



MUSCLE WALL HOLDINGS, LLC (CREDITOR)
 675 North 600 West Suite 1
 Logan, Utah 84321
 Phone: 1.800.801.8739 Fax: 435.514.6707

Confidential Account Application and Terms & Conditions

Please complete the entire application to ensure timely processing.

Salesperson: _____		Branch/Location: _____	
Business Unit: _____		Account Number: _____	
TO BE COMPLETED BY CUSTOMER:		Account Applying For:	
Legal Company Name ("Customer"):		Name of Parent Company:	
Billing/Mailing Address:		City/State/Zip:	
Phone: _____	Fax: _____	Email: _____	
Type of Business:		Date Business Started:	
Business Operates as:	Estimated Monthly Purchases:	Purchase Order No. Required?	
List Name(s) of Owner(s) or Corporate Officers, Individual Titles:		EIN or Social Security Number(s):	
Tax Exempt?		If Tax Exempt, please attach a copy of your certificate to this application.	
A/P Contact & Telephone Number:			
BANK AND TRADE REFERENCES (Please attach an authorized current financial statement with the application.):			
By: _____		Printed Name: _____	
Title: _____		Date: _____	
Bank Name:		Account Number:	
Phone:		Fax:	
Trade Reference:			
Address:		City/State/Zip:	
Phone:		Fax:	
Trade Reference:			
Address:		City/State/Zip:	
Phone:		Fax:	
Trade Reference:			
Address:		City/State/Zip:	
Phone:		Fax:	
CUSTOMER HEREBY (i) VERIFIES THAT THE ABOVE CONFIDENTIAL ACCOUNT APPLICATION IS ACCURATE AND COMPLETE, AND (ii) ACKNOWLEDGES AND AGGRES THAT ALL PRODUCTS PURCHASED BY CREDITOR AND ITS AFFILIATES SHALL BE GOVERNED BY THE TERMS AND CONDITIONS, ATTACHED AS EXHIBIT A AND INCORPORATED HEREIN BY THIS REFERENCE.			
By: _____		Printed Name: _____	
Title: _____		Date: _____	
PERSONAL GUARANTY:			
<p>If required by Creditor, PERSONAL GUARANTY: In consideration of credit being extended to Customer, the undersigned ("Guarantor") joint and severally, unconditionally and irrevocably, personally guarantees to Creditor and its successors and assigns the full and punctual payment of any and all debts, obligations and liabilities of Customer to Creditor of any kind and nature, whether already existing or hereafter arising, and all credit, or other financial accommodations extended by Creditor, whether due or not due, and whether the obligations may be or hereafter become otherwise invalid or unenforceable (collectively, "Indebtedness"). No notice of the indebtedness or extension of credit already or hereafter contracted by or extended to the Customer need be given to the Guarantor. Guarantor hereby expressly waives presentation, demands for performance, and notices of protest and dishonor, and notices of existence, creation, or incurring of new or additional Indebtedness. Guarantor waives all rights to require Creditor to (a) proceed against Customer; (b) proceed against and exhaust any security held from Customer, or (c) pursue any other remedy in Creditor's power whatsoever. Guarantor waives any defense based on or arising out of any defense of Creditor/Customer other than payment in full of the Indebtedness, Guarantor agrees to reimburse Creditor for all amounts incurred by Creditor in the collection and enforcement of this Guaranty. Guarantor shall remain liable hereon regardless of whether Customer or any other guarantor be found liable for any reason. Guarantor will pay Creditor the amount of the Indebtedness due and unpaid by Customer within five (5) days from any request by Creditor to pay such amount. This Guaranty shall be governed by the laws of the State of Texas. Guarantor acknowledges that in any enforcement action, venue will lie exclusively in Harris County, Texas. This Guaranty shall be binding upon the heirs, executors, assigns, and legal representatives of Guarantor.</p>			
AGREED TO AND ACCEPTED BY:			
GUARANTOR: _____		Printed Name: _____	
Social Security # _____		Address: _____	

Muscle Wall Holdings, LLC (“Manufacturer”)

TERMS AND CONDITIONS

Terms of Agreement. Notwithstanding any contrary provision in Purchaser’s purchase order, quotations, or correspondence, these terms and conditions shall govern Manufacturer’s acceptance of any order by Purchaser to purchase Product.

