



Arch Machinery Services, LLC

Credit Application

THIS CREDIT APPLICATION AND GENERAL INFORMATION IS FOR THE BENEFIT OF ARCH MACHINERY SERVICES, LLC, AND ITS SUBSIDIARIES, AFFILIATES AND RELATED ENTITIES (COLLECTIVELY REFERRED TO HEREIN AS "AMS") AND ALL REPAIRS WILL BE SUBJECT TO THE OPEN ACCOUNT AGREEMENT SET FORTH BELOW AND MADE A PART OF THIS APPLICATION. PLEASE COMPLETE THIS APPLICATION ENTIRELY AND EMAIL IT TO AT AR@ARCHMACHINERY.COM.

TYPE OF CREDIT REQUESTED (UNLESS OTHERWISE NOTED HEREIN, CREDIT WILL BE REVIEWED FOR ALL OF THE OPTIONS SET FORTH BELOW)

Equipment Repair Undercarriage Repair

CREDIT LIMIT REQUESTED: TERMS ARE NET 30 DAYS

PURCHASE ORDER REQUIRED: No Yes: Verbal Written

TYPE OF ENTITY: Individual/Sole Proprietor Partnership Corporation State: Date Formed: LLC Other:

Complete Firm Name: Date Business Started: Business Description:

Taxpayer ID/Social Security #:

Tax Exemption Certificate: Completely Tax Exempt Partially Tax Exempt (For either please attach signed "Tax Exemption Certificate")

LIST ALL INDIVIDUALS, PARTNERS, PRINCIPALS, MEMBERS, OR SHAREHOLDERS:

Name SS # DOB DL # Address or Physical Location Phone (Res.) Phone (Bus.)

Billing Address Street or Box City County State Zip Code

Have you or any of your Principals, Partners, Shareholders, or Members ever made a composition settlement or sought protection under the laws of bankruptcy?

No Yes Explain:

COMPLETE THE FOLLOWING FOR ALL INDIVIDUALS, PARTNERS, PRINCIPALS, MEMBERS, OR SHAREHOLDERS:

Name Title Name Title Name Title Name Title

BONDING:

Bonding Company Contact Name Phone #

Insurance Company Contact Name Phone #

REFERENCES:

Table with columns: BANK, Name, City, State, Phone No., Bank Officer, Acct#

OPEN ACCOUNT AGREEMENT BETWEEN APPLICANT/BUYER AND SELLER:

The Applicant set forth above (hereinafter called "Buyer") and AMS (hereinafter called "Seller") agrees that all purchases, rentals or leases of goods and services by Buyer from Seller on open account, or any other credit facility, shall be subject to the following terms and provisions:

- 1. Payment Due: For all purchases made during any one calendar month...
2. Where To Make Payments: Buyer acknowledges that this agreement does not require any sales on credit nor the deferred payment of all or any part of the agreed cash price or prices of goods and services...

