



Empire State Mulch Supply Co., LLC
13600 Railroad Street
P.O. Box 157
Alden, NY 14004

Telephone: (716) 256-1702

Email: Charlier@empiremulch.com

CREDIT APPLICATION

Company/Individual Name: _____
Mailing Address: _____
City: _____ State: _____ Zip Code: _____
Telephone Number: _____ Fax Number: _____
Type: () Sole Prop. () Partnership () Corporation Federal ID or SS#: _____
Person Providing Information: _____
Amount of credit requested: \$ _____

Owners and Officers: _____ Title: _____
_____ Title: _____
_____ Title: _____

Are Purchase Orders Required: Yes ____ No ____
Accounts Payable Contact: _____ Email: _____
Tax Exempt () *Yes () No If "Yes" furnish tax exempt certificate

BANK INFORMATION

Bank: _____ Address: _____
City: _____ State: _____ Zip Code: _____
Telephone Number: _____ Fax Number: _____
Account Officer Name & Email: _____

CREDIT REFERENCES

Name: _____ Address: _____
City: _____ State: _____ Zip Code: _____
Telephone Number: _____ Fax Number: _____
Contact Person Name & Email: _____

Name: _____ Address: _____
City: _____ State: _____ Zip Code: _____
Telephone Number: _____ Fax Number: _____
Contact Person Name & Email: _____

Name: _____ Address: _____
City: _____ State: _____ Zip Code: _____
Telephone Number: _____ Fax Number: _____
Contact Person Name & Email: _____

TERMS AND CONDITIONS

Definitions. “Seller” means Empire State Mulch Supply Co., LLC., its subsidiaries, if any, and when it does business under any assumed business name. “Buyer” means the company(ies) referenced herein, its subsidiaries, and when it does business under any assumed business name. “Agreement” means this credit application and agreement between Buyer and Seller. “Goods” shall mean any and all materials, equipment, labor, services, or other property provided, performed, furnished, sold, rented, leased or delivered by or through Seller or otherwise subject to this Agreement.

Taxes, freight and handling costs. Unless otherwise agreed by Seller in writing, all prices are exclusive of applicable federal, state local and foreign sales, use, excise, value added and other taxes, as well as charges for shipment, handling, storage and insurance. Any and all current or future tax or other governmental charge applicable to the sale, delivery, shipment or storage of the Goods that Seller is required to pay or permitted to collect shall be for Buyer’s account and shall be added to the price, and shall not be subject to any reduction. Buyer shall pay all transportation and delivery costs not prepaid by Seller, and Seller will credit against invoice price, upon receipt of paid freight bill, actual freight paid by Buyer but not in excess of freight charges shown on the Order Confirmation. If the delivering carrier charges an amount of freight larger than that for which Buyer received credit as aforesaid, it shall be Buyer’s obligation to file a claim for overcharge with the appropriate carrier.

Authorization to contact bank and trade references. Seller may contact any banks and trade references and make any and all other credit inquiries it deems necessary, including but not limited to the utilization of outside credit reporting services, and Buyer authorizes the release of information to Seller. This authorization is continuing in nature and may be used to obtain updated information. Buyer represents and warrants, upon which Seller has a right to rely, that the information provided by the Buyer herein is complete, true and correct.

Invoice Terms. Invoices must otherwise be paid in full no later than the 30th day after the invoice date. No pay if paid or paid when paid clause is applicable to amounts due Seller. A late payment charge of 2% per month (24% annum), or the maximum rate permitted by law (if less than 24%), is due on all past due principal amounts. If any amount owing to Seller is not paid when due, Seller may at its option: place the account on a cash basis, terminate any unfilled orders or discontinue any deliveries until all past-due payments (including principal and interest) are paid in full and adequate assurance of Seller’s financial ability is received. The amount of any Seller’s invoice shall be conclusively binding upon Buyer as due unless, Buyer objects in writing before the invoice is due.

Change of business structure. Any change in Buyer’s business structure shall not affect Buyer’s obligations under this Agreement unless Seller agrees otherwise in writing. This Agreement may not be assigned by Buyer, but may be assigned by Seller.

Attorney fees. In case of any default in relation to this Agreement, Buyer shall pay Seller’s reasonable attorney fees and costs, even if no action is filed. If any action is filed Buyer shall pay Seller’s reasonable attorney fees and costs (whether in the state or federal courts, including but not limited to the bankruptcy courts), for any court annexed arbitration, on any appeal, and on denial of any petition for review even if no action is filed. This Agreement shall be governed by and construed in accordance with law of the principal state of delivery of the goods to Buyer without resort to its principles on conflict of laws.

Excuse of performance. Any delay in or failure of performance by Seller shall not be a breach of these Terms if and to the extent such performance is prevented or delayed due to insufficient production capacity or events beyond the Seller’s reasonable control, including (without limitation) acts of God, embargoes, government restrictions, compliance with law or government authority, military action, terrorism, riots, civil disorders, fires, floods, accidents, labor strikes, lockouts and shortages, computer system failures, loss of electronic data, unavailability of materials, fuel products or components, or delays in transportation. Seller’s obligations shall be suspended, without liability, for so long as such event continues.

