

BLUE DIAMOND MATERIALS

APPLICATION FOR CREDIT
CREDIT AGREEMENT
GENERAL TERMS & CONDITIONS
OF SALE

Blue Diamond Materials
135 S. State College Blvd Suite 400
Brea, CA 92821
Credit Dept.
Phone 714-578-9654
Fax 714-449-2831

CREDIT APPLICATION REQUIREMENTS

Three references, from the same industry (rock & sand, ready mix, or asphalt), opened a minimum of one year.

Credit Application cannot be modified, i.e., nothing can be added to, deleted from, or crossed out.

Personal guarantee must be signed by principal(s).

Our Credit Application form must be used and signed (do not substitute form).

Bank information and account number(s) must be listed.

If you have any questions, please contact Ruby Davidson, our Credit Manager at 714-578-9654.

Please return this application to

Fax 714-449-2831

Email rdavidson@sully-miller.com

Mail:

Blue Diamond Materials

Credit Dept.

135 S. State College Blvd. Suite 400

Brea, Ca 92821

COMPLETE AND FAX TO:
BLUE DIAMOND MATERIALS
CREDIT DEPT. •

Fax (714) 449-2831

BLUE DIAMOND MATERIALS

A Division of Sully-Miller Contracting Company

CREDIT APPLICATION

DATE: _____

APPLICANT NAME _____

PHYSICAL LOCATION _____ CITY _____ ZIP _____
If different than Mailing Address

MAILING ADDRESS _____ CITY _____ ZIP _____

TELEPHONE NUMBER () _____ FAX NUMBER () _____
Area Code Area Code

CONTRACTOR'S LICENSE NUMBER _____ TYPE OF LICENSE _____

- CORPORATION PARTNERSHIP LLC SOLE OWNERSHIP

OWNERS, OFFICERS OR PRINCIPALS

NAME	TITLE	SOC. SEC/TAX I.D. #
HOME ADDRESS	HOME PHONE #	
CITY	STATE	ZIP
NAME	TITLE	SOC. SEC/TAX I.D. #
HOME ADDRESS	HOME PHONE #	
CITY	STATE	ZIP
NAME	TITLE	SOC. SEC/TAX I.D. #
HOME ADDRESS	HOME PHONE #	
CITY	STATE	ZIP

NAME FOUR FIRMS WITH WHOM YOU HAVE ESTABLISHED CREDIT

NAME	NAME
ADDRESS	ADDRESS
CITY	CITY
ZIP	ZIP
PHONE NUMBER ()	PHONE NUMBER ()
NAME	NAME
ADDRESS	ADDRESS
CITY	CITY
ZIP	ZIP
PHONE NUMBER ()	PHONE NUMBER ()

BANK REFERENCES

BANK	TYPES OF ACCOUNT(S): <input type="checkbox"/> CHECKING <input type="checkbox"/> SAVINGS <input type="checkbox"/> LOAN	
BRANCH	ACCOUNT NUMBER	
ADDRESS	CITY	ZIP
PHONE NUMBER ()	MANAGER OR RESPONSIBLE PARTY	

HOW LONG IN BUSINESS? _____ TYPE OF BUSINESS _____

BONDING COMPANY _____

ADDRESS: _____

CITY/STATE: _____ STATE: _____

HAVE YOU EVER FILED BANKRUPTCY? YES NO

IF YES, WHEN AND WHERE: _____

STATUS OF BANKRUPTCY: _____

* IF APPLICANT IS A LICENSED CONTRACTOR, THE COMPANY NAME MUST BE THE SAME AS IT APPEARS ON THE CONTRACTOR'S LICENSE.
IF MATERIAL FOR RESALE, PLEASE PROVIDE A CURRENT RESALE CERTIFICATE OR BE SUBJECT TO TAXATION.

