



CREDIT APPLICATION & SALES AGREEMENT

COMPANY NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_ CITY/ST/ZIP \_\_\_\_\_

PHONE \_\_\_\_\_ FAX \_\_\_\_\_

BILLING ADDRESS \_\_\_\_\_ CITY/ST/ZIP \_\_\_\_\_

EMAIL \_\_\_\_\_ WEBSITE \_\_\_\_\_

FEDERAL TAX ID \_\_\_\_\_ INVOICE BY:  EMAIL  US MAIL

CORPORATE OFFICERS/PARTNERS/OWNERS

NAME \_\_\_\_\_ TITLE \_\_\_\_\_ SSN \_\_\_\_\_

NAME \_\_\_\_\_ TITLE \_\_\_\_\_ SSN \_\_\_\_\_

NAME \_\_\_\_\_ TITLE \_\_\_\_\_ SSN \_\_\_\_\_

CORPORATION  SOLE PROPRIETOR  PARTNERSHIP  LLC  LLP START DATE \_\_\_\_\_

FINANCIAL INFORMATION

BANK NAME \_\_\_\_\_ ACCOUNT # \_\_\_\_\_

ADDRESS \_\_\_\_\_ CITY/ST/ZIP \_\_\_\_\_

CONTACT \_\_\_\_\_ PHONE \_\_\_\_\_

HAVE YOU EVER DECLARED BANKRUPTCY? \_\_\_\_\_ IF YES, WHEN? \_\_\_\_\_ CASE # \_\_\_\_\_

REFERENCES: LIST THREE TRADE REFERENCES WHERE CREDIT IS ON OPEN ACCOUNT

1. COMPANY NAME \_\_\_\_\_ PHONE \_\_\_\_\_

CONTACT/ACCOUNT # \_\_\_\_\_ FAX \_\_\_\_\_

2. COMPANY NAME \_\_\_\_\_ PHONE \_\_\_\_\_

CONTACT/ACCOUNT # \_\_\_\_\_ FAX \_\_\_\_\_

3. COMPANY NAME \_\_\_\_\_ PHONE \_\_\_\_\_

CONTACT/ACCOUNT # \_\_\_\_\_ FAX \_\_\_\_\_

Applicant authorizes, by signature on page 4 of this agreement, the above listed trade and financial references to release information requested relative to open accounts, mortgages, construction loans, average deposit balances, etc. pertinent to the granting of credit to the applicant.



**CREDIT APPLICATION & SALES AGREEMENT**

**PERSONAL GUARANTY**

In consideration of the extension of credit by Kodiak Gypsum Mountain States, LLC d/b/a Jones Hartz Drywall Supply and/or Drywall Material Supply ("the Company") to

(Full legal name of applicant, hereinafter referred to as "the Customer") and for other valuable consideration, the undersigned hereby jointly and severally absolutely and unconditionally guarantee full and prompt payment of any and all sums which are now, or may in the future, become due to the Company from the Customer. The undersigned promise to pay any amounts owed under this guaranty to the Company within two days after demand by the Company of payment of such amounts at the address of the Company set forth below.

Each of the undersigned acknowledges the Company is relying upon this guarantee and would not extend credit to the Customer without the undersigned entering into this guarantee. This guarantee is an absolute, unconditional and continuing guarantee of the full and prompt payment and performance by the Customer of any and all invoices now or in the future to become due, and is not a guaranty of collection only, and is in no way conditioned upon any requirements that the Company first attempt to collect any of the outstanding amounts from the Customer or any other party primarily or secondarily liable with respect thereto, or upon any other contingency whatsoever. Each of the undersigned hereby waives any notice of the time and amount of extension of credit to the Customer, as well as rights to set-off, redemption and counterclaim that may be alleged to exist in favor of the Customer. This guarantee shall extend, without limitation, to principal, interest, costs of collection and attorney's fees incurred by the Company relating to any amounts owed pursuant to this Guaranty or amounts owed by the Customer to the Company.

