

R. E. JANES GRAVEL CO.

SPECIFICATION SAND AND GRAVEL AGGREGATES

APPLICATION FOR CREDIT AND AGREEMENT BY CUSTOMER

OTHER THAN PRICING, THIS AGREEMENT WILL GOVERN THE ENTIRE RELATIONSHIP OF THE PARTIES INCLUDING WITHOUT LIMITATION PAYMENT, DELIVERY, AND GOVERNING CONTRACT

CUSTOMER DETAILS	
Legal Name:	Business Phone No.:
Business Name:	Cellular Phone No.:
Contact Name:	Fax No.:
Address: City/ST/Zip:	E-mail Address:

BUSINESS DETAILS	
Business Structure:	Business Type:
<input type="checkbox"/> Partnership	Years in Business:
<input type="checkbox"/> Corporation	Fed. ID No.:
<input type="checkbox"/> LLC	Business Assets:
<input type="checkbox"/> Cooperative	Value of Assets less Liabilities:
<input type="checkbox"/> Sole Proprietorship	State of Incorporation:

OWNERSHIP DETAILS		
Primary Owners of Customer: Names of Partners, Shareholders, and/or Members	SSN / Fed. ID No.	% Ownership of Customer

PROJECT DETAILS (If Material is for a Specific Project)	
Project Name:	Job Site Address:
Legal Description:	
General Contractor: Phone:	Address: Contact Name on Project:
Property Owner: Phone:	Address: Contact for Owner:
Accounts Payable Contact: Phone:	Email:
Customer's Bonding Company: Agent's Name:	Phone:

MAIN BANK REFERENCES				
		Checking	Savings	Loan
Bank Name:	Acct. Nos.:			
Address:	Contact:			
City/ST/Zip:	Phone No.:			
		Checking	Savings	Loan
Bank Name:	Acct. Nos.:			
Address:	Contact:			
City/ST/Zip:	Phone No.:			

CREDIT REFERENCES	
Business Name/Address	Phone/Email Address

CREDIT LIMIT REQUESTED
\$

CREDIT CHECK AUTHORIZATION BY CUSTOMER, OWNER AND GUARANTOR
<p>The Customer and each of the Owners of the Customer or other Guarantors, as named above and whose signature appears below, hereby;</p> <p>(a) authorize R. E. Janes Gravel Co. ("Janes Gravel") or its agent to obtain and retain financial, credit and other information about the Customer or Owner, as the case may be, from any credit reporting agency, credit bureau, bank, lender, supplier or person with whom the Customer or Owner has or proposes to have a financial relationship ("Credit Source") for the purpose of evaluating the credit requested by or extended to the Customer, or the guaranty given by the Owner, under the Application For Credit By Customer;</p> <p>(b) authorize each Credit Source to provide character, reputation, financial, credit and other information about the Customer or Owner, as the case may be, as may be requested by Janes Gravel or its agent, to Janes Gravel or its agent for the purpose of evaluating the credit requested by or extended to the Customer or the guaranty given by the Owner; and</p> <p>(c) release Janes Gravel, its agent and every Credit Source from any and all claims, defenses, offsets or causes of action that may arise by reason of information provided such Credit Source to Janes Gravel.</p>

