

Credit Application and Agreement

Faxed copy will serve as original.
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Guntert Sales Div., Inc.
222 East Fourth Street
Ripon, CA 95366-2761
209-599-6131 – phone
209-599-2502 – fax
www.guntertsteel.com

Date: _____

Applicant Information	
Legal Name	DBA:
Billing Address	Shipping Address
City, State, Zip	City, State, Zip
Phone _____ Fax _____	Form of Organization <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Proprietorship <input type="checkbox"/> LLC

Ownership Information		Bank Reference	
Type of Business _____ Date Started _____		Bank Name _____	
Principal Name _____ Title _____		Branch or Address _____	
Home Address _____		Name on Account _____	
Home Phone _____ Social Security No. _____ DOB _____		Contact Name _____	Account No. _____
Contractor's License Number _____ Credit Limit Desired _____		Do you have a loan from this bank? If yes, what type?	
Purchase Order Required? <input type="checkbox"/> Yes <input type="checkbox"/> No Price Out Packing Slips? <input type="checkbox"/> Yes <input type="checkbox"/> No		Do any of your suppliers or banks have a security interest in any of your assets at this time?	

Trade References (Metal suppliers preferred)			
Supplier _____		Supplier _____	
Address _____		Address _____	
Phone _____ Fax _____		Phone _____ Fax _____	
Contact Name _____ Account No. _____		Contact Name _____ Account No. _____	

Supplier _____		Supplier _____	
Address _____		Address _____	
Phone _____ Fax _____		Phone _____ Fax _____	
Contact Name _____ Account No. _____		Contact Name _____ Account No. _____	

Security Agreement
To secure payment for all purchases from Secured Party, now and in the future, Debtor hereby grants Guntert Sales Div., Inc. (Secured Party) a continuing security interest in all of Debtor's presently owned or hereafter acquired (a) goods, (b) instruments, (c) Chattel paper, (d) books and records, (e) accounts, (f) accounts receivable, (g) general intangibles, and (h) payment intangibles and together with all proceeds and all support obligations thereof. The following constitute Customer defaults: Non-payment in a timely fashion of Customer's indebtedness to Guntert Sales Div., Inc. bankruptcy, insolvency or assignment for the benefit of creditors; misrepresentation in respect of any provision of this or Agreement between Guntert Sales Div., Inc. and Customer. In the event of default Guntert Sales Div., Inc. may declare unpaid balances due. Customer authorizes Secured Party to file a financing statement describing collateral.

Authorization to Obtain Consumer Credit Report(s)
The undersigned hereby gives consent for GSDI to obtain a consumer credit report on me/us for the express purpose of evaluating my/our credit worthiness in connection with this application for credit.

Certification and Notices
The undersigned signor is an authorized agent of said Applicant and is duly empowered to enter into and make a binding Agreement on behalf of Applicant. I/We certify that everything stated on this application, and stated on any document attached to this application, is true to the best of my/our knowledge. It shall be conclusively presumed that all goods invoiced to Applicant by Guntert Sales Div., Inc., herein after referred to as GSDI, shall be sold in reliance on the information contained in, and/or attached to this document. Applicant specifically authorizes any of its suppliers, banks, and/or any credit reporting agencies to disclose to GSDI any credit information regarding Applicant as may be requested by GSDI. I/we specifically agree that all goods sold by GSDI to Applicant are sold and purchased pursuant to the terms and conditions set forth on the reverse side of this document, or following page if faxed. Applicant agrees that all sales are subject to these terms and conditions to the exclusion of all others.

