

# PORT ORCHARD

SAND & GRAVEL COMPANY

## COMMERCIAL CREDIT APPLICATION

DATE \_\_\_\_\_

COMPLETE LEGAL NAME OF BUSINESS \_\_\_\_\_

DBA \_\_\_\_\_

NAME OF PARENT COMPANY (if applicable) \_\_\_\_\_

BILLING ADDRESS \_\_\_\_\_

STREET ADDRESS \_\_\_\_\_

PHONE NUMBER \_\_\_\_\_ CELL \_\_\_\_\_

E-MAIL ADDRESS \_\_\_\_\_ FAX NUMBER \_\_\_\_\_

CONTRACTORS LICENSE NUMBER \_\_\_\_\_

FEDERAL TAX ID# \_\_\_\_\_ BUSINESS LICENSE NUMBER (UBI) \_\_\_\_\_

TAXABLE \_\_\_\_\_ TAX EXEMPT \_\_\_\_\_

BUSINESS STRUCTURE:

CORPORATION \_\_\_\_\_ PARTNERSHIP \_\_\_\_\_ SOLE PROP \_\_\_\_\_

LIMITED LIABILITY COMPANY \_\_\_\_\_ OTHER (explain) \_\_\_\_\_

HOW LONG IN BUSINESS \_\_\_\_\_ HAVE YOU EVER FILED BANKRUPTCY \_\_\_\_\_

IF YES, PERSONAL OR BUSINESS \_\_\_\_\_ YEAR \_\_\_\_\_

NAME OF CORPORATE OFFICERS, MEMBERS, PARTNERS OR OWNERS:

NAME \_\_\_\_\_ ADDRESS \_\_\_\_\_

PHONE NO. \_\_\_\_\_ SOCIAL SECURITY \_\_\_\_\_

NAME \_\_\_\_\_ ADDRESS \_\_\_\_\_

PHONE NO. \_\_\_\_\_ SOCIAL SECURITY \_\_\_\_\_

BANK \_\_\_\_\_ ADDRESS \_\_\_\_\_

TYPE OF BUSINESS: \_\_\_\_\_

## COMMERCIAL ACCOUNT AGREEMENT

Customer warrants the above information to be 100% accurate and complete. Customer applies to Port Orchard Sand & Gravel Company, Inc. ("POS&G") for the right to make commercial purchases on an open account basis. Customer hereby agrees that if credit is, or has been, extended, all purchases made from POS&G will be subject to the following terms and conditions:

1. POS&G is not a lending institution; this is not a revolving account. Customer promises to pay its account in full within thirty (30) days of Invoice date. All past due amounts will accrue a late charge (or delinquent charge) at the Annual Percentage Rate of eighteen-percent (18%) (1.5% per month). Customer agrees to pay all pre- and post-judgment attorneys' fees, costs, collection agency costs/fees and expenses incurred by POS&G relating to this Account Agreement, the sale of goods and/or any default hereunder. Customer shall pay a \$25.00 fee for all returned or "NSF" checks. At POS&G's option, jurisdiction and venue of any lawsuit relating to this Account Agreement and/or the sale of goods may be laid in King County Superior Court, Seattle, Washington. The validity, effect, interpretation and performance of this Account Agreement shall be governed by the laws of the State of Washington. Customer understands that the fact that a service charge will be imposed does not authorize payment of the account to be made in installments or in any other manner than provided herein.
2. The undersigned consent(s) to POS&G's use of a non-business consumer credit report on the undersigned in order to further evaluate the credit worthiness of the undersigned as principal(s), proprietor(s) and/or guarantor(s) in connection with the extension of business credit as contemplated by the above Credit Application. The undersigned authorize(s) POS&G to utilize a consumer credit report on the undersigned from time to time in connection with the extension or continuation of the business credit. Customer, Customer's agents/principals and guarantor(s) authorize POS&G at any time to inquire into and obtain from any bank, lending institution, credit reporting agency or other reference, whether or not listed in the above Credit Application, any and all information relating to Customer's credit worthiness or financial condition and/or Customer's principals'/agents' personal credit worthiness or financial condition and/or guarantor's personal credit worthiness or financial condition. The undersigned knowingly consent(s) to the use of such credit report/information consistent with the Federal Fair Credit Reporting Act (15 U.S.C.@1681 et seq.). Customer understands that POS&G may report Customer's performance under this Account Agreement to credit reporting agencies or other authorized entities including, but not limited to, the owner of real property which POS&G has the right to lien and/or a project owner or upper-tier contractor. Customer agrees to release, defend, indemnify and hold fully harmless POS&G and its employees or agents for any and all liability or claims resulting from this periodic credit inquiry or reporting effort.
3. Acceptance by POS&G of less than full payment of any amounts due from Customer shall not be construed as a waiver of its rights hereunder or at law. Payments received by POS&G may be applied to such portion(s) of Customer's unpaid account balance as POS&G deems appropriate.
4. **For all goods sold, and unless otherwise expressly agreed to by POS&G in writing, POS&G HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. In no circumstance -- whether as a result of breach of contract, tort (including without limitation negligence) or other grounds -- shall POS&G be liable for SPECIAL, INDIRECT, CONSEQUENTIAL OR LIQUIDATED DAMAGES (including, without limitation, lost profits/revenues) of Customer or claims of any third party against Customer (pass-through claims) for such damages. Customer agrees to release/waive any claims against POS&G for any damage to Customer's real or personal property and adjacent properties caused by or relating to delivery of the goods. Customer further agrees to defend, indemnify and hold POS&G fully harmless for any damage to the real or personal property and adjacent properties of Customer or third parties caused by or relating to delivery of the goods. All claims of Customer (including pass-through claims of another contractor or owner) relating to alleged (1) quantity or delivery errors and/or (2) defective, non-conforming and/or unacceptable goods shall be WAIVED by Customer unless made in detailed writing to POS&G within fourteen (14) days after delivery (or Customer pickup) of the goods. All claims of Customer relating to alleged pricing errors shall be WAIVED by Customer unless made in detailed writing to POS&G within ten (10) days after receipt of the applicable Invoice. Customer's sole/exclusive remedy for ANY breach or default on the part of POS&G shall be to require POS&G, at POS&G's sole option, to**