Each of the undersigned unconditionally and irrevocably waives (i) notice of every kind (other than as required by any unwaivable and applicable law or as otherwise required pursuant to the terms hereof), including, without limitation, notice of dishonor, (ii) protest, (iii) presentment, and (iv) each and every defense based on suretyship, impairment of collateral or an election of remedies. This guaranty shall not be limited or impacted in any way by any failure, omission or delay to enforce, assert or exercise any right, power or remedy conferred by the terms between the Company and the Customer, by any claim, defense, counterclaim or setoff, other than that of prior payment or performance, that the Company, any of the undersigned or any other party that may become liable for all or any part of the guaranteed obligations may have asserted, any future increase or decrease in the amount of the guaranteed obligations pursuant to the terms between the Company and the Customer or any guarantee of, or grant of a lien or other interest in collateral to secure, any of the guaranteed obligations by any other party.

This guaranty is intended to cover a running account or accounts by the Customer and will remain in full force and effect until 14 days after a termination in writing is sent by any of the undersigned registered mail, return receipt, and received at the below address. In such event, this guaranty shall terminate only to new obligations as to the undersigned terminating this guaranty, but shall not terminate as to any obligations incurred prior to the date of such termination.

No rights against the undersigned are waived by failure to exercise any rights against the Customer upon his or its default. The incorporation, merger, reorganization or sale of the Customer's business shall not operate as a termination of this guaranty. This guaranty shall survive any bankruptcy or receivership proceeding of the Customer.

Each of the undersigned hereby consents and authorizes Kodiak Gypsum Mountain States, LLC d/b/a Jones Hartz Drywall Supply use of non-business consumer credit report on the undersigned in order to further evaluate the credit worthiness of the undersigned as principal(s), proprietor(s) and/or guarantor(s) in connection with the extension of business credit as contemplated by this credit application.

\_\_\_\_\_  
Personal Guarantor/Individual (Signature)  
  
\_\_\_\_\_  
Personal Guarantor/Individual (Please Print)  
  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Personal Guarantor/Individual (Signature)  
  
\_\_\_\_\_  
Personal Guarantor/Individual (Please Print)  
  
