



3722 Fort Hamilton Parkway
 Brooklyn, NY 11218
 718.436.1802
www.yblighting.com

APPLICATION FOR OPEN ACCOUNT CREDIT

The business entity below hereby referred to as the Applicant, seeks to apply for credit with Y&B Lighting and Electric Supplies, LLC ("Y&B") for purposes of this application for business credit. This application consists of this informational page and the Terms and Conditions of Application for Business Credit attached hereto and made a part hereof (the "Terms and Conditions")

Company Background:

Applicant's Business Name: _____ No. of Employees: _____
 Address: _____ EIN: _____
 City: _____ State: _____ ZIP: _____ Year Established: _____
 Telephone: _____ Fax: _____ Email: _____
 We operate: _____ business.
 Ours is a: Corporation Partnership Limited Partnership Individual Partnership Other _____
 Credit Limit Requested: \$ _____ Monthly Sales Volume: \$ _____

IMPORTANT: Attach most recent financial statement if credit limit requested is \$5,000 or more, or if in business less than two years.

We are a subsidiary of: _____ Sales Tax Exempt: No Yes if exempt, attach Sales Tax Certificate

Principal owners or stock holders:

Name: _____ SSN: _____ Phone: _____
 Address: _____ City: _____ State: _____ ZIP: _____
 Name: _____ SSN: _____ Phone: _____
 Address: _____ City: _____ State: _____ ZIP: _____

Trade References:

Name: _____ Contact: _____
 Address: _____ City: _____ State: _____ ZIP: _____
 Phone: _____ Fax: _____ Email: _____
 Name: _____ Contact: _____
 Address: _____ City: _____ State: _____ ZIP: _____
 Phone: _____ Fax: _____ Email: _____
 Name: _____ Contact: _____
 Address: _____ City: _____ State: _____ ZIP: _____
 Phone: _____ Fax: _____ Email: _____

Bank Reference:

Name: _____ Contact: _____
 Address: _____ City: _____ State: _____ ZIP: _____
 Phone: _____ Fax: _____ Email: _____



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Continuing Personal Guarantee

In consideration of credit being extended by Y&B, I/We (the "Guarantor") hereby personally guarantee to Y&B the payment on demand of any and obligations and sums that may become due to Y&B by Applicant, including but not limited to, all bills rendered by Y&B to Applicant and other liabilities of Applicant to Y&B of every kind and character and all extensions, renewals, and replacements thereof, including without limitation, all unpaid accrued interest thereon and all costs and expenses payable by Applicant, including legal fees: (i) whether now existing or hereafter incurred; (ii) whether direct, indirect, primary, absolute, secondary, contingent, secured, unsecured, matured or un-matured, by guaranty or otherwise; and (iii) whether such indebtedness is from time to time reduced and thereafter increased or entirely extinguished and thereafter re-incurred. (the "Indebtedness").

If any default shall be made in the payment of any Indebtedness, Guarantor hereby agrees to pay the same in full: (i) without deduction by reason of any setoff, defense or counterclaim by Applicant; (ii) without requiring protest, presentment or notice of non-payment of default to Guarantor or to Applicant; (iii) without requiring notice of non-performance, dishonor, protest, presentment, diligence, promptness, creation, renewal, change, accrual of extension of the Indebtedness; (iv) without notice of sale and delivery of any and all goods, wares, merchandise and/or equipment to Applicant; (v) without requiring Y&B to resort first to Applicant (this being a guaranty of payment and not of collection; and (vi) without requiring notice that any Indebtedness has been incurred or based upon the reliance by Y&B upon this Guaranty; all of which Guarantor hereby waives.

This guaranty shall be a primary absolute, continuing, irrevocable guaranty of the payment and not of collection. The Guarantor further agrees that Y&B may, from time to time, extend the time of payment in whole or in part of the Indebtedness of the Applicant without in any way changing, releasing, or discharging the Guarantor from its obligation hereunder. This guaranty shall remain in full force and effect until revocation by registered mail is sent to and received by Y&B, and thereafter until any and all claims that Y&B may have against Applicant shall have been settled and discharged in full. If there is more than one guarantor, each guarantor signing this document agrees to be bound jointly and severally. The Guarantor shall be bound by all applicable terms and conditions of Y&B, including those set forth in this Application and in part of any invoice.