3. **Interest:** Should Buyer fail to pay the entire balance owed on or before the Payment Due Date, Buyer agrees to pay interest on the unpaid portion thereof from the purchase date until paid in full at the maximum rate allowed by applicable law. Anti-Usury: Interest on any indebtedness owing to Seller by Buyer shall not exceed the maximum amount of non-usurious interest that may be contracted for, taken, reserved, charged, or received under law; any interest in excess shall be cancelled automatically as of the acceleration or prepayment, or if already paid, credited on the principal of the indebtedness or, if the principal has been paid, refunded.
4. **Security Interest in Goods and Financing Statements:** Buyer grants to Seller an express security interest under the Uniform Commercial Code covering any and all goods purchased hereunder, and grants permission to Seller to file all security agreements, financing statements or other instruments appropriate to document and perfect the security interest herein granted without Buyer's signature. For purposes of perfecting this security interest, Buyer appoints Seller its agent and attorney in fact to execute and file whatever documents are necessary to perfect the security interest granted herein. If requested by Seller, Buyer shall execute any additional documents deemed necessary by Seller in order to perfect its security interest. Further, if requested by Seller, Buyer shall provide a list of all secured creditors of Buyer. Neither the agreement to pay interest herein contained, nor the payment thereof by Buyer, nor the acceptance thereof by Seller, shall be construed as an extension of any payment due date nor any waiver by Seller of any remedy available to Seller, including but not limited to, the right to reclaim goods sold.
5. **Cross-Collateralization of Security:** Any security interest granted to Seller by Buyer in this or any other agreement between the parties shall also secure and enforce the payment of all other indebtedness of Buyer to Seller presently existing or which may in any manner or means hereafter be incurred by Buyer to Seller, and evidenced in any manner whatsoever, either by lease/rental agreements, equipment purchased, parts or labor, open accounts, promissory notes, advances, overdrafts or any other mode or means. The fact of repayment of any or all indebtedness to Seller shall not terminate such security agreement(s) and it shall nevertheless secure the payment of any future indebtedness owing to Seller and it shall remain in full force and effect until it is fully and formally discharged in writing.
6. **Failure To Pay:** Should Buyer fail to pay promptly when any sum or sums are owed to Seller under the terms of the agreement or otherwise or fail to keep, observe and perform the terms and provisions of this or any other agreement with Seller, then Seller as its option may declare any and all sums owed hereunder to be immediately due and payable. If any indebtedness now or hereafter due is placed in the hands of an attorney for collection or collected through probate, bankruptcy or other proceeding, Buyer agrees to pay reasonable attorneys' fees.
7. **Cross-Default Remedies:** It is agreed that should Buyer fail to pay any indebtedness owing to Seller as the same shall become due and payable to Seller including lease/rental agreements, equipment purchases, parts or labor, open accounts, promissory notes, advances, overdrafts, principal, interest, or any part thereof or any other mode or means, or should Buyer fail to comply with any of the covenants or obligations of any security agreement, lease/rental agreement, sales order, lease order, credit application, or any other documents securing or pertaining to such indebtedness, then such failure shall be a default and breach under this document and all other documents securing all other indebtedness, and Seller shall be entitled to pursue any of the contractual remedies in such documents and any remedies allowed under applicable law.
8. **Notices:** Notices called for hereunder or required by law shall be deemed received by Buyer three(3) days after said notice is deposited in the United States mail, properly stamped and addressed to Buyer at its address shown on the reverse side hereof.
9. **Jurisdiction, Venue and Choice of Law:** The Buyer expressly agrees that jurisdiction and venue of any dispute arising from this agreement shall be in Harris County, Texas and the laws of the State of Texas shall govern the dispute.
10. **Cost estimates:** It is understood that, because of the complexity of the equipment sold by Seller, it is difficult to project an accurate estimate of the costs involved in certain types of repairs, maintenance and other work. If requested by Buyer for a particular project, Seller, upon completion of the sufficient inspection for adequate determination, will make its best effort to inform Buyer of projected costs of that particular project. Seller will attempt to inform Buyer of any material additions to that projection as work is being performed. However, UNLESS SPECIFICALLY REQUESTED TO MAINTAIN WORK WITHIN A PARTICULAR DOLLAR ESTIMATE, evidenced by an appropriate notation on the work order, Seller shall proceed with authorized work and BUYER SHALL BE LIABLE FOR ALL REASONABLE AND CUSTOMARY CHARGES incurred by Seller in so performing thereunder.
11. **Warranty Policy:** In addition to the standard manufacturer warranties, Seller warrants the work performed to be free from defects in workmanship for a period of ninety (90) days (unless specified and agreed to in writing). Seller's obligation under this warranty shall be limited to the repair or replacement at Seller's premises of those new parts previously installed or labor performed demonstrated to be defective. Such remedy shall constitute Buyer's sole and exclusive remedy and Buyer hereby agrees that no other remedy (including, but not limited to claims for INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, OR ANY CAUSE, LOSS, ACTION, CLAIM OR DAMAGE, INCLUDING LOSS OF TIME, WHATSOEVER, OR INJURY TO PERSON OR PROPERTY OR ANY OTHER CONSEQUENTIAL DAMAGE OR INCIDENTAL OR ECONOMIC LOSS) shall be available to Buyer. THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Substandard repair work may be performed upon request of Buyer and according to Buyer's instructions but such work will carry absolutely no warranty whatsoever. Buyer further acknowledges and agrees that nonverbal contracts, agreements or warranties other than what is set forth herein have been received or given unless expressly given in writing by Seller at the time each maintenance, repair, or other work project is undertaken. Warranty repairs will be provided without charge to Buyer during normal work hours at a place of business of Seller or other establishment authorized by Seller, but this warranty does not include any costs for transporting the product to such place of business or establishment, any overtime labor charges or expendables such as oil and filters. When warranty repairs are requested at a site other than one of Seller's choice the Buyer must bear all costs to provide a mechanic at the jobsite. This includes but is not limited to: 1) transportation to and from the job site; 2) mechanic's travel time at prevailing revenue rates; and, 3) meals and other incurred expenses. Repairs provided under the terms of the warranty are warranted for the remainder of the applicable warranty period.

