

CREDIT PROPOSAL & SURETYSHIP

Application to open a credit account with
Gaydons Motor Spares SA (Pty) Ltd

CONTACT DETAILS

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E-mail: info@gaydons.co.za • Website: www.gaydonmotorspares.com

Date: _____ Account Number: _____

I, the undersigned, _____ do hereby make application on behalf of

_____ ("the Applicant") for credit facilities from Gaydons Motor Spares S.A (Pty) Ltd (hereinafter referred to as "Gaydons Spares")

Value of goods to be taken on credit: _____

Description of goods:

Address where the goods will be kept:

DETAILS OF APPLICANT:

Full name of Applicant: _____
(If Company, please provide name of Company account, which is to be debited)

Identify Number / Passport Number (if not South African): _____

Date of birth: _____ Marital Status: Single / Married with ANC / Married in COP

If married, please provide the following details:-

1. Spouse's name: _____

2. Spouse's ID No. _____

3. Date of birth: _____

4. Number of dependants: _____

Has the Applicant ever been insolvent? Yes ____ / No ____

If yes, was he/she rehabilitated? Yes ____ / No ____

Is the Applicant one of the following?

Limited Liability Company		Close Corporation	
Partnership		Sole proprietorship	

If so:

Date on which Applicant commenced business: _____

Address at which the Applicant conducts its business: _____

Postal Address: _____

Telephone Number: (____) _____ Cell No. _____

Fax Number: (____) _____ Email: _____

The Applicant's VAT Registration Number: _____

In the event of the applicant being a Limited Liability Company or Close Corporation, kindly specify the following:

A. Registered offices of company Registered office address of company _____

B. Company / Close Corporation Registration Number: _____

C. Name and Addresses of all Directors, Partners, Members, Sole Proprietor:

FULL NAMES	IDENTITY NO. (Kindly enclose certified copies of first page of Identity documents)	RESIDENTIAL ADDRESS (Please provide proof of residence)	TELEPHONE NO. (Landline and cellphone)

D. Name of Address of Accounting Officer / Auditor: _____

1. APPLICANT'S BANKING DETAILS

- a) Bank: _____
- b) Branch name: _____
- c) Branch code: _____
- d) Account Number: _____
- e) Credit card details: _____

Method of payment: EFT / Debit Order / Cash

2. Previous Credit Transactions (a minimum of three (3) credit references must be provided):

COMPANY	CONTACT DETAILS	AMOUNT OWING/ PAID IN FULL	TYPE OF GOODS	ORIGINAL AMOUNT
1.				
2.				
3.				
4.				

PROPERTY

Does the Applicant own any immovable property? Yes / No _____

Address: _____

Is the property subject to a bond? Yes/No _____

If Yes, please complete the following:

Bond holder: _____ Loan account number: _____

Purchase price: _____ Date Purchased: _____

Details of other credit transactions still operative:

Name of supplier: _____ Amount of installment: _____

Balance still to be paid: _____ Monthly income of applicant: _____

Monthly income of spouse: _____ Monthly expenses: _____

Life insurance: Yes/No

Amount insured for: _____

Details of other insurance (RAF/Pension/Provident funds):

Personal assets value: _____ Amount of shares held: _____

Fixed deposits/other investments: _____

Motor vehicles owned / value: _____

Description of such vehicles owned: _____

I hereby declare that to the best of my knowledge and belief this is a true
and correct statement of assets and liabilities and of the other information given above.

Signed at _____ on the _____ of _____

Name: _____ ID number: _____

Signature: _____

TERMS AND CONDITIONS

PREAMBLE

The applicant confirms that he/she/it is familiar with the provisions of the Consumer Protection Act 68 of 2008 as well as the National Credit Act 34 of 2005.

The applicant further acknowledges that he/she/it has the right to seek legal representation regarding these standard terms and conditions and this application for credit, and that he/she/it waives such right to do so.

The applicant confirms that he /she/it has read the standard terms and conditions of Gaydon's Motor Spares (Pty) Ltd. and considers himself/herself/itself bound thereby.

INTERPRETATION

In these trading terms and conditions:

The headings to the clauses are for reference purposes only and shall not aid in the interpretation of the clauses to which they relate;

Unless the context clearly indicates a contrary intention, words importing any one gender include the other two genders, the singular includes the plural and vice versa, and natural persons include created entities (corporate or unincorporate) and vice versa;

The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning namely —

"The company" refers to Gaydon's Motor Spares (Pty) Ltd.

