

TERMS AND CONDITIONS

THIS APPLICATION COVERS ALL CURRENT AND FUTURE PURCHASES, RENTALS AND SERVICES. BY SIGNING THIS APPLICATION OR ACCEPTING ANY MATERIALS, VEHICLES, SERVICES AND/OR EQUIPMENT, EVEN IF THIS APPLICATION OR CONTRACT IS NOT SIGNED, APPLICANT AGREES TO ALL OF THE TERMS AND CONDITIONS IN THIS APPLICATION, RENTAL OUT CONTRACT(S), INVOICES, EQUIPMENT SALE INVOICE(S)/ORDER(S), AND/OR WORK ORDER(S). AS THE SUBJECT MATTER OF THIS APPLICATION IS THE EXTENSION OF CREDIT, WHICH IS OCCURRING FROM THE STATE OF TEXAS, APPLICANT EXPRESSLY AGREES TO PARAGRAPH 16 OF THE FOLLOWING TERMS AND CONDITIONS, WHICH IS A FORUM SELECTION CLAUSE THAT GOVERNS THIS APPLICATION.

1. Applicant desires to purchase or rent equipment or parts (the "Equipment") Arroyo Energy Services, LLC (AES) on an open account basis and desires in consideration of the creation of open account to be bound by the terms and conditions as contained in this Application. Applicant further understands and agrees that Applicant has an on-going affirmative duty to notify AES, in writing, immediately of any material change in Applicant's financial status, a change in entity or company structure, and/or of any change in the information provided herein.
2. Applicant agrees to provide AES with current financial statements if requested. Applicant gives its permission to AES to verify and/or supplement the information stated hereon and to make inquiry with the credit references listed on this Application. Applicant further authorizes AEC to obtain credit and financial information concerning the Applicant at any time, before or after credit is extended, from any source, including any financial institution where the Applicant does business and from any credit reporting bureau or agency.
3. By completing this Application, AES is not agreeing to extend credit but is considering whether to allow Applicant to rent, purchase and/or repair Equipment on an open account.
4. Should AES extend credit, then as a material inducement for extending credit, Applicant agrees and warrants that all rentals, purchases and repairs for each Equipment are subject to: (i) the terms and conditions contained in this Application; (ii) the terms and conditions of AES's Rental Out Contract(s), which are available upon request, including, but not limited to, the representations, insurance, warranties, indemnification, limitation of liability, assumption of risk, and Rental Protection Plan provisions (if applicable) contained therein; (iii) the terms and conditions of AES's Equipment Sale Invoice(s)/Order(s), which are available upon request; (iv) the terms and conditions of AES's Work Order(s); and (v) any other documentation delivered to Applicant by AES. Applicant agrees and acknowledges that the terms and conditions of AES's Rental Out Contract(s), Equipment Sale Invoice(s)/Order(s) and/or Work Order(s) are hereby incorporated into this Application by reference, and are made a part of this Application as if fully set forth herein, irrespective of whether Applicant executes AES's Rental Out Contract(s), Equipment Sale Invoice(s)/Order(s) and/or Work Order(s).
5. **Computation of Rental Amount.** Unless otherwise agreed in writing by the parties, the following provisions shall apply.
 - a. **Definitions.** A day's rental period comprises 10 hours. Minimum charge shall be one full day. A week's rental period comprises 5 ten-hour days (50 hours). Days in excess of one week are charged at the daily rate. A month's rental comprises 4 consecutive calendar weeks (20 days 200 hours). Days in excess of one month are billed at daily rates and weeks in excess of one month are billed at the weekly rate.
 - b. **Overtime.** "Minimum Rent" for each piece of Equipment is based upon an assumed normal use and operation of the Equipment for not more than ten (10) hours in any one day of 24 hours commencing at midnight and not more than 50 hours in any one calendar week beginning with Monday. Any use or operation of Equipment in excess of 10 hours in any one day, 50 in any one week, or 200 hours in any period of 4 consecutive weeks is considered overtime use, and for such overtime use, Lessee agrees to pay the Lessor additional "Overtime Rent" at the rate of 50% of the regular rate shown per day or period for each day or period of overtime use, in addition to the Minimum Rent. The Minimum Rent shall be payable in all events for the entire term and until the Equipment is redelivered to the Lessor, without regard to the time during which Equipment may have been used or operated.
6. Notwithstanding anything to the contrary contained herein, Applicant understands and agrees that AES has no obligation to extend credit to Applicant and that AES, in its sole and absolute discretion, may reduce or terminate the extension of any account accommodations or credit to Applicant at any time without notice for any reason or for no reason whatsoever.
7. If, for any reason, it becomes necessary for AES to repossess the Equipment, Applicant authorizes AES to repossess the Equipment without further notice or legal process and Applicant agrees that AES shall not be liable for any claims for damage, loss and/or trespass arising out of the repossession of the Equipment.
8. If Applicant refuses to pay for repairs/services undertaken by AES on Applicant-owned Equipment after Applicant's authorization, AES is entitled to all legal and equitable remedies available at law, including, without limitation, selling, disposing, and charging storage fees for the repaired/serviced Equipment, plus all costs, including, without limitation, all fees and attorneys' costs incurred by AES in enforcing this provision of the Application.
