

Revised 8.5.22

Fax to Suzanne Godwin at

NEW SOUTH CONSTRUCTION SUPPLY, LLC

Company Headquarters

(866) 834-4292 or send a scan to

CREDIT APPLICATION AND AGREEMENT

9 N. Kings Rd.

accountsreceivable@newsouthsupply.com

& CONTINUING PERSONAL GUARANTY

Greenville, SC 29605

NEW SOUTH CONSTRUCTION SUPPLY, LLC (Seller) - Salesperson Initiating Application \_\_\_\_\_

Legal Business Name (Purchaser) \_\_\_\_\_

Street Address \_\_\_\_\_ City, State and Zip Code \_\_\_\_\_

Mailing Address \_\_\_\_\_ City, State and Zip Code \_\_\_\_\_

Business Phone Number ( \_\_\_\_\_ ) \_\_\_\_\_ Fax Number ( \_\_\_\_\_ ) \_\_\_\_\_

E-mail address for invoices \_\_\_\_\_ Payment is via ACH, Billtrust, or wire transfer

Proprietorship  Partnership  Corporation  Joint Venture  Nonprofit Org.  Ltd. Liability Company

Business Started \_\_\_\_\_ Average Annual Sales \$ \_\_\_\_\_ Number of Employees \_\_\_\_\_

Type of Business \_\_\_\_\_ Credit Line Requested \_\_\_\_\_

Bonding Company \_\_\_\_\_ Contact & Phone \_\_\_\_\_

Federal ID # \_\_\_\_\_ Tax Exempt ( )Yes ( )No Exemption No. \_\_\_\_\_

DUNS # \_\_\_\_\_ Contact for payment \_\_\_\_\_ e-mail \_\_\_\_\_

**PRINCIPALS, OWNERS, PARTNERS, AND/OR OFFICERS**

Name \_\_\_\_\_ Title \_\_\_\_\_ Social Security # \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

Home Address \_\_\_\_\_ Home Phone ( \_\_\_\_\_ ) \_\_\_\_\_

Name \_\_\_\_\_ Title \_\_\_\_\_ Social Security # \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

Home Address \_\_\_\_\_ Home Phone ( \_\_\_\_\_ ) \_\_\_\_\_

If any of the principals were ever involved in bankruptcy proceedings, please provide name (personal or business), location, date and bankruptcy type: \_\_\_\_\_

**TRADE REFERENCES**

List 5 unrelated Suppliers where you have an active account and who are not competitors of ours

Name	City & State	Contact name	Contact e-mail or fax
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

**BANK REFERENCE**

Name \_\_\_\_\_ City & State \_\_\_\_\_ Account Number \_\_\_\_\_ Contact & Telephone \_\_\_\_\_

The undersigned certifies the above information to be true and correct, that it is submitted for the purpose of obtaining or continuing credit and agrees to the Terms and Conditions of Sale of Seller as attached hereto and to any changes to those terms which may occur in the future all of which are herein incorporated by reference. Copies of the current terms are available on request and on-line at our web site. The undersigned further authorizes Seller to request and receive credit reports from credit bureaus and other credit service organizations regarding the undersigned's personal credit for the purpose of investigating the Purchaser's business and its eligibility for commercial credit. The undersigned consents to an investigation into the creditworthiness of the Purchaser.

**SELLER'S USE ONLY**

Branch \_\_\_\_\_  
Salesman \_\_\_\_\_ Number \_\_\_\_\_  
Comments \_\_\_\_\_  
Branch Name & Number \_\_\_\_\_

\_\_\_\_\_  
**Officer's Signature or Authorized Signer**

\_\_\_\_\_  
**By: (Print or Type Name)**

\_\_\_\_\_  
**Title:**

Lead Source

The most current Terms and Conditions of Sale are available on request and they are available on-line at [newsouthsupply.com/businesscenter/](http://newsouthsupply.com/businesscenter/) They may be modified at any time by us, without notice to you, and the version in effect at the time of the transaction shall apply to that transaction.

