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Houston | Dallas/Fort Worth | Pearland | Bryan/College Station | San Antonio | Austin |  
 Corpus Christi | Phoenix | Long Beach | Chino | Hayward

**CREDIT APPLICATION**

Date: \_\_\_\_\_ Sales Rep: \_\_\_\_\_

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

Mailing Address: \_\_\_\_\_  
 Street/PO Box City State Zip

Physical Address: \_\_\_\_\_  
 Street City State Zip

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

**Purchasing Information**

Credit Amount Requested \$ \_\_\_\_\_

Do you Require Purchase Orders? YES  NO

Accounts Payable Contact: \_\_\_\_\_

**Principal Officers, Partners and/or Owners**

1.Name: \_\_\_\_\_

Home Address: \_\_\_\_\_  
 Street/PO Box City State Zip

Driver's License No. State Issued Social Security Number Date of Birth  
 Check One: Owner Partner Officer Title: \_\_\_\_\_

2.Name: \_\_\_\_\_

Home Address: \_\_\_\_\_  
 Street/PO Box City State Zip

Driver's License No. State Issued Social Security Number Date of Birth  
 Check One: Owner Partner Officer Title: \_\_\_\_\_

**Type of Business**

Proprietorship  Partnership  Corporation  Limited Liability  Other: \_\_\_\_\_  
 If Limited Partnership, Name and Address of General Partner: \_\_\_\_\_

**Business Information**

Years in Business: \_\_\_\_\_ IF less than 3 years, please list former business name below  
 Name: \_\_\_\_\_

Have any of your principals ever been in personal or business bankruptcy? YES  NO

Initials \_\_\_\_\_

(If yes, list name of Debtor and date of bankruptcy filing:  
Federal Tax ID#

Are you a tax exempt entity? YES  NO  *If YES please attach a Sales and Use and/or Resale Certificate*

Resale # (if applicable) \_\_\_\_\_ Contractor Lic# \_\_\_\_\_

Are you bonded? If so, with whom: \_\_\_\_\_

**Financial Information** *(Most banks require a customer signature before releasing any information. To prevent any delay in processing your application please make sure to sign and date this application where indicated)*

1. Name of Bank \_\_\_\_\_ Account # \_\_\_\_\_

Average monthly balance: \$\_\_\_\_\_

Contact Name \_\_\_\_\_ Phone: \_\_\_\_\_ Fax \_\_\_\_\_

2. Name of Bank \_\_\_\_\_ Account # \_\_\_\_\_

Average monthly balance: \$\_\_\_\_\_

Contact Name \_\_\_\_\_ Phone \_\_\_\_\_ Fax \_\_\_\_\_

**Business / Trade References** *(List suppliers with whom you have had an account for 6+months)*

1. Company Name \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Contact Name \_\_\_\_\_ Phone \_\_\_\_\_ Fax \_\_\_\_\_

2. Company Name \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Contact Name \_\_\_\_\_ Phone \_\_\_\_\_ Fax \_\_\_\_\_

The undersigned authorizes Action Gypsum Supply, L.P., its partners, affiliated entities, and joint venturers (collectively hereafter "Action Gypsum Supply"), to contact the Banks and References listed herein, and authorizes the Banks and References listed herein to verify the information contained herein.

The undersigned understands that the information furnished in this Credit Application is for the purpose of obtaining credit from Action Gypsum Supply and Action Gypsum Supply shall rely upon the information contained herein; and the undersigned warrants and represents that the information contained herein is true, accurate and complete. The undersigned agrees and acknowledges that any and all purchases from Action Gypsum Supply are subject to the Terms and Conditions of Credit Agreement, attached hereto and incorporated herein.

This Credit Application may only be signed by an officer, partner or owner identified above of the Customer. The undersigned has read and fully understand(s) the foregoing Credit Application, and is duly authorized to bind the Customer to the terms and conditions of this Credit Application.

Customer legal business name:

\_\_\_\_\_

Action Gypsum Supply is hereby authorized at any time, and from time to time, to generate and/or obtain one or more credit and/or investigative reports from credit reporting agencies and/or others regarding the individual credit of the undersigned officer, partner or owner of Customer

By: \_\_\_\_\_

Signature

\_\_\_\_\_

Signature

Printed Name

\_\_\_\_\_

Printed Name

Title

\_\_\_\_\_

Title

Date

\_\_\_\_\_

Date

Initials \_\_\_\_\_

## TERMS AND CONDITIONS OF CREDIT AGREEMENT

The Customer identified on page 1 hereof (hereinafter referred to as "Customer") hereby makes this Credit Application ("Application") for credit from Action Gypsum Supply, L.P. and/or its partners, affiliated entities, and joint venturers (collectively hereafter "Action Gypsum Supply") and in making this Application, agrees to be bound by all the terms and conditions contained in the Application, any documents referenced in this Application, or any supplements to this Application. The Customer, by execution of this Application, represents that the statements furnished to Action Gypsum Supply are true and correct and does hereby expressly agree that all purchases made or to be made from Action Gypsum Supply shall be according to the terms and conditions of Action Gypsum Supply.

