



## CREDIT APPLICATION AND AGREEMENT

COMPANY INFORMATION				
LEGAL BUSINESS NAME OF BUYER		DBA NAME (if used)		
BILLING ADDRESS		PHYSICAL ADDRESS		
CITY / STATE / ZIP		CITY / STATE / ZIP		
PRIMARY BUSINESS PHONE #	PRIMARY BUSINESS FAX #	PARENT COMPANY NAME (if applicable)		
LEGAL ENTITY TYPE (choose one): <input type="radio"/> Individual / Sole Owner <input type="radio"/> Partnership <input type="radio"/> Corporation <input type="radio"/> LLC / LP / LLP <input type="radio"/> Public Agency <input type="radio"/> Other				
YEAR BUSINESS EST.	FEDERAL TAX ID / SSN	D-U-N-S #	TAXABLE STATUS <input type="radio"/> Taxable <input type="radio"/> Exempt	CONTRACTOR INFORMATION Contractor <input type="radio"/> YES <input type="radio"/> NO
DESCRIBE YOUR PRODUCT OR SERVICE			Exemption #	License #
COMPANY PERSONNEL				
PRINCIPLE OWNER / OFFICER / MEMBER		TITLE	PRINCIPLE OWNER / OFFICER / MEMBER	TITLE
STREET ADDRESS		STREET ADDRESS		
CITY / STATE / ZIP		CITY / STATE / ZIP		
HOME PHONE	CELL PHONE	HOME PHONE	CELL PHONE	
BIRTH DATE	SSN #	BIRTH DATE	SSN #	
A/P CONTACT NAME	A/P CONTACT EMAIL	HAS COMPANY OR ANY OFFICER EVER FILED BANKRUPTCY? <input type="radio"/> YES <input type="radio"/> NO    If Yes when?		
REFERENCES				
TRADE REFERENCE NAMES		TELEPHONE	FAX # or EMAIL (required)	CONTACT NAME
1)				
2)				
3)				
4)				
BANK NAME		TELEPHONE	FAX # or EMAIL	BANKER NAME
BONDING BROKER AGENCY NAME		TELEPHONE	FAX # or EMAIL	BROKER NAME
BONDING COMPANY NAME		TELEPHONE	FAX # or EMAIL	
BILLING INFORMATION				
P.O. / JOB # REQUIRED <input type="radio"/> YES <input type="radio"/> NO		PREFERRED INVOICE DELIVERY: <input type="radio"/> US Mail <input type="radio"/> Email    Billing Email Address:		
ANTICIPATED MONTHLY PURCHASES		CREDIT LIMIT REQUESTED		
CREDIT APPLICATION AND AGREEMENT MUST BE SIGNED ON PAGE 2 OR APPLICATION CANNOT BE PROCESSED				

## CREDIT AGREEMENT TERMS AND CONDITIONS

IN CONSIDERATION OF PROCESSING THIS CREDIT AGREEMENT ("Credit Agreement") BY SELLER (as defined below), AND/OR THE EXTENSION OF ANY COMMERCIAL CREDIT TO BUYER (as defined below) AND/OR THE MAKING OF ANY SALE, BUYER AGREES AS FOLLOWS:

