



## OPEN ACCOUNT CREDIT APPLICATION

Chaney Materials, LLC (d/b/a Chaney Enterprises; Chandler Concrete), and related entities (hereinafter "Chaney" or "Seller")  
2661 Riva Road, Bldg 900, Annapolis, MD 21401

Email to: [creditapps@chaneyenterprises.com](mailto:creditapps@chaneyenterprises.com) or fax completed application to: (240) 260-0734

Name: \_\_\_\_\_ (hereinafter "Customer")

Purchase Order No Required:      Yes                      No

Type of Business:      Individual              Partnership              Corporation              \_\_\_\_\_ Years in Business

Type of Account:      Residential              Commercial              Highway/Bridge              Utility              Other

Electronic Invoicing Information:

Contact: \_\_\_\_\_ Email: \_\_\_\_\_ Phone: \_\_\_\_\_

### I. INDIVIDUAL

Name: \_\_\_\_\_ Soc Sec No. \_\_\_\_\_  
Address: \_\_\_\_\_  
   Street                      City                      State                      Zip Code  
Phone: \_\_\_\_\_ Birth Date: \_\_\_\_\_ Age: \_\_\_\_\_  
Employer: \_\_\_\_\_ Phone: \_\_\_\_\_  
Spouse: \_\_\_\_\_ Soc Sec No. \_\_\_\_\_

### II. PARTNERSHIP OR CORPORATION

Partnership/Corporation Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Tax ID#: \_\_\_\_\_  
Phone Number: \_\_\_\_\_

### PARTNERS/MANAGERS (OF LLC) AND/OR CORPORATE OFFICERS\*

Name	Title	Social Security Number
1		
2		
3		
4		

### BANK REFERENCES

Name	Account Number	Contact Name & Phone
1		
2		

3		
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**CREDIT REFERENCES**

Company Name	Contact Name	Fax or Email Address
1		
2		
3		

Customer hereby applies to Seller for Seller to sell concrete and/or other materials and services to the Customer on credit under the GENERAL TERMS AND CONDITIONS set forth below. The terms of this Agreement supersede the terms and conditions of any contract and/or purchase order between Seller and Applicant, unless specifically and explicitly provided in writing and executed by Seller, that a subsequent document supersedes this Agreement.

The individual signing on behalf of the Customer represents and warrants that they have the authority to sign on behalf of the Customer and the information provided on the application is true, correct and complete in every aspect.

**GENERAL TERMS AND CONDITIONS:**

**1. Exclusive Terms/Entire Agreement.** Customer agrees to purchase, and Seller agrees to sell, the product(s) identified in a subsequent order ("Order") placed in ordinary course of business, ("Products"; such transactions, the "Sales"), and these Terms and Conditions of Sale (these "Terms") will apply to all the Sales between the parties. These Terms shall constitute the entire agreement between the parties with respect to the provision of the Products set forth in any Order (the "Agreement"). Seller reserves the right to update or change these Terms for future Sales at any time without prior notice. Customer's acceptance of this Agreement shall be presumed from Customer's receipt of this Agreement or Customer's receipt of all or any portion of the Products, and this Agreement shall be a binding contract between Customer and Seller. To the extent there are any inconsistencies between these Terms and those terms in the Order or any other agreement, these Terms will control. Unless Seller has explicitly accepted additional or differing terms in writing, Seller expressly rejects any of Customer's terms and conditions in any offer, order acknowledgement, or other document provided to Seller that are in addition to or conflict with the terms and conditions of the Agreement; and any such additional or conflicting terms or conditions will be of no force or effect with respect to the matters the Agreement covers.

**2. Specifications.** The specific nature of the Products, the quality and quantity of the Products ordered, date(s) of delivery, price and other specifications applicable to the Products being purchased are set forth in the Order (the "Specifications"). Seller shall have no obligation to ensure that any of the Products meet any unique specifications and/or other requirements unless set forth in an Order and expressly accepted by Seller. Seller shall have no obligation to provide any Products in excess of the amount set forth in the Specifications unless previously agreed to in writing by Seller.

