



Credit Application • Sales Agreement • Guaranty ERS Investments, LLC

Application must be completed in full and signed by Corporate Officers, Partners, or Sole Proprietor

APPLICANT INFORMATION

Salesperson: _____ Branch: _____

Full Legal Business Name: _____

DBA Name: _____ Contractor License #: _____

Street Address: _____ City: _____ State: _____ Zip: _____

Mailing Address: _____ City: _____ State: _____ Zip: _____

Phone: _____ Cell: _____ Fax: _____

Date Business Started: _____ State of Incorporation: _____ Federal Tax ID #: _____

Type of Business: Sole Proprietor Partnership Corp. LLC Estimated Monthly Purchases \$ _____

Taxable () Yes () No IF NO, attach copy of Tax Exemption or Resale Certificate

OWNER INFORMATION

Name:	Name:	Name:
Address:	Address:	Address:
City, State, Zip:	City, State, Zip:	City, State, Zip:
Phone:	Phone:	Phone:
SS#:	SS#:	SS#:
Driver Lic.#:	Driver Lic.#:	Driver Lic.#:
Spouse's Name:	Spouse's Name:	Spouse's Name:

Accounts Payable Contact: _____ PO Required? Yes No

How do you want to receive invoices: Fax Mail E-mail Address: _____

Bank Reference (Name and Branch): _____ Phone #: _____

Bank Address: _____ Name of Officer: _____ Account #: _____

CONTINUING GUARANTY AND CONSENT: Personal Guarantee: This two page, Credit Application – Sales Agreement – Guaranty (the "Agreement") is by and between the Applicant identified above, the undersigned guarantor (s) and ERS Investments, LLC and its affiliates, subsidiaries, successors and assigns (collectively "ERS"). For value received and to induce ERS to extend credit to Applicant, by signing below, I am personally, jointly and severally, irrevocably, continually and unconditionally, guaranteeing the Applicant' s account and all obligations, indebtedness and liabilities owed by Applicant to ERS now existing or arising in the future. I waive all notices and demands of any kind and hereby agree to any arrangements or agreements between ERS, Applicant or other guarantor, including without limitation, to a change in the amount of credit extended to Applicant, terms of sale, compromise, extension, increase or alteration of the amount, or terms of any indebtedness owed by Applicant or any other guarantor, and I agree the same shall in no way reduce, impair, discharge or release my guaranty obligation. I agree ERS may enforce this guaranty against me and pursue payment from me, without having to first seek payment from, sue, or exhaust its remedies, against Applicant or other guarantor. The incorporation, merger, sale, or reorganization of Applicant or ERS will not terminate or affect my guaranty obligations which will continue a s to credit extended to or by such other entity. This guaranty is continuing and absolute and shall continue in force until seven (7) days after written notice of termination is received and receipt is acknowledged in writing by an ERS Credit Manager, except that such termination shall not affect the liability of guarantor with respect to obligations created or incurred prior to such date, or extensions or renewals of, interest accruing on, or fees, costs, or expenses, including reasonable attorney fees, incurred with respect to, such obligations on or after such date. Venue for any dispute or litigation arising from or related to this Agreement shall be in any county where an ERS store is located from which the Applicant purchased goods or conducted business with ERS. Upon demand by ERS and in addition to Applicant' s indebtedness, I agree to pay all costs incurred by ERS enforcing its rights or collecting monies due under this Agreement, including filing and for closing liens, reasonable attorney fees, court costs, and pre and post judgment interest accruing at the lesser of 1 - 1/2 percent per month or the highest rate allowable by the laws of the state where the ERS store is located from which Applicant purchased goods or conducted business with ERS. I warrant and represent that the information provided by me and the Applicant in this Agreement is true, complete and correct and that ERS is relying upon the information provided by the Applicant in this Agreement and my guaranty to determine whether to extend credit to the Applicant and in what amount. I authorize ERS to obtain and evaluate my credit and financial information at any time and from any source. If any term or provision of this Agreement is found invalid or unenforceable, such provision shall be severed out and shall not invalidate the remainder of the Agreement.

