

BUILDING MATERIAL DEALERS ASSOCIATION

APPLICATION AND AGREEMENT OF MEMBERSHIP

I, and if more than one each of (hereinafter, jointly and severally, "Company") hereby make application for:

<input type="checkbox"/> FULL	<input type="checkbox"/> ASSOCIATE (for branch offices)	<input type="checkbox"/> NOTICE	<input type="checkbox"/> INTENT ONLY
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Membership in the Building Material Dealers Association ("BMDA"), an Oregon non-profit corporation, and agree to be bound by all terms and conditions of this Application and Agreement and to abide and be bound by the Bylaws of BMDA, which may be amended from time to time by the membership in accordance with the terms thereof. A current copy of the Bylaws has been furnished and is attached to this application, and has been read and is fully understood and agreed to by Company.

COMPANY'S NAME: _____

STREET ADDRESS: _____

MAILING ADDRESS: _____

City: _____ State: _____ ZIP: _____

PHONE NUMBER: (____) _____ FAX NUMBER (____) _____

YEARS IN BUSINESS: _____ NATURE OF BUSINESS: _____

TYPE OF BUSINESS: Limited Liability Company Corporation
 Sole Proprietorship Partnership

REFERRED BY: _____

LICENSED WITH CCB: YES/NO CCB NUMBER: _____

NAME OF BANK(S) AND BRANCH(ES): _____

CREDIT REFERENCES

Please list names, addresses, and phone numbers of two (2) creditors you have dealt with in the past year:

	Name of Creditor	Address	Phone No.
1.	_____	_____	_____
2.	_____	_____	_____

BMDA may contact any banks and trade references and make any and all other credit inquiries it deems necessary, including but not limited to the utilization of outside credit reporting services, and Company authorizes the release of information to BMDA. Member represents and warrants that the information here is complete, true and correct.

DUES

Annual/Monthly membership dues are as set forth in BMDA's Fee Schedule now existing or as modified from time to time by BMDA's Board of Directors. Fees will be billed on a monthly or annual basis. Intent Only fees must be paid in advance. A pro-rata portion of the first month's dues must accompany this Application and Agreement. The amount of the annual membership dues and the billing frequency and rates may be changed from time to time by BMDA's Board of Directors. Payment must be in the legal tender of the United States.

ADDITIONAL CHARGES.

Intent Only fees are paid in advance; no billing is sent from BMDA. All charges for goods, information and services are in addition to the dues and shall be billed on a monthly basis. All amounts owing to BMDA shall be due and payable thirty (30) days after the date of billing. A past due service charge of 1 1/2 % per month (18% per annum) is imposed on all amounts not paid when due.

3. **CONFIDENTIALITY.**

Company agrees to treat all credit information furnished by BMDA, if any, as confidential and agrees not to disclose such information, or any part thereof, to other than Company's authorized employees or agents for lawful purposes.

4. **DISCLAIMER OF WARRANTIES.**

It is understood and agreed that BMDA does not guarantee the accuracy, correctness, timeliness or validity of any notices, goods, scrivenering, information, labor or services performed or provided by or through BMDA or any of its agents. **THE PARTIES FURTHER UNDERSTAND AND AGREE THAT THERE ARE NO WARRANTIES OF ANY KIND, EXPRESSED OR IMPLIED** related to any notices, goods, scrivenering, information, labor or services performed or provided by or through BMDA or any of its agents.

5. **LIMITATION OF LIABILITY.**

COMPANY ASSUMES ANY AND ALL RISK AND LIABILITY related to any notices, goods, scrivenering, information, labor or services performed or provided by or through BMDA or any of its agents. Other than the remedy set forth in this paragraph, Company agrees that no damages, direct, consequential, incidental, or other damages or remedy of any kind arising by reason of or related to this Agreement or any notices, goods, scrivenering, information, labor or services performed or provided by or through BMDA or any of its agents, or failed to be performed or provided, whether arising from claims in contract, equity, warranty, negligence, strict liability, tort or otherwise by law, shall now or any time in the future be recoverable from BMDA or any of its employees, officers, directors, agents or assigns (jointly and severally "BMDA" in this paragraph and in paragraphs 4, 6, 7 & 8). **Notice of any defect in any notices, goods, scrivenering, information, labor or services performed or provided by or through BMDA or any of its agents shall be made within 24 hours of the act or omission giving rise to the claim.** In all events, related to the Company's sole and exclusive remedy shall be a reduction or refund of BMDA's charges for the specific notice(s), good(s), scrivenering, information, labor or service(s) performed or provided by or through BMDA which is basis for Company's claim. **IN NO EVENT SHALL BMDA'S TOTAL LIABILITY REGARDLESS OF THE NUMBER OF CLAIMS MADE OR PRESENTED BE GREATER THAN THE AMOUNT CHARGED BY BMDA AND PAID BY COMPANY IN RESPECT OF WHICH SUCH CLAIM IS MADE. IN NO EVENT SHALL BMDA BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER OR NOT RESULTING FROM OR CAUSED BY THE NEGLIGENCE OF BMDA.**

6. **EXCLUSIVITY OF REMEDIES.**

Company's rights, now existing or arising at any time in the future, to make claims or recover damages other than those permitted by this Agreement, whether such rights or damages now exists or arises any time in the future or in the future are hereby fully, finally, irrevocably and unconditionally waived, released and discharged. The remedy provided by this Agreement is the sole and exclusive remedy available to Company.