Authorized Signature(s)	
Authorized Signature _____	Printed Name _____
Title _____	Date _____

Terms and Conditions

1. The sale of goods by Guntert Sales Div., Inc., to you is subject to the terms and conditions set forth below. Since you are purchasing materials from Guntert Sales Div., Inc. ("GSDI"), you shall sometimes be referred to in the balance of this agreement as "Buyer."
2. CREDIT AGREEMENT. In consideration for credit which may be granted, or which may have already been granted, by Guntert Sales Div., Inc., GSDI, Guntert Steel or by any division or subsidiary of Guntert Sales Div., Inc. (Collective GSDI) to you ("Applicant") it is specifically agreed that all goods sold by GSDI to Applicant are sold and purchased pursuant to the terms and conditions set forth within this document. Applicant agrees that all sales are subject to these terms and conditions to the exclusion of all others. Packing slips (priced out, if requested) are delivered along with goods. An invoice is mailed to Applicant after delivery of the goods. In the event of a conflict among the terms and conditions on our invoices, the terms and conditions attached hereto, and those in this Document, the provision most favorable to GSDI shall be controlling. It is specifically agreed that any past due balance shall be paid by Applicant or by Guarantor(s) at 222 E. Fourth Street, Ripon, CA 95366-2761. Except for the description of the goods, none of the terms and conditions on any written purchase order submitted by Applicant shall be part of the contract between GSDI and Applicant.
3. BANK AUTHORIZATION. Applicant hereby authorizes GSDI to provide a copy of this document to any and all banks with which Applicant has or has had an account and authorizes any bank to provide GSDI any and all information with respect to Applicant's credit banking history.
4. CERTIFICATION AND NOTICES. I/We certify that everything stated on this application, and stated on any document attached to this application, is true to the best of my/our knowledge. It shall be conclusively presumed that all goods invoiced to Applicant by GSDI shall be sold in reliance on the information contained in, and/or attached to this document. Applicant's and/or my/our liability to GSDI may be limited or terminated only by written notice mailed by return receipt requested mail, addressed to Guntert Sales Div., Inc., 222 E. Fourth Street, Ripon, CA 95366-2761, Attention: Christine Stanbrough, Credit Manager, with a copy to Deanna Tocco, V.P.O. at 222 E. Fourth Street, Ripon, CA 95366-2761. Such notice shall be the exclusive method of limiting or terminating liability to GSDI, and shall only apply to purchases made after receipt of the notice of termination. Applicant specifically authorizes any of its suppliers, banks, and/or any credit reporting agencies to disclose to GSDI any credit information regarding Applicant as may be requested by GSDI.
5. PAST DUE ACCOUNTS. Any action (I) to collect past due balances, (II) arising out of or related to the sale and/or use of goods sold by GSDI to Applicant must be filed in the Tracy or Stockton Branch of the San Joaquin Municipal Court, in the San Joaquin Superior Court, or in the Federal District Court of Sacramento. The successful party in any such action shall be entitled to attorney fees as more specifically set forth in the Terms and Conditions of Sale as shown within this document and incorporated herein as if set forth in full.
6. QUOTATIONS. Any quotations given by GSDI to Applicant shall not be considered an offer to sell and may not be relied upon unless and until Applicant places a written order with GSDI and the order is accepted in writing by GSDI in the form of a written order confirmation. All order confirmations are subject to the terms and conditions printed in this document.
7. SALE AGREEMENT. All sale of goods by GSDI to Applicant are hereby acknowledged to be purchased and sold pursuant to the terms and condition hereof and within GSDI's order confirmation. These terms and conditions supersede any terms and conditions set forth on the purchase order that you (Buyer) may have sent GSDI. Furthermore, any future orders from Buyer to GSDI incorporate the terms and conditions set forth herein notwithstanding any terms and conditions to the contrary on Buyer's purchase order. If you wish to purchase goods from GSDI on different terms and conditions, you should contact GSDI's Credit Manager and negotiate different terms and conditions, which must be set forth in writing and signed by you and by an officer of GSDI.
8. QUOTATIONS. Quotations from GSDI shall not be considered an offer to sell. Purchase orders from Buyer shall not be considered accepted by GSDI until GSDI has provided Buyer with a written order confirmation. No verbal statement, promises, or understanding shall be binding on GSDI. We will endeavor to quote prices promptly, either by phone or in writing. All prices are subject to change without notice and deliveries are subject to delays, which are beyond our control. Quotations on materials are subject to prior sale. Unless otherwise stated, our quotations are for immediate acceptance. All quotations are F.O.B. our warehouse unless otherwise agreed upon. Shipments from manufactures are F.O.B. shipping point unless otherwise agreed upon. We reserve the right to correct stenographic errors in quotations or invoices.