**CONTINUING PERSONAL GUARANTY**

**TO: NEW SOUTH CONSTRUCTION SUPPLY, LLC AND ITS AFFILIATED ENTITIES ("SELLER")**

Please sell and deliver to Purchaser ( \_\_\_\_\_ ) or its representatives, pursuant to the then-applicable Terms and Conditions of Sale contained in the credit application incorporated herein by reference and made a part hereof, such merchandise as they or their representatives may order or select, and in consideration thereof the undersigned ("Guarantor(s)", which shall include Guarantor, if only one, and Guarantors, if more than one) hereby fully guarantee and agree that the Guarantor(s) shall be personally responsible, jointly and severally for the payment whether by open account acceptance, note or otherwise, together with all other damages and costs for which Purchaser may be obligated to Seller, including all costs and expenses of collection, suit, or other legal action, including all reasonable attorney's and paralegal fees incurred pre-suit through trial, on appeal, or in any administrative proceedings brought as a result of the commercial relationship between them. The Guarantor(s) hereby waive notice of acceptance hereof, amounts of sale, dates of shipments or deliveries, notice of default in payment and legal proceedings against Purchaser. Guarantor(s) acknowledge that the Guaranty is a condition for extending, and continuing to extend, commercial credit to Purchaser. The interest rate applicable to the Purchaser's account shall continue to accrue after Seller obtains a judgment against Guarantors.

This is intended to be, and shall be construed to be, a Continuing Personal Guaranty ("Guaranty") applying not only to all future sales made by Seller to Purchaser, but all sales made by Seller to Purchaser for which payment in full has not been received by Seller as of the date hereof, and shall not be revoked by: (1) the death of a Guarantor(s); (2) the sale or transfer of Purchaser subsequent to the execution of the Guaranty; or (3) the departure, resignation and/or disassociation for any reason, of Guarantor(s) from Purchaser. This Guaranty shall remain in full force and effect until the Guarantor(s) shall have given notice in writing to Seller to make no further advances on the security of this Guaranty, and until such notice shall have been received by an authorized agent of Seller. Unless Seller agrees in writing otherwise, the Guaranty shall extend to the transactions between Seller and Purchaser, as well as any successor or related business entities or to any other business entity in which the undersigned owns or holds an interest. Guarantor(s) agree to notify Seller in writing of any changes in the form of the Purchaser's business or ownership of Purchaser's business within five (5) days of such change, otherwise this Guaranty shall extend to Purchaser, and any successor companies, individuals or assignees, or related entities, as a condition of maintaining an open account with Seller. The obligation of the Guarantor(s), where more than one, shall be joint and several, and the death, discontinuance, or discharge for any reason as to one or more of the undersigned shall not operate as a discontinuance or discharge as to any of the others.

The provisions of this Guaranty shall be applied and interpreted in a manner consistent with each other so as to carry out the purposes and intent of the parties, but, if for any reason any provision, or portion thereof, is unenforceable or invalid, such provision, or portion thereof, shall be deemed severed from this Guaranty and the remaining provisions shall be carried out with the same force and effect as if the severed portion had not been a part of this Guaranty.

It is understood and agreed that the Guarantors) liability under this Guaranty shall be unlimited. The undersigned consents to an investigation into the creditworthiness of the Guarantor(s).

IN WITNESS WHEREOF, the undersigned hereby execute(s) the Guaranty this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

**DO NOT USE CORPORATE OR BUSINESS TITLES AS THEY ARE INAPPLICABLE**

**Guarantor's Signature (Individually)** \_\_\_\_\_ **Name (Please Print)** \_\_\_\_\_

**WITNESSES** \_\_\_\_\_ **Date** \_\_\_\_\_

**Guarantor's Signature (Individually)** \_\_\_\_\_ **Name (Please Print)** \_\_\_\_\_

**WITNESSES** \_\_\_\_\_ **Date** \_\_\_\_\_

The Term and Conditions of Sale in effect as of the date of this application are set forth on the following page. They may be modified by us at any time without notice to you. For the latest Terms and Conditions of Sale, please consult our web site ([newsouthsupply.com/businesscenter/](http://newsouthsupply.com/businesscenter/)) or ask a member of our sales team.

