

# KILGORE COMPANIES



## OPEN ACCOUNT APPLICATION AND AGREEMENT

PHONE 801-250-0132 • FAX 801-250-8146 • EMAIL CREDIT@KILGORECOMPANIES.COM

BUSINESS NAME			
Company's Full Legal Name:			Phone:
Street Address: (required)		City:	State:      Zip:
P.O. Box: (mail)		City:	State:      Zip:
Contact Person for Billing:		Title:	Phone:
Years in Business:	Is Purchase Order Required? <input type="checkbox"/> Yes <input type="checkbox"/> No		Fax:
Contractor's License Number:		Expiration Date:	Type of Material: (check all that apply) <input type="checkbox"/> Aggregates <input type="checkbox"/> Asphalt <input type="checkbox"/> Ready Mix
Email:			Kilgore Sales Representative:
Division: (check all that apply) <input type="checkbox"/> Contracting <input type="checkbox"/> Altaview <input type="checkbox"/> Triple C <input type="checkbox"/> L&L <input type="checkbox"/> LeGrand Johnson <input type="checkbox"/> Elam <input type="checkbox"/> Sierra Ready Mix <input type="checkbox"/> Peak Materials <input type="checkbox"/> Walker Sand & Gravel <input type="checkbox"/> AMI			

**COMPLETE THE SECTIONS BELOW** as they apply to the applicant named above.

SOLE OWNERSHIP			
Name:	Birth Date:	SS Number: (Required)	Phone:
Residence Address:		Spouse's Name:	

BUSINESS ENTITY			
Business Structure: <input type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Company <input type="checkbox"/> Partnership (check one): <input type="checkbox"/> General <input type="checkbox"/> Limited <input type="checkbox"/> L.L.P			
Officers, Members, or Partners:			
Name and Address	Title:	Birth Date:	SS#: (Required)

Trade References:	Address:	Phone Number:	Fax Number:

Bank:	Branch:	Phone:	Account:	Type:

The undersigned (Purchaser) authorizes Kilgore Companies (Seller) to verify the information, obtain commercial and consumer credit reports from time to time, and to inquire of the trade and bank references. Seller may make inquiries regarding, and Purchaser authorizes, any consumer reporting agency to furnish a credit report under other names or aliases. This Open Account Application and Agreement in no way obligates Seller to extend credit to the undersigned or its company. If Seller chooses to extend such credit, such extensions of credit shall be governed by the terms and conditions on the reverse side. The Purchaser acknowledges and agrees to account agreement on reverse side. Fax copy shall be considered same as original.

Purchaser's Signature, Title \_\_\_\_\_ (Printed Name) \_\_\_\_\_ Date \_\_\_\_\_

**For Office Use Only**

Credit Approved/Denied By: \_\_\_\_\_ Date: \_\_\_\_\_ Account #: \_\_\_\_\_ Credit Limit: \_\_\_\_\_

