



PO BOX 40010 ♦ HOUSTON, TX 77240

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Texas | California | Arizona | Colorado | Nevada | Oklahoma

**CREDIT APPLICATION**

**1. CUSTOMER INFORMATION**

Legal Name of Business (hereinafter referred to as "Customer")		State of Formation, Type of Business	Date of Formation	Federal EIN No.
Physical Address:				
Address		City	State	Zip
Mailing Address:				
Address		City	State	Zip
Phone Number:				
Sales & Use Tax Permit:	Check One <input type="radio"/> Yes <input type="radio"/> No If YES, attach a Sales & Use and/or Resale Certificate	Resale #:		
		Contractor License #:		
Bonded:	Check One <input type="radio"/> Yes <input type="radio"/> No IF YES, complete the following:			
	Name of Bond Company	Bond Company Address	City, State, Zip	Bond Company Phone No.

**2. CUSTOMER AUTHORIZED REPRESENTATIVE INFORMATION (PRINCIPAL OFFICER, PARTNER AND/OR OWNER)**

Last Name		First Name		Title	
Address		City		State Zip	
Phone Number			Email		
Date of Birth	Driver's License Number (attach copy of Driver's License)	State Driver's License Issued	Social Security Number		
Last Name		First Name		Title	
Address		City		State Zip	
Phone Number			Email		
Date of Birth	Driver's License Number (attach copy of Driver's License)	State Driver's License Issued	Social Security Number		

**3. BANK ACCOUNT(S) REFERENCES/INFORMATION**

Institution #1: Name	Institution #2: Name	Institution #3: Name
Account No. / Type of Acct.	Account No. / Type of Acct.	Account No. / Type of Acct.
Contact Name	Contact Name	Contact Name
Contact Phone Number	Contact Phone Number	Contact Phone Number
Contact Email	Contact Email	Contact Email

**4. TRADE REFERENCES/INFORMATION (minimum of 2 required)**

<b>Trade Company #1:</b>		<b>Trade Company #2:</b>		<b>Trade Company #3:</b>	
<b>Company Name</b>		<b>Company Name</b>		<b>Company Name</b>	
<b>Month/Date Account Opened</b>		<b>Month/Date Account Opened</b>		<b>Month/Date Account Opened</b>	
<b>Credit Limit</b>	<b>Credit Balance</b>	<b>Credit Limit</b>	<b>Credit Balance</b>	<b>Credit Limit</b>	<b>Credit Balance</b>
<b>Address</b>		<b>Address</b>		<b>Address</b>	
<b>Contact Name</b>		<b>Contact Name</b>		<b>Contact Name</b>	
<b>Contact Phone Number</b>		<b>Contact Phone Number</b>		<b>Contact Phone Number</b>	
<b>Contact Email</b>		<b>Contact Email</b>		<b>Contact Email</b>	

By execution of this Credit Application, Customer and/or the undersigned hereby covenants, represents and warrants that (i) Customer has received, read and explicitly understands the Terms and Conditions of Credit Application, and expressly agrees that this Credit Application for any purchase of goods and/or services from Action Gypsum Supply, LP is governed by and shall be subject to the provisions of the Terms and Conditions of Credit Application, which is incorporated herein; (ii) the information contained herein is true, complete and accurate and Action Gypsum Supply, LP is entitled to rely on such information; (iii) this information has been furnished with the full understanding that it is to be used to determine the amount and conditions of the credit to be extended to Customer for the purchase of any goods and/or service from Action Gypsum Supply, LP; (iv) the bank institutions and trade companies listed in this Credit Application are authorized to release necessary information to Action Gypsum Supply, LP for which credit is being applied for in order to verify the information contained therein; and (v) the undersigned is an authorized representative of Customer and is duly authorized to enter into the Agreement (as defined in the Terms & Conditions of Credit Application) and bind Customer to all the terms and conditions therein.

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**Authorized Signature** **Print Name & Title** **Date**

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**Authorized Signature** **Print Name & Title** **Date**

## TERMS & CONDITIONS OF CREDIT APPLICATION

This Terms & Conditions of Credit Application (“**Terms**”) are the only terms that govern the Credit Application entered into by Customer (as identified on the Credit Application) for the sale of goods and/or services by Action Gypsum Supply, LP (“**Seller**”). The Credit Application, this Terms and any documents referenced and/or listed in any of them are hereby incorporated by reference and shall comprise the entire agreement between Customer and Seller and shall hereinafter collectively be referred to as the “**Agreement**.”

