

**CREDIT APPLICATION & AGREEMENT**  
**TRI-CITY HIGHWAY PRODUCTS, INC.**  
**AND**

\_\_\_\_\_  
Credit Amount \$ \_\_\_\_\_

**I. APPLICANT'S BACKGROUND:**

APPLICANT'S NAME: \_\_\_\_\_

DIVISION OF: \_\_\_\_\_

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

PHYSICAL ADDRESS: \_\_\_\_\_

FORMER ADDRESS: (IF AT PRESENT ADDRESS LESS THAN TWO YEARS):

\_\_\_\_\_

TELEPHONE NUMBER: ( ) \_\_\_\_\_ FAX NUMBER: ( ) \_\_\_\_\_

TRADE NAMES: \_\_\_\_\_

LIST ALL OTHER BUSINESS LOCATIONS: ATTACHED SEPARATE SHEET IF NECESSARY

1. \_\_\_\_\_

2. \_\_\_\_\_

**II. OWNERS/PARTNERS/OFFICERS/SHAREHOLDERS:**

NAME	TITLE	S.S.#	ADDRESS	PHONE NUMBER
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\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

HAS APPLICANT OR ANY OF THE ABOVE LISTED FILED FOR BANKRUPTCY  
WITHIN THE LAST 10 YEARS?

YES\_\_\_ NO\_\_\_ IF YES, PLEASE INDICATE THE DATE, DOCKET NUMBER, AND  
COURT WITH WHOM SAID BANKRUPTCY PETITION WAS FILED

\_\_\_\_\_

**III. CONTACTS:**

CONTROLLER: \_\_\_\_\_ CREDIT INFORMATION: \_\_\_\_\_

PURCHASING: \_\_\_\_\_ ACCOUNTS PAYABLE: \_\_\_\_\_

**IV. TYPE OF BUSINESS:**

\_\_\_ CORPORATION    DATE OF INC.: \_\_\_\_\_    IN WHAT STATE: \_\_\_\_\_    TIN# \_\_\_\_\_

\_\_\_ PARTNERSHIP    DATE STARTED: \_\_\_\_\_    LIMITED OR GENERAL: \_\_\_\_\_    S.S.# \_\_\_\_\_

\_\_\_ PROPRIETORSHIP    DATE STARTED: \_\_\_\_\_    S.S.# \_\_\_\_\_

**V. BANK REFERENCES:**

NAME: \_\_\_\_\_

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_

FAX: \_\_\_\_\_

FAX: \_\_\_\_\_

**Vi. TRADE REFERENCES:**

NAME: \_\_\_\_\_

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_

FAX: \_\_\_\_\_

FAX: \_\_\_\_\_

NAME: \_\_\_\_\_

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_

FAX: \_\_\_\_\_

FAX: \_\_\_\_\_

**VII. FINANCIAL STATEMENTS:**

FISCAL YEAR ENDS: \_\_\_\_\_

Applicant agrees to furnish to Tri-City with this application a current financial statement, and Applicant further agrees to provide to Tri-City at Tri-City's credit department in Binghamton, New York, as often as Tri-City may reasonably request, updated financial information, including but not limited to Applicant's annual financial statements.

**VIII. OTHER AGREEMENTS:**

**A.** Applicant hereby authorizes and grants to Tri-City the right to inquire of any and all trade and bank references as Tri-City deems necessary to verify the credit and financial responsibility of Applicant. All information to be held in confidence by Tri-City. Applicant authorizes any bank or banks at which it maintains accounts to furnish to Tri-City, or Tri-City's authorized agent(s), on request, from time to time, information regarding Applicant's account balances and the persons authorized to draw on the accounts.

**B.** No term or condition contained herein or in any purchase order, offer, or other communication to the Tri-City, shall be valid and binding upon the Tri-City, unless specifically set forth by the Tri-City in an individualized acknowledgement, signed by the Tri-City or unless said terms or condition is identical to the written terms and conditions of the sale of Tri-City.

