



# ENCORE Building Products

# BUSINESS CREDIT APPLICATION AND INDEMNITY AGREEMENT

CUSTOMER NAME (Hereinafter, "Customer")		CREDIT LIMIT REQUESTED \$			(If new business or limit to exceed \$25,000 please attach audited financial statemnt.)
STREET ADDRESS	CITY	STATE	ZIP	TELEPHONE	
BILLING ADDRESS (IF DIFFERENT)	CITY	STATE	ZIP	FAX #	
TYPE OF ACCOUNT (Check All that Apply)					
___ COMMERCIAL		RESIDENTIAL: ___ Multi-Family ___ Single-Family			
SUBCONTRACTOR ___ Electrical ___ Landscaping ___ Painting ___ Plumbing ___ Roofing ___ Siding/Windows					
___ MANUFACTURER ___ RESALE ___ RESIDENTIAL REMODELER ___ OTHER-Describe:					
PLEASE CHECK ONE: ___ SOLE PROPRIETOR ___ PARTNERSHIP ___ LP OR LLP ___ CORPORATION ___ LLC ___ TRUST					
STATE/FILING#	STATE/CONTRACTOR LICENSE #	STATE/RESALE TAX ID# (Attach copy)		FEDERAL TAX ID	

PRINCIPALS OF BUSINESS		PLEASE CHECK ALL THAT APPLY <input type="checkbox"/> Must have PO number on each invoice <input type="checkbox"/> Must have written PO <input type="checkbox"/> Must have buyers name on each invoice List all people or entities which are specifically designated as NOT authorized to charge to the Account (See the reverse side for additional and full details). _____ _____ _____
NAME	SOC. SEC. #	
TITLE	HOME PHONE	
NAME	SOC. SEC. #	
TITLE	HOME PHONE	
NUMBER OF YEARS IN BUSINESS	OWN OR RENT FACILITY	
ANNUAL INCOME \$	ANNUAL EXPENSE \$	NET WORTH \$

BANKING INFORMATION			
BANK NAME (Checking Account)	CITY/STATE	TELEPHONE	CONTACT
BANK NAME (Loan - Business or Construction)	CITY/STATE	TELEPHONE	LOAN OFFICER

TRADE REFERENCES			
NAME	ADDRESS/CITY/STATE/ZIP	NO. OF YEARS	TELEPHONE
NAME	ADDRESS/CITY/STATE/ZIP	NO. OF YEARS	TELEPHONE
NAME	ADDRESS/CITY/STATE/ZIP	NO. OF YEARS	TELEPHONE

The preceding information is provided for the purpose of obtaining credit and is warranted to be true and correct by the undersigned. I hereby authorize Encore Building Products ("Encore") to investigate my credit standing, history, financial circumstances and responsibility, and to obtain my credit report in order to evaluate and use information from that report in determining whether, or to what extent, to extend credit to me. My signature below authorizes Encore to release to one or more credit reporting agencies chosen by Encore a copy of my credit application and authorizes the credit reporting agencies to obtain and disclose information regarding my employment, savings accounts, and outstanding credit accounts (mortgages, auto loans, personal loans, charge cards, credit unions, etc. Authorization is further granted to Encore and the reporting agencies to use a photostatic reproduction of this authorization if necessary to obtain an information regarding the above-mentioned information. This authorization relates and extends to all pending, anticipated and current extensions of credit, all renewals of such credit, and all reviews by Encore to determine continuing eligibility. Encore Building Products is hereby authorized, ongoing, to investigate above credit references and other related credit information sources as they deem appropriate including the access of consumer credit reports on the principals of business and when required, report, report performance based on payment history to proper persons and/or business entities. Above references and other credit reporting agencies are hereby authorized to release requested information for the purpose of obtaining and/or reviewing credit. It is further certified by the undersigned that they have read, understand and agree to "Terms and Conditions" listed on reverse side, by this reference made part of application, and they are duly authorized to execute this application and bind Customer contractually.

