

Winco Fireworks Utah, LLC  
712 W. Amidan Drive #5X  
Ogden, UT 84404  
Phone: 801-732-5880 Fax: 801-732-5877

## Credit Application

Customer Account # (if current customer): \_\_\_\_\_ Amount of Credit Requested: \$ \_\_\_\_\_

Business Name: \_\_\_\_\_ Web Site: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Address: \_\_\_\_\_ For: \_\_\_\_\_ years  
Street City State Zip Code

Billing Address: \_\_\_\_\_  
Street City State Zip Code

Previous Address: \_\_\_\_\_  
Street City State Zip Code

D/B/A: \_\_\_\_\_ Federal Tax I.D. Number: \_\_\_\_\_

Parent Company: \_\_\_\_\_ # Locations: \_\_\_\_\_

Address: \_\_\_\_\_  
Street City State Zip Code

Subsidiaries/Affiliates: \_\_\_\_\_

Type of Business: \_\_\_\_\_ Date Established: \_\_\_\_\_

**Type of Entity:**  Sole Proprietorship  Partnership  Corporation  LLC  LLP

Principle 1: \_\_\_\_\_  
Name Title

Home Address: \_\_\_\_\_  
Street City State Zip Code

Ownership Percentage \_\_\_\_\_ Email Address \_\_\_\_\_  
\_\_\_\_\_  
Social Security # \_\_\_\_\_ Date of Birth \_\_\_\_\_

Principle 2: \_\_\_\_\_  
Name Title

Home Address: \_\_\_\_\_  
Street City State Zip Code

Ownership Percentage \_\_\_\_\_ Email Address \_\_\_\_\_  
\_\_\_\_\_  
Social Security # \_\_\_\_\_ Date of Birth \_\_\_\_\_

**AGREEMENT**

For purposes of obtaining goods and materials from Winco Fireworks Utah, LLC (hereinafter referred to as "Winco"), the undersigned Buyer makes the following representations and covenants:

1. The Buyer and any guarantor shall pay the full amount of any invoice according to the terms of said invoice unless otherwise specified in writing, signed by Winco.
2. If payment in full is not received by Winco, by the due date, interest at the rate of eighteen (18%) per annum (1½% per month, or part thereof) shall accrue and be payable on the unpaid balance from the due date until payment is made in full, at Winco's sole discretion.
3. The undersigned Buyer acknowledges that it has read and agrees to Winco's terms and conditions of sale, as printed on this credit application and are incorporated herein by reference.

Everything that Buyer has stated in this Credit Application or other documents provided to Winco is correct to the best of Buyer's knowledge and the knowledge of any guarantor. The Buyer understands that Winco will retain this document whether or not it is approved. Winco is hereby authorized to check the credit of the Buyer and contact any credit reference or company listed in this Credit Application. Buyer shall attach hereto Buyer's most recent financial statement. Credit may not be extended until it is received and approved in writing by Winco.

SIGNED AT: City \_\_\_\_\_ State \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Printed Name of Principle 1

\_\_\_\_\_  
Printed Name of Principle 2

\_\_\_\_\_  
Signature of Principle 1

\_\_\_\_\_  
Signature of Principle 2

**Guarantor's  
Personal Credit Release**

By signing this application, I authorize Winco Fireworks Utah, LLC, its subsidiaries, affiliates and its agents (hereinafter referred to as "Winco") to investigate my personal credit and financial records. As part of such investigation, I authorize Winco to request and obtain consumer credit reports on me in connection with the opening, monitoring, renewal and extension of this and other accounts with Winco and the marketing of other products and services to me and my business by Winco. I further authorize Winco to share the information received from my consumer credit report with Winco's subsidiaries and affiliates. If I request, you will tell me whether my consumer credit report was requested and if so the name and address of the consumer credit agency that furnished the report. Any misrepresentation in this application will be considered evidence of a fraud, since this information is the basis of the granting of credit. As an inducement to grant credit, the undersigned warrants that the information submitted is true and correct. You are authorized to investigate any credit references listed.

\_\_\_\_\_  
Printed Name of Principle 1

\_\_\_\_\_  
Printed Name of Principle 2

\_\_\_\_\_  
Signature of Principle 1

\_\_\_\_\_  
Signature of Principle 2

**TERMS AND CONDITIONS**

1. **NO MODIFICATIONS** – The sale of merchandise hereunder is expressly conditioned upon Buyer's assent to and acceptance of the terms and conditions contained or referred to herein. **ALL TERMS AND CONDITIONS SET FORTH IN ANY OTHER DOCUMENT OR COMMUNICATION ARE HEREBY EXPLICITLY REJECTED UNLESS EXPRESSLY AGREED TO IN WRITING BY WINCO FIREWORKS UTAH, LLC (“WINCO”).** Execution of this Credit Application or authorization by Buyer to Winco to furnish merchandise hereunder constitutes Buyer's acceptance of and assent to all terms and conditions set forth herein.