JWS: \_\_\_\_\_ Command: \_\_\_\_\_

## ACCOUNT AGREEMENT

1. All merchandise is sold to Purchaser on a net basis unless the invoice specifically states otherwise or unless other terms are specifically approved by Kilgore Companies (herein referred to as "Seller").
2. All credit extended in accordance with this application shall be on the basis of repayment of all sums due; Net 30 days from invoice date. All amounts not paid shall be subject to a finance charge of 2% per month on the unpaid balance. Payment by credit card may be accepted.
3. If Purchaser fails to make any payment when due, Seller may terminate this Agreement without notice. Termination shall not affect Purchaser's liability for any existing balance and any material on order. **Purchaser also agrees to provide Seller with prompt written notice of any change in Purchaser's name, address, ownership or form of business entity.** Any notice required shall be in writing and shall be given by delivery (in person with receipt) or by certified mail to the other party at the address stated in this Agreement or at such other address as may hereafter be designated.
4. This Agreement may be amended from time to time by Seller, with at least 10 days' written notice to Purchaser. Unless Purchaser terminates this Agreement prior to the effective date of the amendment, Purchaser will be deemed to have agreed to such amendment. Any purchase made after the effective date of any amendment shall constitute an acceptance of the terms of the amendment.
5. **SELLER EXPRESSLY DISCLAIMS ALL WARRANTIES, EITHER EXPRESSED OR IMPLIED, CONCERNING THE FITNESS FOR ANY PARTICULAR PURPOSE OF THE MATERIALS DELIVERED.** Purchaser assumes all risk and liability for the results of the use of any merchandise sold by Seller to Purchaser. Any items not manufactured by Seller are warranted only as warranted by the manufacturer or distributor of such items; otherwise, all such items are sold on an AS IS basis. Seller warrants its products, as designed and mixed at its plants, to perform in an acceptable manner in applications for which they were designed for a period of one year. Seller does not warrant the performance of its products when the product mix is altered or modified at the request of/or by others over whom Seller has no control. These alterations or modifications include, but are not limited to, the addition of water or any other substances to the mix. **SELLER DOES NOT WARRANT FINISHING OF ANY KIND. SELLER ASSUMES NO LIABILITY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES. ANY AND ALL LIABILITY IS LIMITED TO THE COST OF THE CONCRETE.**
6. Oral statements or commitments to extend credit or to alter the terms of this Agreement are not enforceable and are not binding. In case of a conflict between this Agreement and any other Agreement between the parties, this Agreement controls. Seller conditions prevail in governing all aspects of this agreement.
7. Seller may retain an attorney or collection agency to collect amounts that are past due hereunder. Purchaser shall pay all collection costs and reasonable attorney fees incurred by Seller, whether or not suit is brought, to collect any money due hereunder, including post-judgment costs and attorney fees. Any or all aspects of this Agreement shall be governed by the laws of the state in which the credit application is delivered. Seller shall designate the venue of any suit.
8. This Agreement may be completed and returned to Seller by electronic transmission, including but not limited to facsimile or e-mail. Electronic submission of this Agreement to Seller shall constitute a signed or executed Agreement by the submitting party or parties.
9. Unless otherwise specified in the remittance advice, Seller may apply payments first to finance charges, shipping charges, attorney fees or any other applicable charges in any order before applying the remainder of any such payments toward Purchaser's principle account balance.
10. By submission of this Agreement to Seller, Purchaser represents that it is a valid business entity; that all information provided in this Agreement is true and correct, and that all purchases on this account, if approved, will be for commercial purposes and not personal, family, or household purposes.
11. **FORCE MAJEURE:** Seller shall not be liable for damages due to any delay or default in performing hereunder if such a delay or default is caused by conditions beyond Seller's control including, but not limited to, Acts of God, Government restriction, wars, insurrections and/or any other cause beyond the reasonable control of Seller. Seller shall not be liable for any failure or delay in performance under this Agreement to the extent said failures or delays are proximately caused by causes beyond Seller's reasonable control and occurring without its fault or negligence.

Any recommendation given or advice offered by any Seller representative is strictly for purposes of assisting the Purchaser in making a decision and in no way constitutes a representation or warranty.

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 IS DERIVED FROM ANY PUBLIC ASSISTANCE PROGRAM; OR BECAUSE THE APPLICANT HAS IN GOOD FAITH EXERCISED ANY RIGHT UNDER THE CONSUMER PROTECTION ACT. THE FEDERAL AGENCY THAT ADMINISTERS COMPLIANCE WITH THE LAW CONCERNING THIS CREDITOR IS THE FEDERAL TRADE COMMISSION.

# PERSONAL GUARANTEE

For value received, the undersigned guarantors (Guarantor), jointly and severally, absolutely and unconditionally guarantee payment to Seller, when due, of any amount that Seller now or hereafter extends as credit to purchaser (the Purchaser) and any subsidiary or affiliate of the Purchaser for goods, materials and merchandise ordered and/or purchased by Purchaser (the Indebtedness) from Seller. Under this Guaranty, the liability of Guarantor is unlimited and shall be open and continuous for so long as this Guaranty remains in force. Because this is a guaranty of an open account that is subject to fluctuating balances, even down to zero dollars, the liability of Guarantor is unlimited and shall be open and continuous for the entire Indebtedness for so long as this Guaranty remains in force.

This Guaranty will take effect when received by Seller without the necessity of any notice of acceptance by Seller or any notice to Guarantor or to Purchaser, and will continue in full force until all Indebtedness incurred or contracted before receipt by Seller of any notice of revocation shall have been fully and finally paid and satisfied and all other obligations of Guarantor under this Guaranty shall have been performed in full. If Guarantor elects to revoke this Guaranty, Guarantor may only do so in writing by certified mail. Written revocation of this Guaranty will apply only to advances or new Indebtedness created more than five (5) business days after actual receipt by Seller of Guarantor's written revocation. This Guaranty will continue to bind Guarantor for all Indebtedness incurred by Purchaser or committed by Seller prior to receipt of Guarantor's written notice of revocation, including any extensions, renewals, substitutions, or modifications of the Indebtedness.