Limitation of Liability. In no event shall Seller be liable to Buyer for any indirect, consequential, exemplary, special, incidental or punitive damages. Seller’s total liability to Buyer in connection with this Agreement and the Goods shall be limited to the lesser of: (1). Direct damages proven by Buyer; or (2). the amount paid by Buyer to Seller for the specific Goods giving rise to the cause of action. The foregoing limitation shall apply, to the extent permitted by applicable law, to all causes of action and claims, including (without limitation) breach of contract, warranty, infringement, negligence, strict liability, and other torts. Without limiting the applicability of the foregoing, Seller shall not be liable for any damages that could have been avoided by Buyer’s use of reasonable diligence. NO LITIGATION BY BUYER CONCERNING THE GOODS SHALL BE COMMENCED LATER THAN ONE YEAR AFTER THE DATE OF SHIPMENT.

Indemnity. To the fullest extent permitted by law, Buyer shall fully and forever defend (with counsel satisfactory to Seller), indemnify and hold Seller and its agents, officers, directors, employees, insurers and assigns harmless from any and all claims and damages, direct, consequential, incidental, or otherwise arising by reason of or related to the goods or the acts or omissions of the Buyer or Buyer’s employees or agents.

Miscellaneous: (a). If any term of this Agreement is invalid, the invalid language shall be considered deleted from this Agreement and shall not invalidate the remaining language. (b). This Agreement may be executed and transmitted to Seller by facsimile machine and the facsimile so transmitted to Seller shall be deemed an original and shall be binding upon the Buyer upon its receipt of Seller. (c). Regardless of any prior or contemporaneous agreements, this Agreement amends and modifies any and all of said prior or contemporaneous agreements and contains the entire agreement between the parties and cannot be changed or terminated orally. (d). All goods shall be for use in Buyer’s business and commercial use only and not for Buyer’s consumer, personal or household use. (e). Any provision of this Agreement may be modified by Seller upon 30 days prior written notice to Buyer. (f). This Agreement may be terminated at any time by Seller for any reason at any time. (g). No waiver by Seller of any breach or any term or condition of this Agreement shall constitute a waiver of any prior or subsequent breach and Seller shall not be affected by any delay, failure or omission to enforce or expressly forbear with respect to any of Seller’s rights, remedies or defenses herein.

TERMS OF PAYMENT: Terms are Net 30 days from invoice date. Empire State Mulch Supply Co., LLC reserves the right to demand payment in full with all accrued service charges at any times after first service charge accrued.

Purchaser agrees to pay seller’s reasonable attorney’s fee and cost of collection in the event the account is placed in any attorney’s hands for collection.

The undersigned understands that the following information is being submitted for the purpose of obtaining credit from Empire State Mulch Supply Co., LLC and authorizes the investigation of this information. The undersigned understands and agrees to the above terms and conditions of credit with Empire State Mulch Supply Co., LLC in the event of credit acceptance.

Authorized Signature: _____ Date: _____

Print Name: _____ Title: _____

GUARANTY

For good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the undersigned, and if more than one, each of them, jointly and severally, (hereinafter, jointly and severally, "Guarantor") unconditionally personally guarantee all obligations of Buyer to Seller including but not limited to payment of all amounts, including invoice amounts, late payment charges, attorney fees and costs and any other indebtedness, which may now or at any time in the future may be owing by the Buyer, or any successor thereof, to Seller. This is an open, unlimited and continuing guaranty ("Guaranty"). It is not limited by Buyer's credit estimate. In case of any default in relations to this Guaranty, Guarantor shall pay Seller's reasonable attorney fees and costs, even if no action is filed. If an action is filed, Guarantor shall pay Seller's reasonable attorney fees and costs (whether in the state or federal courts, including but not limited to bankruptcy courts), for any court annexed arbitration, on any appeal, and on denial of any petition for review even if no action is filed. This Agreement shall be governed by and construed in accordance with law of the principal state of delivery of the goods to Buyer without resort to its principles on conflict of laws. Guarantor agrees that any and all credit extended to the Buyer is done so by Seller in material reliance on this Guaranty notwithstanding any other rights or remedies Seller may have now or at any time in the future relating to the collection of such sum(s) by lien, contract, bond, equity or otherwise. Seller may contact any banks and trade references and make any and all other credit inquiries it deems necessary, including but not limited to the utilization of outside credit reporting services, and Buyer authorizes the release of information to Seller. This Guaranty shall not be affected by any settlement, extension, modification or amendment of the terms of any obligation of Buyer or with any guarantor who is not a party to such settlement, extension, modification or amendment. This Guaranty shall not be affected by the discharge, death, dissolution, liquidation or release of any obligation of Buyer or any guarantor or guarantors. Notice of acceptance of this Guaranty, notice of non-payment, notice of non-performance, notice of amount of indebtedness outstanding at any time and all other rights to notices and actions by Seller and any rights to extension, composition or otherwise are hereby fully, unconditionally and irrevocably waived by the Guarantor. This Guaranty shall bind as the circumstances may require, not only to the immediate parties hereto, but their respective heirs, executors, administrators, personal representatives, successors in interest and assigns, as well.

By signing here, you agree to ALL THE TERMS OF THIS GUARANTY PERSONALLY:

Signature: _____

Social Security Number: _____

Print Name: _____

Date: _____

Signature: _____

Social Security Number: _____

Print Name: _____

Date: _____