



Gist Credit Application April 2008

THIS APPLICATION FOR CREDIT FACILITIES INCORPORATES STANDARD TERMS AND CONDITIONS OF SALE AND SURETYSHIP ACCEPTANCE.

SECTION A - QUESTIONNAIRE

We, _____
(hereinafter referred to as "THE APPLICANT") hereby make application for credit facilities for the opening of an account with GIST (PTY) LTD, Registration number 2000/030523/07 (hereinafter referred to as "THE CREDITOR").
In support of this application, the following information is furnished:

1. Legal entity type (please tick)

Sole Ownership	Partnership	Close Corporation	Private Co. (Pty) Ltd	Public Co. (Ltd)
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2.1 Registered Name of "THE APPLICANT" _____
2.2 Trading Name _____
2.3 Company Registration number (if registered) _____
2.4 Company VAT number (if registered) _____

3.1 Postal Address _____
_____ Code _____

3.2 Physical Address of THE APPLICANT in terms of Section B, clause 1 of the Terms and Conditions of Sale

3.3 Delivery Address _____

3.4 Registered Office Address _____

3.5 Telephone Numbers Area Code (_____) _____

3.6 Telefax Number Area Code (_____) _____

3.7 Cellular Number _____

3.8 e-Mail address _____

3.9 Name, Address and Contact number of landlord _____

3.10 Person responsible for account payment: _____

4.1 Date Business Commenced Trading

D	D	M	M	Y	Y	Y	Y
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5.1 Bankers _____
5.2 Branch _____
5.3 Account Number _____
5.4 Branch Code _____
5.5 Type of account _____
5.6 Date account opened _____
5.7 If account has been open for less than 3 years, please state details of previous account _____

Please initial here _____

- 6.1 Holding Company Name _____
- 6.2 Percentage Share Holding _____
- 6.3 Name of Auditors / Accounting Officer _____
- 6.3.1 Street address _____

- 6.3.2 Telephone Number _____ Code (_____) _____
- 6.4 Date of last audited financial statements _____ (please attach hereto)

7 Details of principals (Sole Owner / Partners / Members / Directors)

Full Name	ID Number	Home Address	Home Phone

8 Trade References

Company Name	Telephone Number
	Area Code ()
	Area Code ()
	Area Code ()
	Area Code ()
	Area Code ()

10 The following credit limit request for assessment purposes only:

- 10.1 Amount of credit required R _____
- 10.2 Estimated monthly purchases R _____
- 10.3 Credit Terms **FROM DATE OF INVOICE:** C.O.D./ 7 days / 14 days / 30 days _____

Please initial here _____

SECTION B – Terms and Conditions of Sale	3
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THE APPLICANT or its duly authorised agent does hereby apply for credit facilities with THE CREDITOR and in consideration thereof THE APPLICANT does hereby irrevocably accept the following terms and conditions.