The Customer agrees and authorizes Action Gypsum Supply to deliver goods, products, services, materials, supplies, wares and merchandise ("Goods") with or without a signed written receipt for items delivered to job sites and/or other locations the Customer directs. Customer further agrees to pay for items delivered with or without written receipt.

All Goods are assumed received in the condition as ordered unless exception is noted on delivery ticket. Action Gypsum Supply will, therefore, not accept damaged and/or nonconforming Goods for credit and/or refund and/or replacement unless noted on original delivery ticket and a written notice of nonconforming Goods is delivered to Action Gypsum Supply within five (5) days of the date of delivery. If exception is noted and notice is timely given as required herein, then Customer's sole and exclusive remedy for such nonconforming Goods is replacement of the nonconforming Goods, or refund of the purchase price of nonconforming Goods, at Action Gypsum Supply's sole discretion. Action Gypsum Supply will not accept any returns of Goods after thirty (30) days from delivery date. Goods picked up by Customer at Action Gypsum Supply's warehouse or at any of our locations must be inspected prior to removal from Action Gypsum Supply's location, and cannot be returned as damaged or nonconforming. Special order items when shipped as ordered are non-returnable and nonrefundable, unless damaged and/or nonconforming and exception noted and notice given as provided above. Returned Goods are also subject to a 15% restocking fee, which may be deducted from any refund due. Action Gypsum Supply is not in any way obliged to accept any damaged, mutilated, altered or otherwise "not suitable for resale" merchandise.

**ACTION GYPSUM SUPPLY HEREBY EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED OR STATUTORY WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR ANY WARRANTY RESPECTING THE SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE OF ANY AND ALL GOODS. ANY AND ALL WARRANTIES ARISING OUT OF OR RELATED TO THIS CREDIT APPLICATION, SALE OF THE GOODS OR THE GOODS RUN TO CUSTOMER ONLY, AND MAY NOT BE RELIED UPON BY ANY CUSTOMER OF CUSTOMER OR ANY THIRD PARTY.** Customer shall not, in any event be entitled to, and Action Gypsum Supply shall not be liable for, any indirect, special, incidental or consequential damages of any kind arising out of or related to the Goods, and defect, deficiency, damages or nonconformity of the Goods, any purchase, sale, failure to deliver or untimely delivery of the Goods, this Credit Application, or any alleged breach hereof, including but not limited to any delay damages, liquidated damages, expediting or acceleration costs, claims for loss of use, lost profits, or increased expenses of operation or work stoppage. Action Gypsum Supply's liability for damages, if any, whether based on Action Gypsum Supply's negligence, breach of contract or otherwise, and no matter by whom asserted, shall not exceed the price of the particular Goods with respect to which such damages are claimed. Furthermore, Action Gypsum Supply's liability is limited to providing a reasonable credit and/or allowance in respect to such Goods, or replacement of the Goods specified on the invoice in which the Goods were originally billed. Customer shall indemnify Action Gypsum Supply for any claims and/or proceeding by Customer, or customers of the Customer, or any other party seeking damages beyond the scope of Action Gypsum Supply's liability as stated in this paragraph