Customer \_\_\_\_\_ Date: \_\_\_\_\_ Email: \_\_\_\_\_

By: \_\_\_\_\_ (seal) Print Name and Title: \_\_\_\_\_

By: \_\_\_\_\_ (seal) Print Name and Title: \_\_\_\_\_

**INDEMNITY AGREEMENT AND PERSONAL GUARANTY**

For valuable consideration, the receipt of which is hereby acknowledged, including but not limited to the extension of credit by Encore Building Products and /or any division thereof, it's successors and assigns (hereinafter collectively referred to as "Encore") to Customer, the undersigned (hereinafter, Guarantor(s) doe(es) further certify they have read, understand and agree to all facets of "Continuing Guaranty" found on reverse side (by this reference made part of the Guaranty.) Guarantor(s), recognizing that their individual credit history is a key factor used to evaluate this personal guaranty and I hereby authorize Encore Flooring & Building Products ("Encore") to investigate my credit standing, history, financial circumstances and responsibility, and to obtain my credit report in order to evaluate and use information from that report in determining whether, or to what extent, to extend credit to me. My signature below authorizes Encore to release to one or more credit reporting agencies chosen by Encore a copy of my credit application and authorizes the credit reporting agencies to obtain and disclose information regarding my employment, savings accounts, and outstanding credit accounts (mortgages, auto loans, personal loans, charge cards, credit unions, etc. Authorization is further granted to Encore and the reporting agencies to use a photostatic reproduction of this authorization if necessary to obtain an information regarding the above-mentioned information. This authorization relates and extends to all pending, anticipated and current extensions of credit, all renewals of such credit, and all reviews by Encore to determine continuing eligibility.

_____ SIGNATURE OF INDIVIDUAL GUARANTOR	_____ PRINT NAME	_____ DATE
_____ SIGNATURE OF INDIVIDUAL GUARANTOR	_____ PRINT NAME	_____ DATE
_____ SIGNATURE OF WITNESS	_____ PRINT NAME / CITY / STATE	_____ DATE

APPLICATION TAKEN BY _____	APPLICATION REVIEWED SIGNATURE _____	ACCOUNT # _____	C/LIMIT _____	I/N _____	DCL _____	DATE _____
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## TERMS AND CONDITIONS

