



CREDIT APPLICATION

Thank you for applying for a credit account with Thompson Tractor. Please follow the following guidelines as you fill out your application:

- While filling out the application, please list as much information as possible where requested. An authorized representative of the applicant must sign both pages of the application.
- In accordance with the Federal Trade Commission's Fair and Accurate Credit Transactions Act, if a Thompson Tractor employee is not available to witness the signature on either page of the application, please have the signature notarized. If the Thompson employee who witnesses the Applicant's signature does not have personal knowledge of the Applicant, a photocopy of the Applicant's identification must be obtained.
- If your company uses a form letter or credit sheet to apply for credit, you must still fill out the top half of the application form (this includes the applicant's legal name, social security number or Federal ID, legal status, physical and billing addresses, payables contact person, and telephone number) and sign it.
- It is required that each applicant check the box for "yes" or "no" regarding purchase orders. If there are any special instructions regarding purchase orders, please advise of them when the application is submitted.
- This application is not for consumer credit.

For Thompson Tractor Company office use only:

ACKNOWLEDGEMENT

I have determined from my personal experience the identity of each of the below listed individuals associated with the referenced transaction. (Please print)

Name of customer/transaction: _____

Individual's name and title: _____

Basis of personal knowledge: _____

Thompson Tractor Representative Signature: _____ Date: _____



Thompson Tractor Company, Inc
PO Box 10367
Birmingham, AL 35202
1-800-547-0760 (Attn: Credit Dept)



The CAT Rental Store
PO Box 10367
Birmingham, AL 35202
1-800-RENT-CAT

PROSPECT ID: _____
SALESMAN: _____
DIVISION: _____

CREDIT APPLICATION AND AGREEMENT

IN MAKING THIS APPLICATION FOR CREDIT, THE "APPLICANT" AGREES THAT ANY CREDIT EXTENDED TO APPLICANT BY THOMPSON TRACTOR CO. INC., INCLUDING THE CAT RENTAL STORE DIVISION ("THOMPSON"), WILL BE SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN THIS APPLICATION.

Please Print or Type (Mark if applicable) - This is an application for Consumer Credit--primarily for personal, family, or household use.

| | | | | | |
|---|---|--|---|--|--|
| Applicant's Exact Legal Name: | | Trade Name or DBA: | | Social Security Number (required): | |
| Legal Status: (check one) | Proprietorship \ <input type="checkbox"/> Partnership \ <input type="checkbox"/> Corporation L.L.C. \ <input type="checkbox"/> Individual (Personal Use) | Charter or State ID No. _____ (none) State of Incorporation / Organization: _____ | | Driver's Lic No. and State (required): | |
| Complete Physical Address of Main Office: | | County: | Complete Mailing (billing) Address: | | Payables Contact Person (required): |
| Telephone Number (required): | | Facsimile Number (required): | | E-mail address (optional): | |
| Primary Officers (Name and Title): | | | | | |
| | | | | Check if also a shareholder <input type="checkbox"/> | |
| | | | | Check if also a shareholder <input type="checkbox"/> | |
| Credit References: Name, Address, City, and State | | | ** (Required) Telephone Number | ** (Required) Facsimile Number | |
| | | | | | |
| | | | | | |
| Bank References: Name of Bank and Account Number | | | ** (Required) Contact Person and Telephone Number | | ** (Required) Facsimile Number |
| | | | | | |
| Do You Furnish Purchase Order Numbers? | | Yes | No | Federal Tax ID Number (if no SSN): | |
| | | | | | |

The Terms and Conditions on Page 2 are part of this Application. Please read them before signing and returning this Application. If returned by fax, and if we do not receive the original application, the fax we receive from you will be the original of your application. Only the Credit Manager may waive the original-documentation requirement.

The undersigned Applicant hereby agrees to the Terms and Conditions on Page 2 of this Application. Applicant represents, warrants, and agrees that the foregoing information is submitted for the purpose of obtaining credit from Thompson and is true and correct to the best of his/her knowledge, information, and belief; that he/she has authority to sign and deliver this Application on behalf of the Applicant and to bind Applicant to the terms and conditions hereof; that a photocopy or fax of this signed Application shall be considered an original and shall be sufficient for all purposes as a manually signed counterpart hereof; that Thompson is authorized to file a financing statement naming Applicant as Debtor, in any public office Thompson deems necessary to perfect its security interest in present or future collateral; that Thompson is authorized to obtain and update credit reports and credit references from time to time; and that Applicant received a full completed copy of this Application at the time he/she signed it. Applicant authorizes Thompson to deliver ordered equipment to job sites without customer being present, and accepts responsibility for such equipment upon delivery.

