

SECTION 2. CREDIT AGREEMENT TERMS

- A. Buyer will pay each invoice in full. In the event Buyer fails to make payment when due, Buyer will pay, in addition to the invoice amount, a monthly late payment charge of 1.5%. Seller reserves the right to change such charges from time to time in its sole discretion and without notice. All payments are due within thirty (30) days of the invoice date.
- B. Should Buyer fail to make any payment within thirty (30) days after receiving written notice that the same is past due, the Seller may recover all costs of suit and other reasonable expenses in connection with efforts to collect any of the past due amounts, together with attorneys' fees (including attorneys' fees for representation in proceedings under the Bankruptcy Code), regardless of whether litigation is commenced, together with interest on any judgment at the highest rate allowed in the State in which the judgment was obtained, until actual payment is made.
- C. Seller will have the sole discretion and complete right to apply any payment received from Buyer hereunder in any manner that Seller deems proper. Unless otherwise specified in the remittance advice, Seller may apply payments first to accrued interest, late payment charges, shipping charges, attorneys' fees, or any other applicable charge, in any order, before applying the remainder of any such payments toward Buyer's principal account balance.
- D. Buyer represents and warrants that Buyer is not a "consumer" as defined in the Federal Consumer Credit Protection Act, or any other consumer credit laws (Federal, State or Local), and Buyer waives all rights granted to consumers under the Federal Consumer Credit Protection Act, and other Federal, State and Local laws pertaining to "consumer" rights. Buyer further represents and warrants that all purchases made from Seller and any credit extended hereunder will be used solely for business and commercial purposes.
- E. If this Credit Application and Credit Agreement is executed by a corporation, LLC, partnership or other business entity or company ("Company"), the individual signing for the entity represents and warrants that the Company has the power to enter into this Agreement, the execution of this Agreement by the signing individual has been duly authorized by the Company and this Agreement is in the best interest of the Company.
- F. **DEFAULT:** Subject to the limitations of applicable law, Seller may declare Buyer to be in default under this Agreement if Buyer: (a) fails to make any payment when due; (b) violates any part of this Agreement or any other agreement Buyer has with Seller; (c) becomes the subject of bankruptcy, receivership or other insolvency proceedings; (d) exceeds the credit limit on Buyer's account; or (e) Seller reasonably believes itself to be insecure. After Buyer's default, and subject to the limitations of applicable law, Seller has the right, in its sole discretion, to: (i) reduce Buyer's credit limit; (ii) terminate Buyer's account, in which case the terms of this Agreement will apply until full payment owing on Buyer's account is received, including finance charges which will continue to accrue until the date of full payment; (iii) require immediate payment of Buyer's entire account balance, all accrued but unpaid finance charges (if applicable), and all fees and other charges listed in this Agreement; and (iv) bring an action to collect all amounts owed.