**either (1) refund the purchase price for the goods sold hereunder, or (2) provide Customer with conforming replacements for any nonconforming goods. UNDER NO CIRCUMSTANCE SHALL POS&G's LIABILITY ON ANY CLAIM FOR LOSS OR DAMAGE EXCEED THE PRICE OF THE GOODS ACTUALLY RECEIVED FROM CUSTOMER WITH REGARD TO WHICH SUCH CLAIM FOR LOSS OR DAMAGE IS MADE. Customer expressly and knowingly WAIVES the right to a jury trial on any issues relating to this Account Agreement and/or sale of goods.**

5. Customer agrees that it will familiarize itself with any and all hazards, safety and precautionary procedures with respect to the handling, transportation or use of the goods and will manage the goods accordingly. Customer will provide or make available any product safety information provided by POS&G or its affiliates to Customer's employees, to all others who handle the goods, and to its customers. Customer agrees to defend, indemnify and hold POS&G fully harmless for any claims made against POS&G or its affiliates, and for associated damages and expenses (including reasonable attorneys' fees, costs and expenses), to the extent caused by Customer's failure to familiarize itself with such hazards, safety and precautionary procedures, to manage accordingly, or to provide such information as set forth above.

6. Customer agrees to notify POS&G, in writing, thirty (30) days prior to any change in the ownership, name or business structure of Customer and further agrees to be jointly and severally liable for all purchases by the new business structure and/or owners should said notification not be given. POS&G may, regardless of the terms herein or on any Invoice, require all outstanding account balances be paid in full on demand upon change in ownership and/or business structure, and may refuse to make further sales or extend further credit pending approval of the new business structure's and/or owners' credit, which approval shall be at POS&G's sole discretion. Customer agrees that (i) any line of credit desired or approved is not a limitation of liability, and (ii) it will be responsible for valid charges in excess of a line of credit either desired or approved. POS&G shall have no obligation whatsoever to make any sale to Customer or to extend credit to Customer -- should credit be granted, POS&G may increase, decrease or terminate any credit availability at any time in its sole discretion. Customer agrees to timely provide in writing to POS&G information regarding bonding companies, general contractors or owners for the purpose of filing preliminary notices and claims on payment bonds/retainage or construction liens.

7. This Account Agreement supersedes and replaces all prior written and oral agreements, representations and understandings between POS&G and Customer. In the event of any conflict between the language of this Account Agreement and the language of an Invoice, Statement, Delivery Ticket or other document, the language of this Account Agreement shall control. No terms or conditions of a Customer existing or future purchase order different from the terms of this Account Agreement will become part of any agreement between the parties unless expressly approved in writing by POS&G. The terms of this Account Agreement are severable and the invalidity or illegality of any term shall not affect the others. This Account Agreement may be executed in counterparts, each of which will constitute an original but all of which constitute one and the same instrument; a faxed, e-mailed or photocopied Account Agreement shall be as valid as the original. Customer agrees that all sales herein are commercial, non-consumer, sales.