Dated this the _____ day of _____, 20____.

Witness:

 Signature and Title of Witness or Notary

 Signature and Title of Applicant or Authorized Agent

 (Print Name Above)

 (Print Name Above)

Subscribed and Sworn to before me this ____ day of _____, 20____. My Commission Expires _____

NOTICE: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is the Federal Trade Commission, Suite 5M35, 60 Forsyth Street, SW, Atlanta, GA 30303-2322.

If your application for business credit is denied, you have the right to a written statement of the specific reasons for the denial. To obtain the statement, please contact Credit Department, Thompson Tractor Co., Inc., P.O. Box 10367, Birmingham, AL 35202, telephone (205) 841-8601, within 60 days from the date you are notified of our decision. We will send you a written statement of reasons for the denial within 30 days of receiving your request for the statement.

TERMS AND CONDITIONS

Each order by Applicant shall be deemed an acknowledgment and acceptance by Applicant of Thompson's terms and conditions as then in effect. All sales or leases are subject to any additional terms and conditions of related contracts, invoices or leases, and all terms and conditions of this Credit Application and Agreement are expressly incorporated into such related contracts or leases, and to the extent that any terms and conditions of a related contract, invoice or lease expressly contradict the terms and conditions herein, the terms and conditions set forth herein are controlling. The terms and conditions set forth herein, as may be subsequently modified by Thompson from time to time, are incorporated by reference into all related contracts, invoices, leases and acknowledgment forms issued by Thompson.

