



## BUSINESS CREDIT AGREEMENT

This Business Credit Agreement (“Agreement”) is made between Hawkeye Ready Mix Inc. (“Vendor”) and \_\_\_\_\_ (“Customer”). Customer desires to purchase various products (“Products”) from Vendor on credit, Vendor has agreed to extend such credit to Customer, and both Vendor and Customer have agreed that such credit shall be provided on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. **Credit Terms.** All invoices for Products are due and payable by the end of the month following the date of purchase. Any amount not paid by the end of the month following the date of purchase shall be past due and shall be subject to a monthly finance charge of 1.5% (18% per annum). If any amounts on Customer’s account are past due, Vendor may terminate this Agreement, or withhold further extensions of credit and require Customer to pay for any additional purchases of Products upon delivery.

2. **Vendor Policies.** Customer acknowledges receipt of Vendor’s current General Policies and Return Policy (“collectively, “Policies”) with respect to Vendor’s Products. Such Policies are incorporated herein by reference as though fully set forth herein and shall apply to all Products purchased by Customer from Vendor. If there is any inconsistency between the terms of this Agreement and the terms of the Policies, the terms of the Policies shall control except for the Warranty and Limitation of Liability provisions below which shall apply regardless of any inconsistency with the Policies.

3. **Warranty.** Subject to the terms and conditions in the Limitation of Liability section below, Vendor warrants that the Products shall be free from defects, including latent defects, in material and workmanship under normal use and service when operated in accordance with Vendor’s instructions for a period of twelve months from shipment of the Products. Vendor’s obligation and Customer’s sole remedy under the Warranty shall be limited to, at Vendor’s option, the repair or replacement of the nonconforming warranted Product, or any part thereof, FOB origin. Notwithstanding the foregoing, the Warranty shall not apply to an Event of Force Majeure, wear and tear, or to defects arising from or connected with Customer’s or any third party’s: (i) improper receipt, transport, handling, storage, maintenance, testing, installation, operation or of the Products, or (ii) alteration, modification, maintenance, overhaul, repair, neglect or foreign object damage of the Products. Vendor shall have no obligation to Customer for any failure, to the extent that it is aggravated by such continued use. Customer shall provide prompt written notice of any Products’ failure within the Warranty period, and ensure the failed Products are properly packed and returned to Vendor transportation and insurance prepaid.

4. **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, AND REGARDLESS OF THE NUMBER OF CLAIMS OR THE FORM OR CAUSE OF ACTION, WHETHER IN CONTRACT, EQUITY, STATUTE, TORT, NEGLIGENCE (ACTIVE OR PASSIVE) OR OTHERWISE, VENDOR SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OF ANY KIND, AND SHALL NOT BE LIABLE TO CUSTOMER FOR LOSSES OF USE, DATA, PROFIT, REVENUE, INCOME, BUSINESS, ANTICIPATED SAVINGS, REPUTATION, AND MORE GENERALLY, ANY LOSSES OF AN ECONOMIC OR FINANCIAL NATURE, REGARDLESS OF WHETHER SUCH LOSSES MAY BE DEEMED AS CONSEQUENTIAL OR ARISING DIRECTLY AND NATURALLY FROM THE INCIDENT GIVING RISE TO THE CLAIM, AND REGARDLESS OF WHETHER SUCH LOSSES ARE FORESEEABLE OR WHETHER A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES. EXCLUDING GROSS NEGLIGENCE OR WILLFULL MISCONDUCT, VENDOR’S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH A PURCHASE ORDER SHALL IN NO EVENT EXCEED ACTUAL, DIRECT, AND PROVEN DAMAGES OF THE PRICE OF THE PRODUCT DIRECTLY PURCHASED BY CUSTOMER UNDER THE PURCHASE ORDER GIVING RISE TO THE CLAIM. THIS LIMITATION OF



LIABILITY SHALL APPLY NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED OR EXCLUSIVE REMEDY. TO THE EXTENT THESE TERMS AND CONDITIONS CONTAIN ANY SPECIFIC REMEDIES PROVIDED BY VENDOR TO CUSTOMER, REGARDLESS OF FORM, SUCH REMEDIES SHALL BE PROVIDED BY VENDOR ON A SOLE AND EXCLUSIVE BASIS AND IN LIEU OF ANY OTHER REMEDIES, DAMAGES, OR LOSSES.

5. **Mechanic's Lien.** Vendor reserves the right to file a mechanic's lien with respect to any past due amounts for Products purchased by Customer.

6. **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

7. **Attorneys' Fees; Expenses.** Customer agrees to pay upon demand all of Vendor's costs and expenses, including Vendor's reasonable attorneys' fees and Vendor's legal expenses, incurred in connection with the enforcement of this Agreement. Vendor may hire or pay someone else to help enforce this Agreement, and Customer shall pay the costs and expenses of such enforcement. Costs and expenses include Vendor's reasonable attorneys' fees and legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and legal expenses for bankruptcy proceedings including efforts to modify or vacate any automatic stay or injunction, appeals, and any anticipated post-judgment collection services.