"Customer" means any person at whose request or on whose behalf the company undertakes any business or provides any advice, information or service;

"Goods" means any goods sold pursuant to the company's standard trading terms and conditions.

1. CREDIT AUTHORISATION

The duly authorized representative of the creditor is the manager. Failure by him to sign this credit application form will constitute rejection regardless of the circumstances.

2. REPAYMENT

2.1. The applicant ("the debtor") agrees that credit facilities granted are payable within 30 days from the date of statement, which date will be deemed to be the last working day of every month. An administration fee of 10% of the amount outstanding will be imposed thereafter.

2.2. The debtor acknowledges that in the event of:

2.2.1. The debtor breaching any condition contained in these conditions; 2.2.2. The debtor failing to pay any amount due and payable on due date; 2.2.3. Civil judgment being taken or entered against the debtor; 2.2.4. The debtor causes a notice of surrender to be published in terms of the Insolvency Act as amended; 2.2.5. The debtor dying; 2.2.6. The debtors estate is placed under an order of provisional and final winding up, sequestration or judicial management, as the case may be; then the creditor may cancel the sale of the goods to the debtor and without notice being given to the debtor, claim immediate repayment of all amounts due in terms of this agreement.

3. LEGAL COSTS

In the event of the creditor instructing attorneys to recover any amount due to it in terms of this agreement, then the debtor will be liable to pay all costs on the scale as between attorney and client including collection charges.

4. WITHDRAWAL OF CREDIT

Credit facilities granted in terms of this agreement may be withdrawn at any time without prior notice and the creditor reserves the right to review the extent, nature and duration of the credit facilities at any time.

5. NON-PAYMENT

In the event that the debtor does not pay the amount due to the creditor on the due date, then the creditor will be entitled to suspend supplies to the debtor without further notice.

6. RISK

Risk in and to the goods will pass to the debtor on delivery.

7. DELIVERY

Delivery of the goods will be subject to: 7.1. the availability of goods;

7.2. the timeous receipt of specifications from the creditor, which will be deemed to be given to the creditor for the purpose of description only and will not form part of the contract;

7.3. time is not of the essence to the agreement and delivery dates are approximate only. The debtor will not be entitled to withdraw or terminate the contract on account of any delay in delivery or have any claim whatsoever against the creditor arising from late delivery.

8. DOMICILIUM

The debtor nominates as its domicilium citandi et executandi the address reflected on the face hereof under the heading registered office/business/physical address for the service upon them of all notices and processes in connection with any claim for any sum due to the creditor arising out of credit granted by the creditor to the debtor.

9. COMPLAINTS

Should the debtor have any complaint of whatsoever nature concerning any of the goods which are not manufactured by the creditor, it will be entitled to require the creditor to cede to it any rights which the creditor may have against the supplier of those goods, but shall have no other claim against the creditor in respect of the matter complained of. The debtor is not entitled to withhold payment from the creditor in respect of the goods.

10. APPLICATION OF TRADING TERMS AND CONDITIONS

Subject to clause 13, all and any business undertaken or advice, information or services provided by the company, whether gratuitous or not, is undertaken or provided on these trading terms and conditions.

11. APPLICABLE LEGISLATION

11.1.If the company is obliged, in the execution of any of its duties and/or responsibilities to comply with any common law or legislative enactment ("the law") of any nature whatsoever, then the company by complying therewith, shall not be deemed to waive nor abandon any of its rights in terms of these trading terms and conditions.

11.2.In addition thereto, in complying with the law, the company shall not be deemed to have assumed any onus, obligation, responsibility or liability in favour of the customer.

11.3. If any of the terms of these trading terms and conditions is repugnant to or in conflict with the law, then and in such event the conflicting term embodied herein shall be deemed to be amended and/or altered to conform therewith, and such amendment and/or alteration shall not in any way affect the remaining provisions of these trading terms and conditions.

12. RECOVERY OF DEBTS DUE TO THE COMPANY

The company shall be entitled to recover any amounts due to it by the customer in respect of goods sold to the customer, or if the customer acts as agent for a disclosed or undisclosed principal from the customer or the principal, as the company in its absolute discretion deems fit.

13. VARIATION OF THESE TRADING TERMS AND CONDITIONS

No variation of these trading terms and conditions shall be binding on the company unless embodied in a written document signed by a duly authorised director of the company. Any purported variation or alteration of these trading terms and conditions otherwise than as set out above shall be of no force and effect, whether such purported variation or alteration is written or oral, or takes place before or after receipt of these standard trading terms and conditions by the customer.