1. All orders and/or credit extensions are subject to approval and acceptance by an authorized representative of Thompson at its office in Birmingham, Alabama.
2. Terms of payment are subject to approval of Thompson's Credit Manager.
3. Thompson's extension of credit, acceptance of any purchase order, sales or rentals of equipment, or sales of parts or services are expressly conditioned upon the terms and conditions contained herein. **NO TERMS OR CONDITIONS WHICH ALTER OR MODIFY IN ANY WAY ANY PROVISION HEREOF SHALL BE BINDING UNLESS EXPRESSLY AGREED TO IN A WRITTEN INSTRUMENT SIGNED BY THOMPSON'S AUTHORIZED REPRESENTATIVE. THOMPSON OBJECTS TO ANY DIFFERENT OR ADDITIONAL TERMS OR CONDITIONS AND HEREBY REJECTS ANY AND ALL SUCH TERMS, WHETHER CONTAINED IN PREVIOUS OR SUBSEQUENT PROPOSALS, PURCHASE ORDERS OR COMMUNICATIONS FROM APPLICANT.** Authorization by Applicant to purchase or rent equipment or to purchase parts or services hereunder constitutes acceptance of these terms and conditions. **THOMPSON AND APPLICANT AGREE THAT THE TERMS AND CONDITIONS PRINTED HEREIN ARE ACCEPTED IN GOOD FAITH BY BOTH PARTIES AS CONTROLLING AND FINAL TERMS AND CONDITIONS, AND FURTHER AGREE THAT THERE SHALL BE NO "BATTLE OF THE FORMS" AS DESCRIBED IN SECTION 2-207 OF THE UNIFORM COMMERCIAL CODE.**
4. Except as otherwise agreed to by Thompson in writing, the terms and conditions set forth herein shall constitute the complete and final agreement between Applicant and Thompson, superseding completely any prior oral or written communications. Terms and conditions contained in any document issued by Applicant which in any manner purport to alter, modify, change, suspend, or add to any term or condition contained herein shall be deemed excluded from such Applicant document and waived by Applicant. Applicant and Thompson expressly agree that Thompson may modify these terms and conditions from time to time, and such modifications shall be binding upon Applicant.
5. All **PARTS, SERVICE AND EQUIPMENT RENTAL** invoices that remain unpaid thirty (30) days from statement date are considered past due and are subject to a late charge on the outstanding balance at the rate of 1.5% per month, and such late charge shall continue to accrue at the aforementioned rate post-judgment until full, unavoidable payment is made. Payments after accrual of such late charges shall be applied first against such late charges and secondly against past due invoices. Applicant's account shall also be charged with any fees associated with insufficient funds. Payment terms on all **EQUIPMENT SALES**, unless otherwise specifically approved IN ADVANCE by the Credit Manager, are **NET DUE ON RECEIPT OF INVOICE**. After default by Applicant in the payment of any sum owed under any equipment order, such sum shall accrue interest daily, payable on demand, at the per annum rate that is 2% in excess of the highest rate published in The Wall Street Journal on the date of default, such rate to increase or decrease in like amount each time the prime rate changes until such sum is paid in full, and such default interest shall continue to accrue at the aforementioned rate post-judgment until full, unavoidable payment is made. Thompson shall have a security interest in any equipment sold or for which it provides parts and/or services until payment in full is received.
6. **THOMPSON DISCLAIMS, AND APPLICANT WAIVES, WITH RESPECT TO EVERY PRODUCT SOLD OR LEASED BY THOMPSON, ALL WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THOMPSON'S LIABILITY, IF ANY, FOR BREACH OF CONTRACT OR WARRANTY OR FOR NEGLIGENCE OR WANTONNESS IS EXPRESSLY LIMITED, AT THE OPTION OF THOMPSON, TO: (A) THE REPLACEMENT AT THE AGREED POINT OF DELIVERY OF ANY PRODUCT FOUND TO BE DEFECTIVE OR NOT TO CONFORM TO THE SPECIFICATIONS SET FORTH IN THE CONTRACT OR INVOICE, (B) REPAIR OF SUCH DEFECTIVE OR NONCONFORMING PRODUCT, OR (C) THE REFUND OR CREDITING TO APPLICANT OF THE PRICE OF SUCH PRODUCT. IN NO EVENT SHALL THOMPSON HAVE ANY LIABILITY FOR LOSS OF TIME, LOST PROFITS, COST OF LABOR EXPENDED, OR ANY SEPARATE, SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES.**
7. Should the financial responsibility if Applicant at any time become unsatisfactory to Thompson, Thompson shall have the right to require payment in advance or satisfactory security. If Applicant fails to make payment in accordance with the terms of this agreement or fails to comply with any provisions hereof or any related contract, invoice or lease, Thompson may, at its option, in addition to any other remedies, cancel or delay any undelivered portion of Applicant's order, Applicant to remain liable for all unpaid accounts. If Thompson suspends performance and later proceeds with such order, Thompson shall be entitled to such extension of time for performance as is necessitated by the suspension. In the event that Applicant fails to make payments in accordance with the terms of this agreement or to make payment according to the terms of any related contract, invoice or lease, the account shall be deemed to be delinquent. Applicant shall pay all collection costs and expenses, including reasonable attorneys' fees incurred by Thompson collecting or attempting to collect such account.
8. No products may be returned for credit and no order may be canceled or changed in whole or in part without the prior written consent of Thompson. Delivery of products cannot be extended beyond the original delivery date specified without Thompson's consent.