TERMS AND CONDITIONS
CREDIT TERMS

1. If R.E. Janes Gravel Co. ("Janes Gravel") approves the Application, then the agreement between Janes Gravel and the Customer shall become a binding agreement effective as of the date of such approval by Janes Gravel and shall consist of the Application and these Terms and Conditions (collectively, the "Agreement"). The Agreement shall govern any extension of credit by Janes Gravel to the Customer and any purchase of goods or services from Janes Gravel.
2. If Janes Gravel extends credit to the Customer under this Agreement, the Customer may use such credit only for the purpose of buying goods and services from Janes Gravel. The Customer represents and warrants that the goods and services purchased by the Customer under this Agreement are to be used and consumed in the Customer's business for business purposes only and not for personal, family, consumer or household purposes.
3. Janes Gravel will issue statements of account and invoices to the Customer only.
4. Invoices shall be sent to the Customer after delivery of goods or services ordered by Customer (the "Invoice"). These Invoices shall show the quantity of the delivery, the pricing of the delivery, and the date of delivery. These Invoices will not state a payment date. The Customer must notify Janes Gravel of any errors or omissions in the Invoice within 15 days of the statement date. After 15 days from the statement date, each such invoice shall be binding on the Customer.
5. Each month, Janes Gravel will send a payment statement to the Customer which will include deliveries of goods and services made during the prior month as well as any past due amounts (the "Statement").
6. **Credit terms are Net Cash within 30 days from the Statement date, unless otherwise specified in the Statement. The Customer agrees to pay interest at a rate of (a) 1.5% per month, which is 18% simple interest per year or (b) if the maximum legal rate is less than 18% per year, the maximum legal rate. At Janes Gravel's discretion, interest shall be charged on all past due balances and shall be calculated from the due date shown on the statement.**
7. All payments made by Customer shall be made only by cash, check, ACH payments, or wire transfer to an account designated in writing by Janes Gravel.
8. The Customer shall make payments to keep the account balance within credit limits and terms, and shall make such payments to Janes Gravel at the address shown on the statement. Janes Gravel may, at its sole discretion, charge the Customer a fee, up to the maximum amount permitted by law, if any payment by check, wire transfer, or other instrument is not honored by the institution upon which it is drawn.
9. Janes Gravel will apply payments first to fees and expenses of Janes Gravel arising under this Agreement or as a result of the extension of credit under this Agreement, then to interest billed and then to any outstanding Statements as Janes Gravel chooses in its sole discretion.
10. The Customer shall be responsible for all amounts lawfully due to Janes Gravel even if the credit extended exceeds the approved credit limit.
11. Janes Gravel has the sole discretion to grant credit to the Customer and to refuse, extend, continue, renew and/or terminate any such credit at any time and from time to time. Janes Gravel may notify Customer of such change by oral notification to Customer.
12. Janes Gravel may require any future sales to the Customer to be made on other prompt payment terms, such as cash or cashier's check.
13. The Customer shall provide additional and/or updated financial information to Janes Gravel on request.
14. The Customer shall give prompt written notice to Janes Gravel of any change in the name, form of business, address or ownership of the Customer and any bankruptcy, insolvency, receivership, wind up or cessation of the business of the Customer. No such change shall be effective as to Janes Gravel until Janes Gravel receives actual notice of such change in accordance with the notice paragraph set forth below.
15. Unless otherwise provided herein, Janes Gravel may change any of these Terms and Conditions or the services available under this Agreement by providing 20 days' written notice of such change to the Customer.
16. The Customer or Janes Gravel may terminate this Agreement at any time, with or without cause by written notice to the other; provided, that all terms of this Agreement shall continue to be in effect until all amounts due and owing under this Agreement by Customer to Janes Gravel have been paid in full. Janes Gravel may terminate this Agreement without prior notice if the Customer does not perform its obligations under this Agreement (including making any payments when due), the Customer dies or becomes incapacitated, insolvent or bankrupt or, in the reasonable opinion of Janes Gravel, the financial status of the Customer becomes impaired. On any termination of this Agreement, the Customer must immediately pay all amounts due.
17. The Customer shall be in default under this Agreement if the Customer fails to pay when due or perform any of its obligations under this Agreement. The Customer shall be responsible for all costs incurred by Janes Gravel to collect any account balance, including but not limited to collection agency fees, court costs and reasonable attorney's fees, and all finance charges charged by Janes Gravel to the extent permitted by law.