Applicant acknowledges, agrees and understands that AMS or any manufacturer may, in its sole discretion, refuse to extend to Applicant business credit, goods, or services and may terminate such at any time. The fact that this Application contains reference to an amount of credit requested shall not be deemed a limitation of liability by Applicant or a guarantor, if applicable.

Notice: If your application for business credit is denied, you have the right to a written statement of the specific reason for the denial. To obtain the statement, please contact the applicable creditor to whom you applied for credit within 60 days from the date you are notified of the decision. The creditor will send you a written statement of the reasons for the denial within 30 days from receiving your request. The Federal Equal Credit Opportunity Act prohibits Creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the application has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is the FTC Regional Office for the region in which the creditor operates for the Federal Commission, Equal Credit Opportunity, Washington, DC 20580.

I _____ on behalf of _____ hereby agree that the information furnished on this application is true and correct. For the purpose of procuring and maintaining credit from time to time in any form whatsoever with AMS, for claims and demands against the undersigned, the undersigned submits the following as being true and accurate statement of its financial condition on the following date, and agree that any change which may occur that materially reduces the means or ability of the undersigned to pay all claims or demands against it, the undersigned will immediately and without delay notify the Vice-President of Finance of AMS, in writing, and unless AMS is so notified it may continue to rely upon the statement herein given as a true and accurate statement of the financial condition of the undersigned as of the close of business _____, 20__ . Income from alimony, child support or maintenance payments need not be revealed if the undersigned does not choose to disclose such income in applying for credit. I hereby authorize AMS to investigate all my information given and hold free from liability all creditors and other persons who may respond to inquiries made by AMS. I also agree that I have read and acknowledged all information, terms and conditions contained herein. I further agree that in consideration of the sale of goods and/or services by AMS, I (or we), jointly and severally, hereby agree to pay you at your office in Houston, Harris County, Texas. It is further agreed that each past due account shall bear interest at the rate of the maximum amount allowed by law, and that if any account is placed in the hands of an attorney for collection, AMS shall be entitled to a reasonable attorney's fee. I further agree to notify AMS of any entity which conducts business with AMS which I own, in whole or in part, directly or indirectly, and I agree that the terms of this application shall apply to such entity, and the Unconditional Continuing Guarantee executed herewith shall apply to, and evidence the guarantee of, any indebtedness of such entity to AMS. In the event any AMS company should assign all or any part of Buyer's indebtedness, then so far as the assigned portion thereof, it

assigns all rights and privileges of AMS against the Buyer, and Buyer consents to said assignment by AMS. All obligations of the undersigned hereunder are to be performed at the office(s) of AMS in Houston, Harris County, Texas.

IF A CORPORATION or LIMITED LIABILITY COMPANY: Must have signature of authorized officer here.

IF A PARTNERSHIP: Must have signature of all partners here.

IF INDIVIDUAL: Must have signature of individual and spouse here.

Applicant's Signature

Title

Date

Spouse's Signature

Title

Date

UNCONDITIONAL CONTINUING GUARANTEE

FOR VALUE RECEIVED and in consideration of the credit heretofore and hereafter extended to _____ (“Customer”), by Arch Machinery Services, LLC or its subsidiaries, affiliates and related entities (collectively “AMS”), the undersigned, whether one or more (“Guarantor”), jointly and severally, as primary obligors, guarantee the full and punctual payment when due of all indebtedness (as hereinafter defined) owing by Customer to AMS. Guarantor agrees that such guarantee is a continuing guarantee of all indebtedness of Customer to AMS now outstanding or owing or which hereafter may be existing or incurred and that it shall be conclusively presumed that all extensions of credit and financial accommodations by AMS to Customer made concurrently herewith or hereafter were made in reliance upon this Unconditional Continuing Guarantee (the “Guarantee Agreement”).

1. Guaranty and Indemnification. AMS has agreed to sell or lease goods or services to Customer in accordance with the terms and conditions of said sale or lease.

For value received, and in consideration of and as an inducement to AMS to defer or finance payment for the goods or services to the Customer, the Guarantor hereby absolutely and unconditionally guarantees to AMS the due and punctual payment and performance of all obligations and indebtedness of the Customer to AMS arising out of or in connection with the sale of the goods or services and any other indebtedness of Customer, including, without limitation, the obligation to pay all expenses incurred by AMS in endeavoring to enforce any or all of such indebtedness and obligations in this Guaranty and any other agreement evidencing the sale or lease of said goods or services (all such indebtedness and obligations and expenses then properly due are hereinafter referred to collectively as the “Obligations”). The right of recovery against the Guarantor granted hereunder is exclusive of liability under any other guaranties executed by the Guarantor or any other person for the benefit of the Customer.