9. In no event shall Thompson be liable for failure to deliver or delays in delivery, for delay in performance or any damages suffered by Applicant by reason of such non-delivery or delays when such is occasioned by cause beyond Thompson's control, including, but not limited to, provisions of law or governmental regulations, accident, explosion, fire, windstorm, flood or other casualty, acts of God, strike, lockout, or other labor difficulty, riot, war, insurrection, shortage of or inability to secure labor, raw materials, production or transportation facilities. Shipping or delivery dates are approximate and are based on factory conditions at the time of quotation. Thompson shall not be liable for failure or delay in performance due to prior sale of products.
10. Neither any failure nor any delay on the part of Thompson in exercising any rights hereunder shall operate as a waiver of any of Thompson's rights hereunder. All rights and remedies granted hereunder are in addition to all remedies available at law or in equity. Any provision of this agreement prohibited by applicable law shall be ineffective to the extent of such prohibition without invalidating the remaining provisions hereof.
11. The laws of the State of Alabama shall govern the rights of Applicant and Thompson under this credit application, the rights of the parties under any agreement between them and the rights of the parties arising out of any sale or lease by Thompson to Applicant.
12. Applicant acknowledges that Thompson's main office is in Jefferson County, Alabama. Applicant submits to the non-exclusive jurisdiction of the courts located in Jefferson County, Alabama, and waives any objection to venue in Jefferson County, Alabama.
13. Applicant agrees that its continued solvency is a precondition to any sale or lease made to Applicant. Applicant agrees to provide Thompson a statement representing that it is and remains solvent. Applicant agrees that Thompson may utilize outside credit reporting services to obtain any information on the Applicant – or the undersigned Guarantors – that Thompson deems necessary. Applicant agrees that immediately following the preparation of its fiscal year end financial statement, it will provide Thompson a copy of the same. Applicant agrees to provide Thompson a copy of Applicant's most current financial statement on a quarterly basis, if requested by Thompson. Applicant agrees to furnish Thompson, promptly upon request, copies of Applicant's articles of incorporation and bylaws, partnership agreement, articles of organization and operating agreement, and other organizational or governing documents, certified to be true and correct by an officer or agent of Applicant acceptable to Thompson.
14. Unless this credit application is expressly marked on the reverse side as being for consumer credit, Applicant represents that any credit extended by Thompson will not be primarily for personal, family or household use.
15. The person whose signature appears on the front page of this Credit Application has full power and authority to execute this Credit Application on behalf of the Applicant. Applicant hereby agrees that the extension of credit for its benefit and/or the receipt of any parts, services or equipment shall constitute a ratification of this Credit Application (including the Terms and Conditions), and that any and all contracts, certificates, invoices and other writings signed on behalf of Applicant by any employee or agent of Applicant shall be deemed to have been executed on behalf of Applicant with full authority.
16. **Arbitration of Disputes and Waiver of Jury Trial.** Applicant acknowledges that the requested credit and the contemplated transactions with Thompson involve "commerce" as that term is used in the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1. Except as provided below, Applicant and Thompson agree that all controversies of any kind and character whatsoever arising out of or related to this credit application, or the transactions evidenced by or contemplated by this credit application or any breach thereof, any prior negotiations or dealings between Applicant and Thompson, or any maintenance or service performed by Thompson on any equipment sold or leased to Applicant before, on or after the date of this credit application, or any relationship that results from any of the foregoing, or the validity or scope of this agreement to arbitrate controversies, whether based in tort, contract, warranty or statutory or strict liability, shall be settled by **binding arbitration** under the FAA in Birmingham, Alabama in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Judgment on the arbitrator's award may be entered in any court of competent jurisdiction. The arbitrator shall be well versed in the leasing and financing of equipment and shall, at the election of either party, be an attorney at law who has been actively engaged in private practice at least 10 years. This agreement does not affect the right of Applicant or Thompson to seek a judgment in court against the other on a contract claim for breach of an express covenant to pay a sum of money and for interest and costs of collection (including reasonable attorneys' fees), or to exercise any right of offset or self-help repossession, or to seek a court order for possession of equipment, or to seek an injunction or other purely equitable remedy (other than a stay of arbitration) that does not include a claim for money damages. The parties agree that the commencement of litigation by either of them pursuant to the preceding sentence or otherwise shall not operate as a waiver or estoppel of the right to arbitrate any counterclaim or other similar claim, and that upon the giving of a notice of arbitration of the counterclaim or other similar claim by any party hereto, litigation of the counterclaim shall be stayed and the counterclaim shall be submitted to binding arbitration hereunder. There parties hereby **waive the right to trial by jury** of all disputes, controversies and claims now or hereafter arising between them, whether or not the dispute, claim or controversy is submitted to arbitration or is decided by a court.