This Guaranty will not be released, discharged, terminated, modified, affected, or impaired by any occurrences, or circumstances whatsoever, including, but not limited to, any insolvency, bankruptcy, reorganization or other similar proceeding affecting Applicant or its assets.

If any of the undersigned is not an "applicant for credit under Section 202.2(e) of the Equal Credit Opportunity Act of 1974 ("ECOA"), such person acknowledged that (a) this guarantees has been executed to provide credit support to Applicant under this Agreement, and (b) such party was not required to execute guaranty in violation of Section 202.7 (d) of ECOA. This guarantee shall be binding upon the heirs, administrators, successors, and assigns of the undersigned.

Print Name	SSN	Signature	Date

Print Name	SSN	Signature	Date

The undersigned hereby warrants and represents that he or she is a duly authorized representative of the Applicant with full authority to bind same by execution and submission of this Application. The undersigned agrees and acknowledges that the Terms and Conditions shall govern Y&B's review of Applicant's credit history, Y&B's subsequent acceptance or rejection of Applicant's request for credit and any subsequent credit relationship between Y&B and the Applicant. The undersigned warrants and represents that the information set forth in this application is true and correct and is provided for purposes of obtaining credit from Y&B. The undersigned agrees and acknowledges to the Terms and Conditions (on the reverse side or attached hereto) and that payment shall be net 30 days and that past due balances are subject to a service charge at the rate of 1 ½ percent per month, and that Applicant shall be liable for all costs of collection, including but not limited to reasonable attorneys' fees, provided, however, that such terms may change based upon revisions to Y&B's Terms and Conditions of sale as the same may be in effect from time to time. It is agreed that the Terms and Conditions currently in effect and as revised from time to time will apply to all sales made by Y&B.

Print Name	Signature	Date



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TERMS AND CONDITIONS OF SALE AND CREDIT

1. **Y&B'S Terms and Conditions Control the Agreement.**
 - a) These terms and conditions are incorporated into and made a part of the agreement or proposal ("Agreement") by Y&B Lighting and Electrical Supplies, LLC and any of its related divisions or affiliates ("Y&B") to sell to the named Buyer the goods referenced on the face of this document sold pursuant to the Credit Application, if any ("Goods") and services (including, without limitation, any material management, assembly and kitting services, and engineering and design services (whether performed by Y&B or a subcontractor)) referenced on the face of this document pursuant to the Credit Application, if any ("Services"). The Agreement expressly limits Buyer's acceptance to these terms and conditions. Buyer may reject the Agreement by not ordering or receiving any Goods or Services. The Agreement does not constitute an acceptance by Y&B of any offer or counteroffer of Buyer, and Y&B hereby rejects any additional, different, or inconsistent terms, conditions or limitations contained in or incorporated by reference in any forms, purchase orders or other documents of Buyer that already have been or hereafter may be presented to Y&B with respect to the Agreement.
 - b) If Buyer has submitted or will submit additional and/or different terms and conditions to Y&B; or submit a counteroffer to Y&B, Y&B's subsequent performance will not be construed as either acceptance of Buyer's additional and/or different terms and conditions or Buyer's counteroffer, nor will Y&B's subsequent performance be viewed as a willingness to accept any provision of the Uniform Commercial Code, as adopted by any State or Commonwealth, that is contrary or in addition to any of the terms and conditions hereof.
2. **Prices.**
 - a) Unless otherwise agreed to by Y&B in writing, Y&B's prices for the Goods and Services will be the prices stated on the face of this document or Y&B's standard prices for such Goods and Services as of the date hereof, provided that, where standard prices for Goods in the quantities ordered as calculated by Y&B extend beyond two decimal places, Y&B shall round such prices for Goods to the nearest two decimal places for purposes of determining Buyer's payment obligation with respect to such Goods; provided, however, that Y&B may change the price for the Goods and Services in accordance with any change to its standard pricing for such Goods and Services prior to the date of shipment of Goods or performance of Services, as the case may be.
 - b) The prices of any and all Goods and Services shall be confidential, and Buyer shall not disclose such prices to any unrelated third party. Y&B and Buyer acknowledge and agree that money damages for any and all breaches of Buyer's obligation not to disclose the price of any Goods or Services is both incalculable and insufficient and that any such breach would irreparably harm Y&B. Therefore, in the event of an actual or prospective breach of the obligation of Buyer not to disclose the prices of any Goods and Services, Y&B shall be entitled to a permanent and/or a preliminary injunction (without the need for Y & B to post a bond, which requirement the Buyer waives), to prevent or remedy such breach and shall have the right to specific enforcement of this Agreement against Buyer in addition to any other remedies to which Y&B may be entitled at law or in equity.
3. **Specifications and Inspection.**

