



PENROD

CREDIT APPLICATION AND AGREEMENT

Date: _____

Complete Legal Name of Company: _____

Division or Trade Name: _____

Mailing Address : _____ City: _____ State: _____ Zip: _____

Street Address : _____ City: _____ State: _____ Zip: _____

Phone Number: _____ Fax Number : _____

Owner's Name: _____

Legal Status: Proprietorship Partnership Corporation

Resale Certificate # (Copy required as well): _____ Registered Agent: _____

AP Contact Name: _____ AP Phone: _____ AP Email: _____

Invoice Delivery: Email (Preferred) _____ Fax Mail

TRADE REFERENCES

1. Name: _____ City/State: _____ Phone: _____

2. Name: _____ City/State: _____ Phone: _____

3. Name: _____ City/State: _____ Phone: _____

Name of Bank: _____

Contact: _____ Account # _____

Phone: _____

Estimated Monthly Purchase \$ _____

The above information is given for the purpose of extending credit, and is represented and warranted to be true, complete and accurate. The Penrod Company is hereby authorized to investigate the above listed references, each of which is authorized by the undersigned to provide all information requested by The Penrod Company. By signing below, I certify that I have authority to bind the company to this agreement, that I have received, read, and hereby agree that The Penrod Company's Terms of Sale (on the attached page of this credit application) apply to the relationship between The Penrod Company and our company, including, specifically, all our past and future purchases from The Penrod Company.

FIRM'S NAME: _____

BY: _____ TITLE: _____



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TERMS OF SALE

The contract for the sale of the products and services (collectively, the “Products”) described on the front of this document by The Penrod Company (“Seller”) to the buyer identified there (“Buyer”) is expressly limited to the terms set forth, or expressly incorporated by reference, on this document (“Terms”). The Terms will be deemed to be accepted and agreed to by Buyer upon Buyer’s acceptance of delivery of any of the Products, or any other action by Buyer acknowledging this document.

1. Seller may cancel or delay shipment of any accepted order if Buyer’s credit becomes impaired or unsatisfactory to Seller, if Buyer fails to meet any financial obligation to Seller, or if any other event or circumstance occurs or exists which causes Seller to believe that cancellation or delay of the order is advisable. Seller is not responsible for any delay in shipment or delivery of Products occurring after Seller delivers the Products to a common carrier for shipment, or due to any cause beyond Seller’s control. All sales by Seller are final, and no Products may be returned without prior written authorization from Seller.

2. Unless otherwise specified, all prices are F.O.B. loaded truck, port from which the Products are sent, with all freight, insurance, taxes, and other transaction costs paid by Buyer. All risk of loss or damage will be borne by Buyer after delivery of any Products to the carrier at the F.O.B. point. Payment terms are net 10 days from date of invoice, unless otherwise specified in writing by Seller. A finance charge on balances remaining unpaid as of the due date will be assessed from date of invoice at the lesser of 1-1/2% per month or the highest rate permitted by law. Payment, price and credit terms are subject to change without notice.

3. Seller warrants that it will maintain consistent standards of quality and workmanship. There are no other warranties or representations which have been made by Seller or relied upon by Buyer. **THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED, IMPLIED OR STATUTORY, AND IS STRICTLY LIMITED TO ITS TERMS. SELLER MAKES NO WARRANTY OF MERCHANTABILITY OR OF SUITABILITY OR FITNESS OF ITS PRODUCTS FOR ANY PARTICULAR PURPOSE, OR AGAINST INFRINGEMENT OF PATENT OR OTHER RIGHTS OF THIRD PARTIES BY ANY OF ITS PRODUCTS. SELLER DISCLAIMS ALL WARRANTIES, INCLUDING THE WARRANTY OF TITLE, FOR ANY PRODUCT SUPPLIED TO SELLER BY BUYER.**

4. In no event will Seller be liable for any claim or demand against it by any party other than Buyer or for any special, indirect, economic, incidental, or consequential damages, regardless of whether Seller knows or is advised of the possibility of such damages. The sole and exclusive remedy of Buyer shall be the repair or replacement of Product or, at Seller’s sole option, refund of the purchase price of any Product, and liability of Seller with respect to any contract or sale or anything done in connection herewith, whether in contract, in tort, under any warranty, or otherwise, shall not exceed the price of the Product on which such liability is based. This exclusive remedy shall not be deemed to have failed of its essential purpose so long as Seller is willing and able to repair or replace defective Product or refunds the purchase price of such Product.