**1. Applicability.** Customer’s execution of the Credit Application shall constitute Customer’s acceptance and agreement of Customer to be bound to the terms and conditions of the Agreement. The Agreement shall apply to and govern all purchase orders/invoice (collectively an “**Invoice**”) with Customer for the sale of goods and/or services by Seller. Each Invoice shall be deemed to incorporate and be subject to the Agreement. Any additional or contrary terms, conditions or instructions proposed by Customer are rejected by Seller unless expressly agreed to in writing by Seller. In the event of a conflict between the Agreement and an Invoice or any other document, the terms of the Agreement shall govern. Notwithstanding any provision to the contrary, Seller may, from time to time change its services without the consent of Customer, including without limitation, the credit limit available to Customer and the terms and conditions upon which credit accommodations will be extended to Customer.

**2. Credit Report Condition Precedent.** Seller is hereby authorized, at any time, to generate and/or obtain one or more credit and/or investigative reports from credit reporting agencies and/or other similar agencies regarding Customer. The extension of any credit by Seller to Customer is directly contingent on Seller’s receipt and approval (in Seller’s discretion) of a satisfactory credit report pertaining to Customer and any guarantors of the credit. If a credit report is deemed unsatisfactory by Seller, Seller shall have no obligation to extend credit to Customer and any commitment or agreement to extend credit shall be void and of no effect. Moreover, in the event Seller extends credit to Customer under the Agreement, Customer agrees that such extension is expressly conditioned on Customer’s continued solvency during the term of the Agreement and any outstanding Invoice. On request, Customer agrees to provide Seller a sworn statement and any other documentation substantiating that Customer is and remains solvent.

**3. Delivery.** Unless the parties agree otherwise, Seller shall deliver to Customer the products, services, materials and/or supplies (collectively the “**Goods**”) described in the Invoice to the delivery address and in the time, manner and method provided in such Invoice. The Goods are automatically deemed to be delivered to Customer when Seller arrives at the delivery address, regardless of Customer’s confirmation of receipt of such Goods. Any delivery of Goods valued under \$500.00 is subject to an additional delivery fee to be paid to Seller.

**4. Inspection.** Unless provided otherwise herein, Customer shall inspect the Goods and submit the notice required in this Section (if applicable) within five (5) calendar days of delivery. Customer shall be deemed to have accepted the Goods unless Customer submits written notice to Seller specifically identifying any nonconforming Goods and evidence substantiating such nonconformity. Nonconforming Goods shall mean goods that are materially different from those described in the respective Invoice. If Customer timely submits such written notice of any nonconforming Goods to Seller, Seller may, in its sole discretion replace the Goods or refund the purchase price for such nonconforming Goods. Any shipping and handling expenses arising therefrom shall be at Customer’s sole expense and risk of loss. All returned Goods are subject to a 15% restocking fee, which Seller may deduct from any refund due Customer. If Customer picks up the Goods at a location of Seller’s, Customer shall inspect the Goods. Customer shall be deemed to have accepted the Goods unless Customer submits the written notice of nonconformity to Seller at the time of pick-up and prior to removal from the pick-up location. Once the Goods are removed from the pick-up location, such Goods are NONRETURNABLE AND NONREFUNDABLE, regardless of cause.

**5. Title; Risk of Loss.** Title to the Goods shall pass to Customer only upon Seller’s receipt of full and proper payment of the respective Invoice for the Goods and any other amounts due Seller. Risk of loss of the Goods shall pass to Customer at the time the Goods are delivered. As collateral security for the payment of the purchase price of the Goods, Customer hereby grants to Seller a lien on and security interest in and to all the right, title and interest of Customer in, to, and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this Section constitutes a purchase money security interest under applicable law. Customer agrees to execute any financing statements or other documentation as reasonably requested by Seller to evidence and perfect such security interest.

**6. Price; Payment Terms.** Customer shall pay the amount of each Invoice in accordance with the Agreement. Each invoice shall be due and payable to Seller on the 20<sup>th</sup> day of the month immediately following the month during which Customer ordered the respective Goods. Payments to be mailed to Seller shall be mailed to PO BOX 40010, Houston, TX 77240.

**6.1 Nonpayment.** For any payments due and not timely paid by Customer, Seller may, in its sole discretion and without limiting any other rights and remedies Seller may have under the Agreement, by law or otherwise, do one or more of the following and without any prior notice: (a) charge Customer interest or a late fee of 1.5% on such payment beginning on the date after the due date and continuing until paid in full; and/or (b) suspend any services by Seller; and/or (c) suspend Customer’s account; and/or (d) terminate the Agreement. In any such event, Seller shall be entitled to (i) all amounts due Seller under the Agreement; (ii) loss relating to materials, equipment, tools machinery and/or general conditions; expenses relating to termination of any existing contracts relating to the Agreement; (iv) costs and expenses incurred relating to collections on amounts due Seller, including without limitation, legal fees and all related expenses; and (v) all other costs and expenses arising therefrom.