GENERAL MATTERS AND CONTRACTS FOR GOODS OR SERVICES

18. Janes Gravel may exercise any of its rights and remedies under this Agreement, at law or in equity from time to time without exhausting all such rights and remedies at that time or precluding it from exercising one or more of such rights and remedies at a later time or times.
19. Janes Gravel may set off any amounts due and owing to Janes Gravel under this Agreement or otherwise against any claims by the Customer against Janes Gravel related to the supply of any goods and/or services by Janes Gravel.
20. Janes Gravel may collect, use and disclose any personal information obtained in connection with this Application and Agreement for the purpose of evaluating the credit requested by or extended to the Customer, managing the credit arrangements and all obligations under this Agreement, and as otherwise permitted or required by law.
21. Janes Gravel may transfer or assign this Agreement or any interest in it without notice to or consent of the Customer. The Customer may not transfer or assign this Agreement or any interest in it without the prior written consent of Janes Gravel.
22. This Agreement contains the entire and only understanding between the Customer and Janes Gravel relating to its subject matter. This Agreement shall be binding on the Customer and the Customer's heirs, executors, legal representatives, successors and permitted assigns. No provision of this Agreement may be waived, amended or modified except by a written instrument signed by a duly authorized representative of Janes Gravel.
23. Notices may be given under this Agreement by personal delivery, certified mail, fax transmission or other means permitted by Janes Gravel. Notices must be given to the last address provided by the Customer or to Janes Gravel's address appearing on the last statement, as the case may be.
24. THIS AGREEMENT SHALL BE GOVERNED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT GIVING EFFECT TO CONFLICT OF LAW PRINCIPLES. ANY ACTION OR PROCEEDINGS ARISING OUT OF OR RELATED TO, DIRECTLY OR INDIRECTLY, THIS AGREEMENT MUST BE BROUGHT SOLELY IN A COURT OF COMPETENT JURISDICTION LOCATED IN LUBBOCK COUNTY, TEXAS, AND THE PARTIES IRREVOCABLY CONSENT TO THE EXCLUSIVE JURISDICTION OF THOSE COURTS AND WAIVE ANY CLAIM OF IMPROPER VENUE AND ANY CLAIM THAT SUCH COURTS ARE AN INCONVENIENT FORUM.
25. **WAIVER OF JURY TRIAL. ALL OF THE PARTIES TO THIS AGREEMENT KNOWINGLY AND INTENTIONALLY, IRREVOCABLY AND UNCONDITIONALLY, WAIVE ANY AND ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDINGS ARISING OUT OF OR RELATED TO, DIRECTLY OR INDIRECTLY, THIS AGREEMENT. EACH PARTY TO THIS AGREEMENT ACKNOWLEDGES THAT THIS SECTION HAS EITHER BEEN BROUGHT TO THE ATTENTION OF EACH PARTY'S LEGAL COUNSEL OR THAT EACH PARTY HAD THE OPPORTUNITY TO DO SO.**
26. Upon receipt of the goods at Janes Gravel's business location, the Customer shall bear all risk of loss or damage to such goods.
27. All goods purchased from Janes Gravel by Customer that are purchased on terms other than cash payment at or prior to delivery of said goods, shall be subject to this Agreement.
28. Neither the exercise of, nor the failure to exercise, any option given under the terms of this Agreement shall be considered as a waiver of the right to exercise the same, or any other option given herein.
29. Customer agrees to purchase goods and services from Janes Gravel upon the terms of this Agreement. Customer hereby agrees and consents that this Agreement and Janes Gravel's Price Sheet (defined below) which is in effect at the time the goods or services are delivered shall govern the relationship of the parties in the sale of all goods and services by Janes Gravel. CUSTOMER HEREBY FURTHER AGREES AND CONSENTS THAT IF CUSTOMER ACCEPTS DELIVERY OF THE GOODS AND OR SERVICES PROVIDED TO CUSTOMER BY JANES GRAVEL, THIS AGREEMENT AND THE PRICE SHEET SHALL CONTROL THE RELATIONSHIP BETWEEN THE PARTIES AND THAT ANY PURCHASE ORDER, SALES CONTRACT OR SIMILAR SALES TERMS OFFERED BY CUSTOMER EITHER PRIOR TO OR SUBSEQUENT TO THIS AGREEMENT AND THE PRICES SHEET IN EFFECT AT THE TIME OF DELIVERY ARE HEREBY REJECTED BY JANES GRAVEL.
30. Pricing of any goods and services sold by Janes Gravel shall be governed by a price sheet published by Janes Gravel (the "Price Sheet"). The prices of goods and services contained in the Price Sheet will be in effect for the period stated in the Price Sheet. A copy of the Price Sheet is available upon request. The price of any goods and services sold to Customer will be the price contained in the Pricing Sheet in effect when the goods or services are delivered to Customer. Pricing of goods and services not covered by or listed on the Price Sheet shall be handled on a case-by-case basis and as agreed by Janes Gravel.
31. Delivery of all goods by Janes Gravel to Customer shall be F.O.B Janes Gravel's plant. Customer agrees that Janes Gravel is not responsible for shipment after delivery of the goods are made F.O.B. at Janes Gravel's plant.
32. If Customer will use a third party hauler, then Customer must provide Janes Gravel with written and signed agency statement from Customer, on Janes Gravel's form, listing the 3rd party haulers that are authorized to take delivery of goods sold by Janes Gravel. Without such signed, written statement from Customer, Janes Gravel may refuse to make delivery to a 3rd party hauler purporting to haul for Customer.
33. GOODS TO BE PURCHASED BY CUSTOMER FROM JANES GRAVEL WILL BE PROVIDED ON A FIRST-COME, FIRST-SERVED BASIS AND ONLY IF AVAILABLE.