Action Gypsum Supply's payment terms are 1% 10<sup>th</sup>, for payments other than credit cards, and net 20<sup>th</sup>. All invoices are payable according to these payment terms. A deduction of 1% on the subtotal (before taxes) of any invoice may be taken if payment, other than credit card payment, is made and received by Action Gypsum Supply before the 10<sup>th</sup> day of the month following the month of the delivery of the Goods billed. All invoices and payments for materials are due the 20<sup>th</sup> day of the month following the month of the delivery of the Goods billed, and no later. If not paid on or before said due date then Action Gypsum Supply shall be entitled to recover interest from Customer on the unpaid past due amount at the maximum rate allowed by applicable law until paid, and/or suspend Customer's account, and the Customer shall be obligated to pay all costs and expenses incurred by Action Gypsum Supply in collecting any past due amounts and delinquencies, including but not limited to costs, expenses, and/or attorneys' fees. Payment is to be made to PO BOX 40010, Houston, TX 77240. In addition, any delivery of Goods valued under \$500.00 is subject to a Delivery Fee to be paid to Action Gypsum Supply. Furthermore, each purchase of Goods is subject to and each invoice is due and payable in accordance with all the terms and conditions of this Credit Application and such invoice. This Credit Application shall govern and control each purchase of Goods, notwithstanding any contrary or inconsistent or supplemental terms and conditions in any purchase order, confirmation, or any other instrument prepared by the Customer, its employee, and/or agents, and any such contrary or inconsistent or supplemental terms and conditions are hereby rejected. Action Gypsum Supply may at any time, and from time to time, modify in writing signed by an authorized representative of Action Gypsum Supply the limits of credit available to the Customer and the terms and conditions upon which credit accommodations will be extended to the Customer.

Action Gypsum Supply is hereby authorized at any time, and from time to time, to generate and/or obtain one or more credit and/or investigative reports from credit reporting agencies and/or others regarding the Customer. The Customer agrees that the continued solvency of the Customer is a precondition to any extension of credit made by Action Gypsum Supply to the Customer. On request the Customer agrees to provide Action Gypsum Supply a sworn statement representing that the Customer is and remains solvent. Customer hereby grants to Action Gypsum Supply a security interest in any and all Goods purchased hereunder as security for Customer's payment and other obligations hereunder, and Customer agrees to execute such financing statements or other documentation as reasonably requested by Action Gypsum Supply to evidence and perfect such security interest.

A faxed or emailed copy of this Credit Application shall and may be treated as an original. Customer agrees that this transaction bears a reasonable relation to the State of Texas. This Credit Application shall be governed by and construed in accordance with the laws of the State of Texas, notwithstanding otherwise applicable conflict of law principles, and venue for any action arising out of or related to this Credit Application, the Goods or any purchase or sale of Goods shall be in Harris County, Texas, and **CUSTOMER HEREBY EXPRESSLY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY SUCH ACTION**, to the fullest extent permitted by applicable law. If the foregoing choice of law and/or venue provisions are invalid or unenforceable for any reason, then this Credit Application shall be governed by and construed in accordance with the laws of the State of, and/or venue shall lie in the county or parish of, as applicable, Action Gypsum Supply's warehouse or other location where the Goods are picked up by Customer, or if the Goods are not picked up by Customer, then the laws of the State and/or venue in the county or parish, as applicable, where the Goods are delivered.

This Credit Application and each invoice constitute the entire agreement between the parties hereto, and it is expressly understood and agreed that there are no agreements, warranties, representations or promises by and between said parties, except as aforesaid, and that any additions thereto or changes shall be in writing signed by the parties. If for any reason any term or provision is unenforceable or invalid, such provisions shall be deemed severed from the Credit Application or invoice, and the remaining terms and provisions shall be carried out with the same force and effect as if the severed provision had not been part of the agreement. Failure by Action Gypsum Supply in any instance to insist upon observance or performance by Customer shall not be deemed a waiver by Action Gypsum Supply of any such observance or performance or any breach. No waiver will be binding upon Action Gypsum Supply unless in writing, and then will be for the particular instance only.

Initials\_\_\_\_\_

The State and/or Customer Specific Addendum, if any, signed by Action Gypsum Supply and Customer, is incorporated herein and made a part hereof for all purposes.

Initials \_\_\_\_\_

**PERSONAL GUARANTY**

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the undersigned(s) Guarantor(s) do severally and unconditionally guarantee and agree to pay Action Gypsum Supply, L.P., its partners, affiliated entities, and joint venturers (collectively hereafter "Action Gypsum Supply") at 9635 W Little York Rd, Houston, TX 77040, or any of such entity's or person's respective assigns, any and all indebtedness or other liability of every kind and character, without limit as to an amount, which \_\_\_\_\_ (Customer/Debtor) may now or at any time owe Action Gypsum Supply by reason of purchase from Action Gypsum Supply of goods, materials, products, wares, merchandise, or supplies and services of any kind and attorneys' fees and other collection costs (jointly and severally referred to as the "Debt").