Unless Y&B has expressly agreed otherwise in writing, it is Buyer's responsibility to ensure that the Goods and Services are the ones that it has requested and that all specifications and quantities are correct. **Y&B HEREBY EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES THAT GOODS AND SERVICES CONFIRM TO ANY SPECIFICATIONS, DRAWINGS, OR SAMPLES. BUYER SHALL PROMPTLY AND TIMELY INSPECT ALL GOODS AND SERVICES PROVIDED AND NOTIFY Y & B OF ANY OBJECTION THEREOF.**
4. **Shipment of Goods; Performance of Services**
 - a) Shipment of all Goods shall be made F.O.B. point of shipment (Ex Works Y&B's facility). Buyer shall bear the risk of loss and damage to Goods after delivery to the point of shipment.
 - b) Any shipping dates for Goods or performance dates for Services given in advance of actual shipment of Goods or performance of Services are Y&B's best estimates for informational purposes only, and deliveries of Goods and performance of Services will be made subject to prior orders on file with Y&B. Unless otherwise agreed to by Y&B in writing, Y&B may, in its sole discretion, use any commercial carriers for shipment of the Goods. Y&B will use its reasonable efforts to comply with Buyer's requests as to method and route of transportation, but Y&B reserves the right to use an alternate method or route of transportation, whether or not at a higher rate.
 - c) Unless otherwise agreed to by Y&B in writing, Buyer will pay all insurance costs in connection with delivery of the Goods, if any, and be responsible for filing and pursuing claims with carriers for loss of, or damage to, Goods in transit.
 - d) Buyer is responsible for obtaining at its sole cost and expense any and all necessary licenses and permits for the Goods and Services, including, without limitation, any licenses and permits for transportation.
 - e) If Buyer is unable to receive the Goods when they are tendered, Buyer will be liable to Y&B for any losses, damages, or additional expenses incurred or suffered by Y&B as a result of Buyer's inability to receive the Goods.
 - f) Buyer immediately will inspect all Goods upon its receipt of them and will be deemed to accept the Goods upon receipt. Any claims for shortages or discrepancies will be waived by Buyer unless made in writing to Y&B within five days of receipt of the Goods.
 - g) For wire and cable, delivery length tolerance is $\pm 10\%$. Cutting and Reel charges will apply when other than standard manufacturer lengths are requested and delivery lead-times may be adjusted.
 - h) Y&B may cancel in whole or in part any order for Goods or Services under the Agreement at any time.
 - i) Until Buyer has fully and finally paid all amounts owed to Y&B for any Goods, Buyer shall hold such Goods in trust for Y&B, and Y&B may repossess them if Buyer fails to pay for them in a timely fashion.
5. **Payment.**
 - a) All payments for Goods and Services must be made in United States currency unless specified in writing by Y&B. Payments for Goods and Services will be made by such means as Y&B may specify, such as by check or wire transfer, provided that Y&B may refuse, in its sole discretion, payment by any means.
 - b) Payment for Goods and Services is due within 30 days from the date of Y&B's invoice; provided, however, that Y&B reserves the right, in its sole discretion, to require full payment in cash before order entry, shipment, or delivery.
 - c) Y&B shall have the right to offset any and all amounts due and owing from Y&B to Buyer under this Agreement, including, without limitation, any chargebacks or rebates, against any amounts due and owing from Buyer to Y&B under this Agreement.
 - d) If Buyer defaults in payment, Buyer will be liable for all collection costs incurred by Y&B including, but not limited to, attorneys' and collection agency fees, and all related disbursements.
 - e) If Buyer does not pay when payment is due, past due amounts are subject to service charges of one and a half percent (1 1/2%) per month or the maximum percentage rate permitted by law, whichever is less.
6. **Taxes.**