1. **Domicilium**
THE APPLICANT and the signatory hereby chooses Domicilium Citandi et Executandi (in other words, the address at which the Applicant and the Signatory will accept all Notices, legal documents and the like, whether or not the Applicant and/or Signatory is still at the address chosen) for all purposes arising out of this application at the Physical Address stipulated in Section A, clause 3.2 of this application.
2. **Proof of Claims**
A certificate signed by a manager or any director of THE CREDITOR reflecting the amount owing by THE APPLICANT to THE CREDITOR, in respect of the credit facilities granted to THE APPLICANT relating to THE APPLICANT'S dealings with THE CREDITOR, and of the fact that such amount is due, owing and unpaid shall be prima facie proof (meaning proof at face value) of the effects therein stated for the purpose of any action (whether by way of provisional sentence or otherwise), proof of debt on insolvency of for any purpose whatsoever where the amount of such claims is required to be established, and it shall rest with THE APPLICANT to prove that such amount is not owing and/or due and unpaid.
3. **Consent to jurisdiction**
Notwithstanding the amount which may at any time be owing by THE APPLICANT to THE CREDITOR, the parties do hereby consent, in terms of Section 45 of Magistrates Court Act (No 32 of 1944 as amended), to the Jurisdiction of the Magistrate's Court [in other words, if the amount owing by THE APPLICANT is more than R100 000-00, then THE CREDITOR shall have the option to sue out of the Magistrate's Court as opposed o the High Court, should it so desire] for the determination of any action or proceeding which may be brought by THE CREDITOR against THE APPLICANT arising out of any transaction between the parties, it being recorded that THE CREDITOR shall be entitled, but not obliged, to bring any action or proceeding in the said court.
4. **Defaulting in payment**
In the event of THE APPLICANT defaulting in making payment of any amount that has become due and owing, then the full balance outstanding (whether due or not) will immediately become due and payable without desire to THE APPLICANT.
5. **Change of address**
THE APPLICANT undertakes to notify THE CREDITOR forthwith in writing of any change of address.
6. **Objections to statement**
If THE APPLICANT should fail to object to any item appearing on THE CREDITOR'S statement of account of account within fourteen (14) days of date of the dispatch of the statements the accounts shall be deemed to be in order.
7. **Change of ownership**
THE APPLICANT undertakes to notify THE CREDITOR, in writing, within seven (7) days of any change of Ownership of THE APPLICANT'S business, or should THE APPLICANT be a company, of its share transactions whereby the majority shareholding is affected, failing which notice the entire balance owing, whether due or not, will immediately be deemed to be due and payable by THE APPLICANT. In addition to the foregoing, THE APPLICANT acknowledges that immediately upon any change of Ownership in THE APPLICANT any outstanding amount whether due or not shall be deemed to be forthwith payable by THE APPLICANT to THE CREDITOR.
8. **Reservation of ownership**
Until such time as THE APPLICANT has paid the purchase price in full in respect of any purchase of goods, the ownership in an to all such goods shall remain vested in THE CREDITOR. THE CREDITOR shall, in its sole discretion, without notice to THE APPLICANT, be entitled to take possession of any such goods which have not been paid for and in respect of which payment is overdue, in which event THE APPLICANT shall be entitled to a credit in respect of the goods so returned being the price at which the goods are sold or the value thereof as determined by THE CREDITOR. THE APPLICANT hereby waives any right it may have for a spoliation order against THE CREDITORS in the event that THE CREDITOR takes possession of any goods.

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9. **Valid orders**

- 9.1 Orders shall constitute irrevocable offers to purchase the goods in question at the usual prices of THE CREDITOR as at the date when THE APPLICANT places the order for goods, and the order shall be capable of acceptance by THE CREDITOR for the delivery of the goods, by written acceptance or confirmation of the order.
- 9.2 In the event of any order being given to THE CREDITOR on an order form reflecting THE APPLICANT'S name as the entity from which the order emanates, such order shall be deemed to have emanated from THE APPLICANT, notwithstanding the fact that such order may have been given or signed by a person not authorised by THE APPLICANT and such order will be deemed to constitute valid delivery. It is further the sole responsibility of THE APPLICANT to determine that goods ordered are suitable for the purposes of the intended use.
- 9.3 THE APPLICANT shall provide THE CREDITOR with an order number when placing an order.
- 9.4 Orders accepted by THE CREDITOR shall not be varied or cancelled by THE APPLICANT, except at the sole discretion of THE CREDITOR, which discretion shall not be unreasonably withheld.
- 9.5 Oral orders shall similarly be capable of acceptance but THE CREDITOR will not be responsible for any errors or misunderstandings occasioned by THE APPLICANT'S failure to make the order in writing.

10. **Non-waiver of rights**

Any condonation of any breach of any of the provisions hereof or other act or relaxation, indulgence or grace on the part of THE CREDITORS shall not in any way operate as or be deemed to be a waiver by THE CREDITOR of any rights under this contract, or be construed as a novation thereof.

11. **Payment to CREDITOR**

THE CREDITOR does not appoint the Post Office as its agents for payments by post. All payments shall be made to THE CREDITOR'S place of business from where the goods were ordered. In the event of any payments being mislaid or lost in the post, THE APPLICANT shall still be liable to THE CREDITOR for payment.

