOX 923, MILLEDGEVILLE, GA 31069. IT IS FURTHER AGREED SUCH NOTICE SHALL NOT RELIEVE THE UNDERSIGNED FROM ANY INDEBTEDNESS OR LIABILITY INCURRED PRIOR TO THE ACTUAL RECEIPT BY SELLER. AUTHORIZATION IS GRANTED TO OBTAIN CONSUMER CREDIT REPORTS ON THE GUARANTORS AS MAY BE NEEDED IN THE CREDIT EVALUATION PROCESS.

DATE \_\_\_\_\_ (PERSONALLY AND INDIVIDUALLY) DATE \_\_\_\_\_ (PERSONALLY AND INDIVIDUALLY)

PRINT NAME: \_\_\_\_\_ PRINT NAME: \_\_\_\_\_

*The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is the Federal Trade Commission. If your application for business credit is denied, you have the right to a written statement of the reasons for the denial. We will send you a written statement of the reasons for the denial within 30 days of receiving your request for the statement.*