IN THE EVENT THAT GUARANTOR(S) IS MARRIED, THEN GUARANTOR'S SPOUSE MUST SIGN THIS CONTINUING GUARANTY AND CONSENT AS GUARANTOR. IN THE EVENT THAT NO SPOUSE SIGNS THIS CONTINUING GUARANTY AND CONSENT, ERS IS EXPRESSLY AUTHORIZED BY GUARANTOR(S) TO ACCEPT THE SAME AS AN AFFIRMATIVE AND MATERIAL REPRESENTATION BY GUARANTOR(S) THAT GUARANTOR(S) IS NOT MARRIED AND UNDERSTANDS THAT ERS'S EXTENSION OF CREDIT HEREUNDER IS MADE IN RELIANCE THEREON. IN THE EVENT SUCH REPRESENTATION IS LATER DETERMINED TO BE UNTRUE, ERS SHALL BE ENTITLED TO SEEK RELIEF AGAINST GUARANTOR'S MARITAL COMMUNITY BASED UPON SUCH MISREPRESENTATION WHICH SHALL BE DEEMED INTENTIONAL. IN THE EVENT THAT GUARANTOR'S MARITAL STATUS CHANGES FOLLOWING THE EXECUTION OF THIS CONTINUING GUARANTY AND CONSENT, GUARANTOR(S) WILL PROVIDE WRITTEN NOTICE TO ERS BY MEANS REQUIRING ACKNOWLEDGEMENT OF RECEIPT BY ERS.

Guarantor: _____ (Signature) Print Name: _____

Social Security Number: _____ Phone: _____ Date: _____

Guarantor: _____ (Signature) Print Name: _____

Social Security Number: _____ Phone: _____ Date: _____

COMMERCIAL TRADE REFERENCES

List three Supplier References with complete addresses, phone numbers and account numbers.

Name:	Address:	Phone:	Fax:	Account #:
Name:	Address:	Phone:	Fax:	Account #:
Name:	Address:	Phone:	Fax:	Account #:

SALES AGREEMENT:

This Credit Application – Sales Agreement – Continuing Guaranty (the “Agreement”) is by and between the Applicant identified on page one, the guarantors and ERS Investments, LLC and its affiliates, subsidiaries, successors and assigns (collectively “ERS”). Applicant expressly agrees that all purchases made now and in the future from ERS shall be in accordance with the terms and conditions in this Agreement, unless otherwise agreed to in writing by ERS. The undersigned warrants and represents that he/she is authorized to enter into this Agreement on behalf of the Applicant and bind the Applicant in the purchase or rental of goods, materials and/or equipment from ERS. Terms of the sale are Net 10th prox, unless otherwise agreed to in writing by the ERS Credit Manager. Payments for materials purchased in one month are due in full by the 10th of the following month or the account is past due. Any dispute with respect to an invoice, statement, charge or credit on Customer’s account, must be submitted to ERS, in writing, within 10 days of Customer’s receipt of such invoice, statement, charge or credit, or Customer waives such dispute. Accounts not paid within 10 days from due date are in default and may be placed on COD basis until the account is paid in full. In consideration of ERS extending credit to Applicant, the Applicant promises full and prompt payment of all indebtedness, obligations and liabilities of every kind, present and future, incurred by the Applicant for goods, products or services purchased or rented from ERS. If Applicant’s account is referred to an attorney or collection agency, Applicant agrees to pay upon demand from ERS, all costs of collection, including reasonable attorneys’ fees, court costs, costs incurred perfecting and foreclosing liens, and pre and post judgment interest, which will accrue at the lesser of 1½ percent per month or the highest rate allowable by the laws of the state where the ERS store is located from which Applicant purchased goods or conducted business with ERS. Finance Charges on past due accounts will be assessed at the lesser of 1½ percent per month (APR of 18%) or the highest rate permitted by the laws of the state where the ERS store is located from which Applicant purchased goods or conducted business with ERS. Returnable items may be subject to a 25% restocking fee. Payments should be made at or sent to the address of the ERS store provided on the invoice sent by ERS to Customer unless ERS instructs the Applicant in writing to do otherwise. If Applicant pays with a check, Applicant authorizes ERS to convert Applicant’s check to an Electronic Funds Transfer (EFT). If Applicant’s EFT is returned unpaid for any reason, Applicant agrees to pay a fee, the lesser of \$35.00 or the highest amount allowed by the applicable law. Applicant understands that discounts (if applicable) are offered for cash payments only, credit card payments do not qualify for cash discounts.