1. This Credit Agreement shall constitute a binding contract between Seller and Buyer upon Seller's acceptance of this Credit Agreement. "Seller" shall mean the legal entity that extends credit sales and/or provides construction materials, goods and/or services to Buyer pursuant to this Credit Agreement, which could be either Burke Quarry, LLC, or any of their subsidiaries or affiliated companies, whether presently existing or hereafter formed. "Affiliated company" means any firm, corporation, partnership, or other entity that is controlled by, or is under common control with the above listed entities. "Control" means ownership or control of fifty percent (50%) or more of the voting rights or the power to direct affairs of the entity in question. The term "Buyer" shall be deemed to include all parent(s), subsidiaries and affiliates of the entity requesting credit. Buyer and Seller may be referred to individually as a "Party" or collectively as "Parties".
2. All orders are subject to credit approval, and any extension of credit granted to Buyer is at the sole discretion of Seller. Subject to applicable law and regulations, Seller may at any time and without notice or liability, reduce or cancel available credit or terminate this Credit Agreement in its entirety.
3. All amounts owed to Seller for credit sales under this Credit Agreement shall be due on or before the tenth (10th) day of the month following sale. Orders placed by Buyer for construction materials, commercial goods and/or services will be processed and documented in accordance with Seller's procedures. Buyer understands that Seller's processing and documentation of orders generally does not include signed delivery receipts. Buyer agrees to pay for all construction materials, goods and/or services purchased, whether or not Seller is able to provide delivery receipts. Buyer shall notify Seller, in writing, of any error in any invoice within ten (10) days after the date of such invoice, and, if not so noticed, the invoice shall be deemed to be correct and accepted as rendered. In the event Buyer's credit is not approved or becomes unsatisfactory to Seller, then Seller, in its sole discretion, may, without notice to Buyer, suspend or cancel performance or require different payment terms including, but not limited to, cash on delivery (COD) or payment in advance.
4. If Buyer fails to make any payment or payments when due, Buyer agrees to pay Seller late charges at the rate of eighteen percent (18%) per annum on all past due, unpaid amounts. If for any reason the rate of eighteen percent (18%) is found to be unenforceable, Buyer agrees to pay Seller late charges at the maximum rate then permitted by law.
5. Buyer agrees to pay all Seller's reasonable attorneys' fees, administrative and/or collection costs, and other related expenses incurred by Seller in enforcing the terms of this Credit Agreement, regardless of whether a lawsuit is filed. If legal proceedings are commenced, and Buyer wants to pay off the amount in full prior to judgment or other final resolution, Seller shall, in addition to principal and late charges, be entitled to be paid attorneys' fees and costs incurred to that point. Any cause of action that Seller has against Buyer may be assigned without Buyer's consent by Seller to any affiliate, parent or subsidiary of Seller or to any other entity.
6. Buyer shall promptly furnish to Seller accurate information necessary for completion and service of notices, including, but not limited to, Preliminary Lien Notices, under applicable mechanic's lien laws. Buyer shall also provide Seller with copies of any payment bond and/or construction lender information.
7. This Credit Agreement may not be amended without Seller's prior written consent. If at any time Buyer sends Seller a purchase order, Buyer acknowledges and agrees that the purchase order shall only serve to document the type and quantity of materials requested by Buyer and shall not become a part of the parties' agreement concerning any resulting sales. If the purchase order includes terms or conditions which are inconsistent with or in addition to the terms and conditions of this Credit Agreement, all such terms and conditions are objected to and rejected by Seller. This Credit Agreement, together with future invoices from Seller, shall constitute the entire understanding of the parties concerning such transactions. This Credit Agreement and Seller's invoices may be amended only if and to the extent agreed to in writing and signed by an authorized person on behalf of Seller.
8. Buyer authorizes the disclosure and use of the information in this Credit Agreement by Burke Quarry, LLC, or any of their subsidiaries or affiliated companies, whether presently existing or hereafter formed, for the purpose of extending additional credit to Buyer for commercial purposes. Buyer acknowledges and agrees that the terms and conditions of this Credit Agreement shall govern additional extensions of credit to Buyer.
9. Unless terminated by Seller, this Credit Agreement shall continue in full force and effect until such time as Seller shall receive from Buyer (by certified mail) written notice of revocation and/or change of status. Such notice shall be delivered or sent to Seller at its office, 170 Industrial Drive Center Conway, NH 03813, or by mail, PO Box 496 North Conway NH 03860, or email, courtney@burkequarry.com, or other such address as Seller may hereafter designate in writing. Notice of Revocation and/or Change in Status shall not in any way relieve Buyer from liability for any indebtedness incurred prior to the actual receipt by Seller of such notice.

Buyer and each of the Principal Owners/Officers/Members signing below (collectively "the Principals") hereby authorize Seller to obtain credit information concerning Buyer and, if Buyer is a sole proprietorship, concerning sole proprietor individually, and if the Buyer is a partnership, concerning each of the partners individually. Buyer and the Principals understand that this authorization includes inquiries directed to credit reporting agencies, seeking credit information concerning Buyer and, where applicable, concerning the sole proprietor's or the partners' personal credit. This authorization is given as a part of a commercial transaction and for the specific purpose of inducing Seller to extend credit to Buyer for commercial purposes. Buyer and the Principals further agree that Seller may update any such credit information at any time, in its sole discretion. Buyer also authorizes the References listed above to release information concerning Buyer to Seller upon request. By applying to Seller for the extension of credit and by executing this Credit Agreement, Buyer also acknowledges and agrees to the terms and conditions listed above.