The following Terms and Conditions, along with the terms, conditions and information on the other side of this Application, and all statements and invoices regarding and reflecting purchases from time to time, are a part of the contract between the parties regarding the credit account (the "Account") for which Customer is applying; provided that Encore is not required to extend credit to Customer merely because Customer completed this Application (as used herein, the term "Application" includes these Terms and Conditions, all terms, conditions and information in the "Guaranty" section below, and all terms, conditions and information on the reverse side hereof). This Application is subject to approval based on criteria determined by Encore in its sole discretion, subject to applicable law. Customer warrants and represents that all of the information on the Application is true and correct, is not presented in a misleading way, and no unfavorable information has been omitted. Customer acknowledges that Encore will acquire credit information regarding Customer from time to time, and check references, and Customer hereby gives Encore full permission to do so, both now and for so long as any amounts are owed to Encore, and Customer releases any and all claims for breach of contract, invasion of privacy, or other statutory, common law or other claims regarding Encore's taking such action. Any credit limit or other restriction on the maximum amount of credit Encore will extend to Customer, whether appearing anywhere on this Application or otherwise from time to time, is solely for Encore's benefit, is not a limitation of Customer's liability, and Customer will be responsible for all charges to the Account and all other amounts owed pursuant to this Application regardless of such information. This Application is given, and if Encore agrees to open the Account for Customer, the contract will be deemed made, in the State of Arkansas; the contract and Account terms will be construed and interpreted according to Arkansas law; Customer and all persons signing the Application will be deemed to have consented to the personal jurisdiction of all Arkansas state and federal courts; and any and all court proceedings or other actions to interpret or enforce this Application, or otherwise pertaining to the services, products, other materials or debts, or to transactions between Customer and Encore shall be brought in Arkansas; provided that notwithstanding the foregoing, any matter involving foreclosure of any lien, mortgage, or other interest in any real property or improvements may be brought in the jurisdiction where the property is located, and all matters ancillary or reasonably related thereto may also be brought in such jurisdiction. Customer shall provide written notice to Encore immediately upon any change in the name, address or other information provided by or on behalf of Customer in this Application. It is Customer's responsibility to ensure that charges made to the Account and delivered to a jobsite are for that job and are actually used at that job and none other. Customer will indemnify Encore and hold Encore harmless for all damages and losses of any kind regarding items charged to a particular job but which are not used at that job. Although Encore offers delivery service for some items, if Customer desires or requires a signed delivery ticket it is Customer's responsibility to have the proper person at the jobsite at the time of delivery. Encore has no obligation to obtain signed delivery tickets. Unless prior written approval is obtained by Encore, at no time shall more than \$1,00 be charged to the Account unless such charges are for materials actually used for the construction of or improvement to real property owned by Customer. All charges to the Account are "Net 15th, meaning all amounts charged to the Account in a calendar month are due, payable and owing on or before the 15th day following the date the statement or other bill showing the charge is mailed to Customer. The Account may be considered past due on the next day, the 15th day thereafter and finance charges will accrue on such past due balances at the maximum rate allowed by law. Payments on the Account shall be made to Encore at the place of purchase or such other places as Encore designates from time to time. Unless Customer specifically requests clearly in writing for Encore to apply payments to certain jobs, invoices or statements, Encore shall have the sole right and discretion to apply payments to the Account as Encore may deem necessary or desirable, including without limitation to payment of any charges and/or fees before any other amount, and payment of non-liable amounts before liable amounts. Encore may accept late or partial payments on one or more occasions without being obligated to do so in the future. Unless Encore specifically agrees otherwise in a separate writing that is applicable to the specific matter for which payment is made, under no circumstances whatsoever shall Encore be bound by, nor shall Encore lose any rights to full payment, nor shall Customer be released from any liability on the Account, for any payments marked "payment in full," "final settlement," or any similar language or restrictive endorsement. Each and every month which Encore mails statements and/or invoices to Customer, Customer agrees to immediately review such document(s) in order to determine whether there have been any charges to the Account which Customer believes to be: (i) inaccurate in some manner; (ii) erroneously charged to Customer's Account; or (iii) otherwise wrong or erroneous. For simplicity purposes items (i) through (ii) in the previous sentence are referred to as "Disputed Charges." Customer shall notify Encore in writing to the address referenced below within sixty days of the date on which the Disputed Charge first appeared, shall designate which charges are Disputed Charges, and shall cooperate with Encore's investigation of them. All charges to the Account which are believed to be Disputed Charges must be designated as such by Customer in writing and received by Encore within sixty days of the date of the first bill on which the Disputed Charge appeared. Otherwise Customer will be deemed to have waived any and all issues or defenses regarding whether a charge was unauthorized, the charge will be conclusively deemed authorized and desired by Customer, and Customer will be responsible for it. Customer's Disputed Charge notification shall be sent to the following address: Encore Performance, LLC, Attn: Manager, or such other address as Encore may designate in writing from time to time. Encore may assess additional reasonable charges to the Account for requests or matters which are not within the normal scope business, such as without limitation: charges for account research; extra bookkeeping; additional copies of invoices, statements, delivery tickets, etc. A returned or "NSF" check fee will be assessed to the Customer and Account in the amount of \$25.00 or the maximum amount allowed by law, whichever is less. The fee for mail returned because of no forwarding or incorrect address is \$5.00 per month (excluding data input error by Encore). Encore shall at all times have the right to assess a maintenance fee of \$10.00 per month for each month after 90 days of inactivity on the Account. Return of special order or fabricated items will not be credited. Normally stocked materials which are returned must be in original packaging, not damaged or destroyed, and otherwise in a resalable condition as determined by Encore in its reasonable discretion, and returned to or picked up by Encore within 45 days from the date of purchase along with receipt or other proof of purchase from Encore, and will be subject to Encore's restocking charges in effect at the time. Encore may, but is not required to, issue credit on any return that does not comply with the foregoing in such an amount or on such terms as Encore may determine in its sole discretion. Except for the foregoing, all sales are final. Customer's salesperson(s) from Encore from time to time shall at all times be authorized (but not required to) issue pick up orders for return and credit of materials without Customer direction in order to prevent a good-faith belief of possible loss or damage of material. Any credits given or returns accepted by Encore are subject to reversal by Encore within a reasonable time if Encore discovers that the return does not comply with the foregoing conditions. Encore may at its discretion determine whether any credit given shall be cash, credit to the Account, or other credit or concession to Customer.