34. Janes Gravel makes **NO WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PURPOSE, AND NO OTHER EXPRESS OR IMPLIED WARRANTIES** which extend beyond the description on the face of an invoice presented to Customer. In lieu of any warranty whether express or implied by operation of law or otherwise, products proving defective in material in the hands of the Customer will be replaced, or, at Janes Gravel's option, credit will be allowed for the original price thereof.
35. **LIMITATION OF DAMAGES.** JANES GRAVEL SHALL NOT BE LIABLE FOR INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, UNDER ANY CIRCUMSTANCES, INCLUDING BUT NOT LIMITED TO DAMAGE OR LOSS RESULTING FROM INABILITY TO USE THE GOODS, INCREASED OPERATING COSTS OR LOSS OF PRODUCTION, OR ANY OTHER SUCH DAMAGES, WHETHER ARISING FROM CAUSES SIMILAR OR DISSIMILAR TO THOSE ENUMERATED.
36. **LIMITATION OF LIABILITY.** IN ANY EVENT, JANES GRAVEL'S MAXIMUM LIABILITY HEREUNDER, WHETHER RESULTING FROM BREACH OF CONTRACT OR NEGLIGENCE OR OTHERWISE, SHALL NOT EXCEED THE CONTRACT PRICE OF THE PRODUCT FURNISHED BY JANES GRAVEL.