Moreover, receipt by Seller of payment or correspondence showing a different name other than the name on the Credit Agreement shall not constitute written notice of a change of status, structure or ownership. Upon a change in principals or the type or nature of Buyer's form of legal entity, Buyer and such new principal(s)/entity will give written notice thereof within fifteen (15) days to the credit department of Seller and shall enter into a new Credit Agreement with Seller. Failure to notify Seller may result in Seller's refusal to sell construction materials, commercial goods and/or services to Buyer.

10. Buyer recognizes that it may be owed money by Seller due to contracts or transactions between Buyer and Seller which are separate and distinct from the credit sales contemplated by this Credit Agreement. Seller shall have the right to withhold from Buyer any monies owed by Seller to Buyer in connection with any such other contracts or transactions and to offset the same against any sums owed by Buyer to Seller in such amounts as may be deemed by Seller to be reasonably necessary to cover such indebtedness of Buyer. So long as this right of withhold and offset is exercised by Seller in good faith, Buyer hereby waives any claims against Seller for any consequential damages flowing from such withhold and offset even if it is later determined that the withhold and offset was improper.

11. In no event or circumstance shall Seller be liable to Buyer for any loss of profits, business interruption or any other indirect, consequential, incidental, special, punitive or exemplary damages of any kind whatsoever arising or incurred by Buyer even if a party has been advised of the possibility of such damages or even if such damages were reasonably foreseeable.

12. Buyer shall be entirely responsible for the manner in which any construction materials, commercial goods and/or services purchased hereunder are used or modified by Buyer. Buyer shall defend, indemnify and hold Seller harmless against any claims of third parties arising from or relating to Buyer's use or modification of such construction materials, commercial goods and/or services.

13. Buyer shall be responsible for all federal, state and local sales/use taxes owing by reason of this Credit Agreement or the transactions contemplated herein. If Buyer claims exemption from any such tax, Buyer shall hold Seller harmless from and against any such tax, together with any interest or penalties thereon which may be assessed if the items are held to be taxable. Any such exemption claimed by Buyer must be verified and accepted by Seller prior to sale of any goods and services.

14. If any term, covenant or condition of the Credit Agreement shall be deemed to be invalid or unenforceable, the remainder of the Credit Agreement shall not be affected thereby and shall be valid and enforced to the fullest extent permitted by law.

15. This Credit Agreement is submitted by Buyer to Seller at Seller's office at 170 Industrial Drive Center Conway, NH 03813, or by mail, PO Box 496 North Conway NH 03860, or email, courtney@burkequarry.com, and shall be deemed to have been entered into in Carroll County, New Hampshire. All payments by Buyer shall be made to Seller at such address as Seller may designate. At sole discretion of Seller, all payments shall be applied first to late charges, then to attorneys' fees and costs, if any, accrued as of the date of payment then to the outstanding principal, as permitted by law.

16. Seller may, at Seller's sole discretion, accept a copy of this Credit Agreement and any Continuing Guaranty, including a facsimile copy, in lieu of an original document. Buyer, and Guarantor (if applicable), consent to Seller's use of this document and waive any right to object to the use of a copy in place of the original and any right to require Seller to subsequently produce an original document.

17. The terms of this Credit Agreement shall be governed by the laws of the State of California. The exclusive and sole venue for resolution of any disputes which arise under this Credit Agreement shall be within a court of competent jurisdiction within the county and state of Seller's place of business or, at the option of the Seller, the county in which the material(s) is/are furnished, used or incorporated into a work of improvement.

18. This Credit Agreement shall be binding and enforceable against Buyer regardless of whether the Continuing Personal Guaranty is signed. Seller may, however, reject or terminate any Credit Agreement that is not personally guaranteed.