12. **Credit terms**

The credit terms are, unless amended in writing by a director/manager of THE CREDITOR, **7 (seven) days, 14 (fourteen) days, 30 (thirty) days nett**, where such days are calculated from the date of **INVOICE**. Settlement is effected only on receipt of cash or due honour of cheque or similar payment instrument. Any credit facilities granted to THE APPLICANT by THE CREDITOR is entirely at the discretion of THE CREDITOR, and may be withdrawn at any time.

13. **Interest on overdue accounts**

THE CREDITOR shall be entitled to charge THE APPLICANT interest at the rate of **5%** per month a tempora morae (in other words, from the moment the debt is overdue) provided however, that nothing contained herein shall be interpreted as obliging THE CREDITOR to afford THE APPLICANT any such indulgence to effect payment after due date.

14. **Consent to sharing information**

THE APPLICANT specifically warrants that THE CREDITOR has consent to:-

1. Carry out a credit enquiry from time to time with one or more credit bureaux, credit information agents, credit insurance companies or other creditors of THE APPLICANT'S in terms of this agreement.
2. THE CREDITOR may transmit details to credit bureaux, credit information agents, credit insurance companies or other creditors of THE APPLICANT'S of how THE APPLICANT has performed in meeting his/her/its obligations in terms of this agreement. Such information shared is for purposes of making risk management decisions and preventing fraud.
3. If THE APPLICANT fails to meet his/her/its commitments to THE CREDITOR, THE CREDITOR may record THE APPLICANT'S non-performance with credit bureaux, credit information agents, credit insurance companies or other creditors of THE APPLICANT'S.

15. **Delivery and Repairs**

- 15.1 THE APPLICANT agrees that the signature of any agent, contractor, sub-contractor or employee of THE APPLICANT on THE CREDITOR'S official delivery note/invoice/waybill, or the delivery note of any authorised independent carrier will constitute delivery of the goods purchased.
- 15.2 Should THE APPLICANT wish to receive delivery of the goods by a more expensive method of transportation than that normally ordered THE CREDITOR, THE APPLICANT shall make such request in writing and, in the event that THE CREDITOR agrees to arrange such special delivery, the additional charges shall be debited to THE APPLICANT'S account and shall become payable by THE APPLICANT.
- 15.3 Any delivery date stated on the order confirmation is approximate only. THE CREDITOR shall not be bound by that date, but will make all reasonable efforts to deliver by that date.
- 15.4 Whilst THE CREDITOR will endeavour to ensure that goods are delivered timeously, it shall not be responsible for any delays in the delivery of such goods, and THE APPLICANT shall not be entitled to refuse acceptance of such

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late deliveries. THE CREDITOR shall in any event not be liable to THE APPLICANT, or to any third party, for any loss of whatsoever nature as a result of goods not being delivered timeously.

- 15.5 The risk in and to the goods shall pass from THE CREDITOR to THE APPLICANT on the date of delivery notwithstanding that ownership will not pass to THE APPLICANT until full payment of the purchase price. Delivery shall be deemed to have taken place against signature of THE CREDITOR'S delivery note, proof of posting if the goods are posted to THE APPLICANT of delivery to the South African Transport Services of Road Carrier if the goods are railed or transported by THE CREDITOR. The Post Office/South African Transport Services or Road Carrier shall act as the agent of THE APPLICANT.
- 15.6 In the event of THE CREDITOR acceding to any request by THE APPLICANT to postpone delivery of the goods, or in the event of THE APPLICANT failing to give THE CREDITOR sufficient information to enable it to process any order, THE APPLICANT will pay any costs and expenses thereby incurred by THE CREDITOR.
- 15.7 THE APPLICANT agrees that goods will be offloaded at the nearest accessible point on site. THE CREDITOR shall not be held responsible for any damage to any goods delivered during the delivery process, arising from any cause whatsoever.
- 15.8 Short deliveries must be reported to THE CREDITOR on delivery, failing which such claims will not be entertained by THE CREDITOR.
- 15.9 Any repair time or cost estimates given by THE APPLICANT to THE CREDITOR shall be estimates only and are not considered binding upon THE CREDITOR. Any item handed in for repair to THE APPLICANT may be sold to defray costs if such repair items are not collected within 30 days of such repair being carried out. Repairs are guaranteed for a period in line with Manufacturers warranty.
- 15.10 All goods taken by THE CREDITOR on evaluation, approval demonstration or consignment shall be deemed sold of not returned with 7 (seven) days from delivery in perfect condition, in the original packaging and with all accessories and manuals intact.
- 15.11 THE CREDITOR acknowledges all copyrights, patents, trade marks or designs, and indemnifies THE APPLICANT against any claims, costs or expenses arising out of the infringement thereof.