7. **INDEMNIFICATION.**

To the fullest extent permitted by law, Company shall fully and forever defend (with counsel acceptable to BMDA), indemnify, protect, save and hold BMDA harmless for any claim, loss, liability and expense, including legal expenses, related to any notices, goods, scrivenering, information, labor or services performed or provided by or through BMDA or failed to be performed or provided. In the event of any claim or litigation brought against BMDA, Company shall, at its own cost and expense, and upon notice from BMDA, vigorously resist and defend such actions or proceedings through legal counsel reasonably satisfactory to BMDA.

8. **CLAIMS BY COMPANY: MEDIATION, JURISDICTION AND GOVERNING LAW.**

To the fullest extent permitted by law, as a condition precedent of commencing any action, suit, litigation, arbitration or claim by Company against BMDA, Company shall have first submitted the dispute to a mediator, agreed to and to be equally compensated by Company and BMDA, and that such mediation shall have actually occurred and the mediator shall have certified that the mediation was unsuccessful. Mediation shall be conducted in Washington or Multnomah County, Oregon, USA. BMDA and Company agree to exercise their best efforts in good faith to resolve all disputes in mediation. Sole and exclusive jurisdiction for any action by Company against BMDA shall be the courts of the State of Oregon with venue in Washington County, Oregon, USA or the federal district court located in Portland, Oregon, USA. To the fullest extent permitted by law, Oregon, USA law, without resort to its principles on conflicts of law shall govern and apply to this Agreement including Company's Claims.

9. **CLAIMS BY BMDA: JURISDICTION AND GOVERNING LAW.**

There is no mediation requirement before BMDA commences any claims including but not limited to those for collection of membership dues or any additional charges for notices, goods, scrivenering, information, labor or services performed or provided by or through BMDA. Jurisdiction for any suit or action by BMDA may, at the sole option of BMDA, be commenced or transferred to the courts of the State of Oregon, USA with venue in Washington County or Multnomah County.

Company consents to such jurisdiction and venue. To the fullest extent permitted by law, Oregon, USA law without resort to its principles on conflicts of law shall govern and apply to this Agreement including BMDA's Claims.

10. **ATTORNEY FEES FOR COLLECTION FOR MEMBERSHIP DUES AND ADDITIONAL CHARGES ONLY.**

If litigation is commenced by BMDA for collection of membership dues or any additional charges for notices, goods, scrivenering, information, labor or services performed or provided by or through BMDA, the prevailing party on such claim shall be entitled to its collection costs and reasonable attorney fees and costs, including those on appeal.

11. **ASSIGNMENT.**

Company agrees not to assign, transfer, pledge, or hypothecate any of Company's rights, duties, obligations or interest provided hereunder without the prior written consent of BMDA. This Agreement is binding on the heirs, successors and assigns, if any, of Company.

12. **SEVERABILITY.**

Should any portion of this Agreement at any time during its effective term be in conflict with any applicable law including laws of foreign nations, then such provision shall continue in effect only to the extent permitted by law. The invalidity of any one or more of the articles, covenants, phrases, sentences, clauses or provisions of this Agreement or any part thereof, shall not affect the remaining portions of this Agreement or any part thereof, and in the event any one of the same shall be declared invalid, this Agreement shall be construed as if such invalid portion had not been inserted.

13. **BASIS OF AGREEMENT.**

It is understood and agreed that the terms of this Agreement are contractual and not mere recitals and have been fully and fairly negotiated by BMDA and Company, and that both parties have equal bargaining positions and power. It is further agreed that this Agreement is an independent contractual agreement, independent of the obligations of BMDA and the Company arising under the Bylaws of BMDA. To the extent that any of the terms and conditions of this Agreement conflict with a valid and enforceable term or provision of the Bylaws, and are not merely supplemental, such terms or conditions of this Agreement shall be considered null and void and the valid and enforceable Bylaw provision(s) shall govern.

14. **APPLICABILITY TO SUBSEQUENT AGREEMENT.**

It is understood and agreed that all terms and conditions of this Agreement shall apply to any and be incorporated by reference into all future agreements, written or oral, between BMDA and Company except to the extent any term has been altered, modified or waived by the express prior written agreement of the parties, with the consent and agreement of BMDA being solely authorized by its Board of Directors.