SECTION 3. GUARANTY TERMS

- A. No extension or renewal of time of payment of the Indebtedness, no release or surrender of any security for the Indebtedness of this Guaranty, no release of any person primarily or secondarily liable on the Indebtedness and no delay in enforcement of payment of the Indebtedness under this Guaranty will affect the liability of Guarantor hereunder. Any and all payments upon the Indebtedness made by Buyer, Guarantor, or any other person and the proceeds of any and all collateral or security for any of the Indebtedness may be applied by Seller upon such of the items of the Indebtedness as Seller will determine in its sole discretion.
- B. Guarantor waives notice of acceptance of this Guaranty, notice of the extension of creditor financial accommodation to Buyer, notice of the amount of Indebtedness which may exist from time to time, notice of any extension of the time for payment, demand for payment, notice of non-payment, protest, notice of protest, and all other notices of every kind and nature, and agrees that this Guaranty may be enforced against the undersigned without any prior or concurrent proceeding or action against Buyer. The obligations of the Guarantor will not be affected by: (a) the failure of Seller to assert any claim or demand or to enforce any right or remedy against the Buyer or another Guarantor; or (b) any extension, modification, or renewal of the terms or amount of the Indebtedness.
- C. This Guaranty is a continuing guaranty and will remain in full force and will be binding upon Guarantor and Guarantor's heirs, executors, administrators, and assigns notwithstanding the death of one or more of the undersigned, until after the later of (a) expiration of thirty (30) days after written notice by Certified or Registered Mail of revocation is received by Seller, and (b) all of the Indebtedness owed to Seller by Buyer will have been fully paid (including all late payment charges and attorneys' fees which accrue after expiration of the 30 day period).
- D. This Guaranty is the joint and several obligation of each person and entity that signs the Guaranty.
- E. If this Guaranty is executed by a corporation, LLC, partnership or other business entity or company ("Entity"), the undersigned individual represents and warrants that the Entity has the power to make this Guaranty, the execution by the undersigned of the Guaranty on behalf of the Entity has been duly authorized and this Guaranty is in the best interest of the Entity.
- F. Guarantor hereby waives and renounces any and all homestead or exemption rights Guarantor may have under or by virtue of the constitution or laws of the state of Guarantor's domicile, or of any other state or of the United States as against the liability and obligation hereby created. Guarantor transfers and assigns to Seller an amount of any homestead or exemption that may be allowed to Guarantor, including such homestead or exemption as may be set apart in bankruptcy, equal to the amount necessary to pay this obligation in full together with all costs of collection.
- G. Guarantor further agrees to the extent that the Buyer makes a payment or payments to Seller or Seller receives any proceeds or collateral, which payment or payments or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to the Buyer, its estate, trustee, receiver, or any other party including without limitation the Guarantor, under any bankruptcy law, state or federal law, common law or equitable cause, then to the extent of such payment or repayment, Buyer's obligations, or the part thereof which has been paid, reduced or satisfied by such amount, will be reinstated and continued in full force and effect as of the date such initial payment, reduction or satisfaction occurred.
- H. Guarantor waives all claims for subrogation, reimbursement, exoneration, contribution and indemnification with respect to sums paid or payable to Seller by Guarantor. Guarantor hereby waives any right to enforce any remedy that Seller now has or may hereafter have against the Buyer. Guarantor further agrees that any and all claims of Guarantor against Buyer will be subordinate and subject in right of payment to the prior payment in full of all principal, interest, reasonable costs of collection (including attorneys' fees and expenses), and any other liabilities or obligations owing to Seller by Buyer.
- I. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable by a court of competent jurisdiction, all other provisions will remain effective.

SECTION 4. PURCHASE AGREEMENT TERMS

- A. Seller's acknowledgment and acceptance of Buyer's orders is expressly conditioned upon Buyer's acceptance of the terms and conditions herein. No terms or conditions other than those stated herein, whether contained in Buyer's purchase order, shipping release, delivery tickets or elsewhere, and no written or oral agreement that purports to vary these terms and conditions shall be binding upon Seller unless hereafter set forth in a writing signed by Seller's authorized representative. All negotiations, proposals and representations are merged herein, and this writing constitutes the complete and exclusive statement of the terms and conditions of this Purchase Agreement between Buyer and Seller. In the event Buyer fails to accept this Purchase Agreement in writing, Buyer's consent to the terms and conditions herein shall be conclusively presumed, either from Buyer's failure to object in ten days in writing or from Buyer's acceptance or use of the material delivered hereunder. As used herein, "Seller's authorized representative"