14. NON WAIVER

No extension of time or waiver or relaxation of any of the trading terms and conditions shall operate as an estoppel against any party in respect of its rights under these trading terms and conditions, nor shall it operate so as to preclude such party thereafter from exercising its rights strictly in accordance with these trading terms and conditions.

15. GOVERNING LAW

These trading terms and conditions and all agreements entered into between the company and the customer pursuant thereto and on the terms thereof shall be governed by and construed in accordance with the laws of the Republic of South Africa.

16. SUBMISSION TO JURISDICTION

The parties agree that any legal action or proceedings arising out of or in connection with these trading terms and conditions shall be brought in the division of the Magistrate's Court having jurisdiction where the company's head office is situated at the commencement of the proceedings, and the customer irrevocably submits to the non-exclusive jurisdiction of such court. This applies notwithstanding that the claim may exceed the normal jurisdiction of this court.

17. BENEFIT OF DISCOUNTS

The company is entitled to the benefits of any discounts obtained and to retain and be paid all brokerages, commissions, allowances and other remunerations of whatsoever nature and kind and shall not be obliged to disclose or account to the customer, or principal for any such amounts received or receivable by it.

18. RESERVATION OF OWNERSHIP

The credit provider will remain the owner of the goods until the debtor has paid all the amounts due under this agreement.

19. LIEN

All goods and documents relating to goods, shall be subject to a special and general lien and pledge either for moneys due in respect of such goods or for other moneys due to the company from the customer, sender, owner, consignee, importer or the holder of the bill of lading or their agents, if any. If any moneys due to the Company are not paid within 14 days after notice has been given to the person from whom the moneys are due that such goods or documents are being detained, they may be sold by auction or otherwise or in some other way disposed of for value at the sole discretion of the Company and at the expense of such person, and the nett proceeds applied in or towards satisfaction of such indebtedness.

20. INDEMNITY BY THE CUSTOMER

20.1 Without prejudice to any of the company's rights and securities under these trading terms and conditions, the customer indemnifies and holds harmless the company against all liabilities, damages, costs and expenses whatsoever incurred or suffered by the company arising directly or indirectly from or in connection with the customer's express or implied instructions or their implementation by or on behalf of or at the instance of the company in relation to any goods, in respect of any liability whatsoever which may be incurred.

20.2 The customer acknowledges that he/she/it is aware that the company only retails automotive spare parts and does not manufacture such. Should any claim arise regarding the state and condition of any goods purchased, then the customer acknowledges that he/she/it will have a cause of action against the manufacturer.

21. LIMITATION OF COMPANY'S LIABILITY

21.1. The company shall not be liable for any claim of whatsoever nature (whether in contract or in delict) and whether for damages or otherwise, howsoever arising including but without limiting the generality of the aforesaid —

21.1.1. any negligent act or omission or statement by the company or its servants, agents or nominees ; and/or

21.1.2. any act or omission of the customer or agent of the customer with whom the company deals; and/or

21.1.3. any loss, damage or expense arising from or in any way connected with the marking, labeling, numbering, non-delivery or mis-delivery of any goods; and/or

21.1.4. any loss, damage or expense arising from or in any way connected with the weight, measurements, contents, quality, inherent vice, defect or description of any goods; and/or

21.1.5. any loss, damage or expense arising from or in any way connected with any circumstances, cause or event beyond the reasonable control of the company, including but without limiting the generality of the aforesaid, strike, lockout, including but not limiting the generality of the aforesaid, strike, lock-out, stoppage or restraint of labour, and/or

21.1.6. damages arising from loss of market or attributable to delay in forwarding or in transit or failure to carry out any instructions given to the company; and/or

21.1.7. loss or non-delivery of any separate package forming part of a consignment of for loss from a package or an unpacked consignment or for damage or mis-delivery; and/or

21.1.8. damage or injury suffered by the customer or any person whatsoever arising out of any cause whatsoever as a result of the company's execution or attempted execution of its obligations to the customer and/or the customer's requirements or mandate;

Unless —

a) Such claim arises from a grossly negligence act or omission on the part of the company or its servants; and

b) Such claim arises at a time when the goods in question are in the actual custody of the company and under its actual control; and

c) In the instance provided in clause 13.1.7 above, the company receives a written notice within 5 days after the end of the transit where the transit ends in the Republic of South Africa and within 14 days after the end of the transit where the transit ends at a place outside the Republic of South Africa.

21.2. Notwithstanding anything to the contrary contained in these trading terms and conditions, the company shall not be liable for any consequential loss arising from any act or omission or statement by the company, its agent, servants or nominees, whether negligent or otherwise.