9. At the request of AES, Applicant agrees to promptly provide the following information to AES: (i) Complete construction project(s) ("project") information whereby Equipment will be utilized (i.e. accurate location/address/legal description of property where project is located; project general contractor name and address; owner name and address of property where project is located; etc.); (ii) Surety, performance and payment bond information for project; and (iii) any other pertinent information concerning the Applicant's project(s).
10. Full payment for all charges is due thirty (30) days from the date of invoice. All past due accounts are subject to a finance charge calculated by multiplying the amount of the unpaid balance by the rate of two percent (2%) per month, or the highest legal rate permitted by law, whichever is less.
11. If Applicant disputes the Equipment rental, purchase, materials provided, and/or services performed, the charge therefore, and/or the validity or correctness of any transactions Applicant has with AES, Applicant must notify AES, in writing, of the dispute, including details thereof, within ten (10) days from date of the invoice(s). If Applicant fails to notify AES of any dispute within the ten (10) day time period, Applicant shall be deemed to have accepted the transaction as satisfactory and voluntarily waives any such claim.
12. "Event of Default" means (a) failure of Applicant to pay any amounts owed to AES when due, whether arising hereunder or otherwise, and whether now existing or hereafter arising, (b) failure of Applicant to otherwise comply with any of the other terms of this Application, Rental Out Contract, Equipment Sale Invoice/Order, and/or Work Order (c) death, bankruptcy, receivership, dissolution, or insolvency of Applicant, or (d) AES determines that the prospect of payment or performance of Applicant's obligations to AES is impaired. If an Event of Default occurs, AES may (i) decline to extend further credit hereunder (and Applicant agrees not to make any further credit purchases, leases or rentals), (ii) declare all debts of Applicant to AES arising hereunder or otherwise to be immediately due and payable without notice or demand of any kind, and (iii) exercise any other rights and remedies of AES, whether in law or in equity. Applicant shall be liable for all collection costs actually incurred by AES, including, but not limited to, reasonable attorney's fees and costs.
13. Payment must be made to Arroyo Energy Services, LLC, P.O. Box 51435, Midland, TX 79710 prior to the last day of the month in which the account becomes due to avoid finance charges.
14. A service charge of up to \$25.00 will be applied to each returned check. Account(s) sixty (60) days past due may be suspended at AES's discretion.
15. Nothing herein shall be construed as an extension or a waiver of any due date of any amounts payable by Applicant, or authorization of payment of charges on an installment basis.
16. This Application and all future contracts shall be construed and enforced in accordance with the laws of Texas. **THE PARTIES AGREE THAT ANY ACTION RELATED TO THIS APPLICATION OR SUBJECT MATTER THEREOF, INCLUDING BUT NOT LIMITED TO, APPLICANT'S CREDIT APPLICATION/AGREEMENT, PERSONAL GUARANTOR'S UNCONDITIONAL PERSONAL GUARANTY AGREEMENT, RENTAL OUT CONTRACTS, WORK ORDER(S)/SERVICE ESTIMATE(S), AND/OR INVOICES, SHALL EXCLUSIVELY BE BROUGHT AND MAINTAINED ONLY IN THE STATE AND/OR FEDERAL COURTS LOCATED IN MIDLAND, TEXAS WITH STRICT EXCEPTION OF MECHANICS LIENS AND FORECLOSURE ACTION(S) OF MECHANICS LIENS, WHICH SHALL BE BROUGHT AND MAINTAINED IN THE COURTS OF THE STATE WHERE THE EQUIPMENT IS RENTED OR THE PROJECT IS LOCATED. THE PARTIES SPECIFICALLY CONSENT TO THE EXCLUSIVE AND PERSONAL JURISDICTION AND VENUE OF SUCH COURTS AND IRREVOCABLY WAIVE ANY RIGHT TO OBJECT TO SUCH JURISDICTION AND VENUE. MOREOVER, THE PARTIES EXPRESSLY UNDERSTAND, CONFIRM AND AGREE THAT THIS JURISDICTION AND VENUE CLAUSE IS REASONABLE AND FAIR AND WAS FREELY NEGOTIATED BETWEEN THE PARTIES.**
17. Applicant agrees that it will not factor, sell or assign the debt related to the credit granted by AES under the terms of this Application. If any provision of this Application is held to be illegal, invalid, or unenforceable under any present or future law, such provision will be fully severable and this Application shall be construed and enforced as if such provision had never comprised a part of this Application and all other provisions will remain in full force and effect. An individual executing this Application on behalf of Applicant represents and warrants that he/she is of legal age and has been vested with authority and power to sign this Application on behalf of the Applicant. With the exception of all representations, warranties, promises to guaranty and any other covenants made by Applicant contained in AES's Rental Out Contract, Equipment Sale Invoice/Order, Work Order, and Invoices which are hereby incorporated into this Application by this reference, this Application and all documents delivered in connection herewith supersede all prior discussions and agreements and contains the sole and entire agreement among the parties. This Application and its terms and conditions have been reviewed by the Parties, and each has had an opportunity to negotiate the contents of this Application.