**3. Payment/Price.** Customer shall compensate Seller for the Products provided in accordance with the Agreement. The purchase price shall be payable within thirty (30) days of the date of each such invoice for an Order. Any Products held as a result of Customer's inability or refusal to accept delivery are at the risk and expense of Customer, including, without limitation, all of Seller's handling, reshipping, restocking and storage charges. All prices stated in the Order are exclusive of any taxes, fees, duties, and levies, however designated or imposed, including but not limited to value-added and withholding taxes that are levied or based upon the amounts paid under the Agreement (collectively, "Taxes"). Any Taxes related to the Products purchased pursuant to the Agreement are the responsibility of Customer, unless Customer presents an exemption certificate acceptable to Seller and the applicable taxing authorities. Any amounts that remain unpaid in accordance with the terms of the Agreement will accrue interest at a rate equal to the lesser of one and one-half percent (1.5%) per month and the maximum rate permitted by applicable law, from the applicable due date until paid, plus Seller's reasonable costs of collection, including, but not limited to, reasonable attorneys' fees. Seller reserves all other rights granted to a seller under the Uniform Commercial Code ("UCC") (or equivalent law in the applicable jurisdiction) for Customer's failure to pay for the Products or any other breach by Customer of the Agreement.

**4. Shipments and Delivery of Products.** Unless otherwise specified by Seller in an Order, all prices are F.O.B. Seller's facility. Customer must pay all transportation costs of the Products. Seller may make partial shipments at Seller's sole discretion and for an additional charge. Seller shall endeavor to meet the shipping date specified by Customer. In no event will Seller be liable for any Losses (as defined below) incurred by Customer if Seller is unable to deliver on a particular date, and Customer shall have no claim for damages resulting therefrom. The Products will be delivered to the place of delivery (the "Delivery Location") set forth in an Order. The Delivery Location must be readily accessible by Seller and Customer shall be available at the Delivery Location with the means to accommodate the Products. Any refusal or inability by Customer to accept the Products when delivered according to the Agreement shall entitle Seller to reimbursement for any damages sustained by Seller. Seller may suspend any delivery of Products without notice to Customer if Customer fails to comply with the terms of this Agreement. In addition, Customer will be charged for truck time at the rate of One Hundred Fifty Dollars (\$150) per hour for any delays in delivery of Products at the Delivery Location. The truck time charges for delays in delivery will commence sixty (60) minutes after Seller's truck arrives at the Delivery Location. Deliveries of concrete Products of less than seven (7) cubic yards are subject to a short-haul charge.

**5. Curb Line; Tow Truck.** Customer must provide suitable approaches to the Delivery Location beyond paved streets. For any deliveries beyond curb lines, Customer assumes all liability for damage to vehicles, sidewalks, driveways, pipes, septic tanks, and/or other property, and Customer will indemnify and hold Seller harmless from and against any and all Losses (as defined below) incurred as a result of such deliveries, including, but not limited to, towing charges, except to the extent directly caused by Seller's gross

negligence or willful misconduct. In addition, if a tow truck is necessary to remove a truck from the Delivery Location, Customer will be charged for all costs incurred, and the truck time charges for delays in delivery will commence fifteen (15) minutes after Seller's truck arrives at the Delivery Location. At the Delivery Location, Customer must provide an environmentally-acceptable wash-out area for Seller's mixer chutes.

**6. Title and Risk of Loss.** Title to the Products passes to Customer when Seller has received full and indefeasible payment for such Products. Seller may assert any and all of its mechanics' lien rights in addition to all of its other remedies if any payment is not made when due. Seller is not responsible for damage or loss in transit. All risk of loss to the Products passes to Customer as the Products are loaded onto the carrier. Customer must obtain adequate insurance to cover the Products from the time risk of loss has passed from Seller.

**7. Limited Warranty.** Seller warrants that the Products will meet the Specifications. THE FOREGOING NOTWITHSTANDING, SELLER IS NOT LIABLE FOR NORMAL MANUFACTURING DEFECTS OR FOR CUSTOMARY VARIATIONS FROM QUANTITIES OR SPECIFICATIONS. UNLESS EXPRESSLY STATED IN THE AGREEMENT, SELLER EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND (WHETHER ARISING BY IMPLICATION OR BY OPERATION OF LAW) WITH RESPECT TO THE PRODUCTS, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OR REPRESENTATIONS AS TO FITNESS FOR PARTICULAR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT, OR ANY OTHER MATTER. THE WARRANTY PROVIDED HEREIN IS THE EXCLUSIVE WARRANTY PROVIDED BY SELLER. THIS SECTION SURVIVES THE TERMINATION OR CANCELLATION OF THE AGREEMENT. Seller's warranty of any Product is of no effect if: (i) the Product is not stored or handled appropriately; (ii) the defect of the Product resulted from damages occurring after delivery of the Product; (iii) the defect should have been discovered by Customer in Customer's inspection and it is not reported to Seller within ten (10) days after the Product's arrival at the destination; (iv) the Product has been altered by a third party other than Seller; (v) the defect is caused in whole or in part by the application of corrosive or other materials that may impact the integrity of the Product; or (vi) Customer, or on Customer's behalf or at Customer's direction, adds water, admixtures, products or other chemicals or materials to the Products.