2. Rights of AMS. The Guarantor hereby agrees that AMS may, at its option, without notice to or further consent of the Guarantor, and without in any manner or to any extent affecting, releasing or diminishing the liability of the Guarantor hereunder, take all or any of the following actions: (a) AMS shall have an unimpaired right to enforce this Guaranty for its own benefit, as to so much of the Obligations as have not been paid; (b) renew for any period any of the Obligations, in whole or in part; (c) extend or accelerate or otherwise change the time for performance of the Obligations; (d) retain or obtain, in addition to this Guaranty, a security interest in any property to secure all of any part of the Obligations; (e) retain or obtain the primary or secondary liability of any party in addition to the Guarantor with respect to all or any part of the Obligations; (f) release their security interest, if any, in all or any property securing any of the Obligations or permit any substitution or exchange for any such property; (g) release or compromise any liability (primary or secondary) of any party with respect to the Obligations or any security therefore; (h) amend, modify, delete or add any term or condition of or to the Obligations.

3. Waivers by Guarantor. The Guarantor hereby expressly waives (a) notice of the acceptance to this Guaranty, (b) notice of the existence or creation of all or any part of the Obligations, (c) notice of termination or the liability of any other person liable for any portion of the Obligations, (d) all presentments, demands for performance, notices of non-performance, protests and all other notices whatsoever, (e) any right to require AMS to proceed against the Customer or any security held in relation to the right to the Obligations or to pursue any other remedy in AMS’s power, and (f) any right to contest the enforcement of the Guaranty by virtue of any statute of limitations period.

4. Extent of Liability; Remedies. The amount of the liability hereunder shall not be reduced by any sum or sums, which may at any time during the existence of this Guaranty be paid by the Customer or by any other person liable for the Obligations of the Customer provided there shall not be double payment or recovery. The Guarantor agrees that if any of the following events occurs at any time when any of the Obligations may not be then due and payable hereunder, the Guarantor will pay to AMS, upon demand, the full amount which would be due and payable hereunder as if the applicable Obligations were then due and payable hereunder:

- (i) The Customer or the Guarantor shall be adjudicated bankrupt;
- (ii) A trustee or a receiver shall be appointed for the Customer or the Guarantor or of all or a substantial part of its or their property in any involuntary proceeding, or any court shall have taken jurisdiction or all of a substantial part of the property of the Customer or the Guarantor in any involuntary proceeding for the reorganization dissolution, liquidation or winding up of the Customer or the guarantor;
- (iii) The Customer or the Guarantor shall file a petition or answer, not denying jurisdiction, in bankruptcy or under Chapter VII or Chapter XI of the Federal Bankruptcy Act or any similar law, state or Federal, whether now or hereafter existing or such a petition filed against the Customer or the Guarantor shall be approved;
- (iv) The Customer or the Guarantor shall become insolvent or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or trustee or liquidator of all of its property or a substantial part thereof, or shall have failed to pay or bond or otherwise discharge any judgment or any attachment of a material item or property which is not stayed on appeal;
- (v) The un-waived default by the Customer or the Guarantor in the payment of any principal of or interest on any other Debt (as hereinafter defined) heretofore or hereafter incurred or assumed by the Customer or the Guarantor when and as the same shall become due and payable, whether at the maturity if any installment thereof, by acceleration or otherwise; or
- (vi) The un-waived Default shall be made by the Customer or the Guarantor in the faithful observance, performance and discharge of any of the covenants, conditions and obligations which are imposed in it by any and all indentures and other agreements securing or evidencing Debt or pursuant to which Debt is issued, and such default shall have caused the acceleration of the maturity of such debt.

As used in clause (v) “Debt” of any person means (a) all indebtedness of such person, whether or not represented by bonds, debentures, notes or other securities, for the repayment of money borrowed, (b) all deferred indebtedness of such person for the payment of the purchase price of property or assets purchased, (c) all indebtedness of such person under any lease, which under generally accepted accounting principles, is required to be capitalized for balance sheet purposes, (d) all guaranties, endorsements, assumptions or other contingent obligations of such person, in respect of, or to purchase or otherwise acquire, indebtedness of others and (e) all indebtedness secured by any mortgage pledge, security interest or lien existing on property owned by such person, subject to such mortgage, pledge, security interest or lien, whether or not the indebtedness secured thereby shall have been assumed by such person, (f) every claim, demand, right and/or cause of action of every kind or character and all extensions and renewals thereof, whether arising by reason of sales of goods, merchandise or services on open account, promissory notes, interest, express or implied contracts, or tort, or any other matter, or whether constituting a joint or several, direct or indirect, primary or secondary, liability of Customer to AMS. The Guarantor further agrees that this Guaranty shall continue to be effective or be reinstated, as the case may be, if payment, or any part