15. **TERMINATION.**

This Agreement may be terminated, with or without cause, by either or both parties, upon thirty (30) days' prior written notice. Notwithstanding termination of the Agreement and Company's membership in BMDA, all rights and obligations of the parties shall continue except for BMDA's obligations to provide or perform notices, goods, scrivenering, information, labor or services after the termination date and Member's obligation to pay for the same. Without limiting the foregoing, the releases, limitation of liability and indemnity provisions of this Agreement shall continue in full force and effect notwithstanding the termination of this Agreement, whether by agreement of the parties, by operation of law, or otherwise.

16. **FULL & FINAL AGREEMENT AND NO ORAL MODIFICATIONS.**

This Agreement represents the parties' final and entire agreement and supersedes all prior or contemporaneous oral or written agreements or communications regarding the subject matter hereof. There are no promises, terms, representations or conditions other than those contained herein. This Agreement may be amended, modified or changed by BMDA only, and only by BMDA providing reasonable prior written notice to Applicant(s) of said amendment, modification or change. Applicant(s) agrees that, by continuing to request services from BMDA after such written notice, it shall be bound by such written amendment, modification or change. The terms of this Agreement take precedence over any terms and conditions set forth in Applicant(s)' purchase order or other similar document, or any other agreement provided by Applicant(s), whether now existing or arising at any time in the future, and, to the extent of any conflict, this Agreement shall control.

17. **CONSTRUCTION.**

All references herein in the singular shall be construed to include the plural where applicable and the masculine to include the feminine or neuter gender where applicable and vice versa. The captions used in this Agreement are for identification only and are not part of this Agreement.

18. **ALTERNATIVES.**

Company understands and agrees that there are alternative providers of the notices, goods, scrivenering, information, labor or services which may be provided or performed by BMDA pursuant to this Agreement and its Bylaws. Fully understanding Company's alternatives and all of the terms, conditions and limitations of this Agreement and membership in BMDA, including its Bylaws, Company after careful, ample and independent consideration of the alternatives, benefits and detriments of this Agreement and BMDA membership, elects to enter into this Agreement and be bound by all of the terms, conditions and obligations herein.

19. **DRAFTING AND REVIEW OF AGREEMENT.**

This Agreement was prepared by the Law Offices of Scott ♦ Hookland, LLP as attorneys for BMDA only. Company understands and agrees that Company has had full and ample opportunity to have this Agreement reviewed by an attorney of Company's choice prior to signing and that Company has been provided the opportunity to review and negotiate each and every term and condition of this Agreement and further agrees that, in part, because of this opportunity, this Agreement was drafted equally by both parties. This Agreement is supported by good and sufficient consideration.

20. **CURRENT MEMBERS.**

To the extent Company is renewing, continuing or upgrading Company's membership, this Agreement shall supersede all prior agreements between Company and BMDA for the providing of goods, information or services both prior to and after this Agreement. In continuing, reviewing or upgrading its membership, Company specifically acknowledges and agrees that BMDA does not have a preexisting duty to continue to provide goods, information or services to Company under any existing Agreement or Bylaw and specifically acknowledges the sufficiency of consideration between the parties to support this Agreement.

21. **EFFECTIVE DATE.**

This Agreement, and every term, condition and requirement herein, shall be effective only upon approval of the Company by the Board of Directors or BMDA performing or providing any notices, goods, scrivenering, information, labor or services whichever occurs first.

22. **TAXES.**

The amount of any present or future sales or other taxes, assessments, registration or license fees applicable to this Agreement or related to any notices, goods, scrivenering, information, labor or services performed or provided by or through BMDA or any of its agents are not included in the prices set forth here and shall be paid by the Member.

23. **MISCELLANEOUS.**

A. This Agreement may be executed and transmitted to BMDA by facsimile machine and the facsimile so transmitted to BMDA shall be deemed an original and shall be binding upon the Company.

B. Any change in Member's business structure shall not affect Member's obligations under this Agreement.

C. All notices, goods, scrivenering, information, labor or services performed or provided by or through BMDA or any of its agents shall be for use in Member's business and commercial use only and not for any consumer, personal or household use.

The undersigned Company has read all the terms and conditions stated herein, together with the Bylaws of BMDA; understands the terms and conditions therein, and hereby agrees to them. If signed by a representative of a corporation, the undersigned hereby verifies that he/she has the actual and requisite authority to bind the corporation to this document and execute this Application and Agreement on behalf of the corporation.

DATE: _____, 20____

COMPANY'S NAME: _____

SIGNATURE(S) AND TITLE(S): _____

PLEASE PRINT NAME(S) OF PERSON(S) WHO SIGNED AND THEIR RESPECTIVE TITLE(S):
IF A PARTNERSHIP, ALL PARTNERS MUST SIGN.

BMDA ASSIGNED MEMBERSHIP NUMBER: _____

President, BMDA Board of Directors

Date Approved