- means a manager or officer of Seller, but not other employees or agents of Seller.
- B. In any case, in which Seller makes delivery, Buyer hereby agrees to pay Seller's customary shipping charges. Delivery shall be made at the project site or other place of delivery adjacent to the closest public right of way. The risk of loss shall pass to Buyer upon delivery of the goods should Buyer not be present to accept delivery. Buyer hereby authorizes Seller to unload the goods and leave them at the delivery destination.
 - C. Buyer shall have the right to inspect the goods upon delivery. Buyer's inspection rights shall expire 24 hours after the delivery of the goods. A failure to make inspection within that time shall waive notice of any defect which reasonable inspection would have revealed. A rejection of the goods by Buyer shall not be effective unless it is made and written notice thereof is given to Seller within 5 calendar days of delivery.
 - D. Seller shall have the right, without prejudice to any, other rights, to suspend further deliveries of any items purchased if Buyer defaults in payment of any amounts due, or whenever Seller may deem itself insecure as to Buyer's performance, until Buyer remedies such default or provides adequate assurance to Seller of Buyer's ability to perform.
 - E. Unless otherwise provided by law, Seller may require Buyer to pay or to reimburse Seller for any tax (except income tax) which now or hereafter may be imposed by any taxing authority with respect to the items purchased or the sale, purchase, manufacture, delivery or use thereof.
 - F. An order may be terminated by Buyer before completion only with Seller's written consent, in which event Buyer shall pay to Seller: (a) the contract price for all products, which shall have been delivered or completed prior to receipt of notice of termination, (b) all actual costs incurred by Seller in connection with the uncompleted portion of the order, and (c) cancellation charges, if any, of Seller because of its commitments, made under the order.
 - G. Buyer shall not hold Seller responsible for any delay caused in whole or in part by circumstances beyond Seller's reasonable control, including but not limited to, force majeure, fires, or accidents; strikes or other differences with workmen: war (whether declared or undeclared), riots, or embargoes; delays by carriers; delays in shipment or receipt of materials from suppliers; or any legislative, administrative or executive law, order, or requisition of the federal or any state or local government or any subdivision, department, agency, officer or official thereof. Seller may allocate its available supply among Seller's customers, including Seller's branches and affiliates, in any manner Seller deems reasonable.
 - H. SELLER MAKES NO OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. There is no warranty that extends beyond the description on the face of this Agreement.