**TERMS AND CONDITIONS OF SALE  
NEW SOUTH CONSTRUCTION SUPPLY, LLC AND ITS AFFILIATES ("SELLER")**

1 These legal terms and conditions of sale cover all purchases  
2 made on or after the effective date, including all in-store, on-  
3 line and telephonic orders, as well as purchases made through  
4 commercial accounts opened with Seller, and all purchases,  
5 however made, on credit terms extended by Seller.  
6 Additionally, all sales made by Seller to Purchaser for which full  
7 and final payment has not been received by Seller as of the  
8 effective date are subject to these Terms and Conditions of  
9 Sale.

10 Purchaser accepts these Terms and Conditions of Sale: (i) by  
11 signing them by hand or electronically; or (ii) by entering into or  
12 maintaining a credit agreement with Seller; or (iii) by making  
13 purchases through a customer trade account established with  
14 Seller; or (iv) by agreeing to, availing itself of, or making  
15 payments consistent with Seller's current trade terms for  
16 payment.

17 As a condition of maintaining the commercial account with  
18 Seller and/or opening and maintaining a credit account with  
19 Seller, Purchaser agrees that these Terms and Conditions of Sale  
20 operate to the exclusion of any legal terms proffered or  
21 tendered by Purchaser, including where such legal terms are  
22 included as part of a purchase order accepted by Seller. Such  
23 acceptances by Seller do not modify, alter or negate these  
24 Terms and Conditions of Sale or the fact that they govern the  
25 purchase and sales transactions between Seller (as seller) and  
26 Purchaser (as buyer).

27 These Terms and Conditions of Sale apply to written purchase  
28 orders as well as verbal purchase orders and any other  
29 instruments or vehicles by which Purchaser and Seller may  
30 become contractually bound to a sales transaction. Purchaser  
31 acknowledges that Seller's delivery of Goods to the mutually  
32 agreed upon site and notation of such on the Delivery Ticket,  
33 regardless of whether Purchaser or its agent or employee is  
34 available to sign for Goods, will constitute acceptance by  
35 Purchaser. No terms and conditions in any way altering or  
36 modifying these provisions shall be binding upon Seller unless  
37 they are specifically authorized in writing by Seller's authorized  
38 representative. No modification or alteration of these  
39 provisions shall result by Seller's shipment of goods following  
40 receipt of Purchaser's purchase order, or other documents  
41 containing provisions, terms, or conditions in addition to, in  
42 conflict with, inconsistent with, or otherwise purporting to  
43 modify, limit or alter these Terms and Conditions of Sale. There  
44 are no terms, conditions, understandings, or agreements other  
45 than those stated herein, and all prior proposals and  
46 negotiations are merged herein.

47 ALL SELLER INVOICES WILL BE SENT VIA E-MAIL UNLESS AN  
48 EXPRESS AGREEMENT IS MADE TO THE CONTRARY.

49 Each order for goods by Purchaser shall constitute a  
50 representation by Purchaser to Seller that Seller is solvent. In  
51 addition, upon Seller's reasonable request, Purchaser will  
52 furnish a written representation concerning its solvency at any  
53 time during a transaction and collection period. If Purchaser's  
54 financial condition at any time does not justify continuance of  
55 performance by Seller hereunder, Seller may require full or  
56 partial payment in advance. In the event of Purchaser's  
57 bankruptcy or insolvency or in the event any proceeding is  
58 brought against Purchaser, voluntarily or involuntarily, under  
59 the bankruptcy or any insolvency laws Seller shall be entitled to  
60 cancel any order then outstanding at any time during the period  
61 allowed for filing claims against the estate and shall receive  
62 reimbursement for its proper cancellation charges. Seller's  
63 rights under this section are in addition to all rights available to  
64 it at law or in equity.

65 Title will pass to Purchaser upon delivery of the goods by Seller  
66 subject to a purchase money security interest hereby reserved  
67 by Seller in the equipment and goods sold and the proceeds  
68 thereof until payment of the full purchase price to Seller.