**6.2 Discretionary Discount.** Seller may apply a 1% discount of the total invoice amount (before taxes), provided Customer makes full payment of such amount before the 10<sup>th</sup> day of the month immediately following the month during which Customer purchased the respective Goods and Customer’s method of payment is not by credit.

**7. Guaranty Agreement Condition Precedent.** The completion, execution and delivery of the Guaranty Agreement (attached hereto) guaranteeing the obligations describe therein (the “**Guaranty**”), concurrently with the execution of the Agreement is a condition precedent to the effectiveness and enforceability of the Agreement. Customer’s failure to strictly comply with this Section shall deem the Agreement null and void and neither party shall have any further obligations or liabilities to the other party under the Agreement. Moreover, Customer expressly understands and agrees that any extension of credit by Seller to Customer is directly contingent on Seller’s receipt and approval (in Seller’s discretion) of a satisfactory credit report pertaining to the guarantor(s) of the Agreement. If the guarantor(s)’s credit report is deemed unsatisfactory by Seller, Seller shall have no obligation to extend credit to Customer and any commitment or agreement to extend credit shall be void and of no effect.

**8. Warranty. SELLER HEREBY EXPRESSLY DISCLAIMS AND MAKES NO WARRANTY WHATSOEVER, TO CUSTOMER OR ANY THIRD PARTY, WHETHER EXPRESS, IMPLIED, STATUTORY, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, WITH RESPECT TO THE GOODS, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WARRANTY OF TITLE AND WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.**

**9. Returns & Refunds.** Unless provided otherwise herein, all Goods are NONRETURNABLE AND NONREFUNDABLE. Notwithstanding any provision to the contrary, all custom and/or special ordered items are NONRETURNABLE AND NONREFUNDABLE, and Seller is not in any way obliged to accept any Goods that are damaged, mutilated, altered or otherwise not suitable for resale, unless provided otherwise in writing by Seller.

**10. Liability.** Notwithstanding any provision to the contrary, in no event shall the total liability amount of Seller in the aggregate for any liability, loss, damage, claim or otherwise, arising out of the Agreement and/or any Invoice, exceed the amount of the total amount of the respective Invoice. Moreover, Customer expressly agrees that in no event shall Seller be liable under any theory of recovery, including without limitation, contract, warranty, strict liability or tort for any indirect, incidental, special or consequential damages, including, without limitation: loss of profits, business, product or information; loss of use of the Goods or any associated equipment; costs of capital, substitute equipment, parts, software, facilities or services; costs of down time or labor; defective,

deficient, damaged or nonconforming Goods; delay in delivery of the Goods; any alleged breach; suspension of Seller's services; shortage of materials; and/or claims of any damages of any kind, including without limitation, delay and liquidated, arising from the Agreement and/or Invoice, however caused, regardless of whether such damages were foreseeable and whether or not Customer was advised of the possibility of such damages.

**11. Insurance.** Customer shall purchase and maintain the kinds of insurance coverage with limits sufficient to protect the amount of each Invoice, in addition to any occurrences that could arise therefrom and the Agreement. Customer shall name Seller and any party for whom Seller is responsible as an additional insured under such policy and require its insurer to waive all rights of subrogation against Seller's insurers.

**12. Indemnity.** TO THE FULLEST EXTENT PERMITTED BY LAW, SELLER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS SELLER AND ANY PARTY FOR WHOM SELLER IS RESPONSIBLE, FROM AND AGAINST ALL CLAIMS, LOSSES, EXPENSES, COSTS, DEMANDS, SUITS, CAUSES OF ACTION, JUDGMENTS AND DAMAGES, INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES AND EXPENSES, FOR BODILY INJURY TO OR SICKNESS, DISEASE OR DEATH OF ANY PERSON AND DAMAGE TO PROPERTY, CAUSED OR ALLEGED TO BE CAUSED BY THE ACTS OR OMISSIONS OF CUSTOMER AND/OR ANY PARTY FOR WHOM CUSTOMER IS RESPONSIBLE, RELATING TO THE AGREEMENT, ANY INVOICE AND/OR THE GOODS, REGARDLESS OF WHETHER CAUSED OR ALLEGED TO BE CAUSED BY THE ACTS OR OMISSIONS OF SELLER AND ANY PARTY FOR WHOM SELLER IS RESPONSIBLE.