TERMS OF SALE: Payment due on 10th of month for all purchases made in the previous month

Incomplete or Unsigned Application will not be approved

BLUE DIAMOND MATERIALS
CREDIT AGREEMENT

This Application for Credit and Credit Agreement, including the General Terms and Conditions of Sale which follow it, collectively the "Agreement", constitute the terms and conditions of credit to the named Applicant (Buyer) and governs all sales of goods between **BLUE DIAMOND MATERIALS**, a division of Sully-Miller Contracting Company, or any of its subsidiaries or divisions, (collectively the "Seller") and Applicant ("Buyer"). This Agreement also sets forth the terms and conditions of the guaranty between Guarantor(s) and Seller. Buyer and Guarantor(s) hereby covenant and agree with Seller as follows:

Buyer agrees to pay Seller for all goods Seller provides to Buyer. All bills are due and payable on the 10th day of the month following month of delivery. A 1¹/₂% per month, 18% per annum or the maximum permitted by law, interest will be added to all amounts that remain unpaid as of the date due. In the event of default in payment, or any default under this agreement, Seller may, at its sole and absolute discretion, refuse to release any further goods until the account or accounts are brought current or the default cured, regardless of whether goods had been previously ordered under any purchase order or contract. All orders and deliveries are subject to Seller's approval at the time of shipment. All sales may be conditioned, at the discretion of the Seller, on Buyer continuing to meet credit terms and policies of Seller. Buyer understands that no representative or employee of Seller, other than Seller's corporate officers or credit manager, has any authority to enter any agreement with Buyer that is different or contrary to the terms herein. No inaction by Seller shall be deemed a waiver of Buyer's obligation to perform any covenant or agreement contained herein. Continuation of the account is discretionary with Seller which discretion may be entirely arbitrary in its exercise. Buyer agrees and acknowledges that Buyer's obligations to Seller to pay sums due are not affected or changed by any term or pre-condition to payment including, but not limited to, "pay when paid clauses" Buyer may be subject to in its dealings with third parties.

Buyer agrees to furnish Seller, on request, with copies of all "Bonds," "Contracts," "Notices of Commencements," purchase order(s) job addresses and other information Seller deems necessary to protect Seller's interests. Buyer agrees and consents that Seller may send out any necessary notices required to secure available lien and/or bond rights and provide and disclose invoices and charges to Buyer's account to obtain payment from any third party. Buyer acknowledges that Seller may elect to file materialman's liens to enforce collection rights.

Buyer and Guarantor(s) certify and warrant to Seller that the information provided in the Agreement is true and correct and authorizes Seller from time to time to (1) verify information supplied by the Buyer and Guarantor(s), (2) obtain credit reports and conduct credit investigation, including obtaining bank and financial institution credit information, (3) reinvestigate credit at its sole discretion and (4) to act as a credit reference for Buyer and Guarantor(s) by responding to inquires from other creditors or potential creditors regarding transactions or experiences with Buyer and Guarantor(s).

In consideration of the credit to be extended to Buyer, each of the Guarantor(s), jointly and severally, unconditionally guarantee to Seller the performance of all terms and conditions of the Agreement, including all obligations and the payment of all indebtedness now due or which may become due by Buyer and shall pay Seller on demand any sum for which should Buyer fail to pay same. This is a continuing, unconditional indemnity and guaranty by Guarantor(s) for the benefit of Seller and its assigns. This guaranty is reasonably expected to benefit the Guarantor(s) either directly or indirectly. In the event Buyer fails to pay Seller, Buyer and Guarantor(s) promise to pay legal fees, costs and expenses of Seller to collect all or any portion of the amounts due including, but not limited to, court costs, attorney's fees incurred whether for consultation, collection efforts that do or do not include litigation, or all of the foregoing. Seller shall be further entitled to recover its attorney's fees and court costs in connection with the foreclosing of any mechanic's lien or stop notice by Seller. This agreement is entered into and to be performed by Buyer and Guarantor(s) in the County of Orange, State of California. All payments by Buyer and Guarantor(s) are to be delivered to Sellers address. Buyer and Guarantor(s) agree to give written notice of any change in the principals, name or legal identity of Buyer 15 days prior to such change. If at any time in the opinion of the Seller, financial responsibility of the Buyer becomes impaired or unsatisfactory, Seller reserves the right to require payment in advance or other security for any future sales and payment for all goods sold to date becomes immediately due and payable. Any attorney's fees, costs and other expenses which may be incurred in the collection of monies due under this contract, including the enforcement of any lien, stop notice or bond right, will be paid for by the Buyer, including attorney's fees. Neither Buyer nor Guarantor(s) shall be entitled to set-off or deduction against sums due Seller.