**8. Defective Products.** If a Product does not conform to the limited warranty in Section 7, then Customer must promptly notify Seller. If Seller determines that the Product does not comply with the warranty provided in Section 7, then Seller must repair or replace the defective Product at no cost to Customer. SUCH REPAIR OR REPLACEMENT IS THE ONLY REMEDY OF CUSTOMER FOR ANY BREACH OF THE LIMITED WARRANTY PROVIDED BY SELLER IN SECTION 6.

**9. Limitation of Liability.** Notwithstanding anything to the contrary contained herein, Seller's aggregate liability in connection with the Sales or provision of any Products, regardless of the form of action giving rise to such liability (whether in breach of warranty, contract, negligence, strict liability or any other theory in contract, tort or otherwise), shall not exceed the amount actually paid by Customer to Seller for such Products. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY EXEMPLARY, SPECIAL, DELAY, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. All remedies of Customer shall be limited exclusively and in lieu of any and all other remedies to those contained in these Terms.

**10. Inspection; Acceptance.** For a period of up to ten (10) days after delivery of the Products to the Delivery Location, Customer shall conduct an inspection of such Products and notify Seller of any damage to or nonconformity with said Products, including, but not limited to, insufficient quantity or non-conformity with the Specifications, which should be noted on the bill of lading or incoming inspection report. Upon notification by Customer in accordance with this Inspection; Acceptance section, Seller will conduct an investigation to determine the status of the Products at issue, and Customer shall not destroy or use any of the Products at issue during this investigatory period and, if Customer does so destroy or use any of the Products at issue, then Customer's claim hereunder shall be void. In addition, Seller shall not be obligated to provide a remedy hereunder if the Products at issue (a) undergo Customer's processes for preparing such Products for sale, and/or (b) are not stored under the proper storage conditions per the Specifications. If the foregoing steps are not completed, the shipment and the Products contained therein will be deemed to have been accepted by Customer. If Customer does follow the foregoing steps, Seller shall, in its sole discretion, credit, discount, or replace such damaged or nonconforming Products, to the extent reasonably practicable, together with any reasonable shipping and handling expenses incurred by Customer in connection therewith. If Customer acknowledges and agrees that the remedies set forth in this Inspection; Acceptance section of these Terms are its exclusive remedies for the delivery of such damaged or nonconforming Products.

**11. Returns.** Products may be returned by Customer only when authorized in writing by Seller. Products must be returned properly packaged and shipped freight prepaid to Seller, and such Products may be subject to a restocking fee. Any designated special order item(s) are non-returnable.

**12. Setoff.** IN NO EVENT IS CUSTOMER AUTHORIZED TO DEDUCT OR SET OFF ANY AMOUNTS FROM THE AMOUNTS OWED TO SELLER.

**13. Indemnification.** Customer shall indemnify Seller from and against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) ("Losses") suffered or incurred by Seller arising out of or in connection with any claim, proceedings or allegation: (a) relating to Customer's or its end customers' use of the Products; (b) relating to Customer's failure to comply with its obligations under the Agreement; and/or (c) relating to infringement of intellectual property rights or other rights in or to any Specification supplied by Customer for use in the manufacturing of the Products.

**14. Right of Termination.** Seller, at any time upon written notice to Customer, may terminate the Agreement with immediate effect if Customer: (i) fails to pay any amount when due under the Agreement and such failure continues for five (5) days following Customer's receipt of notice of such nonpayment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy, receivership, reorganization, or assignment for the benefit of creditors. In such event, Customer shall remain liable for all amounts then-due to Seller hereunder. The Order may be cancelled by Customer only with the written consent of Seller and upon Customer's payment for any and all expenses and other losses and damages incurred by Seller a

result of such cancellation, including, but not limited to, Seller's out of pocket costs, overhead, and anticipated profit.