Guarantor(s) hereby severally waive notice of acceptance of this guarantee and all other notices in connection herewith or in connection with the Debt guaranteed hereby, and waive diligence, presentment, protest, and suit on the part of Action Gypsum Supply in the collection of any Debt hereby guaranteed, and agree that Action Gypsum Supply shall not be required to first endeavor to collect from Customer/Debtor any Debt hereby guaranteed, or to foreclose, proceed against or exhaust any collateral or security for any Debt hereby guaranteed, before requiring Guarantor(s) to pay the full amount of the liability hereby created. Suit may be brought and maintained against any one of or more of the undersigned Guarantor(s), each of which are jointly and severally liable to Action Gypsum Supply for any Debt, at the election of Action Gypsum Supply without joinder of Customer/Debtor or the other undersigned Guarantor(s) as parties thereto.

If any of the sum due to Action Gypsum Supply by Guarantor(s) here under is placed in the hands of an attorney for collection, or is collected through probate, bankruptcy, or other court proceeding, then the undersigned Guarantor(s) promise to pay Action Gypsum Supply its reasonable attorneys' fees for such collection, which in any event shall not be less than ten percent (10%) of the amount of the indebtedness thereupon collected. Should the status of the Customer/Debtor change through merger, consolidation, or otherwise, this agreement shall continue and shall cover Debt under the new status.

This is a continuing guarantee, and shall apply to and cover all Debt and renewals thereof abovementioned or described. Any Guarantor may terminate his respective liability hereunder by written notice that he will not be liable for any Debt created or arising after such notice (which notice shall not be deemed to have been given until actually received by Action Gypsum Supply). This obligation of all Guarantor(s) who shall not have given such notice, however, shall as to all Debt created, incurred or arising after the giving of such notice, remain and continue as if such Guarantor(s) had been the only Guarantor(s) signing this instrument. If any Guarantor(s) dies or becomes incapacitated, his estate shall be bound hereby until his personal representative shall give such notice. Such notice shall not be effective as to existing Debt made before such notice of termination.

Each Guarantor shall remain liable for the Debt even though the Debt shall be unenforceable against or uncollectible from the Customer/Debtor or any other person because of incapacity, lack of power or authority, discharge, or any other reason.

Action Gypsum Supply may assign its rights hereunder in whole or in part, and upon any such assignment all the terms and provisions of this Personal Guaranty shall inure to the benefit of such assignee, to the extent so assigned. This agreement shall bind Guarantor(s) and their respective heirs, administrators, personal representatives, successors, and assigns. Each Guarantor shall include all genders, and the singular shall include the plural, and the plural the singular, as the context shall require.

Guarantor(s) agree that this transaction bears a reasonable relation to the State of Texas. To the fullest extent permitted by applicable law, this agreement is made under and shall be governed by, and construed in accordance with the laws of Texas, notwithstanding otherwise applicable conflict of law principles, and is performable in Harris County, Texas, and venue for any action arising out of or related to this agreement shall be in Harris County, Texas. If the foregoing choice of law and/or venue provisions are invalid or unenforceable for any reason, then this Personal Guaranty shall be governed by and construed in accordance with the laws of the State of, and/or venue shall lie in the county or parish of, as applicable, Action Gypsum Supply's warehouse or other location where the goods, materials, products, wares, merchandise, or supplies are picked up by Customer/Debtor, or if not picked up by Customer/Debtor, then the laws of the State and/or venue in the county or parish, as applicable, where the goods, materials, products, wares, merchandise, supplies or services are delivered, to the fullest extent permitted by applicable law. Action Gypsum Supply is relying and is entitled to rely upon any and all of the provisions of this agreement. If any provision or provisions of this instrument shall be held to be invalid, unenforceable or ineffective, then such provision or provisions shall be deemed stricken from this agreement, and all other provisions shall continue in full force and effect notwithstanding.

The undersigned duly consent(s) to Action Gypsum Supply obtaining a "Consumer Credit Report" for the purpose of evaluating the creditworthiness of the Guarantor(s) in connection with this Personal Guaranty and the Customer/Debtor's Credit Application for business credit.

Guarantor(s) understand(s) and acknowledge(s) that they/he/she are personally liable for payments of the Debt described herein, including but not limited to invoices for products, wares, merchandise, supplies, services, goods, materials, and/or labor provided by Action Gypsum Supply to the Customer/Debtor.

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

Signature of Guarantor		Guarantor's Name Typed or Printed		
Guarantor's Address Street / PO Box		City	State	Zip
Guarantors Social Security Number		Today's Date		
Guarantors Driver's License No.	State	Date of Birth		
Signature of Guarantor		Guarantor's Name Typed or Printed		
Guarantor's Address Street / PO Box		City	State	Zip
Guarantors Social Security Number		Today's Date		
Guarantors Driver's License No.	State	Date of Birth		

Initials\_\_\_\_\_