2. **ORDERS** – Orders made by Buyer which are not in writing are made at the risk of Buyer, and shipments made before Winco's receipt of a written confirmation of such orders are permitted for Buyer's convenience. To avoid the possibility of duplication, Buyer's written confirmation of any orders must be clearly marked as “CONFIRMATION.” Buyer shall be responsible for any costs of correcting any non-written orders, or Buyer's error in any written order. Confirmation of orders which are not properly marked may be treated as original open orders. Orders cannot be canceled or modified without Winco's consent. Buyer acknowledges that the actual prices of the merchandise sold to Buyer by Winco will be based upon the USD/RMD exchange rate at the time of shipment.

3. **DELIVERY** – Unless agreed to by Winco in a separate written agreement, Winco does not guarantee any certain date of delivery. In no event will Winco be liable for failure to deliver or delays in delivery occasioned by causes beyond Winco's control, including without limitation, strikes, lockouts, fires, embargoes, war or other outbreak of hostilities, acts of God, inability to obtain shipping space, machinery breakdowns, delays of carriers or suppliers, and governmental acts and regulations. Winco shall not be liable for consequential or incidental damages resulting from any delay in delivery. Buyer's right, under the Kansas Uniform Commercial Code, to reject any order due to delay in delivery is waived unless the delivery date was guaranteed by Winco in writing and notice of Buyer's desire to reject any order is presented to Winco in writing within five (5) days after delivery.

4. **DEFECTIVE MERCHANDISE, SUBJECT TO PARAGRAPH 5, IF MATERIAL PURCHASED HEREUNDER IS DEFECTIVE OR IS NOT IN SUBSTANTIAL CONFORMITY WITH THE SPECIFICATIONS, WINCO (AT WINCO'S ELECTION) EITHER WILL (A) REPLACE SUCH MATERIAL WITH CONFORMING MATERIAL AT THE POINT OF INITIAL DELIVERY, OR (B) ALLOW BUYER A CREDIT OR REFUND FOR THE PURCHASE PRICE, PROVIDED IN ANY EVENT THAT (1) BUYER HAS NOTIFIED WINCO OF THE DEFECT OR NONCONFORMITY WITHIN THIRTY (30) DAYS AFTER THE DELIVERY OF THE MATERIAL; (2) THE MATERIAL HAS NOT BEEN INCORPORATED BY**

**BUYER INTO ANY OTHER GOODS; AND (3) WINCO HAS BEEN GIVEN A REASONABLE OPPORTUNITY TO INSPECT THE MATERIAL. BUYER MAY NOT RETURN MATERIAL WITHOUT WINCO'S CONSENT. AFTER INSPECTION OR WAIVER OF INSPECTION BY WINCO, WINCO WILL ARRANGE FOR DISPOSITION OF DEFECTIVE OR NONCONFORMING MATERIALS.**

5. **WARRANTY DISCLAIMER – NOT WITHSTANDING ANY PROVISION HEREIN TO THE CONTRARY, WINCO EXPRESSLY EXCLUDES AND DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR USE FOR A PARTICULAR PURPOSE.** Winco is not liable for loss of time, cost of labor expended, or for any separate, special, direct, consequential, punitive, or incidental damages. Buyer understands that it must inspect and approve all merchandise received from Winco.

6. **CLAIMS AGAINST COMMON CARRIERS** – Unless specified in writing prior to shipment, all good shipped by Winco will be shipped F.O.B. origin. If Buyer discovers a shortage in merchandise delivered or if the merchandise have been damaged in transit, Buyer must make a written notation of the shortage or damage upon the receipt Buyer gives the carrier or his agent. Also, Buyer must request that a similar notation be made on the bill of lading. Damaged material must not be unloaded until it has been inspected and noted in writing upon the receipt.

7. **ATTORNEYS' FEES** – If any default is made in payment of amounts due for the sale of merchandise hereunder or upon any other breach of the terms and conditions set forth herein, Buyer agrees to pay Winco's reasonable cost of collection and/or compliance, including reasonable attorneys' fees, costs and expert fees.

8. **FREIGHT CHARGES** – Buyer will be responsible for freight charges in effect at the time of shipment. Unless specified in writing by Winco prior to shipment, all merchandise will be shipped F.O.B. origin. Freight and duty charges for container shipments are invoiced and due when the container is shipped.

9. **TAXES, SURCHARGES AND OTHER CHARGES** – In addition to the price quoted for merchandise sold, Buyer shall pay any tax, surcharge, or other charge imposed by any present or future law, or otherwise, on the sale of merchandise covered by this order, including without limitation, sales tax, duties, import fees, penalties, and interest and all other reasonable charges for ancillary services and costs.