GUARANTY BY OWNER OR OTHER GUARANTOR

1. In consideration of credit being extended by Janes Gravel to the Customer for the purchase of goods and services as indicated above, each Guarantor whose signature appears below hereby individually, jointly and severally, unconditionally guarantees to Janes Gravel the faithful payment, when due, of all liabilities, debts and obligations of the Customer to Janes Gravel as may not exist and as may hereafter arise, including but not limited to all costs of collection, including collection agency fees, court fees and reasonable attorney fees.
2. This guaranty is a continuing guaranty and covers all liabilities which the Customer may incur, together with interest at the applicable rate on the amount outstanding from time to time, from the date of demand, both before and after judgment, until payment.
3. Janes Gravel has the right at any time to refuse further credit to the Customer, to take and release any security, to extend the time for payment and to compromise with the Customer, in each case without notice to the Guarantor and without affecting the Guarantor's liability.
4. Janes Gravel has the sole discretion to renew, extend, amend, release or discharge any security held by Janes Gravel and may apply all payments received from the Customer or any Guarantor or realized from the security in such manner as Janes Gravel may determine.
5. Janes Gravel is not required to exhaust its resources or remedies against the Customer, or other Guarantors or persons or the security before being entitled to payment from the Guarantor of the amount guaranteed and Janes Gravel has no obligation to account to the Guarantor respecting the security or the recovery or realization of it.
6. This guaranty shall continue notwithstanding any change in the name of the Customer and any bankruptcy insolvency, receivership, wind up or cessation of the business of the Customer.
7. This guaranty shall be binding on the Guarantor and the Guarantor's heirs, executors, legal representatives, successors and any permitted assigns.
8. This guaranty, if it is given by more than one Guarantor, is binding individually, jointly and severally on each Guarantor.

AGREEMENT BY THE CUSTOMER:

The Customer:

- (a) acknowledges receiving a copy of this signed Application For Credit By Customer ("Application") and the Terms and Conditions set out below;
- (b) understands that the Credit Check Authorization above shall allow Janes Gravel and/or its agent to conduct credit checks respecting the Customer;
- (c) understands that any EXTENSION OF CREDIT FOLLOWING APPROVAL OF THIS APPLICATION SHALL BE SUBJECT TO THE TERMS AND CONDITIONS SET OUT BELOW, which are part of this Application, and that the agreement with R.E. Janes Gravel Co. ("Janes Gravel") resulting from an approval of this Application by Janes Gravel shall consist of this Application and the Terms and Conditions (collectively, the "Agreement");
- (d) understands that Janes Gravel is relying on the completeness and accuracy of the information provided by the Customer as an inducement to approve and extend credit; and
- (e) acknowledges having read and understood this Agreement and agrees to be bound by this Agreement.

EXECUTION BY THE CUSTOMER:

- I. The Customer is a sole proprietorship, partnership, limited partnership, corporation, limited liability company or cooperative. The person(s) signing below certify(ies) and warrant(s) that: (i) on behalf of the Customer, the information in this Application is complete and accurate; (ii) the Customer is duly organized, and/or registered, validly existing and in good standing; (iii) the Customer has taken all necessary action to authorize this Application and Agreement; (iv) they are authorized signing officers and have the power to legally bind the Customer in all respects; and (v) the Customer understands and agrees to be bound by this Agreement, including the Terms and Conditions.

CUSTOMER NAME: _____

By: _____

Signature	Name	Title	Soc. Sec. No.	Date
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By: _____

Signature	Name	Title	Soc. Sec. No.	Date
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APPROVAL AND AGREEMENT BY JANES GRAVEL:

Name of Salesperson: _____

Credit Limit: \$ _____

Signature	Name	Title	Date
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AGREEMENT BY GUARANTOR:

The Guarantor:

- (a) acknowledges receiving a copy of the Agreement, consisting of the Customer’s signed Application For Credit By Customer and the Terms and Conditions;
- (b) understands that the Credit Check Authorization above shall allow Janes Gravel and/or its agent to conduct credit checks respecting the Owner or other Guarantor
- (c) understands that the Guaranty By Owner Or Other Guarantor below shall make the Guarantor individually, jointly and severally and unconditionally liable for the liabilities of the Customer to Janes Gravel under the Agreement; and
- (d) acknowledges having read and understood, and agrees to be bound by, the Guaranty and the Agreement, including the Terms and Conditions.

EXECUTION BY GUARANTOR THAT IS AN INDIVIDUAL:

Signature	Name	Soc. Sec. No.	Date
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Signature	Name	Soc. Sec. No.	Date
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Signature	Name	Soc. Sec. No.	Date
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Signature	Name	Soc. Sec. No.	Date
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