“**Product(s)**” shall mean the Muscle Wall containment products.

“**Purchaser**” shall mean the customer identified on the attached proposal.

Taxes. Any tax or other charge imposed by law on the sale or production of Products shall be paid by Purchaser, unless the law specifically provides that such payment must be made by Manufacturer, in which case Purchaser will reimburse Manufacturer for such payment as part of the purchase price.

Terms of payment. All payment for the Products sold by Representative shall be paid directly by the Purchaser to Manufacturer. Manufacturer shall invoice Purchaser. Terms of payment shall be net thirty (30) days from the date of invoice or as otherwise defined on the invoice or as described in the order acknowledgment.

Delivery, Title, and Risk of Loss. Manufacturer shall use its best efforts to deliver the Product by the date specified on the face of the purchase order. Purchaser is liable for any and all delivery costs and expenses. Title shall transfer upon delivery of the Product or receipt of full payment for the Product by Manufacturer, whichever occurs first. Risk of loss shall transfer upon delivery of the Product.

Conditions. In addition to any legal standards excusing performance due to impracticability, Manufacturer’s duty to perform is expressly conditioned upon Manufacturer’s ability to obtain the necessary raw materials to fulfill its obligations.

Warranties. Manufacturer warrants all Products to be free from defects in material and workmanship for a period of one (1) year from the order date, when all such Products are operated in accordance with these terms and conditions and Manufacturer’s standard tolerances for variations. Manufacturer further provides a ten (10) year ultra violet (UV) warranty, beginning from the date of the Product’s manufacture, on all low density polyethylene Products. This warranty provides that the Product will withstand the damage and breakdown caused by exposure to sunlight, excluding color fading. The ten year ultra violet (UV) warranty shall be prorated with full replacement during the first five (5) years and then a seventeen percent (17%) reduction per year for years 6 through 10.

In the event that Purchaser discovers a defect in the Products within the warranty period specified above, Purchaser shall notify Manufacturer of such defect. As Purchaser’s sole and exclusive remedy, Manufacturer shall, at its sole option and expense, repair or replace the defective part or Product, or repay to purchaser the full price paid by Purchaser for such defective part or Product. Manufacturer agrees to pay freight charges for repairs or replacements. Any items damaged during transportation must be noted on the written receipt as damaged goods and a claim filed by purchaser with the freight company; failure to do so could jeopardize any reimbursements from the freight company.

Manufacturer may require claims to be verified by pictures and approved by Manufacturer before shipping Product back to the manufacturing facility located at 1755 N 2000 W, Brigham City, UT, 84302.

The advice of Manufacturer’s technical staff is available to the trade, but Manufacturer, not controlling or supervising the subsequent installation of the Product or its use after sale, does not warrant or guarantee such advice.

NOTWITHSTANDING ANY CONTRARY PROVISION IN THE ORDER AND THESE TERMS AND CONDITIONS, MANUFACTURER SHALL NOT BE LIABLE FOR ANY DAMAGES, CLAIMS, LOSSES OR EXPENSES OF PURCHASER RESULTING FROM (1) ANY DEFECTS IN THE PRODUCTS AFTER THE EXPIRATION OF THE ABOVE WARRANTY PERIOD(S), (2) RECOVERY UNDER GENERAL TORT LAW, (3) RECOVERY UNDER A STRICT LIABILITY CAUSE OF ACTION, OR (4) DELAYS, OR LOSS OF USE. FURTHER, MANUFACTURER SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE, INCLUDING LOST PROFITS, ARISING FROM THE ORDER, THESE TERMS AND CONDITIONS OR THE PRODUCT.

MANUFACTURER WILL NOT BE RESPONSIBLE FOR AND DOES NOT WARRANT THE FOLLOWING: (I) DAMAGE TO PRODUCT WHICH HAS BEEN IN ANY WAY TAMPERED WITH OR ALTERED BY ANYONE OTHER THAN AN AUTHORIZED REPRESENTATIVE OF MANUFACTURER, (II) FAILURES DUE TO LACK OF COMPLIANCE WITH MANUFACTURER’S PRINTED INSTRUCTIONS, (III) PRODUCTS REQUIRING REPLACEMENT DUE TO NORMAL WEAR AND TEAR, (IV) FAILURE OF ANY PRODUCT TO MEET THE REQUIREMENTS OF ANY SAFETY CODE OF ANY STATE, MUNICIPALITY, OR OTHER JURISDICTION, (V) FAILURES OF ANY PRODUCT

SUBJECT TO MISUSE, NEGLIGENCE, OR ACCIDENT, AND (VI) FAILURES OF PRODUCT OPERATED UNDER CONDITIONS MORE SEVERE THAN, OR OTHERWISE EXCEEDING, THOSE SET FORTH IN THE SPECIFICATIONS RELATED TO THIS ORDER.