16. Returned Goods

- 16.1 Whilst THE CREDITOR is under no obligation to accept the return of goods, The APPLICANT may apply to THE CREDITOR for permission to return goods and if written permission together with a Return Manufacturer's Authorisation (RMA) number is given by THE CREDITOR'S operations department for such return, the following will apply :-
 - i. Goods will only be accepted for credit if they are returned within 21 (twenty one) calendar days of delivery in their original saleable condition, in which event THE CREDITOR will be entitled without the necessity of any further agreement to claim from THE APPLICANT a handling charge of 15% (fifteen percent) of the invoice price of the goods returned.
 - ii. Defective products may be returned if, within 7 (seven) days of delivery, THE APPLICANT advises THE CREDITOR of the defect and then returns the product immediately together with all documentation and approved RMA number, and in the products original saleable condition. Unless this is done, the product concerned will be deemed to have been delivered to THE APPLICANT in perfect condition.
 - iii. In the event of a cancellation of an order by THE APPLICANT for goods received by THE APPLICANT and accepted for a return by THE CREDITOR, and THE CREDITOR reserves the right to charge a handling fee of 15% (fifteen percent) on the value of the order cancelled or goods returned.
 - iv. The credit control department must be notified of the relevant invoice before any claim will be considered.

17. Warranties

- 17.1 New goods are guaranteed according to the Manufacturer's product specific warranties only and all other guarantees including common law guarantees are hereby specifically excluded. Services carry no guarantees. No representation or warranty, including but not limited to statements of capacity, suitability for use or performance, made by employees of THE CREDITOR shall be considered to be a warranty by or binding on THE CREDITOR. Any such statements made shall not give rise to any liability of whatsoever nature on the part of THE CREDITOR.
- 17.2 Liability under clause 16.1 is restricted to the cost of repair or replacement of faulty goods or granting of a credit to the value of such goods at the sole discretion of THE CREDITOR.
- 17.3 THE APPLICANT will have no warranty or guarantee claims under this agreement unless THE CREDITOR has received notice within 7 (seven) days of the alleged defect occurring, a written notice from THE APPLICANT specifying the defect and requesting THE CREDITOR to remedy such defect. Any written notice of such defect must be accompanied by the original tax invoice as issued by THE CREDITOR.
- 17.4 THE APPLICANT shall return any defective goods to the premises of THE CREDITOR at THE APPLICANT'S cost, packed in the original packaging, failing which no guarantee or warranty claim will be enforceable.
- 17.5 All warranties and guarantees shall become immediately null and void should any equipment be tampered with; seals broken by THE APPLICANT; or should the goods be opened outside of the Manufacturer's specifications.