**13. Termination.** Seller may terminate the Agreement for any reason upon written notice to Customer. In such event, Customer shall pay Seller, without limitation, all cancellation charges arising from other contracts in connection herewith, all costs incurred by Seller related to any Invoice and/or Goods, and all costs and expenses incurred by Seller attributable to such termination.

**14. Disputes; Governing Law; Venue; Fees & Costs.** Any dispute arising out of the Agreement shall first be resolved by good faith negotiations between the parties promptly upon receipt of the dispute in writing to the other party. If the dispute is not resolved by good faith negotiations, Seller shall, in its sole discretion, elect in writing whether the binding dispute resolution shall be arbitration or litigation. If Seller elects arbitration, the arbitration shall be governed by the American Arbitration Association, and all awards of the arbitrator shall be binding and non-appealable. Judgment upon the award of the arbitrator may be entered in any court having jurisdiction. The Agreement shall be governed by and construed in accordance with the laws of the State of Texas, notwithstanding otherwise applicable conflict of law principles. Any action, arbitration or other proceeding shall be brought or held in Harris County, Texas. **CUSTOMER HEREBY EXPRESSLY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY SUCH ACTION**, to the fullest extent permitted by applicable law. The prevailing party shall be entitled to recover its reasonable attorneys' fees and court or arbitration fees, and related costs and expenses.

**15. No Third Party Beneficiary.** The parties expressly agree that the Agreement shall not create rights in third parties and is not intended to be relied upon by any other person or entity other than the parties to the Agreement.

**16. Independent Contractor.** Customer expressly agrees Seller is an independent contractor with respect to this Agreement. Customer shall not have the right to control or direct the details of the services performed by Seller. Seller and any party under Seller's control or direction shall not be considered or deemed to be employees of Customer.

**17. No Waiver.** A waiver by Seller of any act, condition or requirement contained in the Agreement shall not constitute a continuing waiver of any other or subsequent act, condition or requirement of the same in other instances, unless specifically so stated in a written agreement and signed by Seller.

**18. Assignment.** Customer shall not assign the Agreement or any portion thereof to any person or entity without Seller's prior written consent. Customer's failure to comply with the foregoing shall deem any such purported assignment void and invalid.

**19. Severability; Survival.** If any provision in the Agreement is determined to be illegal, unenforceable, or non-applicable it shall be deemed severed and shall not affect the remaining provisions of the Agreement. Any and all rights, benefits, warranties, covenants and agreements which benefit Seller under the Agreement, and all obligations of Customer, shall survive any consideration, completion and/or payment to Customer or termination of the Agreement and shall continue in full force and effect.

**20. Entire Agreement.** The Agreement represents the entire and integrated agreement between Seller and Customer and supersedes all prior negotiations, representations or agreements, either written or oral. Any other documents referenced in the Agreement are hereby incorporated herein by reference and made part hereof. The Agreement may be modified only by a mutually agreed-upon written instrument signed by both Seller and Customer.

**Notice: The Federal Equal Credit Opportunity Act (ECOA) 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 rights under the Consumer Protection Credit Act. The federal agency that administers compliance with law concerning this creditor is the Federal Trade Commission, Division of Credit Practices, 600 Pennsylvania Avenue, NW, Washington, DC 20580.**

**GUARANTY AGREEMENT**

Any capitalized terms not specifically defined in this Guaranty Agreement (this "**Guaranty**") shall have the meaning as defined in the Agreement (as defined in the Terms and Conditions of Credit Application) between Customer and Seller. This Guaranty is made part of the Agreement and incorporated therein. In consideration of the making, effectiveness and enforceability of the Agreement, the undersigned (referred to as "**Guarantor**" whether there is one or more undersigned), does hereby explicitly agree to the following:

**A.** Guarantor represents and warrants that it has received and diligently reviewed all terms and conditions provided in the Agreement, including the Credit Application, Terms and Conditions of Credit Application and all documents attached thereto and/or referenced therein and Guarantor explicitly agree to unconditionally and continuously guarantee any and all obligations of Customer under the Agreement, any Invoice and/or otherwise, including without limitation, all payments and financial obligations required of Customer thereunder, regardless of Customer's change in business name and/or status through merger, consolidation, or otherwise the like.

**B.** Seller shall not be first required to enforce against Customer or any other party any liability, obligation or duty, or to foreclose, proceed against or exhaust any collateral or security, guaranteed by this Guaranty before seeking enforcement thereof against Guarantor. An action, arbitration or other proceeding may be brought and maintained against any one of or more Guarantor, each of which are jointly and severally liable to Seller for any such guaranteed obligations, and without joinder of Customer or any other party, at Seller's sole discretion.