EXCEPT FOR THE WARRANTIES EXPRESSLY STATED ABOVE, THERE ARE NO OTHER WARRANTIES AND NONE SHALL BE IMPLIED BY LAW INCLUDING THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THIS SECTION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS ORDER.

Cancellation. Purchaser may cancel an order for any reason once the order has been placed and prior to the Product being shipped provided that Purchaser pays a restocking fee of fifty percent (50%) of the price of the Product within five (5) days of canceling the order.

Patents. Manufacturer certifies it owns the following patent(s): USPTO D631977, US 8,313,265 B2, USD 6634443, and USPTO D631977. Purchaser agrees to indemnify and hold Manufacturer harmless against any claims against Manufacturer for any patent, copyright, trademark, infringement or related issue arising as a result Purchaser's misuse of the Product or caused by Purchaser or its representatives, employees or agents acts or omissions.

Manufacturer's right of possession. Manufacturer shall have the right, at law or in equity, in addition to all others it may possess, at any time, for credit reasons or because of purchaser's default or defaults, to withhold shipments, in whole or in part, and to recall Product in transit, retake same, and repossess all Product which may be stored with Manufacturer for purchaser's account, without the necessity of making any court proceedings, and purchaser consents that all the merchandise so recalled, retaken, or repossessed shall become Manufacturer's absolute property, provided that purchaser is given full credit therefor. The foregoing shall not be construed as limiting, in any manner, any of the rights or remedies available to Manufacturer because of any default of purchaser under the applicable Uniform Commercial Code. If Manufacturer exercises this option upon receiving faulty information or otherwise negligently, it agrees to compensate purchaser for any actual losses it incurs as a result of taking this action.

Supplementary information. Terms, such as, product description, quantities, pricing, delivery instructions, and technical data referred to in the purchase order shall be deemed to be incorporated herein by reference as if fully set forth herein.

Bankruptcy. In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against either party, the inability of a bankrupt

party to meet its debts as they become due, or in the event of the appointment, with or without consent, of an assignee for the benefit of creditors or of a receiver, then the non-bankrupt party shall be entitled, at its sole option, to cancel any unfilled part of this purchase order without any liability whatsoever.

Governing law. The purchase order and these terms and conditions shall be governed by the laws of the State of Texas without regard to conflict of law principles, and shall be binding on the parties and their successors and assigns.

Conflicts. These terms and conditions shall prevail over any inconsistent terms or conditions contained in or referred to in Purchaser's purchase order, quotations or correspondence or implied by trade, custom or practice, or course of dealing, and any addition to or variation of these terms and conditions or any exclusion or attempted exclusion of these terms and conditions by Purchaser shall be null and void and of no effect on the parties. No amendment to these terms and conditions shall be effective unless (i) evidenced in writing; (ii) the provision to be amended specifically referenced therein, and (iii) signed by an authorized representative of each party.

Warning: Failure to heed instructions and warnings contained herein could result in serious injury or damage to property, and will void any warranty offered by Manufacturer.

WARNINGS

Products are not intended to be used as traffic barricades.

Dropping any Product can cause damage to surrounding properties and equipment. Heavy equipment and tools near the walls should be used with extreme caution. Never use a Product that is damaged.

The risk of failure greatly increases when flood waters exceed the height of the Product and they should not be used in such a fashion.

The water-filled Product is designed and intended to be used for temporary water containment and rising flood waters, as well as soil retention and detention.

The effectiveness of Products diminishes when used on uneven surfaces or on saturated soils. The supplemental use of stakes, braces and sandbags may be necessary.

The Products are designed to channel water, NOT to stop rushing water, such as may occur with a dam or levee break. Too much water and or pressure can lead to failure.

Do not use the Products near substances or conditions that are deleterious to low density polyethylene such as fire, jagged rocks or sharp objects.