**C.** Applicant acknowledges that all shipment, deliveries, and performance of work by Tri-City for Applicant shall at all times be subject to approval by Tri-City's credit department. Tri-City may at any time, in its own discretion, decline to make any shipment or delivery or perform any work except upon receipt of payment or security or upon terms and conditions satisfactory to Tri-City's credit department. Upon credit approval, Applicant agrees to be bound as "Buyer" and to pay all invoices and to perform in accordance with Tri-City's terms and conditions of sale. Additionally, Applicant agrees to pay to Tri-City a service charge equal to 1.5% per month or the legal maximum rate for which the parties may lawfully contract for all invoices not paid within Tri-City's terms.

**D.** Applicant further agrees that in the event that Tri-City institutes legal proceedings to collect any indebtedness which Applicant has failed timely to pay to Tri-City, or if Tri-City, in its sole discretion, deems it necessary to retain counsel; refer to a collection service or undergo any other cost or expense in an effort to collect a balance that has not timely been paid by Applicant, Applicant promises to reimburse Tri-City for the reasonable costs and expenses incurred by Tri-City, including reasonable attorney's fees, court costs, collection fees, filing fees, etc. Additionally, Applicant agrees that if any check accepted by Tri-City for payment of Applicant's account is returned unpaid by any bank for any reason, Applicant agrees to pay to Tri-City a fee of \$50.00 to cover the expense of recovering that payment.

**E.** Tri-City represents and warrants that all of the information contained in this application, or furnished to Tri-City in connection herewith, is true and complete. Applicant understands that credit may be extended in reliance upon the statements or financial information that may from time to time be furnished to Tri-City. Applicant represents and warrants that this is a commercial account and that no purchase hereunder shall be deemed a retail/household/consumer purchase as defined by the laws of the State of New York.

**F.** The terms and conditions contained within this credit application and agreement, and attached below, are binding upon Applicant, all signatories herein, all guarantors, and their heirs, administrators, executors, successors, personal representatives and assigns, and shall inure to the benefit of Tri-City, its heirs, successors, personal representatives and assigns.

**[SIGNATURE PAGE TO FOLLOW]**

APPLICANT SIGNATURE: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_ DATE: \_\_\_\_\_

ATTEST/WITNESS: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_ DATE: \_\_\_\_\_

RETURN COMPLETED APPLICATION TO: TRI-CITY HIGHWAY PRODUCTS, INC.  
145 Podpadic Road  
Richmondville, NY 12149

**TRI-CITY HIGHWAY PRODUCTS, INC.**  
**SELLER'S STANDARD TERMS AND CONDITIONS**

**1. CONTRACT:** Upon acceptance of and assent to this Agreement and the terms and conditions set forth therein and these printed terms and conditions, both shall become this "Contract." This Contract is expressly limited to and made conditional on Applicant's acceptance of and assent to the terms and conditions set forth herein. This Contract between Applicant and Tri-City consists of the terms written on the face of Agreement, these printed terms and conditions, the detailed specifications and drawings, if any, and if applicable, and any appendices thereto. In the event of conflict of terms written on the face of Agreement and these printed terms and conditions, the terms written on the face of Agreement shall prevail. This Contract, as described above, contains the entire agreement between Applicant and Tri-City, which agreement shall not be modified orally or by a failure of either party to enforce its rights hereunder. If any provision of this Contract is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Contract, the legality, validity and enforceability of the remaining provisions of this Contract shall not be affected thereby. Tri-City's shipment of Products under this Contract does not constitute a waiver of any term or condition hereunder nor an acceptance of any term or condition on any Applicant's Purchase Order. THIS CONTRACT CONSTITUTES A FINAL WRITTEN EXPRESSION OF ALL THE TERMS OF THIS AGREEMENT AND IS A COMPLETE AND EXCLUSIVE STATEMENT OF THOSE TERMS AND ANY TERMS AND/OR CONDITIONS ON ANY APPLICANT'S PURCHASE ORDER THAT DIFFERS FROM THESE TERMS AND CONDITIONS SHALL NOT BE BINDING UPON TRI-CITY.