19. Buyer may not assign or transfer this Credit Agreement or all or any part of its rights or obligations thereunder to any person or entity without Seller's prior written consent. Any such transfer in violation of this provision shall be void and of no effect. This Credit Agreement shall be binding upon and shall inure to the benefit of the Parties, their permitted successors and assigns.

20. The person(s) completing and executing this Credit Agreement declares under penalty of perjury that all information provided herein by Buyer is true and correct, is an authorized signor and has executed the Credit Agreement on behalf of the Buyer.

COMPANY / BUYER NAME: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

NAME / TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

NAME / TITLE: \_\_\_\_\_

### CONTINUING PERSONAL GUARANTY

For value received, and the further consideration of any credit that Seller (as defined below) may now or hereafter from time to time extend to \_\_\_\_\_ ("Buyer"), the undersigned ("Guarantor") does hereby unconditionally guarantee and promise to pay to Seller the full and prompt payment of all indebtedness which Buyer has heretofore incurred and/or does hereafter incur for the purchase of construction materials, commercial goods, and /or services and also guarantee any costs of collection thereof, including, but not limited to, all attorneys' fees, expert consultant fees, and legal costs. This Continuing Personal Guaranty ("Guaranty") shall be continuing and effective for all indebtedness of Buyer to Seller.

The term "Seller" shall be deemed to include Burke Quarry, LLC, and any of their subsidiaries or affiliated companies, whether presently existing or hereafter formed, which extend credit sales and/or provide construction materials, goods and/or services to Customer. "Affiliated company" means any firm, corporation, partnership, or other entity that is controlled by, or is under common control with Burke Quarry, LLC. "Control" means ownership or control of fifty percent (50%) or more of the voting rights or the power to direct the affairs of the entity in question. The term "Buyer" shall be deemed to include all parent(s), subsidiaries and affiliates of the entity requesting credit.

The Guarantor waives any right to notice of extension of credit hereunder, Buyer's default, change of indebtedness, or demand/presentment, and any right to require Seller to first proceed against Buyer, proceed against or exhaust any security provided by Buyer or pursue any other remedy. The Guarantor waives any defense based on or arising out of any defense of Buyer, other than payment in full. Any debt of Buyer now or later held by the Guarantor is subordinated to Buyer's indebtedness to Seller.

The Guarantor hereby authorizes Seller without notice or demand from time to time to do any of the following without invalidating this Guaranty: (a) receive, renew, extend, relinquish, substitute or modify the terms of indebtedness, or enforce any liens, statutory or otherwise, or security of any kind for payment of said indebtedness together with interest thereon and of any renewals, extensions, substitutions or modifications thereof; (b) change the amount of credit extended, or the form of said indebtedness by note or otherwise, or by any extension or renewal thereof; (c) accept any manner of security for any indebtedness; and (d) assign the Credit Agreement and this Guaranty in whole or in part. In addition to the amounts guaranteed, the Guarantor shall pay Seller reasonable attorneys' fees incurred in enforcing this Guaranty and late charges of eighteen percent (18%) per annum, or at the maximum rate then permitted by law, on any amounts not paid by the Guarantor upon demand and when due. This Guaranty is submitted, entered into and is to be performed at Seller's corporate office in Center Conway, New Hampshire.

The Guarantor acknowledges that the execution of this Guaranty and all indebtedness secured by this Guaranty arise out of the Guarantor's conduct of a trade, business or profession.

This Guaranty shall continue in full force and effect until such time as Seller shall receive from Buyer written notice of revocation (by certified mail); provided, however, that such notice shall not in any way relieve Guarantor from liability for any indebtedness incurred prior to its actual receipt by Seller. Such notice shall be delivered or sent to Seller at its office, 170 Industrial Drive Center Conway, NH 03813, or by mail, PO Box 496 North Conway NH 03860, or email, courtney@burkequarry.com, or other such address as Seller may hereafter designate in writing.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_, \_\_\_\_\_  
DAY MONTH YEAR CITY STATE

#### GUARANTOR:

Name Printed: \_\_\_\_\_ Signature: \_\_\_\_\_

#### WITNESSED BY:

Name Printed: \_\_\_\_\_ Signature: \_\_\_\_\_