\_\_\_\_\_  
Date

## CREDIT APPLICATION & SALES AGREEMENT

### TERMS AND CONDITIONS

- PAYMENT TERMS:** Payment terms are 30<sup>th</sup> day of the month following the invoice date, unless the invoice is paid by the 10<sup>th</sup> day of the month following the invoice date, Customer/Applicant (hereinafter referred to as "Customer") shall receive a 1% discount after deducting tax and delivery charges on such invoice. Retainage shall not apply and Customer shall not hold back any amounts from Kodiak Gypsum Mountain States, LLC d/b/a Jones Hartz Drywall Supply and/or Drywall Material Sales (hereinafter referred to as "Seller"), even if retainage is contractually withheld from Customer by another party. Payment to Seller is not contingent on Customer's receipt of payment from a third party. Seller, in its sole discretion, may determine that the Customer's financial condition requires adequate assurance of due performance from Customer, including but not limited to, requiring full or partial payment in advance of delivery of any materials or goods ordered by Customer (any such materials or goods collectively being referred to herein as, the "Goods"). In the event Customer fails to make any payment when due, Seller reserves the right to suspend any further deliveries or to cancel the unfilled portion of any order without liability of Seller, and all unpaid accounts shall thereupon become due and payable to Seller. Interest at highest rate permitted by applicable law, shall accrue on all past due accounts. Waiver of one or more interest charges shall not be deemed to be a waiver of any other interest charges. In the event of non-payment, Customer shall be responsible for, and pay, Seller's cost of collection, including but not limited to Seller's reasonable attorney fees and court costs. Seller may apply payments first to accrued interest on any outstanding invoices and then to principal amounts due and owing on any outstanding invoices unless Customer specifies a particular invoice to which such payment applies. All amounts and payments made in connection with the transactions contemplated herein shall be in United States Dollars.
- ACCEPTANCE; INDEPENDENT CONTRACTORS:** Acceptance of any order is subject to credit approval by Seller. ACCEPTANCE OF AN ORDER BY SELLER IS LIMITED TO THE TERMS AND CONDITIONS STATED HEREIN, AND ANY ADDITIONAL TERMS, CONDITIONS OR INSTRUCTIONS PROPOSED BY CUSTOMER ARE UNENFORCEABLE AND OF NO EFFECT UNLESS EXPRESSLY AGREED TO IN WRITING BY SELLER. BY REQUESTING A QUOTE FROM SELLER OR PRESENTING AN ORDER TO SELLER, CUSTOMER CONFIRMS THAT THESE TERMS AND CONDITIONS OF SALE SHALL GOVERN ALL PURCHASES OF GOODS BY CUSTOMER FROM SELLER AND NO CHANGES OR ADDITIONAL OR DIFFERENT TERMS, WHETHER CONTAINED IN A PURCHASE ORDER OR OTHER DOCUMENT WILL CHANGE OR MODIFY THESE TERMS AND CONDITIONS UNLESS ACKNOWLEDGED IN WRITING AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF SELLER. NO EMPLOYEE OR REPRESENTATIVE OF SELLER HAS THE AUTHORITY TO ORALLY MODIFY THESE TERMS AND CONDITIONS. Customer further agrees that the amount of credit desired and approved is not a limitation of liability, and Customer expressly agrees that it will be responsible for valid charges in excess of the amount of credit either desired or approved. The extension of credit hereunder, the amount of credit and the cancellation or reduction of credit shall be within the sole discretion of the Seller. Neither these terms and conditions nor the sale of Goods hereunder shall be construed as constituting a partnership, agency, distributorship or joint venture between Seller and Customer. Neither party shall have any right to obligate or bind the other party in any manner whatsoever, and nothing herein shall give, or is intended to give, any rights of any kind to any third parties.