**2. SHIPPING:** Tri-City shall deliver the Products, FOB at such place as specified in Tri-City's Agreement, to the freight forwarder nominated by Applicant. Title to and risk of loss for the Products shall pass to Applicant on such date and at such time as the Products are delivered to the freight forwarder nominated by Applicant. All freight and charges and insurance for shipment and other costs, expenses, fees, duties, imposts and charges of whatever kind or nature incurred after the Products have been delivered to the freight forwarder will be for Applicant's sole account and at Applicant's sole cost and expense.

**3. DEFECTIVE PRODUCTS; LIABILITY:** Applicant shall alert Tri-City to any defects in the Products not caused during shipping, within fifteen (15) days of receipt of such Products by Applicant. Applicant shall remain solely responsible for damage caused during shipment while the Products are with Applicant's carrier. Applicant shall, and hereby does, indemnify and agree to pay, defend, and hold harmless Tri-City, and each of its officers, directors, shareholders, employees, and agents from any liability, loss, damage, cost, expense (including attorneys' fees) arising from or pertaining in any manner to the sale or use of the Products, including actions concerning negligence or products liability. In the event that litigation, or other legal proceedings or arbitration, is filed against Applicant or Tri-City which alleges harm due to product defects, Applicant agrees to indemnify and agree to pay, defend, and hold harmless Tri-City against all liability associated therewith.

**4. RISK OF LOSS AND INSURANCE:** Applicant agrees to pay all transportation charges regarding goods sold pursuant to this Contract, and to bear all risk of loss until their arrival. Applicant agrees to keep the goods sold pursuant to this Contract fully insured. As to any loss or destruction of the goods from casualty not caused by the negligence of either party, Applicant agrees to bear the cost of such loss.

**5. NO WARRANTIES:** Tri-City assumes no responsibility whatsoever for compliance with any of the packaging or other specifications and requirements required by any federal or state law. Responsibility for compliance is expressly assumed entirely by Applicant. TRI-CITY MAKES NO WARRANTIES (INCLUDING ANY WARRANTIES AS TO MERCHANTABILITY OR FITNESS) EITHER EXPRESS OR IMPLIED WITH RESPECT TO THE PROPERTY UNLESS ENDORSED HEREIN IN WRITING. APPLICANT SHALL BE LIMITED TO THE WARRANTIES OF THE RESPECTIVE MANUFACTURER(S) OF THE PRODUCTS. The goods sold under this Contract are sold "AS IS" and "WITH ALL FAULTS."

**6. TERMINATION:** In addition to any other rights of termination herein (including, if appropriate, recovery of damages), this Contract may be terminated by Tri-City, at any time and with written notice of termination effective on the date that such notice was received, upon the occurrence of any of the following events:

(a) Any breach of Applicant's obligations unrelated to payment under this Contract;

(b) Applicant's failure to pay any sum due hereunder within seven (7) days after the amount is due;

(c) Upon the insolvency or bankruptcy of Applicant, the inability of Applicant to pay its debts as they fall due or upon the appointment of a trustee or receiver or the equivalent for Applicant, the making of any assignment for benefit of creditors, the admission in writing of Applicant's inability to pay debts when they come due, or upon the institution of proceedings under the laws of the

Territory, respectively, relating to dissolution, liquidation, winding up, bankruptcy, insolvency or the relief of creditors, if such proceedings are not terminated or discharged within thirty (30) days;

(d) Applicant's engaging in any practice with respect to the Products, which is determined to be illegal or unfair trade practice in violation of any applicable laws of any nation, state, or local law or, which is an illegal or unfair trade practice in violation of any such laws;

(e) Any lien, levy against, or foreclosure or seizure of a material part of Applicant's assets or any of the Products which have been shipped to Applicant by any creditor, lien holder, lessor, or government authority.