**15. Financial Responsibility.** Customer warrants that it has and will at all times maintain and, upon request by Seller, show that it has sufficient working capital and financial ability to perform and complete its obligations herein. Customer warrants to Seller that it is not insolvent within the meaning of the Federal Bankruptcy Laws, the laws of the states in which it conducts its business, and for any other similar laws that may apply in any country outside of the United States. In addition to any and all other rights and remedies which Seller may have pursuant to the law of contracts or at common law, Seller reserves the right to terminate its obligations, without liability, in respect of any undelivered Products if (i) Customer shall become insolvent or bankrupt; (ii) Customer shall make any general assignment for the benefit of its creditors; (iii) any trustee or receiver is appointed of any substantial part of Customer's assets; or (iv) Customer shall be adjudicated a bankrupt.

**16. Force Majeure.** Seller will not be liable for any delay in or impairment of performance resulting in whole or in part from fires, floods, accidents, earthquakes, or other catastrophes; strikes, lockouts or labor disruptions; wars, riots, civil commotion, terrorist acts, or embargo delays; government allocations or priorities; any applicable governmental or judicial law, regulation, order or decree, or any other circumstance or cause beyond Seller's control in the reasonable conduct of its business.

**17. Applicable Law.** The laws of the State of Maryland govern the Agreement without reference to its choice of law rules or to the laws of any other jurisdiction. With respect to any dispute, claim or controversy arising under, out of, in connection with or relating to the Agreement or the Products, the parties each agree that it will institute any action at law, suit in equity or other judicial proceeding for the enforcement of the Agreement or any provision hereof only in the United States federal or state courts located in or nearest to Annapolis, Maryland.

**18. WAIVER OF JURY TRIAL. TO THE FULLEST EXTENT PERMITTED BY LAW, THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND WITH THE ADVICE OF COUNSEL WAIVE ANY RIGHTS THAT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THE AGREEMENT OR THE PRODUCTS.**

**19. Attorneys' Fees.** In the event of any suit, action or proceeding of the nature to which the refers, the substantially prevailing party will be entitled to its reasonable attorneys' fees, costs, and expenses incurred in such dispute, including any appeal thereof.

**20. No Modification.** No modification of the Agreement will be binding upon the parties unless it is in writing, refers specifically to the Agreement and the portion(s) of such agreement it is intended to modify, and an authorized representative of both parties has signed it.

**21. Headings.** Any headings are inserted for convenience only and are not intended to affect the meaning or interpretation of these Terms.

**22. Successors and Assigns.** The Agreement will be binding upon and inure to the benefit of the parties thereto and their respective successors and assigns. Customer may not assign or transfer any right or interest in or to the Agreement and/or the transaction to which these terms and conditions relate, to any third party whatsoever without the prior written consent of Seller.

**23. Effect of Waiver.** Seller's delay or omission to exercise any right or remedy accruing from Customer's breach or default will not impair any such right or remedy or be construed to be a waiver of any such breach or default; nor will any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring.

**24. Severability.** If any provision of the Agreement conflicts with any statute or rule of law of any jurisdiction wherein it may be sought to be enforced, then such provision will be deemed null and void to the extent that it may conflict therewith, but without invalidating the remaining provisions of the Agreement.

**25. Notices.** Any and all notices required to be given hereunder shall be in writing and hand delivered (including by commercial courier), with an appropriate receipt thereof obtained, or sent by United States certified mail or, if such mail is to be sent to an address outside of the United States, then the local-equivalent of United States certified mail, return receipt requested, to the addresses of the respective parties set forth on the Order, or to such other address as either party may designate to the other by written notice for such purpose from time to time.

**26. No Third-Party Beneficiary.** The Agreement will inure only to the benefit of the parties thereto and to no third parties except Seller's indemnified affiliates, directors, managers, officers, employees and agents, who both parties expressly agree are intended third-party beneficiaries of the Agreement.

**27. Survival Of Provisions.** The following provisions of the Agreement will survive completion of the Sales and/or termination of the Agreement: Sections 1 (Exclusive Terms/Entire Agreement), 3 (Payment/Price), 7 (Limited Warranty), 8 (Defective Products), 8 (Limitation of Liability), 13 (Indemnification), 17 (Applicable Law), 18 (Waiver of Jury Trial), and 19 (Attorneys' Fees).