69 For value received, Purchaser grants to Seller the purchase  
70 money security interest in all the following property of the  
71 Purchaser that has purchased from Seller, wherever located,

72 whether now or hereafter acquired and all identifiable  
73 proceeds of any of the following property: each item of  
74 equipment and other goods purchased from Seller ("the  
75 Purchase Money Collateral"). The foregoing security interest in  
76 each item of Purchase Money Collateral shall secure the  
77 purchase price of that item and further secure any other  
78 obligations of Purchaser to Seller related to the purchase price  
79 of that item to the extent that such other obligations may,  
80 under applicable law, be secured by a purchase money security  
81 interest in that item ("the Purchase Money Obligations"). Seller  
82 shall be authorized by Purchaser, by operation of these Terms  
83 and Conditions of Sale and by law to file a UCC filing statement  
84 and to perfect any security interest Seller has in the Purchase  
85 Money Collateral. Purchaser shall cooperate with the Seller in  
86 providing complete and accurate information necessary for  
87 Seller to perfect its security interest in the Purchase Money  
88 Collateral.

89 Prices in quotation made by Seller are subject to change  
90 without notice, and all quotations expire and become invalid if  
91 not accepted and shipped within thirty (30) days from the date  
92 of issue, unless otherwise noted by Seller in writing. Price  
93 extensions, when made, are for Purchaser's convenience only,  
94 and they, as well as any mathematical or clerical errors, are not  
95 legally binding on Seller. Prices shown do not include any sales,  
96 excise, or other governmental tax or charge payable by Seller to  
97 any Federal, State or local authority. Any taxes now or  
98 hereafter imposed upon sales of shipments will be added to the  
99 purchase price. Purchaser agrees to reimburse Seller for any  
100 such tax liability or to provide Seller with an acceptable tax  
101 exemption certificate.

102 Seller reserves the right to ship in advance of any delivery date  
103 requested by Purchaser, except for those dates stipulated "not  
104 before."

105 Seller shall not be liable for delay or default in delivery. The  
106 times and dates specified for delivery and other milestones in  
107 all quotations, orders and agreements are contingent upon any  
108 and all causes that are beyond Seller's reasonable control,  
109 including, but not limited to, governmental action, strikes, or  
110 other labor troubles, fire, damage or destruction of goods,  
111 manufacturer's shortages, inability to obtain materials, fuel, or  
112 supplies, acts of God, and all other circumstances recognized in  
113 the trade or by law as *force majeure* events.

114 Goods not manufactured by Seller are warranted and  
115 guaranteed only to the extent and in the manner warranted and  
116 guaranteed to Purchaser by the manufacturer of such goods.

117 Seller warrants only that the goods supplied shall conform to  
118 the descriptions stated in the order confirmation or bill of  
119 lading, that it will convey good title thereto, and that the goods  
120 will be delivered free from any third-party security interest or  
121 other lien or encumbrance of which the Purchaser, at the time  
122 of contracting, has no knowledge.

123 ALL OTHER WARRANTIES ARE EXCLUDED, WHETHER  
124 EXPRESSED OR IMPLIED BY OPERATION OF LAW OR  
125 OTHERWISE, INCLUDING ALL IMPLIED WARRANTIES OF  
126 MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE,  
127 AND NON-INFRINGEMENT OF INTELLECTUAL PROPERTY  
128 RIGHTS. SELLER'S LIABILITY HEREUNDER, AND PURCHASER'S  
129 EXCLUSIVE REMEDIES HEREUNDER, EITHER IN CONTRACT OR IN  
130 TORT OR PURSUANT TO STATUTE, FOR BREACH OF WARRANTY  
131 OR FOR NEGLIGENCE, ARE EXPRESSLY LIMITED TO THE GIVING  
132 OF CREDIT NOT TO EXCEED THE PURCHASE PRICE OF THE  
133 GOODS FOR WHICH A CLAIM IS MADE OR REPLACEMENT,  
134 WHICH SHALL BE DETERMINED AT SELLER'S  
135 DISCRETION. SELLER MUST BE GIVEN WRITTEN NOTICE  
136 IDENTIFYING THE DEFECTIVE GOODS AND SPECIFYING THE  
137 DEFECT WITHIN TEN (10) DAYS AFTER DELIVERY OF THE GOODS  
138 TO THE DESIGNATED DESTINATION. SELLER MUST ALSO BE  
139 GIVEN THE REASONABLE OPPORTUNITY TO INSPECT THE  
140 ALLEGEDLY DEFECTIVE GOODS, AND IF REQUESTED BY SELLER,  
141 THE ALLEGEDLY DEFECTIVE GOODS MUST BE RETURNED TO  
142 SELLER. FAILURE TO GIVE REQUIRED NOTICE WITHIN THE TIME  
143 PROVIDED, OR FAILURE TO RETURN ALLEGEDLY DEFECTIVE