Seller may at any time change the credit terms of this Agreement effective upon postal mailing, electronic mailing or faxing a notice of the change to Buyer. Guarantor(s) waive any right to notice of any modification, supplement, extension, accord and satisfaction, amendment, termination or alteration of this Agreement, and further waives any right to notice or demand upon default by Buyer, including presentation for payment, and further waives any notice to any renewal, compromise or change in the time for payment by Buyer or the terms of any obligation by Buyer to Seller, and that Seller may do any of the foregoing upon any such terms and at such times as Seller, in its discretion, deems advisable, without impairing, affecting, reducing or releasing any of the terms of the guaranty. Buyer and Guarantor(s) waive any claims against Seller for any decision made by Seller.

This Agreement may be executed by any party in counterparts, irrespective of the date of its execution and delivery, and that a photocopy, or fax signature shall be effective, valid and enforceable as if it was an original signature.

Note: Both Buyer and Guarantor(s) give their unconditional consent to have both their commercial and their non-business, personal consumer credit report and history search obtained and used by Seller in connection with this application for credit.

Buyer (Applicant): _____

Signature of Authorized Agent of Applicant: _____ Date _____
Must be owner, officer, or partner

Print name of person signing: _____ Title _____

Guarantor signature: _____ Date _____
Individual signature - No Title

Print name of person signing guaranty: _____

Guarantor signature: _____ Date _____
Individual signature - No Title

Print name of person signing guaranty: _____

GENERAL TERMS AND CONDITIONS OF SALE

The following terms and conditions shall govern all sales of goods between Seller and Buyer. The terms "goods", "materials" and "products" are used interchangeably.

ACCEPTANCE OF TERMS AND CONDITIONS: All transactions between Buyer and Seller are governed by the following Terms and Conditions of Sale notwithstanding any provisions submitted by Buyer. Acceptance of orders from Buyer is expressly conditioned on Buyer's assent to Seller's Terms and Conditions. Seller specifically rejects any different or additional terms and conditions and neither Seller's performance nor receipt of payment shall constitute any acceptance of them.

PRICE CHANGES: Price, delivery terms, terms of payment, and minimum shipment are subject to change without notice.

BINDER AND MIX - Seller does not, under any circumstances, guarantee the result of any binder, additives, admixture, mix or compaction.

ADDED INGREDIENTS - If at any time water, color or other material is added to the asphalt or products by the Buyer or his agent or at his request, under no circumstances shall Seller be responsible or liable for the temperature, compaction, or strength of the product so treated.

INSPECTION AND TESTING OF MATERIALS - This Agreement, including any Proposal or Purchase Order, does not include any engineering costs for services which may be requested by the Buyer, except such services as may be rendered by our own engineer.

CANCELLATION: At any time prior to shipment Seller may alter or suspend credit, refuse shipment, or cancel unfilled orders whenever in Seller's opinion the financial condition of the Buyer, or the status of Buyer's account, warrants it, or if the Buyer delays delivery. Buyer may cancel his order at any time upon payment in full of all expenses incurred by Seller.

SALES OR USE TAX: Buyer shall pay any applicable national, state or local sales or use taxes upon, or measured by, the production, sale, transportation, delivery or use of the goods sold.

DELIVERY AND INSPECTION: At time of delivery Buyer assumes all risk of damage and loss resulting from any cause whatsoever. Buyer agrees to inspect and evaluate all goods upon delivery. Buyer is solely responsible for, and shall determine suitability of, products delivered for their use. Seller must be notified in writing within ten (10) days after receipt of any shipment of Seller's products in case any such goods are claimed to be defective or short delivered in any respect. Failure to notify Seller shall constitute a waiver of all claims with respect to the goods and the order placed by Buyer with Seller. In any event, use of the goods shall be deemed to be a complete and unqualified acceptance of them by the Buyer.