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

CUSTOMER: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_

NAME (printed): \_\_\_\_\_

## GUARANTY AGREEMENT

This Guaranty Agreement (this "Guaranty") is entered into and made effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ between the Chaney Materials, LLC (d/b/a Chaney Enterprises; Chandler Concrete), a Maryland limited liability company (herein, the "Seller"), and the undersigned Guarantor(s) (herein collectively referred to as "Guarantors", whether one or more) for the benefit of the Debtor named hereinafter.

Guarantors have requested Seller to extend credit to Customer: (business name) \_\_\_\_\_ by selling materials and/or services to the Customer without requiring payment in advance therefor. To induce such extension of credit to the Customer, the Guarantors have agreed to guaranty the payment of any and all obligations of the Customer to Seller as provided herein. From time to time and in its sole discretion, Seller may extend or withhold the extension of credit, to Customer.

Seller and Guarantors agree as follows:

1. In consideration of the extension of credit by Seller to the Customer each Guarantor, jointly and severally if more the one, hereby unconditionally guarantees to Seller the punctual payment when due, with such interest as may accrue thereon, of all debts and obligations of the Customer to Seller, now existing or hereafter arising, including without limitation any obligation for the payment of the purchase price and/or contract price of materials and services provided by Seller, or at the request of , the Customer (all which are herein sometimes referred to as "Obligations of Customer").
2. Each Guarantor's liability hereunder for payment of the Obligations of Customer shall not be affected by this exchange, compromise or surrender of all or any security now or hereafter held for payment of any of the Obligations of Customer, the modification, renewal and/or extension of the Obligations of Customer, and/or release of, or the granting of an indulgence to, any other person liable for payment of the Obligations of Customer.
3. If there is a default in payment of the Obligations of Customer, Seller may employ an attorney to enforce its rights and remedies under this Guaranty Agreement and each Guarantor agrees to pay all costs and expenses, including reasonable attorney's fees, incurred by Seller in attempting to collect the unpaid portion of the Obligations of Customer and/or to enforce any of Seller's rights and remedies under this Guarantee Agreement.
4. Each Guarantor expressly waives: (a) notice of acceptance of this guaranty and for all extensions of credit to the Customer; (b) presentment and demand for payment of any of the Obligations of Customer; (c) protest and notice of dishonor or of default to the Guarantors or to any other party with respect to any Obligations of Customer or with respect to any security therefor; (d) all other notices to which a Guarantor might otherwise be entitled; and (e) demand for payment under this guaranty.
5. This is a guaranty of payment and not of collection. The liability of each Guarantor on this guaranty shall be direct and immediate and not conditional or contingent upon the pursuit of any remedies against the Customer or any other person or the enforcement of any security interest or lien available to Seller. Each Guarantor waives the right to require that an action be brought against the Customer or any other person or to require the enforcement of any security interest or lien securing the payment of any of the Obligations of Customer or to require the enforcement of any other remedy against the Customer or others.
6. The guaranty shall be binding upon each Guarantor, his or her personal representatives, successor and assigns unless and until (and then with respect to future transaction or commitments) terminated by a written notice to that effect received by Seller, by certified mail, return receipt requested, address to: Chaney Materials, LLC, 2661 Riva Road, Building 900, Annapolis, MD 21401.

Each of the Guarantors has signed this Guaranty and affixed his or her seal as of the date set forth above.

### Guarantor Signature(s)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature –Individually

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Signature –Individually

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address

**CREDIT APPLICATION  
PROJECT INFORMATION SHEET**

Please provide as much of the information below as possible. This will help us process your request in a timelier manner. Thank you for your assistance.

Project Name (s) –

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Location (s) –

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General Contractor / Owner (s) –

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Project Start Date (s) - \_\_\_\_\_

Type of materials - \_\_\_\_\_

Quantity of materials - \_\_\_\_\_

Estimated Month Credit Limit Required - \$ \_\_\_\_\_

If the project is bonded please provide a copy of the Performance and Payment Bonds or provide the information below: Bonding

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

Bond # - \_\_\_\_\_

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

Address of Bond Co. - \_\_\_\_\_