144 GOODS TO SELLER FOLLOWING SELLER'S REQUEST  
145 CONSTITUTES A WAIVER OF ALL CLAIMS AGAINST SELLER  
146 ARISING OUT OF OR RELATED TO THE ORDER. SELLER'S  
147 RESPONSIBILITY TO GIVE CREDIT OR REPLACEMENT IS LIMITED  
148 TO THE EXTENT THAT SELLER IS ABLE TO OBTAIN EQUIVALENT  
149 CREDIT OR REPLACEMENT FROM THE ORIGINAL  
150 MANUFACTURER OF SUCH GOODS.

151 **PURCHASER AND SELLER AGREE THAT SELLER SHALL NOT BE  
152 LIABLE DIRECTLY OR INDIRECTLY FOR ANY CONSEQUENTIAL,  
153 INCIDENTAL, SPECIAL OR INDIRECT DAMAGES IN ANY WAY  
154 ARISING FROM THE SALE, HANDLING, INSTALLATION, OR USE  
155 OF THE GOODS SOLD OR FROM ANY OTHER BREACH OF  
156 CONTRACT OR TORT CLAIM ASSERTED BY PURCHASER  
157 ARISING UNDER OR RELATING TO THE SUBJECT ORDER, THE  
158 ACCOUNTS BETWEEN PURCHASER AND SELLER, ANY  
159 ANCILLARY PURCHASE ORDER OR ANY OTHER AGREEMENT(S)  
160 BETWEEN PURCHASER AND SELLER.**

161 No credit for goods returned by Purchaser shall be given  
162 without Seller's prior written authorization. All returns are  
163 subject to a restocking charge at the currently published rates  
164 as indicated on our web site and at our sales center. Requests  
165 for return authorizations shall be sent to the central office  
166 indicated on our web site and only authorizations from that  
167 office shall be valid for purposes of awarding return credits.

168 No claim for shortage of goods or damage to goods shall be  
169 allowed unless Purchaser, within ten (10) days after receipt of  
170 the relevant shipment, gives Seller written notice of the claim  
171 for shortage or damage and in such written notice fully  
172 describes the shortage and/or damage alleged. Seller's  
173 responsibility for damage ceases upon issuance of Bill of  
174 Lading. Seller shall not be liable to Purchaser for goods which  
175 are damaged or lost following transfer to a common carrier, and  
176 it will be Purchaser's responsibility to recover any and all  
177 damage directly from the common carrier.

178 Changes requested by Purchaser as to the quantity, grade,  
179 destination or delivery date on any order may result in a price  
180 adjustment by Seller.

181 Seller assumes no responsibility whatsoever for Seller's  
182 interpretation of drawings, schematics, blueprints, plans, or  
183 specifications provided by Purchaser. Purchaser's inspection  
184 and acceptance of goods and/or services, if any, must be  
185 premised on final approval by architects, engineers, or other  
186 qualified third parties, without regard to any interpretation by  
187 Seller.

188 Unless otherwise stated, payment terms are net 30  
189 days. Payment is due in the form of cash, check, ACH, or money  
190 order. In the absence of remittance advice Seller may apply  
191 Purchaser's payment against any open charges at Seller's sole  
192 discretion. Purchaser agrees to pay Seller on accounts over 30  
193 days past due a monthly interest charge equal to the lesser of  
194 1½% (18% per annum) or the maximum rate allowed by law.