The purchase price of the Goods and Services does not include transportation taxes and sales, use, excise, import or any similar tax or other governmental charge arising pursuant to or in connection with the sale, purchase, processing, delivery, storage usage, consumption, performance or transportation of the Goods and Services. Buyer is responsible for payment of any transportation taxes, and any present or future sales, use, excise, import or any similar tax or other governmental charge applicable to the Agreement and to the sale and/or furnishing of the Goods and Services.
7. **Cancellation.**

Buyer may cancel its order for Goods and/or Services, but only if Y&B agrees to such cancellation in writing and only after Buyer pays reasonable charges for expenses already incurred and commitments made by Y&B in connection with the placement of such order(s).
8. **Disclaimer of Warranties.**

Y&B HEREBY EXPRESSLY DISCLAIMS AND EXCLUDES ANY AND ALL REPRESENTATIONS AND WARRANTIES, WHETHER WRITTEN OR ORAL, WHETHER EXPRESS OR IMPLIED, WHETHER ARISING BY CONTRACT, AT LAW, IN EQUITY, BY STRICT LIABILITY OR OTHERWISE, WITH RESPECT TO THE GOODS AND SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, ANY WARRANTY AGAINST DEFECTS IN DESIGN, MATERIALS AND WORKMANSHIP, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTY AGAINST REDHIBITORY DEFECTS, ANY WARRANTY OF GOOD TITLE, AND ANY WARRANTY AGAINST INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY PATENTS, TRADEMARKS, OR COPYRIGHTS. Y&B shall, however, if given prompt written notice by Buyer of any claim of alleged patent, trademark or copyright infringement with respect to any Goods use its reasonable efforts to secure for Buyer such indemnity rights as the manufacturer may offer with respect to such Goods.
9. **Exclusive Remedy.**

Buyer's **EXCLUSIVE** remedy against Y&B for any claim for, or arising out of any in a Good tendered to Buyer is the repair or replacement of the Good, or alternatively, at Y&B's sole election, a refund of the purchase price of the Good. Buyer's **EXCLUSIVE** remedy against Y&B arising out of any defect in, or in connection with, any Service provided hereunder is the re-performance of that Service or, at Y&B's sole election, a refund of the purchase price of the Service. These remedies are the only remedies available to Buyer provided that Buyer has asserted a claim in writing within one year after the Good or Service is provided to Buyer. In the case of the defect which is not reasonably discovered within one year from delivery or performance by Y & B, Buyer shall notify Y & B within 30 days of discovery of the defect, in which case any such defect shall be subject to repair or replacement, subject to a four year statute of limitations commencing from the date the goods or services were delivered or performed. Any Good returned pursuant to this Section 9 will be returned by Buyer in accordance with Y&B's return material authorization procedures then in effect. Returns for a refund may be subject to restocking fees.
10. **Limitation of Liability.**

NOTWITHSTANDING ANYTHING ELSE CONTAINED HEREIN TO THE CONTRARY, IN NO EVENT WILL: (A) Y&B BE LIABLE TO BUYER FOR ANY CIRCUMSTANTIAL, CONSEQUENTIAL, CONTINGENT, EXEMPLARY, INCIDENTAL, INDIRECT, LIQUIDATED, MATERIAL, PUNITIVE, SPECIAL, SPECULATIVE OR OTHER DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, SALES OR REVENUES, COST OF REPLACEMENT GOODS, LOST BUSINESS OR BUSINESS INTERRUPTIONS, OR ATTORNEYS FEES OR COURT COSTS ARISING IN ANY MANNER PURSUANT TO OR IN CONNECTION WITH THE AGREEMENT, THE GOODS OR THE SERVICES (EVEN IF Y&B IS MADE AWARE OF THE POTENTIAL FOR SUCH DAMAGES); AND (B) Y&B'S TOTAL LIABILITY RELATED TO ANY GOOD OR SERVICE SHALL NOT EXCEED THE PURCHASE PRICE OF SUCH GOOD OR SERVICE.
11. **Indemnification.**
 - a) Upon prompt notice by Buyer of any claims of U.S. patent, copyright, or trademark infringement with respect to any Goods or Services, Y&B will use its reasonable efforts to secure for Buyer such indemnity rights as the manufacturer may customarily give with respect to such Goods. This Section 11 sets forth Buyer's sole and exclusive remedy against Y&B regarding the infringement by any Goods or Services of any third party intellectual property rights, including, without limitation, any patents or trademarks.
 - b) Buyer will indemnify, defend and hold harmless Y&B, its shareholders, officers, directors, employees, agents and representatives from and against all losses, damages, liabilities, costs, and expenses including, but not limited to, property damage, loss of profits or revenue, loss of use of any property, cost of capital, cost of purchased or replacement power or temporary equipment, personal or bodily injury, or death