To the fullest extent permitted by applicable law, Guarantor waives any right to require Seller (a) to continue to extend credit to Purchaser; (b) to proceed directly or at once against any person, including Purchaser or any other guarantor; (c) to proceed directly against or exhaust any collateral held by Seller from Purchaser, any other guarantor, or any other person; (d) to pursue any other remedy without Seller's power; (e) to not alter the terms of the Indebtedness; (f) to extend the time for payment of the Indebtedness; or (g) to comply with any applicable single-action rule.

Guarantor also waives any and all rights or defenses arising by reason of (a) any election of remedies by Seller that destroys or otherwise adversely affects Guarantor's subrogation rights or Guarantor's rights to proceed against Purchaser for reimbursement, including, without limitation, any loss of rights Guarantor may suffer by reason of any law limiting, qualifying, or discharging the Indebtedness; or (b) any statute of limitations. If payment is made by Purchaser, whether voluntarily or otherwise, or by any third party, on the Indebtedness and thereafter Seller is forced to remit the amount of that payment to Purchaser's trustee in bankruptcy or to any similar person under any federal or state bankruptcy law or law for the relief of debtors. The Indebtedness shall be considered unpaid for the purpose of enforcement of this Guaranty. Guarantor further waives and agrees not to assert or claim at any time any deductions to the amount guaranteed under this Guaranty for any claim of setoff, counterclaim, counter demand, recoupment or similar right, whether such claim, demand or right may be asserted by the Purchaser, the Guarantor, or both. Guarantor further expressly waives notice of nonpayment, protest, and notice of protest with respect to the Indebtedness covered by this Guaranty.

The Indebtedness of Purchaser to Seller, whether now existing or hereafter created, shall be prior to any claim that Guarantor may now have or hereafter acquire against Purchaser, whether or not Purchaser becomes insolvent. Guarantor expressly subordinates any claim Guarantor may have against Purchaser, upon any account whatsoever, to any claim that Seller may now or hereafter have against Purchaser.

This Guaranty and the obligations arising hereunder shall be governed by, and construed in accordance with, the laws of the state in which this Guaranty is delivered to Seller. Venue shall be designated by Seller. All disputes, controversies, or claims arising out of or in connection with this Guaranty shall be litigated in any court of competent jurisdiction within such state. Each party hereby accepts jurisdiction of such state and agrees to accept service of process as if it were personally served within such state. Guarantor shall pay upon demand all of Seller's costs and expenses incurred in connection with the enforcement of this Guaranty, including without limitation, reasonable attorney fees, whether or not litigation is commenced, and at trial and on appeal.

In all cases where there is more than one Purchaser or Guarantor, all words used in this Guaranty in the singular shall be deemed to have been used in the plural, where the context and construction so require; and where there is more than one Purchaser named in this Guaranty or when this Guaranty is executed by more than one Guarantor, the words Purchaser and Guarantor respectively shall mean all and any one or more of them. The words Guarantor, Purchaser, and Seller include the heirs, successors, assigns, and transferees of each of them.

The Guarantor consents to Seller obtaining a commercial and consumer credit report from time to time on Guarantor for the purpose of evaluating the credit worthiness of Purchaser in connection with an application for business credit.

EACH UNDERSIGNED GUARANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS GUARANTY AND AGREES TO ITS TERMS. IN ADDITION, EACH GUARANTOR UNDERSTANDS THAT THIS GUARANTY IS EFFECTIVE UPON GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY TO SELLER.

This Guaranty may be completed and returned to Seller by electronic transmission, including but not limited to facsimile or e-mail. Electronic submission of this Guaranty to Seller shall constitute a signed or executed Guaranty by the submitting party or parties.

FIRST GUARANTOR

SECOND GUARANTOR  
(OR FIRST GUARANTOR'S SPOUSE)

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Printed complete legal name \_\_\_\_\_

Printed complete legal name \_\_\_\_\_

Social Security # (Required) \_\_\_\_\_ Residential phone \_\_\_\_\_

Social Security # \_\_\_\_\_ Residential phone \_\_\_\_\_

Address \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_