5. All claims of Buyer arising hereunder shall be forever barred unless Buyer gives notice thereof within 30 days from the event or omission giving rise to such claim. Failure by Buyer to give notice of such claim in accordance with this paragraph shall constitute an absolute bar to such claim. Buyer shall have a period of one year from the date of its notice in which to file suit and failure to do so shall constitute an absolute bar to any claim of Buyer.



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6. This document (together with any other written agreement between the parties that incorporates the Terms by reference) constitutes the entire integrated agreement between Seller and Buyer and supersedes all prior oral or written agreements and understandings. Seller objects to and rejects all additional or different terms in any purchase order or other writing sent by Buyer.

7. The parties agree that their relations have substantial connection with the Commonwealth of Virginia and accordingly agree that the substantive law of the Commonwealth of Virginia shall apply to any disputes. The choice of law principles of the Commonwealth of Virginia shall not be utilized to cause the law of another jurisdiction to apply. The parties further agree that the appropriate court in the City of Virginia Beach, Virginia, or the United States District Court for the Eastern District of Virginia, Norfolk Division, shall be the exclusive forums in which any action shall be brought for any matter not subject to the dispute resolution procedures set forth in paragraph 9. Provided, however, at Seller's sole option, it may elect to initiate proceedings against Buyer in any forum in which Buyer maintains an office, does business, or owns any property. Buyer expressly consents to jurisdiction of those courts and agrees to the appropriateness of the venue of the courts designated herein.

8. Buyer agrees to pay, indemnify and hold Seller harmless against all claims, suits, expenses, losses, liability and costs incurred by Seller (including costs of investigation, negotiation, collection agencies, and attorneys' fees), arising out of or resulting from (i) any acts or omissions of Buyer or its agents or employees resulting in any suit or claim against Seller; or (ii) any disputes, collection actions, or litigation arising out of dealings between Seller and Buyer. Should Seller be entitled to indemnification or successfully pursue relief against Buyer (whether in court or in alternative proceedings), including specifically its right to collect any sums due, it shall also be awarded its full costs of investigation, negotiation, dispute resolution, litigation, and settlement (including actual court costs, collection agency fees, and attorneys' fees and expenses consisting of, at Seller's sole election, either 25% of the amount owed by Buyer or Seller's reasonable attorneys' fees and expenses; Buyer understands that the amount of attorney's fees is intended to take into account and anticipate post-judgment collection efforts).

9. The parties will attempt to settle all disputes, controversies or claims – whether based on contract, tort, statute, fraud, misrepresentation or any other legal theory – through good faith negotiations. If those attempts fail to resolve the dispute within 45 days of the date of initial demand for negotiations, then the parties shall try in good faith to settle the dispute by mediation conducted in Norfolk, Virginia, under the CPR Institute for Dispute Resolution Model Mediation Procedure for Business Disputes. Any remaining disputes not settled by mediation shall be arbitrated in Norfolk, Virginia, under the then current Commercial Arbitration Rules of the American Arbitration Association. The arbitrator shall not have the power to award damages in excess of actual damages, such as punitive damages and damages excluded under paragraph 4 of the Terms. This provision shall apply to all claims of Buyer, regardless of when those claims arose or accrued. Provided, however, at Seller's sole election, it may pursue sums due and owing to Seller from Buyer in court, foregoing the procedures otherwise mandated hereunder.