Applicant and its owners, officers and principals warrant and represent that the information provided by Applicant in this Agreement is true, complete and correct; and acknowledges that ERS is relying upon this information to determine whether to extend credit to Applicant and in what amount. Applicant authorizes ERS to obtain and use credit reports and/or other credit information on Applicant, its owners, officers and principals. Despite the authorization to obtain such credit reports, ERS is not obligated to do so. Upon request by ERS, Applicant agrees to timely cooperate and supply additional information to ERS to warrant future extensions of credit to Applicant or to assist ERS in perfecting lien or bond claims. ERS and Applicant agree that Applicant is not a “consumer” under State and Federal Law and all extensions of credit are for business purposes only. The Applicant agrees it has a continuing duty and will inform ERS immediately in writing by certified mail, return receipt requested, of any changes to the information provided by Applicant in this Agreement.

ERS SELLS ALL PRODUCTS TO APPLICANT “AS IS, WHERE IS.” APPLICANT UNDERSTANDS AND ACKNOWLEDGES THAT ERS DOES NOT MANUFACTURE THE PRODUCTS IT SELLS AND, THEREFORE, ERS MAKES NO REPRESENTATIONS, WARRANTIES, EXPRESS OR IMPLIED, AND/OR GUARANTEES WITH RESPECT TO THE PRODUCTS IT SELLS AND SPECIFICALLY DISCLAIMS ALL WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ANY LIABILITY IMPOSED ON ERS SHALL BE LIMITED TO THE REPLACEMENT OF THE PRODUCT AND ERS WILL NOT BE LIABLE IN ANY EVENT FOR CONSEQUENTIAL, PUNITIVE, SPECIAL, INCIDENTAL OR OTHER SIMILAR DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION, INJURY TO PERSONS, DAMAGE TO ANY BUILDING OR CONTENTS THEREOF, DAMAGE TO PROPERTY, DRIVEWAYS, SIDEWALKS OR LANDSCAPING, WHETHER FOR ITS SOLE OR CONCURRENT NEGLIGENCE, STRICT LIABILITY IN TORT OR FOR ANY OTHER STATUTORY OR COMMON LAW THEORY OF LIABILITY. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGE SO THE ABOVE EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU.

Customer understands and acknowledges that the corporate office of ERS is located in the State of Arizona, and all credit accounts are not considered effective until approved at the corporate office. As such, this Credit Application -Sales Agreement- and Continuing Guaranty are deemed to have been entered into in the State of Arizona, thus venue for any dispute arising from or relating to this Agreement, goods purchased by Customer, or Customer’s relationship with ERS, shall be in the Courts of Maricopa County, Arizona, irrespective of where the Customer or Guarantor reside, and the laws of the State of Arizona will apply. This Agreement is the complete written expression of the parties’ agreement and supersedes any prior agreements between Applicant and ERS and can only be modified in writing. The Agreement will continue until terminated by ERS or by the Applicant in writing. No failure or delay by ERS to exercise any right, power or remedy shall constitute a waiver. If any term or provision of this Agreement is found invalid or unenforceable, such provision shall be severed out and shall not invalidate the remainder of the Agreement.

EQUAL CREDIT OPPORTUNITY ACT (ECOA) – THE FEDERAL EQUAL 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 LAW CONCERNING THIS CREDIT IS THE FEDERAL TRADE COMMISSION, DIVISION OF CREDIT PRACTICES, 6TH AND PENNSYLVANIA AVENUE NW, WASHINGTON, D.C. 20580.

By signing below, I warrant and represent that I have carefully read the terms of this Agreement and agree to each and every term contained herein.

Signature of Customer’s Authorized
Officer-Owner-Principal-Agent

Date

Print Name and Title