8. **Governing Law.** This Agreement will be governed by the laws of the State of Iowa without regard to its conflicts of law provisions. This Agreement has been accepted by Vendor in the State of Iowa.

9. **Choice of Venue.** If there is a lawsuit, Customer agrees to submit to the jurisdiction of the courts of Linn County, State of Iowa, and to the jurisdiction of the courts in any other county in Iowa or anywhere else where any of the Products may be located.

10. **Indemnification of Vendor.** Customer agrees to indemnify, to defend and to save and hold Vendor harmless from any and all claims, suits, obligations, damages, losses, costs and expenses (including, without limitation, Vendor's attorneys' fees), demands, liabilities, penalties, fines and forfeitures of any nature whatsoever that may be asserted against or incurred by Vendor, its officers, directors, employees, and agents arising out of, relating to, or in any manner occasioned by this Agreement and the exercise of the rights and remedies granted Vendor under this Agreement.

11. **No Waiver by Vendor.** Vendor shall not be deemed to have waived any rights under this Agreement, unless such waiver is given in writing and signed by Vendor. No delay or omission on the part of Vendor in exercising any right shall operate as a waiver of such right or any other right. A waiver by Vendor of a provision of this Agreement shall not prejudice or constitute a waiver of Vendor's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Vendor, nor any course of dealing between Vendor and Customer, shall constitute a waiver of any of Vendor's rights or of any of Customer's obligations as to any future transactions. Whenever the consent of Vendor is required under this Agreement, the granting of such consent by Vendor in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent shall not be unreasonably withheld by Vendor.

12. **Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall



be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

13. **Successors and Assigns.** All covenants and agreements by or on behalf of Customer contained in his Agreement or any other documents given by Customer to Vendor shall bind Customer’s successors and assigns and shall inure to the benefit of Vendor and its successors and assigns.

14. **Survival of Representations and Warranties.** Customer understands and agrees that in making this Agreement, Vendor is relying on all representations, warranties, and covenants made by Customer in this Agreement or in any certificate or other instrument delivered by Customer to Vendor under this Agreement or otherwise. Customer further agrees that regardless of any investigation made by Vendor, all such representations, warranties and covenants shall be continuing in nature, and shall remain in full force and effect until such time as all obligations of Customer to Vendor shall be paid in full, or until this Agreement shall be terminated in the manner provided above, whichever is the last to occur.

15. **Time is of the Essence.** Time is of the essence in the performance of this Agreement.

16. **Waive Jury.** All parties to this Agreement hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

17. **Entire Agreement.** This Agreement contains the entire agreement between the parties and no modification of this Agreement shall be binding upon the parties unless evidenced by an agreement in writing signed by Vendor and Customer after the date hereof.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

VENDOR

CUSTOMER

Hawkeye Ready Mix, Inc.

Business Name: \_\_\_\_\_

Clark Haker, CFO

Printed Name (signor): \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

**Please mail, fax, or email your terms agreement to the following address.**

Hawkeye Ready Mix Inc.  
PO Box 368  
Cedar Rapids, IA 52406  
Phone: 319-363-0233  
Fax: 319-261-0738  
Email: [ssnyder@kingsmaterial.com](mailto:ssnyder@kingsmaterial.com)



## PERSONAL GUARANTY

For and in consideration of the extension of credit to Customer in accordance with the above Business Credit Agreement, the undersigned, as of the date indicated below, hereby individually and personally, and if more than one, jointly and severally, guarantees absolutely, continually, unconditionally and irrevocably the prompt payment of any sums owed by Customer to Vendor for all Products supplied at the request of Customer, its agents, or employees, including all service and /or finance charges costs of collection and attorney fees, whether said sums are or will be due to Vendor under open account, contract, or otherwise.

It is understood that credit, when and if extended by Vendor, is to be on a continuing basis and Vendor shall not be obligated to notify the undersigned of the dates or amounts of any such credit. The undersigned waives demand, notice of default, and any extension of time, modification, or other forbearance, which may be extended by Vendor to Customer. It is further understood and agreed that Vendor may enforce this Guaranty against any of the undersigned directly without first having exhausted its remedies against Customer.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

GUARANTOR(S)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State

\_\_\_\_\_  
Phone Number

**Please mail, fax, or email your terms agreement to the following address.**

Hawkeye Ready Mix Inc.  
PO Box 368  
Cedar Rapids, IA 52406  
Phone: 319-363-0233  
Fax: 319-261-0738  
Email: [ssnyder@kingsmaterial.com](mailto:ssnyder@kingsmaterial.com)