**7. LIMITATION OF LIABILITY:** TRI-CITY SHALL NOT IN ANY EVENT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND RESULTING FROM ANY USE OR FAILURE OF THE PRODUCTS, EVEN IF TRI-CITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE INCLUDING, BUT NOT LIMITED TO, LIABILITY FOR LOSS OF USE, LOSS OF WORK IN PROGRESS, DOWN TIME, LOSS OF REVENUE OR PROFITS, FAILURE TO REALIZE ANTICIPATED SAVINGS, LOSS OF BUYER PROPERTY OR ANY LIABILITY OF APPLICANT TO A THIRD PARTY, OR FOR ANY LABOR OR ANY OTHER EXPENSE, DAMAGE OR LOSS OCCASIONED BY SUCH PRODUCT INCLUDING PERSONAL INJURY OR PROPERTY DAMAGE. Applicant assumes all risk and liability for loss, damage or injury to persons or property of Applicant or others arising out of the use or possession of any goods sold hereunder. IT IS UNDERSTOOD AND AGREED THAT TRI-CITY'S LIABILITY WHETHER IN CONTRACT, IN TORT, UNDER ANY WARRANTY, IN NEGLIGENCE OR OTHERWISE SHALL NOT EXCEED THE RETURN OF THE AMOUNT OF THE PURCHASE PRICE PAID BY APPLICANT. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF THE TRANSACTIONS OF THIS CONTRACT MAY BE BROUGHT BY THE APPLICANT MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED. The remedies provided to Applicant in this Contract shall constitute the exclusive remedies available to Applicant and all other remedies that might otherwise be available to Applicant under the law of any jurisdiction are hereby waived by Applicant. If Applicant's limited remedies provided in this Contract fail of their essential purpose, the parties agree that, notwithstanding that failure, the exclusion of Applicant's consequential damages shall remain in full force and effect as though Applicant's remedies had not failed of their essential purpose. Nothing contained herein shall prohibit Tri-City, however, from recovering incidental, indirect, or consequential damages from Applicant, in addition to other damages and equitable relief to which Tri-City may be entitled under applicable law, and, without limitation.

**8. ATTORNEYS' FEES:** Should any proceeding, arbitration, or litigation be commenced by Tri-City to enforce the terms of this Contract, Tri-City shall be entitled, in addition to such other relief as may be granted, to its attorneys' fees and litigation costs, including but not limited to expert witness fees.

**9. GOVERNING LAW:** This Contract and the rights and obligation of the parties hereunder shall in all respects be governed by and construed in accordance with the internal laws of the State of New York, without regard to principles of conflicts of law, and excluding the Convention on Contracts for the International Sale of Goods, including all matters of construction, validity and performance, regardless of the location of the Products or the State of incorporation or principal place of business of the Applicant. The parties expressly agree that the transaction described in this Contract bears a reasonable relationship to the State of New York, that this Contract should be governed by the laws of the State of New York, and that this choice of law provision is a negotiated item that forms part of the bargained-for consideration to the parties. Applicant (i) consents to the exclusive jurisdiction and venue of the state courts situated in Albany County, New York, or, if they can acquire jurisdiction, the federal courts, situated in Albany County, New York, (ii) waives any objection to improper venue and forum non conveniens, and (iii) consents to service of process by certified mail, postage prepaid, to Applicant at its address as set forth herein, which service shall be deemed complete within ten (10) days after the date of mailing thereof. If any provision of this Contract shall contravene or be invalid under applicable law or regulation, such contravention or invalidity shall not affect the entire Contract, the provisions held to be invalid to be deemed deleted or modified and this Contract interpreted and construed as though such invalid provision or provisions were not part hereof or conformed thereto.

**10. COUNTERPARTS:** This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The Parties agree that facsimile or electronic signatures of this Contract shall be deemed a valid and binding execution of this Contract.