DELIVERY: Buyer is to give Seller shipping instructions within a reasonable time before shipments are to be made. Materials are sold for any specific job upon representation that they are purchased for use in the work represented by Buyer. If the materials are used for any other work, or resold for use in any work, or disposed of for any other purpose, Seller shall incur no liability and Seller may terminate this agreement. Any claims for delays encountered on the job by Buyer that may be caused by the Seller's delay in deliveries will not be allowed, as all deliveries by the Seller are made to the best of its ability and dispatch. Seller agrees to make truck delivery as requested by Buyer, and then only to point accessible to Seller's truck. If materials are required to be dumped on street Buyer must first secure permit to do so, in the event Buyer orders delivery beyond curb line, Seller will not assume liability for damage to sidewalks, driveways or other property, and Buyer hereby agrees to indemnify and hold Seller harmless against all liability, loss and expense including reasonable attorney's fees incurred as a result of such delivery, including damage to Seller's equipment and loss of time. Should Buyer decide to remove any delivered product, Buyer shall first notify Seller and give Seller a reasonable opportunity to investigate and test the in-place product before being removed by Buyer. Buyer's exceptions and claims shall be deemed waived unless Buyer submits to Seller a fully documented statement of claim and exceptions and presented to Seller within three (3) business day after receipt of materials. When so made, Seller shall be given a reasonable opportunity to investigate and test same. Seller's liability under this agreement shall in no event exceed the purchase price of the material against which claim is made. The Buyer agrees to provide suitable roadways or approaches to points of delivery when materials are to be delivered by trucks in places other than paved streets, if such suitable roadways or approaches are not provided, Seller reserves the right to stop deliveries until this condition is remedied. Materials shall be unloaded by Buyer within a reasonable time after arrival of Seller's trucks and are not to be delayed so as to affect the quality of the product, including the temperature of the materials being delivered. Seller shall charge demurrage (Standing time) per hour or fraction thereof for unloading time in excess of the minimum rate. A fee for returned product will be assessed per load unless the cause of the return or disposal is the Seller's fault. Seller reserves the right to refuse to make delivery in any instance where Seller believes delivery unsafe or impracticable or by reason of any strike, lockout boycott or picketing or other labor disputes whether existing or threatened.

ADDITIONAL CHARGES: Unless otherwise specifically included, additional charges will be made for all deliveries before 6:00 AM. or after 3:00 P.M. on weekdays, and all day on Saturdays, Sundays and recognized holidays. Arrangements for deliveries at these times or on these dates must be made at least forty-eight (48) hours prior to the date of such delivery. Charges for such deliveries will be quoted upon request. A minimum load charge will be added to all deliveries of product that are less than a full load.

DISCLAIMER OF WARRANTY: Seller warrants that the products, at the time of delivery to Buyer, shall conform to the specifications and description included (if any) with the shipment. THIS WARRANTY IS EXCLUSIVE, AND SELLER MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS CONCERNING THE PRODUCTS (WHETHER IMPLIED BY STATUTE OR OTHERWISE) AND SPECIFICALLY EXCLUDES SUCH WARRANTIES AND REPRESENTATIONS TO THE FULLEST EXTENT PERMITTED BY LAW. SELLER SPECIFICALLY MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. SELLER NEITHER ASSUMES NOR AUTHORIZES ANY PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE SALE OR USE OF THE GOODS SOLD HEREUNDER.