- 17.6 THE APPLICANT indemnifies and holds THE CREDITOR (including its employees, sub-contractors or subsidiaries) harmless against all claims of whatsoever nature that may be brought or threatened against THE CREDITOR or its employees by any third party of arising from or in connection with any defect, latent or otherwise in any goods supplied and/or services rendered by THE CREDITOR.
18. **Recovery of legal/collection costs**
Should THE CREDITOR instruct its attorneys or collection agent to collect any overdue amounts, or to take any action against THE APPLICANT in the implementation or protection of THE CREDITOR'S rights, THE CREDITOR shall be entitled to the recovery of all legal or collection costs arising there from, on the scale as between attorney, agent or collection agency and own client.
19. **Responsibility for losses / damages or delays**
THE CREDITOR will not be in any way responsible for losses, damages or delays caused by or arising from *vis major* (a natural disaster) *causes fortuitus* (an unavoidable accident) or acts of the State's enemies, riots, lockouts, cessation of labour, transport delays, shortened hours of labour, accidents of any kind, insurrection, war, whether declared or not, the imposition of any trade boycotts or sanctions of trade restrictions by any government, authority, company or organization of person or persons, whether within the Republic of South Africa or anywhere else, or any other cause or contingency whatsoever beyond the control of THE CREDITOR, whether *eiusdem generic* (of what was clearly the real intention between the parties) with the causes aforementioned or not.
20. **Jurisdiction of magistrate's court – irrespective of value**
THE APPLICANT consents that at the option of THE CREDITOR (who shall be entitled but not obliged hereunder) any proceedings against THE APPLICANT may be brought by the Magistrate's Court, notwithstanding that the value of the claimable amount exceeds the jurisdiction of the Court.
21. **Set-off**
It is agreed that set-off shall operate automatically as a matter of law at the moment reciprocal debts between THE CREDITOR and THE APPLICANT come into existence and independently of the will of the parties and it shall not be necessary for either THE CREDITOR or THE APPLICANT to specifically raise set-off. Upon the operation of automatic set-off aforementioned, the debts shall be mutually extinguished to the extent of the lesser debt.
22. **Severability of clauses**
Each clause of these conditions of sale is severable, the one from the other and if any one or more clauses are found to be invalid or enforceable, that clause/clauses shall not affect the balance of these conditions of sale, which shall remain of full force and affect.
23. **Entire agreement**
This contract contains the entire agreement between the parties and any other terms thereof whether express or implied or excluded herefrom and any variations, cancellations or additions to this contract shall not be of any force or effect unless reduced to writing and signed by the parties or their duly authorised signatories. This agreement shall be governed by the laws of South Africa.
24. **Suretyship**
I, by my signature hereto (which appears below) do, in addition to the above, hereby bind myself in my private and individual capacity as surety and co-principal in solidum (in other words in entirety – where there are several co-obligants he bound "in solidum", each is liable for full payment or performance, and THE CREDITOR may choose which of the obligants he will sue) with THE APPLICANT in favour of THE CREDITOR for the due performance of any obligation of THE APPLICANT and for the payment to THE CREDITOR by THE APPLICANT of any amounts which may now or at any time be or become owing to THE CREDITOR by THE APPLICANT from whatsoever cause arising and including, but without limiting the generality of the foregoing, any claims and actions against THE APPLICANT acquired by way of cession. This suretyship shall be a continuing covering guarantee/surety may only be cancelled in writing by THE CREDITOR and then only, in the event that the sums then owing by THE APPLICANT (Whether due or not) to THE CREDITOR have been paid in full. I hereby renounce the benefits of the legal exceptions "non Causa Debiti" (no cause or ground of debt), "Ordinis Seu Excussionis et Divisionis" (the benefit of being sued for only that portion of the debt) and "cession of Action" with the force, meaning and effect of which I declare myself to be fully acquainted. I furthermore bind myself irrevocably to all of the terms and conditions set out in this agreement.

THE APPLICANT warrants that the information submitted in this application is true and correct in all respects and that THE APPLICANT is entirely familiar with the terms and conditions contained herein. THE APPLICANT further warrants that he/she has read and understood the contents of clause 23.

Please initial here _____

Thus signed by THE APPLICANT or its duly authorised agent/signatory who hereby warrants that he/she is authorised to sign on behalf of THE APPLICANT.

Signed at _____ this _____ day of _____
Before the undersigned witnesses.

For and on behalf of THE APPLICANT:

Name: _____
Designation: _____
Signature: _____
Date: _____
As Witness: _____