9. PRICE. Shortly after delivery, an invoice will be mailed to Buyer, which will set forth the price of the goods sold and delivered. If there is any discrepancy between the prices agreed upon between Buyer and GSDI and the prices indicated on the invoice, Buyer must, within ten days of receipt of said invoice, notify GSDI in writing by certified, return receipt requested mail, of the discrepancy or the prices set forth on the invoice shall conclusively be presumed to be the agreed upon price.
10. SPECIALLY ORDERED MATERIAL. Specially ordered material is not subject to cancellation without our written consent.
11. RETURNS AND CLAIMS FOR SHORTAGES. Returned goods must be authorized prior to return. In order to expedite credit being given we must have our invoice number and date. The issuance of credit will be subject to normal inspection and customary handling charges. Claims for damaged material or shortages should be made immediately upon receipt of goods. All materials are carefully inspected before shipment, but in spite of the best care, it is sometimes impossible to detect all imperfections. Material that is a special-order item or is cut to customer's specifications cannot be returned for credit.
12. PAYMENTS, ATTORNEY'S FEES AND SUIT. Payment on any past due account is to be paid to GSDI at 222 E. Fourth Street, Ripon, CA 95366-2761. In the event Buyer fails to make payment to GSDI, Buyer's entire account with GSDI shall become immediately due and payable. In the event of any suit arising out of or related to the sale of goods by GSDI to Buyer, which is concluded by entry of Default Judgment because a Defendant fails to answer the Complaint, the successful party shall be entitled to attorney fees in the amount of: (I) 40% (but not less than \$1,500.00) of the claim if the claim is \$5,000.00 or less; or, (II) 33.3% of the claim if the claim is over \$5,000.00. If the suit is concluded after Defendant files an Answer (even if the Answer is allowed to be filed by the Court after a Default has been entered and/or even if the Answer is ultimately stricken), the successful party shall be entitled to reasonable attorney fees. In addition, the successful party in any suit shall be entitled to request and receive post judgment attorney fees with respect to fees incurred to collect the Judgment. Any Action by GSDI or by Buyer must be brought in the San Joaquin Municipal Court (Tracy Judicial District), in the San Joaquin Superior Court (Stockton District), or in the Federal District Court in Sacramento. However, if GSDI elects to require payment on any past due account of \$5,000.00 or less, suit must be filed in Tracy Small Claims Court. Buyer shall pay \$25.00 to GSDI for the first and \$35.00 for each subsequent check issued by Buyer and returned unpaid to GSDI. These terms and conditions and all sales by GSDI to Buyer shall be construed and enforced in accordance with and governed by the laws of the State of California.
13. TERMS: 3/4 of 1%, 10 days, net 30. Payment with respect to any purchase is due upon issuance of an invoice and shall be delinquent or past due in thirty days after date of said invoice. GSDI shall be entitled to service charges on any delinquent account. Service charges will be charged at the rate of 1.5% per month.
14. REPRESENTATION AND WARRANTIES. "Seller warrants that the product(s) furnished is free from defects in material and workmanship and shall replace, at the delivery point specified herein, any product found to be defective within one year, or at the Seller's option refund the price paid for such product, plus any transportation charges paid by the buyer to GSDI. Damages are limited to the purchase price plus the above transportation. This constitutes Buyer's sole remedy and in no event shall the seller be liable for labor, loss of use or profits, or for any other special, indirect, incidental or consequential damages. THE WARRANTIES SET FORTH IN THIS PROVISION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES WHETHER STATUTORY, EXPRESS OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE AND/OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE). THE REMEDIES PROVIDED ABOVE ARE THE PURCHASER'S SOLE REMEDIES FOR ANY FAILURE OF SELLER TO COMPLY WITH ITS OBLIGATIONS."
15. "Correction of any non-conformity in the manner and period of time provided above shall constitute complete fulfillment of all the liabilities of the Seller whether the claims of the Buyer are based in contract, in tort (including negligence and strict liability), in warranty or otherwise with respect to or arising out of the products furnished hereunder." Buyer agrees to comply with, notify his customers of all use, maintenance, and care requirements published and distributed in GSDI's catalogs.