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("Losses"), that may arise pursuant to or in connection with the Agreement, the Goods, or the Services (including, without limitation, Losses arising in connection with the performance of Services on Buyer's premises by Y&B's employees, representatives, agents, or subcontractors), regardless of whether such Losses are suffered directly by Buyer or arise pursuant to or in connection with a third-party suit, claim, counterclaim, demand, judgment or other action (each a "Claim") and regardless of whether or not Y&B or any third-party is proportionately negligent with respect to such Losses and/or Claim, provided that Buyer need not indemnify Y&B for Y&B's obligation, if any, to Buyer under Section 9 above. For the avoidance of doubt and without limitation, this indemnification obligation requires Buyer to pay any judgments against Y&B or any other indemnified party resulting from any Claim, any court costs of Y&B or any other indemnified party in connection with any Claim, and any reasonable attorneys' fees and disbursements incurred by Y&B or any other indemnified party in Y&B's defense of any Claim. Y&B will have the sole and exclusive right to conduct the defense of any Claim at Buyer's sole and exclusive cost and expense. Buyer's indemnification obligation does not depend on the truth or accuracy of any allegations made against Y&B, Buyer or any third party.

12. Product Sustainability

Goods sold by Y&B are designed to meet stated U.S. safety standards and regulations. Because local safety standards and regulations may vary significantly, Y&B cannot guarantee that the Goods meet all applicable requirements in each locality. Buyer assumes responsibility for compliance with such safety standards and regulations in the localities in which the Goods will be shipped, sold and used. Before purchase and use of any Goods, Buyer should review the product application, and national and local codes and regulations, and verify that the use and installation of the Goods will comply with them.

13. Ownership

Y&B shall have and retain all right, title, and interest in and to any and all trade secrets, technical data, sales service and product plans, methodologies, techniques, designs, molds, tools, samples, systems, know-how, expertise and other proprietary information that it may use pursuant to or in connection with any Services, and Buyer shall not obtain a license to, or any other property rights in, any such Y&B property pursuant to or in connection with this Agreement.

14. Export Controls; Availability Laws.

- a) Certain Goods may be subject to export controls under the laws, regulations and/or directives of the United States and various other countries. Buyer must comply with such laws and regulations and not export, re-export or transfer these Goods to any country to which such export, re-export, or transfer is forbidden or without first obtaining all required authorizations or licenses.
- b) Due to government regulations and product availability, not all goods sold by Y&B may be available in every area.
- c) Buyer hereby warrants and represents that it will comply with any and all Laws with respect to the purchase, use, and operation of any and all Goods and Services. For purposes hereof, "Laws" means any international, multinational, national, foreign, federal, state, municipal, local (or other political subdivision) or administrative laws, constitutions, statutes, codes, ordinances, rules, regulations, requirements, standards, policies or guidances having the force of law, treaties, judgments or orders of any kind or nature whatsoever, including, without limitation, any judgment or principle of common law.