8. If Customer's application for business credit is denied, it has the right to a written statement of the specific reasons for the denial. To obtain the statement please contact the Credit Manager at 400 Valley Ave. NE, Puyallup, WA 98372 within 60 days from the date you are notified of the credit decision. POS&G will send Customer a written statement of reasons for the denial within 30 days of receiving the request for the statement. 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 that 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 applicant 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 Federal Trade Commission, Division of Credit Practices, 6<sup>th</sup> and Pennsylvania Ave. NW, Washington D.C. 20580.

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.  
"CUSTOMER"

By: \_\_\_\_\_ (Signature) Date: \_\_\_\_\_

\_\_\_\_\_ (Name and Title)

**PERSONAL GUARANTY**

This Personal Guaranty is made by the undersigned to Port Orchard Sand & Gravel Company, Inc. ("POS&G") in order to induce POS&G to extend credit for the sale of goods to Customer and for other valuable consideration.

I/we hereby absolutely and personally guarantee to POS&G the prompt and full payment and satisfaction of ALL amounts, obligations and indebtedness due POS&G from Customer. This Personal Guaranty further extends to, and guarantees prompt and full payment of all late charges, interest, pre- and post-judgment expenses, costs, collection costs/fees, attorneys' fees incurred by POS&G by reason of default of Customer and/or default of Guarantor(s). This Personal Guaranty is a continuing, primary and unconditional personal obligation and covers all existing and future obligations and indebtedness of Customer to POS&G (and/or any predecessor company of POS&G). I/we hereby waive notice of default, non-payment and notice thereof. I/we consent, and therefore this Personal Guaranty applies, to any modification or renewal of Customer's agreement with POS&G hereby guaranteed. Any indication of a corporate status in the signature block below shall be taken as informational only and shall not affect the personal nature of this Personal Guaranty. If more than one person signs below, each signor is a Guarantor hereunder and agrees to be jointly and severally liable herein. The release of one Guarantor shall not affect the liability of another Guarantor.

This Personal Guaranty remains valid and binding notwithstanding any change in the nature, structure, composition, ownership, merger or consolidation of Customer. This Personal Guaranty shall be binding on my/our heirs, executors, personal representatives and assigns. I/we waive any rights I/we may have to require POS&G to proceed against Customer or pursue any other remedy prior to enforcing this Personal Guaranty. I/we warrant that the waivers above are made with my/our full knowledge and careful consideration and are reasonable and not contrary to public policy or law. The validity, effect, interpretation and performance of this Personal Guaranty shall be governed by the laws of the State of Washington. At POS&G's option, jurisdiction and venue for any lawsuit may be laid in King County Superior Court, Seattle, Washington. **I/we expressly and knowingly WAIVE the right to a jury trial on any issues relating to this Personal Guaranty.** To assist POS&G in making any credit decision, I/we authorize it to from time to time inquire into and obtain from any bank, lending institution, consumer credit reporting agency or other reference, whether or not listed in the above Credit Application, any and all information relating to my/our personal credit worthiness or financial condition consistent with the Federal Fair Credit Reporting Act. I/we agree to release, defend, indemnify and hold fully harmless POS&G and its employees or agents for any and all liability or claims resulting from this periodic credit inquiry or reporting effort.

SIGNATURE \_\_\_\_\_

Date: \_\_\_\_\_

Print Name \_\_\_\_\_

SIGNATURE \_\_\_\_\_

Date: \_\_\_\_\_

Print Name \_\_\_\_\_

Information for: \_\_\_\_\_  
(Your Name)

**PROPERTY OWNER / PROJECT INFORMATION**

We are looking forward to working with you on this project. Please submit the information noted below and return as soon as possible via fax (253.833.3746) or email ([debbied@gravelpits.com](mailto:debbied@gravelpits.com)). This information is required prior to delivery.

Project Name: \_\_\_\_\_ Job Number \_\_\_\_\_  
(if applicable)

Property Owner's Name: \_\_\_\_\_

Owner's Mailing Address: \_\_\_\_\_

City/ State/ Zip: \_\_\_\_\_

Job Location Information:

Project Address: \_\_\_\_\_

County: \_\_\_\_\_ Parcel#: \_\_\_\_\_

General Contractor: \_\_\_\_\_

Address: \_\_\_\_\_

Construction Loan Information: (for spec builders only)

Lender Name: \_\_\_\_\_ Branch \_\_\_\_\_

Account #: \_\_\_\_\_ Telephone #: \_\_\_\_\_

Lender Contact: \_\_\_\_\_

Information provided by: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

If you have any questions, please contact our Credit Manager, Debbie deBoer at 253.833.3705 x 405 or [debbied@gravelpits.com](mailto:debbied@gravelpits.com).