**C.** If Guarantor is a corporation, partnership, limited liability company, each individual executing this Guaranty on behalf of Guarantor represents and warrants that they are duly authorized to execute and bind Guarantor to this Guaranty on Guarantor's behalf.

**D.** Guarantor's obligations and liabilities under this Guaranty shall continue notwithstanding any modification of the Agreement; any release or modification of any security for the Agreement, including other guarantees for performance of the Agreement; and any unenforceability of any part or all of the provisions of the Agreement.

**E.** Guarantor shall remain liable for the guarantees described herein even if Customer or any other responsible party dies, becomes incapacitated, lacks any power or authority, discharge or any other similar reason.

**F.** Any dispute arising out of this Guaranty shall first be resolved by good faith negotiations between Seller and Guarantor promptly upon receipt of the dispute in writing to the other party. If the dispute is not resolved by good faith negotiations, Seller shall, in its sole discretion, elect in writing whether the binding dispute resolution shall be arbitration or litigation. If Seller elects arbitration, the arbitration shall be governed by the American Arbitration Association, and all awards of the arbitrator shall be binding and non-appealable. Judgment upon the award of the arbitrator may be entered in any court having jurisdiction. The Agreement shall be governed by and construed in accordance with the laws of the State of Texas, notwithstanding otherwise applicable conflict of law principles. Any action, arbitration or other proceeding shall be brought or held in Harris County, Texas. **GUARANTOR HEREBY EXPRESSLY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY SUCH ACTION**, to the fullest extent permitted by applicable law.

**G.** Seller shall be entitled to recover from Guarantor its attorneys' fees, court and/or arbitration expenses and other related legal costs and expenses arising from this Guaranty, including without limitation, Seller's enforcement of any provisions hereof or to protect its interest in any matter arising under this Guaranty, or to seek recovery of damages, or successfully defend itself against any claim arising under this Guaranty.

**H.** Guarantor waives any requirement for notice to be given to Guarantor under the Agreement and this Guaranty. Moreover, a waiver by Seller of any act, condition or requirement contained in this Guaranty shall not constitute a continuing waiver of any other or subsequent act, condition or requirement of the same in other instances, unless specifically so stated in a written agreement and signed by Seller.

**I.** Guarantor shall not assign this Guaranty or any portion thereof to any person or entity without Seller's prior written consent. Guarantor's failure to comply with the foregoing shall deem any such purported assignment void and invalid.

**J.** If any provision in this Guaranty is determined to be illegal, unenforceable, or non-applicable it shall be deemed severed and shall not affect the remaining provisions of this Guaranty. Any and all rights, benefits, warranties, covenants and agreements which benefit Seller under this Guaranty, and all obligations of Customer, shall survive any consideration, completion and/or payment to Seller or expiration or termination of the Agreement and shall continue in full force and effect.

**K.** This Guaranty may be modified only by a mutually agreed-upon written instrument signed by both Seller and Guarantor. Any party's failure to comply with the foregoing shall deem any such purported modification void and invalid.

**L.** This Guaranty is binding on Guarantor, Guarantor's successors, assigns, beneficiaries, heirs, administrators, and personal representatives, and inures to the benefit of Seller and Seller's successors, assigns, beneficiaries, heirs, administrators and personal representatives.

**M.** Seller is hereby authorized, at any time, to generate and/or obtain one or more credit and/or investigative reports from credit reporting agencies and/or other similar agencies regarding Guarantor for the purpose of evaluating the creditworthiness of Guarantor in connection with this Guaranty. In order to generate and/or obtain any such reports, Guarantor shall provide the information below in the signature section and represents and warrants that such information is true, complete and accurate and Seller is entitled to rely on such information. On request of Seller, Guarantor agrees to provide Seller a sworn statement and any other documentation as may be necessary to substantiate Guarantor's creditworthiness and/or to obtain any credit report.

**IN WITNESS HEREOF**, the undersign(s) acknowledge and agree to the terms of, and have executed, this Guaranty as effective as of the date identified below.

<b>GUARANTOR:</b> [Print Name, Title]	<b>GUARANTOR:</b> [Print Name, Title]
<b>By:</b> _____	<b>By:</b> _____
<b>Date of Birth:</b> XX/XX/XXXX	<b>Date of Birth:</b> XX/XX/XXXX
<b>Social Security #:</b> #	<b>Social Security #:</b> #
<b>Driver's License:</b> State, Number	<b>Driver's License:</b> State, Number
<b>Address:</b> Address City, State Zip	<b>Address:</b> Address City, State Zip
<b>Date:</b> XX/XX/XXXX	<b>Date:</b> XX/XX/XXXX