Applicant's Initials _____

CONTINUING GUARANTY: For good and valuable consideration, including the extension of credit to the Applicant named in the above Credit Application and Agreement from which the undersigned will benefit, the undersigned (hereinafter called "Guarantors," whether one or more), jointly and severally, absolutely and unconditionally guarantee the full and complete payment and performance of, and promise to pay to Thompson (as "Thompson" is defined in the above Credit Application), when due, any and all indebtedness, liabilities, damages, obligations and covenants of the above named Applicant, any successor or related business entities and any other business entity in which the undersigned owns or holds an interest (hereinafter referred to collectively as the "Customer") to Thompson, including all interest and late charges, all costs and expenses of collection, suit or other legal action, including reasonable attorneys' fees, arising out of or relating to credit now or hereafter extended by Thompson to any Customer, whether for purchases or leases of equipment, purchases of parts or services, or otherwise, and any and all renewals, modifications, extensions, and increases thereof (collectively, the "Obligations"). Upon default by any Customer, Guarantors shall pay the Obligations immediately without deduction by reason of any set-off, recoupment, defense or counterclaim. The amount of the Obligations guaranteed by this Guaranty is not limited. This is a continuing guaranty relating to all Obligations, including Obligations arising under successive transactions between Thompson and any Customer. This Guaranty shall remain in full force and effect with respect to all present and future Obligations of the Customer and may not be revoked or terminated without the prior written consent of Thompson; and even after any such receipt, acknowledgment, revocation or termination, this Guaranty shall be and remain effective as to Obligations then outstanding (plus interest and late charges thereafter accruing), any credit that Thompson has then committed to extend to a Customer (plus interest and late charges thereafter accruing), and any renewals, modifications and extensions thereof. If more than one person signs this Guaranty, termination by one of the undersigned shall not terminate this Guaranty with respect to the other(s). The obligations of the undersigned are those of a primary obligor (and not merely as a surety or guarantor of collection), joint and several with any Customer, independent of the obligations of any Customer, and a separate action or actions may be brought against any one or more of the undersigned whether action is brought against any Customer or any other Guarantor or whether any Customer or other Guarantor is joined in any such action or actions. The obligations hereunder may be enforced without requiring Thompson first to resort to any other right, remedy or security. The obligations of Guarantors are continuing, absolute, and unconditional, and the undersigned guarantee that the Obligations will be paid in full, regardless of whether recovery upon such Obligations may be or hereafter become barred by any statute of limitations, or whether such Obligations may be now or hereafter become otherwise unenforceable. The undersigned hereby: (a) waive acceptance of this Guaranty by Thompson, notice of acceptance, notice of default, and notices of any kind; (b) waive all defenses of suretyship and the defense of impairment of collateral; (c) agree that Thompson, without notice and without affecting any Guarantor's liability hereunder, may from time to time renew, extend or modify or otherwise change the terms of the Obligations, take and hold security for payment of the Obligations, and release or substitute any one or more guarantors of all or any part of the Obligations; (d) waive any rights to exemption; (e) agree that nothing, including, without limitation, discharge of a Customer in bankruptcy, will discharge or satisfy the obligations of the undersigned hereunder except the full, unavoidable payment and performance of all Obligations of the Customer to Thompson; (f) agree that the interest rate applicable to the applicable Customer account(s) shall continue to accrue after Thompson obtains a judgment against Guarantors; (g) agree to pay reasonable attorneys' fees and other costs and expenses incurred by Thompson in enforcement of this Guaranty; (h) waive and subordinate all right of subrogation against the Customer until all of the Obligations have been paid in full and are not avoidable by a trustee in bankruptcy; (i) consent to the non-exclusive jurisdiction of the courts of Jefferson County, Alabama in any action to enforce this Guaranty; (j) confirms that the undersigned have read and agrees to the terms of the above Credit Application and Agreement; (k) and agree that a photocopy or facsimile of this Guaranty will be considered an original and will be sufficient for all purposes as a manually-signed counterpart hereof. This Guaranty shall be governed by the laws of the State of Alabama. This Guaranty is given under the seal of all parties hereto, and it is intended that this Guaranty is and shall constitute and have the effect of a sealed instrument according to law. This Guaranty shall inure to the benefit of Thompson, its successors and assigns, and shall bind the heirs, executors, personal representatives, administrators and successors of the undersigned.

 Guarantor Name

 Guarantor Signature

 Guarantor Social Security Number

 Witness/Notary Signature

 Guarantor Home Address

Notary Commission Expiration Date: _____/_____/_____

 Guarantor Name

 Guarantor Signature

 Guarantor Social Security Number

 Witness/Notary Signature

 Guarantor Home Address

Notary Commission Expiration Date: _____/_____/_____