- WARRANTIES:** Seller warrants that, to its knowledge, (a) all Goods furnished to Customer are new unless otherwise specified, and (b) all Goods furnished to Customer are free and clear of any security interests and liens. The foregoing warranties terminate one (1) year after the Goods are accepted in accordance with the terms of Section 5 below. If a claim is made within such period of time, and such claim is determined to be valid by Seller, then Seller shall replace such Goods. All other warranties, if any, are limited to those provided by the manufacturer of the Goods and Seller assigns to Customer any applicable manufacturer warranties and remedies to the extent permitted. Seller is a distributor and not a manufacturer and makes no warranties other than those expressly set forth herein. THE WARRANTIES IN THIS SECTION 3 ARE SELLER'S SOLE AND EXCLUSIVE WARRANTIES, AND ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, OR WRITTEN OR ORAL, AND DO NOT INCLUDE ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR COURSE OF PERFORMANCE, COURSE OF DEALING, AND/OR USAGE OF TRADE. IN ADDITION TO THE FOREGOING, SELLER EXPRESSLY EXCLUDES ANY WARRANTIES OR REMEDIES FOR DEFECTS OR DAMAGES CAUSED BY NORMAL WEAR AND TEAR, IMPROPER OR INSUFFICIENT INSTALLATION, OPERATIONS, MAINTENANCE, STORAGE OR ABUSE OR MODIFICATION OF ANY GOODS BY SELLER.
- LIMITATION OF LIABILITY; FORCE MAJEURE:** Seller's liability to Customer arising from the purchase or use of any Goods or the performance of any services is limited to the price paid to Seller of the Goods giving rise to the claim. IN NO EVENT SHALL SELLER [OR ITS VENDORS] BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, CONTINGENT OR OTHER SIMILAR DAMAGES OF ANY DESCRIPTION, WHETHER ARISING OUT OF WARRANTY, CONTRACT, NEGLIGENCE OR OTHER TORT, OR OTHERWISE, INCLUDING WITHOUT LIMITATION, LOST PROFITS OR REVENUE, BACK-CHARGES, LABOR COSTS, COSTS OF REMOVAL AND/OR REPLACEMENT, TESTING OR INSTALLATION, LOSS OF EFFICIENCY, DOWNTIME, LOSS OF USE OF GOODS OR ANY ASSOCIATED MATERIALS OR GOODS OR DAMAGE TO ASSOCIATED MATERIALS OR GOODS OR EQUIPMENT, UNAVAILABILITY OF GOODS, COST OF CAPITAL, OR COST OF SUBSTITUTE GOODS, FACILITIES OR SERVICES, WHETHER OR NOT SELLER HAS ACTUAL KNOWLEDGE OR REASON TO BELIEVE THAT ANY SUCH LOSSES OR DAMAGES ARE FORESEEABLE, AND SELLER'S LIABILITY SHALL NOT EXTEND TO ANY DAMAGES OR LOSSES CUSTOMER MAY SUFFER OR INCUR AS A RESULT OF CLAIMS, SUITS OR OTHER PROCEEDINGS AGAINST CUSTOMER BY THIRD PARTIES. Neither Seller nor Customer shall be liable to the other for failure or delay in the performance of a required obligation of such party (except for payment obligations) if such failure or delay is caused by or results from acts beyond such party's control, including but not limited to, terrorist threats or acts, riot or other civil unrest, war, strikes, labor stoppages or slowdowns or other industrial disturbances, shortages or delays in receiving raw materials, fire, flood, earthquake or other natural disaster.
- TITLE AND RISK OF LOSS; CLAIMS:** Title to the Goods and risk of loss thereof, or damage thereto shall pass to Customer at the location where Customer receives possession or the location that Customer directs Seller to deliver the Goods. Customer shall provide a safe work environment for Seller to deliver the Goods and with right-of-access to any delivery site, and Seller shall have the right to refuse to deliver the Goods if it reasonably believes that such working conditions are not safe or if Seller is not provided with such right-of-access, in which case Seller shall have no liability for failure to deliver the Goods and Customer shall be liable for the full amount payable for such Goods. All Goods shall be received by Customer subject to its right of inspection and rejection. Customer shall be allowed a period of one (1) day following delivery (or partial delivery) to inspect or reject the Goods and to notify Seller of any such rejection for non-conforming Goods. As used herein, 'non-conforming' means Goods that are different from the Goods ordered by Customer or identified in the corresponding purchase order from Customer that is accepted by Seller. Seller does not guaranty that the Goods it sells conform to any plans and specification or intended use. When plans and specifications are involved, Customer is solely responsible for verifying Seller's interpretations of such plans and specifications, and it is the Customer's sole responsibility to assure that the Goods will be accepted on any specific project or job. When Seller offers substitute Goods on any quote or proposal, Customer is solely responsible for confirming their acceptability. Claims for any non-conforming Goods must be made by Customer, in writing, within one (1) days of Customer's partial or complete receipt of such Good and must state with particularity all material facts concerning the claim