10. **FINANCIAL RESPONSIBILITY** – Credit is provided to Buyer at Winco's sole discretion. Winco may, in its discretion, require any order placed by Buyer to be paid on a C.O.D. basis. Any concern on the part of Winco regarding Buyer's or Guarantor(s)' ability or willingness to pay for any merchandise purchased on credit shall entitle Winco to stop operation, decline shipment, or stop any goods or materials in

transit without liability, until the merchandise have been paid for or until Winco is furnished assurances adequate to Winco of payment. Buyer agrees to provide its most recent financial statement to Winco upon request and agrees that Winco is authorized to check the credit of Buyer and Guarantor(s) at any time and from time to time.

11. **NON-WAIVER** – No failure or delay on the part of Winco in exercising any rights under this agreement shall operate as a waiver of any of Winco's rights hereunder.

12. **SECURITY AGREEMENT/LIEN RIGHTS** – Buyer hereby grants and conveys to Winco a security interest, pursuant to the Kansas Uniform Commercial Code (“UCC”), in all merchandise sold by Winco to Buyer, and in any and all additions, accessions, substitutions thereto and proceeds thereof (the “collateral”). The security interest is being provided to secure Buyer’s obligation to make payment of the purchase price of the collateral to Winco. Upon any default or breach under this agreement by Buyer, including, however not limited to, failure to make timely payment, Winco shall have all remedies and rights of a secured party under the UCC. Winco is hereby granted authority to file a financing statement (UCC-1) in the county real estate records or with the Secretary of State, of any county or state. Buyer hereby agrees to execute and deliver any such financing statement immediately upon Winco’s request, and additionally irrevocably grants Winco a power of attorney to execute and deliver any such financing statement on Buyer’s behalf. Upon Winco’s request, Buyer and/or Guarantor(s) shall immediately provide Winco with the address and legal description of any real property on which Winco’s merchandise are being stored or located, an accounting of the merchandise stored or located on each property, the name of the owner of each property, if different from Buyer. Failure to timely provide the information shall constitute a default.

13. **PAYMENT TERMS AND CONDITIONS** – **Payment must be made per the due date on each invoice.** If payment in full is not received by Winco by the due date, interest at the rate of one and one-half percent (1½%) per month, or part thereof, shall accrue and be payable on the unpaid balance from the due date until payment is made in full.

14. **SOLVENCY** – Buyer and the Guarantor(s) have not been in bankruptcy under any chapter of the United States Bankruptcy Code within the past twelve (12) months, and Buyer and Guarantor(s) hereby represent that Buyer and Guarantor(s) do not have any present intent (i) to file any voluntary petition in bankruptcy under any Chapter of the Bankruptcy Code; or (ii) directly or indirectly to cause any

goods sold or any interest of Buyer in such goods sold to become the property of any bankruptcy estate. Buyer and Guarantor(s) represent that they are not insolvent and have been, and are presently, paying its debts to creditors as they become due. Buyer and Guarantor(s) agree that the representations made by Buyer and Guarantor(s) in the preceding two sentences are material terms relied upon by Winco in supplying any goods or materials to Buyer and Buyer and Guarantor(s) agree that each purchase order submitted by Buyer shall constitute a reaffirmation by Buyer and Guarantor(s) of the accuracy of those representations. In the event of any voluntary or involuntary bankruptcy filing by or against Buyer and/or Guarantor(s), Winco shall be entitled upon *ex parte* application to an order from the Bankruptcy Court granting immediate relief from the automatic stay to permit Winco to exercise its rights and remedies pursuant to this Credit Application, including without limitation, enforcement of its security interest in the collateral.

15. **USE OF MERCHANDISE** – Buyer represents that any merchandise sold and shipped to Buyer by Winco will be used strictly in accordance with the laws of the state of destination.

16. **INDEMNITY** – Buyer agrees to indemnify, defend, and hold harmless Winco, its officers, managers, employees, agents, assigns and successors against any claims, demands or liability related to or arising out of the transportation, handling, storage, sale or use of said merchandise

17. **GENERAL PROVISIONS** – (a) The person executing this Credit Application on behalf of Buyer and each Guarantor represents that he/she has full authority, and is competent to, execute this Credit Application. (b) In interpreting this Credit Application, the singular shall include the plural and the plural shall include the singular. This Credit Application may be executed and transmitted by facsimile or any other electronic means signature and in counterparts. (c) Paragraph headings set forth herein are for the convenience of the parties and shall not be used to interpret this Agreement. (d) Buyer and each Guarantor have had a reasonable time to consider the terms of this Credit Application and an opportunity to consult with independent legal counsel to review this Credit Application and to revise any provision of this Credit Application with the assistance of counsel. Therefore, any ambiguity contained in this Credit Application shall not be construed against the drafting party. (e) This Credit Application is deemed made in Kansas and shall be governed by and construed in accordance with the laws of Kansas without regard to choice of law provisions. Any dispute regarding this Agreement shall be brought in the District Court of Johnson County, Kansas, where the parties agree to submit to jurisdiction and venue.