SECTION 5. GENERAL TERMS

- A. This Agreement shall be governed by and construed according to the laws of Missouri (without regard to internal principles of conflicts of law). Any action arising out of or related to the Agreement will be brought, at Seller's sole discretion, in a court of law or equity in Cole County, Missouri, or where an action between Seller and a third party is pending that concerns the subject matter of the agreement. BUYER WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY REGARDING ANY AND ALL DISPUTES ARISING OUT OF THIS AGREEMENT, subject to the law of the jurisdiction where the action is pending. The Agreement contains the full, final and exclusive statement of the Agreement between Seller and Buyer, and no terms and conditions other than those stated herein, and no agreement or understanding in any way purporting to modify the terms and conditions thereof, will be binding on Seller without Seller's written consent. Waiver by Seller of any terms or conditions of this contract or waiver of any breach thereof will not be construed as a waiver of any other terms, conditions, or breach. Determination that any provision of the Agreement is illegal or invalid will not affect the validity or enforceability of the remaining provisions of the Agreement.
- B. Buyer agrees to provide Seller with no less than thirty days prior written notice by Certified Mail or nationally recognized overnight courier of any change in Buyer's name, address, ownership, or form of business entity.
- C. All notifications from Buyer should be addressed to the Seller location from which Buyer has purchased the most goods in the last 90 days. A copy of all notifications should also be sent to General Counsel at 221 Bolivar Street, Suite 400, Jefferson City, MO 65101.
- D. The terms and conditions noted in this Agreement will govern and apply to any and all purchases, whether for materials and/or services made by the Buyer from Seller or any division, affiliate and/or predecessor thereof, at any time whatsoever, whether past, present, or future. In the event the terms and conditions noted herein conflict with terms and conditions of any other existing or future agreement between Seller and Buyer, including, without limitation, any purchase orders or other documents issued by Buyer relating to any material purchases, then in each instance, the terms and conditions of Agreement noted herein shall prevail in all respects, notwithstanding any language in such other agreement or document to the contrary. Buyer hereby acknowledges that this provision is a material inducement to Seller to establish an open account business relationship with Buyer and extending any and all payment terms or credit to the Buyer.
- E. Delivery of an electronic image and/or facsimile copy of this Agreement or any other document or of any signature page to this Agreement by facsimile, email or other electronic method, or delivery of an email communication from an authorized representative of a party providing such party's acceptance or approval of a document previously transmitted to such party by electronic means, will be binding and considered a delivery of an executed original of such document.
- F. **Indemnity: TO THE FULLEST EXTENT PERMITTED BY LAW, BUYER AGREES TO PROTECT, DEFEND, INDEMNIFY AND HOLD SELLER (INCLUDING ITS AFFILIATED COMPANIES, AGENTS, OFFICERS, AND EMPLOYEES, COLLECTIVELY REFERRED TO AS THE "INDEMNITEE") FREE AND HARMLESS FROM AND AGAINST ANY AND ALL EXPENSES, CLAIMS, DEMANDS, CAUSES OF ACTIONS, SUITS OR OTHER LITIGATION (INCLUDING, WITHOUT LIMITATION, CLAIMS FOR ACTUAL, STATUTORY, PUNITIVE OR EXEMPLARY DAMAGES, AND ALL COSTS THEREOF AND ATTORNEYS' FEES) OF EVERY KIND AND CHARACTER ON ACCOUNT OF PROPERTY DAMAGE, BODILY INJURY, SICKNESS, DEATH OR OTHER LOSS (HEREIN COLLECTIVELY REFERRED TO AS THE "LOSS") IN ANY WAY OCCURRING, INCIDENT TO, ARISING OUT OF OR IN CONNECTION WITH (1) ANY MISREPRESENTATIONS MADE BY BUYER HEREIN; (2) ANY BREACH OF OR DEFAULT UNDER THE AGREEMENT; (3) ANY ACT OR OMISSION, NEGLIGENT OR OTHERWISE, OF BUYER, OR ANY OF BUYER'S AGENTS, SERVANTS, EMPLOYEES, SUBCONTRACTORS OR CUSTOMERS, AND/OR (4) IN ANY WAY RELATED TO THE DELIVERY OF GOODS ONTO A PROJECT SITE, WHETHER SUCH DELIVERY IS MADE IN ACCORDANCE WITH OR PURSUANT TO BUYER'S INSTRUCTIONS. IN THE EVENT THAT THE APPLICABLE LAW PROHIBITS ENFORCEMENT OF THIS CLAUSE AS WRITTEN, THEN AND ONLY THEN, THIS CLAUSE SHALL BE MODIFIED TO PROVIDE THE MAXIMUM INDEMNIFICATION TO SELLER, AS INDEMNITEE, ALLOWABLE UNDER THAT APPLICABLE LAW.**
- G. The parties agree to waive all claims that any of them may have against each other for any consequential damages that may arise out of or relate to this Agreement, including but not limited to loss of business, loss of financing, loss of profits, loss of bonding capacity, loss of reputation, or insolvency. The provisions of this section shall also apply to the termination of this Agreement and shall survive such termination. The following are excluded from this mutual waiver: (a) losses covered by insurance required by this Agreement; and (b) third-party consequential damages that flow through to the other party. The liability of Seller is limited to repayment of the purchase price of items not conforming to the description on the face hereof upon return of the items. This remedy is the exclusive remedy of Buyer under this Agreement. Seller shall not be liable for any damages attributable to product abuse, misuse, neglect or any other cause, which is not the fault of Seller.
- H. **FAILURE OF BUYER TO PAY THOSE PERSONS SUPPLYING MATERIAL OR SERVICES CAN RESULT IN THE FILING OF A MECHANIC'S LIEN ON THE PROPERTY WHERE THE WORK IS BEING PERFORMED PURSUANT TO CHAPTER 429, RSMO.**

Buyer's Initials: _____
 Guarantor's Initials: _____