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then known to Customer. Failure by Customer to give notice, within such one (1) day period shall constitute an unqualified acceptance of such Goods by Customer, and a waiver of any right to reject or revoke acceptance of such Goods.

- 6. RETURN OF GOODS: Seller will accept returns of normal stock Goods for a period of one (1) day following delivery for exchange or refund of the purchase price subject to the restocking fee/charge set forth herein and provided that the Goods must be unused and in substantially similar condition to that when such Goods were delivered to Customer. All Goods returned shall be subject to a restocking fee/charge of 15% of the invoiced amount(s) for such returned Goods. Seller shall be under no obligation to accept the return of any specially ordered (non-normal stock) Goods or any fabricated materials.
7. ORDER CANCELLATION: If an order for Goods is canceled by Customer, whether in part or full, then Customer shall be required to pay the full amount of the purchase price for specially ordered (non-normal stock) Goods or any fabricated materials.
8. SECURITY INTERESTS; LIENS: To secure Customer's prompt and complete payment and performance of any and all obligations and liabilities of Customer to Seller, Customer hereby grants Seller a security interest in all Goods purchased from Seller, wherever located, and whether now existing or hereafter arising or acquired from time to time, and all replacements or modifications thereto, as well as all proceeds of the foregoing. Seller may file a financing statement or other liens for such security interest and Customer will execute such statements or other documentation necessary to perfect Seller's security interest in such Goods. Customer also authorizes Seller to execute, on Customer's behalf, such statements or other documentation necessary to perfect Seller's security interest in such Goods.
9. TAXES: If Seller is required to make any payment on account of any tax in relation to any sum received or receivable by it hereunder or any liability in respect of any such payment is asserted, imposed, levied or assessed against Seller, to the extent that such payment or liability is in excess of the amount of taxes paid by Customer to Seller, Customer shall indemnify and hold harmless Seller at all times on demand against such payment or liability, together with any interest, penalties, costs and expenses payable or incurred in connection therewith.
10. CONFIDENTIAL INFORMATION: Customer understands and acknowledges that the terms of any purchase order with respect to Goods (including but not limited to the purchase price for Goods) and the terms and conditions stated herein, shall not be disclosed by Customer for any reason without Seller's prior written consent.
11. INDEMNIFICATION: Customer agrees to defend, indemnify and hold harmless Seller and Seller's employees, agents, contractors, representatives or agents from claims, actions, damages, losses, liability, costs and expenses (including reasonable attorneys' fees) arising as a result of or in connection with Customer's breach or other violation of the terms and conditions contained herein, except to the extent of Seller's gross negligence or fraud with respect to such claim.
12. NO WAIVER; ASSIGNMENT: No waiver, addition to or modification to the terms and conditions contained herein shall be binding upon Seller unless set forth in a written document signed by Seller. Any failure or delay in exercising any right, remedy, power or privilege or in enforcing any terms or conditions herein, or any act, omission or course of dealing between Seller and Customer shall not constitute a waiver of any right, remedy, power or privilege or condition arising from these terms and conditions. No right or obligation of Customer under these terms and conditions shall be delegated, assigned or otherwise transferred (whether by operation of law or otherwise) without Seller's prior written consent.
13. GOVERNING LAW AND VENUE: These terms and conditions of sale shall be governed by laws of the State of Colorado, without regard to any conflict of law rules or principles. All disputes arising out of these terms and conditions shall be resolved exclusively in the applicable courts within the State of Colorado, which courts shall have personal jurisdiction over the parties. In any action between Customer and Seller relating to these terms and conditions, the prevailing party or substantially prevailing party will have the right to recover from the other its costs and reasonable fees and expenses arising as a result of such action (including attorneys' fees). CUSTOMER AND SELLER EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO MATTERS RELATED TO THE SUBJECT MATTER HEREOF.
14. SEVERABILITY: If any provision of these terms and conditions is held to be unenforceable for any reason, it will be modified rather than voided, if possible, in order to achieve the intent of Seller and Customer to the extent possible. Any provision held overbroad as written will be deemed amended to narrow its application to the extent necessary to make the provision enforceable under applicable law, and enforced as amended. In any event, all other provisions of these terms and conditions will be deemed valid and enforceable to the full extent.
15. HEADINGS: The headings contained herein are for reference only and do not affect the interpretation hereof.
16. NO THIRD-PARTY BENEFICIARIES: Except as expressly set forth in these terms and conditions, nothing contained herein confers on any other party other than Seller and Customer any legal right or remedy.

THE UNDERSIGNED REPRESENTS AND WARRANTS THAT THE ABOVE STATED TERMS AND CONDITIONS HAVE BEEN CAREFULLY READ BY CUSTOMER AND THAT CUSTOMER UNDERSTANDS THE SAME. CUSTOMER REPRESENTS AND WARRANTS THAT IT HAS THE LEGAL RIGHT AND AUTHORITY TO ENTER INTO AND AGREE TO THESE TERMS AND CONDITIONS, WHICH TERMS AND CONDITIONS SHALL BE BINDING ON AND ENFORCEABLE AGAINST CUSTOMER.

FULL LEGAL NAME OF COMPANY (applicant) \_\_\_\_\_

BY (signature): \_\_\_\_\_ TITLE: \_\_\_\_\_

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

#### ACKNOWLEDGED AND ACCEPTED:

[Kodiak Gypsum Mountain States, LLC d/b/a Jones Hartz Drywall Supply and/or Drywall Material Sales]

BY (signature): \_\_\_\_\_ TITLE: \_\_\_\_\_

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