15. Interpretation of the Agreement.

None of Y&B's or Buyer's shareholders, directors, officers, partners, managers, employees, agents or representatives have any authority to orally modify or alter in any way the terms and conditions of the Agreement. The terms, conditions, and limitations set forth in the Agreement can be modified, altered, or added to only by a subsequent written instrument signed by an authorized representative of Y&B or by language included on the face hereof. Regardless of how many times Buyer purchases, or has purchased, goods and services from Y&B by whatever means, each time Buyer accepts the Agreement, Buyer and Y&B enter into a separate agreement that will be interpreted without reference to any other agreement between Buyer and Y&B, or what Buyer may claim to be a course of dealing or course of performance that has arisen between Buyer and Y&B. No inconsistent usage of trade or industry custom, if any, prior to, contemporaneous with or subsequent to the making of the Agreement will waive, vary, serve to explain or serve to interpret any of the terms, conditions and limitations of the Agreement. The Agreement is the sole and exclusive agreement with respect to the matters discussed herein and the provision of Goods and Services hereunder, (except for any contemporaneous writing agreed to in writing by Y&B expressly modifying the terms and conditions hereof, which is hereby incorporated herein by reference and made a part hereof) and supersedes all prior and contemporaneous agreements and understandings, negotiations, inducements, representations or conditions, whether oral or written, whether express or implied, with respect to such matters. Failure by Y&B to enforce any of the terms, conditions and limitations of the Agreement will not constitute a waiver of those terms, conditions and limitations or a waiver of any other terms, conditions or limitations of the Agreement, and the failure of Y&B to exercise any right (whether provided by the Agreement, law, equity, or otherwise) arising from Buyer's default under the Agreement will not constitute a waiver of that right or any other rights.

16. Force Majeure.

Y&B will not be liable for its failure to perform under the Agreement (including, without limitation, the failure to deliver any Goods or perform any Services) due to circumstances beyond its control, including, without limitation, fire, flood, earthquake, pestilence or similar catastrophe; war, act of terrorism, or strike; lack or failure of transportation facilities, shortage of suitable parts, materials or labor; any existing or future law, rule, regulation, decree, treaty, proclamation, or order of any governmental agency; inability to secure fuel, materials, supplies, equipment or power at reasonable prices or in sufficient amounts; act of God or the public enemy; or any other event or cause beyond Y&B's reasonable control, including, without limitation, any delay caused by Buyer (each, a "Force Majeure Event"). If any Force Majeure Event prevents Y&B's performance of any of its obligations under the Agreement, Y&B will have the right to (a) change, terminate or cancel the Agreement, or (b) omit during the period of the Force Majeure Event all or any portion of the quantity of the Goods deliverable during that period, whereupon the total quantity deliverable under the Agreement will be reduced by the quantity omitted. If Y&B is unable to supply the total demands for any Goods to be delivered under the Agreement due to a Force Majeure Event, Y&B will have the right to allocate its available supply among its customers in whatever manner Y&B deems to be fair and equitable. In no event will Y&B be obligated to purchase materials from other than its regular sources of supply in order to enable it to supply Goods to Buyer under the Agreement. No change, cancellation or prorotation by Y&B will be deemed to be a breach of any clause, provision, term, condition, or covenant of the Agreement.

17. Choice of Law; Choice of Venue

The negotiation, execution, performance, termination, interpretation and construction of the Agreement will be governed by the law of the State of New York. If either Y&B or Buyer brings a lawsuit or any other action arising out of the Agreement against the other party, such party must file its lawsuit or other action in a state or federal court located in Brooklyn, New York. Y&B and Buyer expressly submit to the exclusive jurisdiction of those courts and consent to venue in those courts, and Y&B. Nothing contained herein shall waive Y & B's right to enforce any judgment obtained against the Buyer outside of such exclusive jurisdiction. In the event of litigation pertaining to any matter covered by the Agreement, **EACH OF Y & B AND BUYER HEREBY WAIVE ANY RIGHT TO A TRIAL BY JURY OF ANY AND ALL ISSUES AND THAT MAY BE RAISED IN SUCH LITIGATION.** Nothing contained in the Agreement will be construed to limit or waive any rights of Y&B under applicable United States federal, state, or local laws. Any provision of the Agreement held to be invalid, illegal or unenforceable will be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof.

18. Binding Authority.

Any director, officer, employee, representative, or agent of Buyer signing or otherwise entering into this Agreement hereby represents and warrants that he or she is duly authorized to execute and enter into this Agreement on behalf of Buyer.