thereof, of the Obligations is rescinded or must otherwise be returned by AMS upon the insolvency, bankruptcy or reorganization of the Customer or otherwise, all as though such payment to AMS had not been made. No delay or neglect on the part of AMS in the exercise of any right or remedy existing shall constitute a waiver thereof, but such rights and remedies shall continue in full force and effect until specifically waived or released by an instrument in writing executed by AMS, and no single or partial exercise by AMS of any right or remedy shall preclude further exercise thereof or permitted hereunder shall in any way impair or affect this Guaranty.

5. Waiver of Subrogation Rights. Until all Obligations of the Customer to AMS shall have been paid in full, the Guarantor shall have no right of subrogation and hereby waives the right to enforce any remedy which AMS now has or may hereafter have against the Customer, and waives any benefit of, and any right to participate in any security now or hereafter held by AMS.

6. Evidence of Indebtedness. Any accounts settled or stayed by or between AMS and the Customer or admitted by the Customer may be adduced by AMS in any proceeding in which this Guaranty is in issue and shall be received as conclusive evidence against the Guarantor of the amount thereby appearing due from said Customer to AMS and shall not be open to dispute or question by the Guarantor. It is not necessary for AMS to inquire into the powers of the Customer or the officers, directors or agents acting or purporting to act on its behalf, and any Obligations created in reliance upon the professed exercise of such powers shall be guaranteed hereunder.

7. Termination of Guaranty. This Guaranty shall be a continuing, absolute and unconditional guaranty, shall continue in full force and effect, be binding upon the Guarantor, and relied upon AMS. This guarantee shall continue until such time as AMS gives written notice of termination by actual delivery thereof to Guarantor; provided, however, such termination of this guarantee shall not be effective as to any indebtedness then owing to AMS by Customer, and this guarantee shall continue as to any such indebtedness until the same is fully paid, discharged and satisfied.

8. General. (a) Any consent, notice or other communication required or contemplated by this Guaranty shall be in writing. If intended for the Guarantor, it shall be effective upon actual delivery to an agent of the Guarantor or shall be deemed given if mailed, postage prepaid, to the Guarantor at the address hereafter set forth or at such other address as AMS may have been requested in writing to deliver communications. (b) This Guaranty shall be binding upon the Guarantor, its heirs, executors, personal representatives, successors and assigns. (c) All words used herein in the singular shall be deemed to have been used in the plural where the context and construction so require. (d) Unless the context otherwise requires, all terms used herein which are defined in the Uniform Commercial Code shall have the meanings be interpreted in such manner as to be effective and valid, but if any provisions of this Guaranty shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Guaranty. (e) The undersigned has the corporate power and authority to enter into this Guaranty and all requisite consents have been secured in order to bind Guarantor by the execution of this Guaranty. (f) If Guarantor fails to pay the indebtedness after notice by AMS of Customer's failure to pay and indebtedness, and if AMS obtains the services of an attorney for collection of amounts owing by Guarantor hereunder, or in the event AMS enforces this Guarantee by suit, or by claim in the probate or bankruptcy courts, Guarantor agrees to pay to AMS reasonable attorney's fees, as well as all costs incurred by AMS in connection with such enforcement. (g) "Customer" means the person or entity identified as "Customer" above, and all successors and assigns of Customer, and all other persons or entities owned or controlled by Customer that conducts business with AMS as if such persons or entities had been named as the Customer in the space provided above (Guarantor agrees to notify the Vice President of Finance of AMS in writing of the existence of any such persons or entities). (h) All obligations of Guarantor under this Guarantee Agreement are to be performed at the office(s) of AMS in Houston, Harris County, Texas, and venue shall lie in the District Courts of Harris County, Texas. (i) This Agreement shall be subject to interpretation and enforcement pursuant to the laws of the State of Texas.

EXECUTED EFFECTIVE THIS _____ day of _____, 20__

_____. IF MARRIED, SPOUSE MUST COMPLETE AND SIGN

THIS SECTION.

GUARANTOR (Please Type or Print)

GUARANTOR (Please Type or Print)

GUARANTOR (Signature)

GUARANTOR (Signature)

Address _____

Address _____

City _____ State _____

City _____ State _____

Social Security # _____

Social Security # _____

Date of Birth _____

Date of Birth _____

Driver's License # _____

Driver's License # _____