**DISCLAIMER OF WARRANTIES: ALL MATERIALS, PRODUCTS, SERVICES AND OTHER ITEMS SHALL AT ALL TIMES BE SOLD "AS-IS," WITH ALL FAULTS, AND WITHOUT ANY OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, AND ALL SUCH WARRANTIES WHICH WOULD OTHERWISE BE APPLICABLE ARE HEREBY EXCLUDED, INCLUDING WITHOUT LIMITATION THE WARRANTY OF MERCHANTABILITY AND/OR FITNESS FOR PARTICULAR PURPOSES. NOTWITHSTANDING THE FOREGOING, CUSTOMER SHALL HAVE ALL MANUFACTURER'S WARRANTIES FOR THE TIMES AND ON THE TERMS PROVIDED BY THE MANUFACTURER, BUT CUSTOMER'S SOLE REMEDY SHALL BE AGAINST THE MANUFACTURER UNDER ITS WARRANTY. IN ANY EVENT AND WITHOUT LIMITING THE FOREGOING, THE MAXIMUM LIMIT OF ENCORE'S LIABILITY FOR DEFECTIVE OR DEFICIENT PRODUCT, MATERIAL OR LABOR OF ANY KIND SHALL BE THE LESSER OF: (I) REFUND OF THE CUSTOMER'S MONEY FOR THE ITEM OR SERVICE ALLEGED TO BE DEFECTIVE, OR (II) ENCORE'S COST TO REPLACE OR REMEDY THE ALLEGED DEFECT, AND ENCORE SHALL BE ENTITLED TO DETERMINE WHICH OF (OR WHETHER EITHER OF) THE FOREGOING IS APPLICABLE. IN NO EVENT SHALL ENCORE BE LIABLE FOR, AND CUSTOMER HEREBY RELEASES ENCORE AND SHALL INDEMNIFY AND HOLD ENCORE HARMLESS FROM, ANY AND ALL INCIDENTAL, CONSEQUENTIAL, AND EXEMPLARY DAMAGES OF ANY KIND, AS WELL AS ALL OTHER COSTS (WHICH INCLUDES ATTORNEY'S FEES) OR DAMAGES CAUSED, WHETHER IN WHOLE OR IN PART, BY ANY ACTS, FACTORS OR CIRCUMSTANCES BEYOND ENCORE'S REASONABLE CONTROL, INCLUDING WITHOUT LIMITATION FIRE, FLOOD, WEATHER, LABOR PROBLEMS, SHORTAGE OF MERCHANDISE, OR ANY OTHER UNFORESEEN CAUSE, CONDITION OR CIRCUMSTANCE.**

Encore's delay or failure to exercise any of its rights or remedies in this Application, or that are applicable to the Account or available to Encore by law, shall not waive, diminish or otherwise affect Encore's rights and remedies, and Encore may at its discretion exercise all such rights and remedies thereafter. If any term or condition of this Application is found by a court of competent jurisdiction to be invalid or unenforceable, it shall be considered severed from the remaining provisions of this Application, and none of the other provisions shall be affected thereby. Other terms and conditions may apply to the Account as set forth on invoices, delivery tickets, statements, quotes, and other Encore literature; provided, that any document marked "quote," "estimate," "take off," or which uses similar language or wording, or can be reasonably construed as being a "quote" or "estimate" shall not be a guarantee of pricing or of quantity of materials or supplies needed. If Customer desires specific guaranteed pricing for any material, quantity, item or service, Customer shall notify Encore accordingly and shall obtain documentation signed by a representative of Encore which specifically says it is a guarantee of pricing or quantity. At no time shall Encore be held responsible for any estimation of quantity of material, supplies or labor necessary to complete any structure, any part thereof, or any project of any kind. Encore reserves the right to modify the terms and conditions of the Account at its discretion, provided that written notice is mailed or otherwise communicated to Customer, and upon such mailing or other communication, such terms shall become effective. Customer acknowledges that Encore's rights as set forth in the previous sentence are reasonable since Customer can avoid having the new or changed terms be applicable by simply not charging anything further on the Account. Encore shall at all times have the right to refuse any further purchases on or to the Account, and to suspend, revoke or otherwise terminate Customer's Account at any time and for any reason, but no such termination shall affect Customer's liability up to the termination.

Without prejudice to or limitation of any other lien rights, Customer hereby grants to Encore, and Encore shall at all times have, a security interest in all products, materials and other items charged to the Account, even if they become fixtures under applicable law, and Customer hereby authorizes Encore to file such UCC financing statements, continuation statements, fixture filings, and other documents as Encore may deem necessary or advisable from time to time. Said security interest shall automatically expire upon receipt and to the extent of payment therefore. The foregoing security interest is in addition to, and does not limit in any way, any other rights Encore may have, including without limitation all rights to a materialman's or other lien.

Default by Customer or Guarantor of any of the terms and conditions of this Application or the Account from time to time will result in all amounts owed or hereafter owed on the Account to become immediately due and payable without notice. Encore shall be entitled to exercise all remedies set forth herein and allowed by applicable law, at its discretion, it being understood that all such remedies are cumulative. Marshalling of assets, presentment, notice of non-payment, protest, notice of protest, notice of intent to accelerate, impairment of recourse, demand for payment, notice of dishonor, right of redemption, homestead and trial by jury are all hereby waived. Customer and all Guarantors shall be responsible for all of Encore's attorney's fees, costs, and other costs and fees incurred in connection with the Account or any amounts owed or alleged to be owed on the Account, whether or not suit is filed. Neither Customer nor any Guarantor shall be entitled to assign this Application, in whole or in part, or the rights or obligations of the Account, at any time. Encore may assign its rights under the Application and the Account, in whole or in part, at any time without the consent of or notice to anyone. Notwithstanding anything in this Application to the contrary, the terms of this Application shall not be enforceable against Encore until Encore has approved Customer's credit and charges are made to the Account.