22. GENERAL AVERAGE

The customer indemnifies and holds harmless the company in respect of any claims of a general average nature which may be made against the company and the customer shall provide such security as may be required by the company in this connection.

23. WARRANTIES AND REPRESENTATIONS BY THE COMPANY

The company makes no warranties and representations to the customer save as it may be specifically provided herein or as notified in writing by the company to the customer from time to time. The customer acknowledges that the company is not in any way bound by any oral statement, representations, guarantee, promise, undertaking, inducement or otherwise which may have been made at any time any salesman, employee, representative or any person acting or purporting to act for or on behalf of the company, whether negligently or otherwise unless such statements, representations, guarantee, promises, undertaking, warranties or inducements are supplied or made in writing by an employee duly authorized by written resolution of the board of directors of the company in response to a written enquiry specifying accurately and in complete detail what information is required.

24. DISPUTES

24.1. Should there be any dispute of any nature whatsoever between the parties in regard to any aspect, matter or thing relating to these trading terms and conditions and whether or not the company has executed its obligations in terms of any agreement it has with the customer, then and in such event the customer shall nevertheless be obliged to perform its obligations in terms of any such agreement as though the company had performed properly and to the customer's satisfaction.

24.2. The customer's remedy, having performed its obligation as provided in clause 26.1 shall be limited to an action against the company for repayment of either the whole or portion of the amount which the customer alleges, constitutes an overpayment.

24.3. Without affecting the generality of clause 27.1 and 27.2 the customer shall not be entitled to withhold payment of any amounts, by reason of any dispute with the company, whether in relation to the company's performance in terms of any agreement, or lack of performance or otherwise, after which payment the customer's rights of action against the company in terms of this clause can be enforced. Until such payment is made, any rights that the customer may have, shall be deemed not yet to have arisen and it is only the payment to the company which releases such rights and makes them available to the customer in respect of any claim that he may have against the company.

24.4. In any dispute between the company and the customer the company shall be deemed to have performed its obligations in a proper and workmanlike manner and strictly in accordance with any agreement between it and the customer, until such time as the customer proves the contrary.

25. TIME FOR PERFORMANCE BY THE CUSTOMER

Time is of the essence for the performance by the customer of all obligations owed to the company in terms of any agreement with it governed by these terms and conditions.

26. SEVERABILITY

If any provision of these terms and conditions is unenforceable, then the company shall be entitled to elect (which election may be made at any time) that such provision shall be severed from the remaining provisions of these terms and conditions which shall not be affected and shall remain of full force and effect.

27. CERTIFICATES OF ACCOUNT

Any certificate given under the hand of any member or manager of the creditor whose appointment need not be proved, as to the existence and the amount of the debtor's indebtedness and the surety's obligations to the creditor at any time, and as to the fact that such amount is due and payable, the amount of interest accrued thereon and any other fact, matter or thing relating to the debtor's indebtedness to the creditor and the surety's indebtedness to the creditor, shall be sufficient and satisfactory proof of the contents and the correctness thereof for the purpose of provisional sentence, summary judgment or any other proceedings of whatsoever nature against the debtor and/or the surety in any competent court and shall be valid as a liquid document for such purpose.

28. SURETYSHIP

28.1. The signatory hereto binds himself as surety and co-principal debtor in solidum with the debtor in favour of the creditor for due payment of all amounts which may at any time be payable by the debtor to the creditor from any cause whatsoever and whether acquired by the creditor by way of cession or otherwise. He/she/it further waives the benefits of exclusion and division and the legal exceptions non numeratae pecuniae, non causa debiti and acknowledges that he/she/it is fully acquainted with the meaning and effect thereof.

28.2. The suretyship is a continuing suretyship and shall remain in force and effect notwithstanding any fluctuation in the temporary extinction of the debtors indebtedness to the creditor. It may not be withdrawn, revoked or cancelled without the creditor's prior written consent. Any consequential cancellation or withdrawal of the suretyship by the surety shall only be valid and effective if reduced to writing and signed by both parties thereto.

28.3 Suretyship is required where the customer is:

28.3.1. an unmarried person

28.3.2. a company

Surety to complete:

Name: _____

ID Number: _____

Appointment/position held: _____

Signature: _____

29. CO-SIGNEE

If the applicant is married in community of property, the applicant's spouse is required to co-sign this agreement:

Spouse's name:

Spouse's ID No.: _____

Date of birth: _____

Signature: _____



GAYDONS

MOTOR SPARES