UNCONDITIONAL PERSONAL GUARANTY AGREEMENT (the "Agreement")

For value received and in consideration for AES extending credit to the Applicant, the undersigned guarantor(s) (the "Guarantor(s)") hereby individually, personally and unconditionally guarantees to AES and/or its successor and assigns, the prompt payment and performance of any and all indebtedness, terms, covenants, obligations, and liabilities of Applicant to AES, as described in this Application, Rental Out Contract(s), Invoices, Equipment Sale Invoice(s)/Order(s), and/or Work Order(s)/Service Estimate(s) (irrespective of whether such Rental Out Contract(s), Equipment Sale Invoice(s)/Order(s), and/or Work Order(s) have been fully executed between the parties), now existing or hereafter created or arising. Guarantor(s) further agrees to pay on demand any monies due by Applicant to AES whenever Applicant fails or refuses to pay AES. Guarantor(s) hereby waives any notice of non-payment, non-performance or non-observance, or proof of notice or demand, presentment, dishonor, diligence, maturity, acceptance of this Guaranty, extension of any guaranteed indebtedness already or hereafter contracted for by Applicant, any modifications or renewals of any credit agreement evidencing the indebtedness hereby guaranteed, and all setoffs and counterclaims. Guarantor(s) hereby consents to any agreement or arrangement with Applicant, including without limitation, agreements and arrangements for payment, extension, subordination, composition, arrangement, discharge or release of the whole or any part of the indebtedness, and the same shall in no way impair Guarantor's liability hereunder. In the event AES retains or employs attorneys and/or collection agencies to secure payment of any monies due from Applicant and/or Guarantor(s), Guarantor(s) agrees to pay all costs incurred by AES in connection therewith, including, but not limited to, attorney's and/or collection fees, costs, and other related expenses, in addition to all other monies not paid by Applicant. This Guaranty is a continuing obligation of the Guarantor(s), and shall continue to apply to all indebtedness which Applicant may hereafter incur, renew, or extend in whole or in part, with AES all without notice to Guarantor(s). This Guaranty may be revoked for future indebtedness only by notifying AES in writing, via certified or registered mail of the Guarantor(s) revocation. The undersigned Guarantor(s) hereby consent(s) to AES use of non-business consumer credit on the undersigned in order to further evaluate the credit worthiness of the undersigned as guarantor(s) in connection with the extension of the business credit as contemplated by this Application. The undersigned hereby authorize(s) AES to utilize a consumer credit report on the undersigned from time to time in connection with the extension or continuation of the business credit represented by this Application. As the subject matter of this Agreement is also the personal guaranty by Guarantor(s) of Applicant's extension of credit, which is occurring in the state of Texas, the Guarantor also expressly agrees to Paragraph 16 of the terms and conditions of the Application, which is a forum selection clause that governs the Agreement, as well as all other terms and conditions within this Agreement.

Guarantor #1 Name: _____ Guarantor #1 Signature: _____ Date: _____

Guarantor #2 Name: _____ Guarantor #2 Signature: _____ Date: _____