195 If the Purchaser shall for any reason terminate an order in  
196 whole or in part, a notice of termination must be given in  
197 writing to the Seller ("the Notice"). The Seller shall thereupon  
198 cease work and the Purchaser shall pay the Seller the  
199 following: (a) The price provided in the order for all goods  
200 which have been specifically manufactured, modified or  
201 ordered by Purchaser on a non-cancelable basis prior to Seller's  
202 receipt of the Notice and which conform to the provisions of the  
203 purchase order (such goods shall be delivered to the  
204 Purchaser); and (b) Actual expenditures made by the Seller in  
205 connection with the uncompleted portion of the order,  
206 including reasonable cancellation charges paid or incurred by  
207 the Seller on account of commitments made under order.

208 Seller has supplied or made available to Purchaser information  
209 (including but not limited to Safety Data Sheets) and warnings  
210 concerning the safety and health aspects of the goods.  
211 Purchaser agrees to communicate such information and  
212 warnings to Purchaser's employees, agents, contractors and  
213 customers, and to require such persons to further communicate  
214 such information and warnings to all persons that they may  
215 reasonably foresee will be exposed to or handle such goods.

216 In the event a legal action is filed by Seller or its assigns to  
217 collect sums owed to Seller and Seller is the prevailing party

218 (which shall occur in the event any monetary judgment is  
219 ordered by the Court in favor of Seller), Seller is entitled to the  
220 reimbursement for all accrued pre-judgment interest and all of  
221 Seller's reasonable costs and expenses of collection, filing fees,  
222 mechanic's liens, and other legal actions, including all  
223 reasonable legal fees, incurred pre-suit, through trial, on  
224 appeal, or in any administrative proceedings brought as a result  
225 of the commercial relationship between Purchaser and  
226 Seller. Any cause of action that Seller may have against  
227 Purchaser may be assigned by Seller without the consent of  
228 Purchaser. The parties hereby agree that this agreement  
229 (Terms and Conditions of Sale) is made in, governed by, be  
230 performed in, and shall be construed in accordance with the  
231 laws of the State of South Carolina. Seller and Purchaser both  
232 further consent to and submit to the jurisdiction of the courts  
233 of general jurisdiction in the State of South Carolina and  
234 expressly agree to such forum for the bringing of any suit, action  
235 or other proceeding arising out of their obligations herein, and  
236 Purchaser expressly waives all objections and defenses to  
237 personal jurisdiction or venue as to actions brought against it in  
238 any such courts.

239 To the extent allowed by law, Purchaser waives all privileges  
240 and rights that Purchaser may have relating to  
241 venue. Purchaser and Seller agree that any legal action  
242 brought by either party with respect to the account or business  
243 relationship between Purchaser and Seller shall be brought in  
244 the venue of the state where the sales from Seller to Purchaser  
245 occurred, not where Purchaser is located. Purchaser agrees to  
246 provide a copy of their performance bond within 7 days of  
247 request of Seller.

248 If Purchaser fails to comply with these Terms and Conditions of  
249 Sale, or Purchaser's credit becomes unsatisfactory in Seller's  
250 sole discretion, Seller reserves the right to terminate or restrict  
251 any order upon notice to Purchaser. Purchaser certifies that it  
252 is solvent and that it will immediately advise Seller if it becomes  
253 insolvent. Purchaser agrees to send Seller written notice of any  
254 changes in the form of ownership of Purchaser's business within  
255 five (5) days of such changes.

256 The provisions of these Terms and Conditions of Sale shall be  
257 applied and interpreted in a manner consistent with each other  
258 so as to carry out the purposes and intent of the parties, but, if  
259 for any reason any provision, or portion thereof, is  
260 unenforceable or invalid, such provision, or portion thereof,  
261 shall be deemed severed from these Terms and Conditions of  
262 Sale and the remaining provisions shall be carried out with the  
263 same force and effect as if the severed portion had not been a  
264 part of these Terms and Conditions of Sale.