LIMITATION OF LIABILITY AND DAMAGES: Buyer assumes all risk and liability whatsoever resulting from the use of Seller's goods. Seller's liability for products Buyer claims are defective or nonconforming shall in no event exceed the purchase price for the material against which claim is made. Seller shall not be liable for any defects that may be caused either by faulty materials used in the aggregate with Seller's produced materials and which are manufactured by others or by faulty construction, installation or use on the part of the Buyer or others. Under no circumstances shall Seller be responsible for Buyer's removal or installation costs. All claims for breach of warranty must be presented to Seller in writing within thirty (30) days after delivery to Buyer. Failure of Buyer to give such notice shall be deemed to be a waiver by Buyer of all claims with respect to the subject products. Seller and Buyer agree that Seller shall not in any event be liable for any liquidated damages, penalties, consequential, contingent, special or incidental damages whatsoever, resulting from the purchase, delivery, receipt, installation or use of Seller's products, even if Seller shall have been advised of the possibility of such potential loss or damage, including, without limitation, liability for loss of use, loss of work in progress, down time, loss of revenue or profits, Buyer's cost of cover, failure to realize anticipated savings, loss of Buyer's property or any liability damage or loss occasioned by such product including injuries to persons or property under any tort, negligence, strict liability, contract, or other legal or equitable theory, including indemnity. Under no circumstances shall Seller be liable for any delays in the performance of this Agreement or any order submitted by Buyer or Buyer's agent, in whole or in part, from any cause, including but not limited to fire, earthquake, flood, rainstorm, strike lockouts, or other differences with workmen or employees, accidents, war, riots, embargoes, delays, losses, or damages in transportation, shortages of train cars or transportation carriers, fuel, labor or materials, delays of other companies or contractors, or similar contingencies. Seller reserves the right to refuse to make delivery in any instance where Seller believes delivery unsafe or impracticable by reason of any strike, lockout boycott or picketing or other labor disputes whether existing or threatened. No payment to Seller shall be withheld by Buyer pending adjustment of liability for the amount of any claim.

INDEMNITY: To the fullest extent permitted by law, Buyer agrees to defend, indemnify and hold harmless the Seller from and against any claim or liability, including all losses, damages and/or expenses, claims, suits, judgments, including costs and fees of legal counsel and all other costs of defending any action, attributable to bodily injury, sickness, disease, or to damage to or destruction of property (including loss of use thereof) caused by, arising out of, or in any way connected with the delivery, installation, or use of the product purchased from Seller, including the possession, use or resale of the products, or where the Seller may incur as a result of any act or failure to act by the Buyer, its officers, agents or employees, successors or assignees, its customers or all other third parties, whether direct or indirect, whether or not caused in part by the active or passive negligence or other fault of Seller, provided, however, Buyer's duty hereunder shall not arise if the cause is Seller's sole negligence as determined by a court of law.

FORCE MAJEURE: All orders taken are subject to force majeure and are contingent upon strikes, accidents, Acts of God, weather conditions, inability to secure labor, fire regulations or other restrictions imposed by any government or governmental agency, or other delays beyond Seller's control. In the event such acts occur, Seller shall be released of all obligations but may reaffirm any contracts if such restrictions are removed within thirty (30) days.

PLACE OF PERFORMANCE: The place of performance of this agreement by Buyer shall be in the State of California, County of Orange.

PLACE OF PAYMENT: All payments to be made hereunder should be made to Seller at its office in Orange County, State of California or such other designated address as Seller may direct Buyer to deliver payment.

FORUM and APPLICABLE LAW: (1) The place of this Agreement, its status or forum, is at all times in the County of Orange, State of California where all matters, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this agreement shall be determined; (2) Any and all suits for any and every breach of this Agreement may be instituted and maintained in the County of Orange, State of California; and (3) This Agreement, and all subsequent modifications, shall be construed and enforced according to the laws of the State of California.

LIMITATION OF ACTIONS: No action against Seller arising out of any transaction may be commenced by Buyer more than one (1) year after the cause of action has accrued.

SEVERABILITY: Should any part, term, or provision of this Agreement be determined to be void, voidable or invalid, in any jurisdiction, the validity of the remaining portions of provisions shall not be affected thereby.

ASSIGNMENT: No transaction by Buyer, or any part therein, nor any claim arising hereunder shall be transferred or assigned by Buyer without the prior written consent of Seller.

OTHER AGREEMENTS OR MODIFICATIONS: All other orders, requests, offers, agreements or contracts between the parties hereto shall be subject to the provisions of this Agreement unless expressly stated otherwise, in writing, by direct reference to this Agreement.

TYPOGRAPHICAL ERRORS: Seller shall not be responsible or liable to Buyer for typographic errors. In the event a product is listed at an incorrect price or with incorrect information due to typographical error or error in pricing Seller shall have the right to refuse or cancel any orders placed for product listed at the incorrect price or with incorrect information.