### CONTINUING GUARANTY

The following terms supplement those set forth above and on the reverse side of this Application. Each person who signed the Application in the Guaranty section is a "Guarantor" for purposes of this Application, and the obligations of each Guarantor under this Guaranty are independent of and separate from any obligations of Customer and any other Guarantor. Guarantor's liability hereunder shall at all times be irrevocable, absolute, unconditional and continuing, and shall not be affected by any circumstance which might constitute a discharge of a surety or guarantor, other than a "Permitted Defense," which are: (i) payment of the money for which Guarantor is alleged to be responsible, (ii) accord and satisfaction. Without limiting the foregoing, Guarantor hereby waives any and all rights, defenses and benefits limiting or exonerating Guarantor's liability (other than Permitted Defenses), including but not limited to: (i) any right of offset in favor of any other person or entity; (ii) the rights and defenses of an "accommodation party", under applicable law; (iii) the incapacity or lack of authority by Customer, any other guarantor or any other person or entity to execute the Application, the Account, or any documents in connection with either; (iv) all rights of presentment for payment, notice of non-payment, protest, notice of protest, notice of intent to accelerate, notice of dishonor, acceptance, notice of acceptance, and demand; and (v) whether any charges to the Account were unauthorized. Guarantor's liability shall not be affected by any of the following, which may occur without notice to or consent of Guarantor: (i) any exercise or enforcement of any remedy, or any failure to exercise or enforce any remedy Encore may have against Customer, any other guarantor, or any other person or entity; (ii) the existence of any dispute or litigation among Encore, Customer, Guarantor, any other guarantor, or any other person or entity; (iii) the partial payment by Customer, any other guarantor or any other person or entity; (iv) any acceptance of late payment; (v) any insolvency, bankruptcy, reorganization, assignment for the benefit of creditors, liquidation, winding up, divorce, death, or dissolution of Customer, any other guarantor, or any other person or entity; (vi) any merger, reorganization, or consolidation of Customer or any other person or entity; (vii) the sale of all or substantially all of the assets of Customer or any other person or entity; (viii) the transfer of any of rights under the Application (including without limitation all guaranty provisions); (ix) any extension, renewal, rescission, waiver, amendment, or modification of any provision of any part of this Application or the Account; (x) increasing or decreasing Customer's available credit or otherwise allowing charges of any amount whatsoever on the Account; (xi) settling, releasing, compromising, collecting or otherwise liquidating any amount due to Encore; (xii) marshaling of assets in favor of Customer, any guarantor, or any other person or entity; (xiii) any act by Encore, Customer, any guarantor, or any other person or entity which would discharge an obligation to pay money under a simple contract; (xiv) the lack, absence, or inadequacy of consideration; (xv) entering into promissory notes, mortgages, or other contracts with Customer or any other person or entity for amounts owed hereunder without such actions constituting a novation of any amounts owed hereunder. Without limiting the foregoing, Guarantor hereby consents to and agrees that any of the following actions may be taken by Encore without notice to Guarantor and without the requirement of any amendment to this Guaranty: (i) the amendment or modification in any respect of this Application or the terms of the Account; (ii) alternation, deviation or any other change or difference of the time, manner or place of any payment of any amount owed to Encore; (iii) the extension or waiver of the time for the performance of any of Customer's obligations to Encore; (iv) discharge or release, in whole or in part, of Customer, any other guarantor, or any other person or entity from liability hereunder; (v) discharge, release, exchange, or sale, in whole or in part, of any collateral; (vi) compromise, settlement, or offset of any liability of Customer or any other person or entity; (vii) transfer of any of Encore's rights hereunder. This Guaranty is an absolute guarantee of payment and not of collection, and shall be a continuing guaranty and shall continue in full force and effect until revoked in writing, signed by Guarantor, which revocation shall only be effective upon the date of delivery by certified mail, restricted delivery, to the Chief Financial Officer of Encore at the following address: P.O. Box 6280, Springdale, AR 72762, or such other address as Encore may designate in writing from time to time; provided that such revocation shall in no way affect Guarantor's liability hereunder for charges made (or other liability) prior to revocation delivery date. This Guaranty section is a part of the overall Application and all other terms set forth in this Application (for example but without limitation - consent to jurisdiction in Arkansas, severability, etc.) are applicable to this Guaranty section except to the extent that they conflict with anything specifically set forth in this Guaranty section.