16. DELAYS. GSDI shall not be responsible for any damages to Buyer as a result of any delay in delivery. Any and all delivery dates given by GSDI are estimates only. Buyer is cautioned to make allowance for delays and is warned that GSDI shall not be liable to Buyer for delays in delivery.
17. LIMITATIONS OF LIABILITY. GSDI shall not, under any circumstance, be liable for special or consequential damages such as, but not limited to: (I) damage to or loss of other property or equipment; (II) loss of profits, revenue or reputation; (III) cost of capital; (IV) cost of replacement ("cover") goods; (V) cost of storage, handling and care of damaged, defective, or non-conforming goods; or, (VI) claims of customers for service interruptions. The remedies of the Buyer set forth herein are exclusive. The liability of GSDI, arising out of or related in any way to any contract, negligence, warranty, mutual mistake or anything done in connection with the contract such as performance or breach thereof, or from the manufacture, sale, delivery, resale, installation or use of any goods furnished under this contract shall be limited to GSDI's choice of any one of the following: (I) the repair of goods; (II) the replacement of the goods; or, (III) the cancellation of the contract, the return of the goods in question to GSDI, and return to Buyer of any consideration paid to GSDI for said goods.
18. SEVERABILITY. If any provision or part of these terms and conditions or the application thereof to any person or circumstance is held invalid or unconscionable, such invalidity or unconscionability shall not affect other provisions or applications of these terms and conditions which can be given effect without the invalid or unconscionable provision or application and, to this end, the provision of this document are to be severable.
19. WAIVERS. GSDI may delay exercising or may omit to exercise any right or remedy, without waiving that or any other past, present or future right or remedy except in writing by GSDI. GSDI's consistent waiver of any right or remedy shall not modify the terms of this Agreement, or of any Agreement that incorporates these terms and conditions, nor establish a "course of dealing" which could be construed as a waiver of any of the provisions of: these terms and conditions; Buyer's signed "Application, Credit Agreement, and Personal Guaranty"; a quotation from GSDI; or any other Agreement between Buyer and GSDI.
20. ENTIRE AGREEMENT. This document and any "Credit Application, Credit Agreement, and Personal Guaranty", constitute the entire understanding between the Buyer and GSDI and supersedes all prior representations, warranties, statements, promises and understandings, whether oral or written with respect to the subject matter thereof, and may not be modified or terminated, except by a document in writing signed by the parties hereto, subsequent to the date hereof. None of the parties hereto have made any promises or representations to induce any party to enter into this Agreement and no party hereto is relying upon any promise or representation not contained in this Agreement, in a credit application, or in any other document referred to herein

Initial

Date

Blanket California Resale Permit

Faxed copy will serve as original

Name of Purchaser

Address of Purchaser

I hereby certify that I hold the following valid seller's permit issued pursuant to the Sales and Use Tax Law; that I am engaged in the business of selling the following tangible personal property described herein which I shall purchase from Guntert Sales Div., Inc. and will be resold by me in the form of tangible personal property; provide, however that in the event any of such property is used for any purpose other than retention, demonstration or display while holding it for sale in the regular course of business, it is understood that I am required by the Sales and Use Tax Law to report and pay tax, measured by the purchase of such property or other authorized amount.

Permit Number

Products sold by your business

Stock and/or Fabricated Steel

Description of property to be purchased for resale

Signature

Title

Date

Phone

Fax

For your information: A person may be guilty of a misdemeanor under Revenue and Taxation Code section 6094.5 if the purchaser knows at the time of purchase that he or she will not resell the purchased item prior to any use (other than retention, demonstration or display while holding it for resale) and he or she furnishes a resale certificate to avoid payment to the seller of an amount as tax. Additionally, a person misusing a resale certificate for personal gain or to evade the payment of tax is liable, for each purchase, for the tax that would have been due, plus a penalty of 10 percent of the tax of \$500, whichever is more.