

WINTERSUN CHEMICAL

1250 E. Belmont St., Ontario, CA 91761. USA
TEL: 909-930-1688 FAX: 909-9471788 Email: acct@wintersunchem.com



Commercial Credit Application and Account Agreement

WC Sales Rep: _____

Applicant Information

Legal Name of Applicant _____ Tax ID# _____
Trade Name/DBA _____ D&B _____ SIC Code _____
Subsidiary Of: _____
Entry Type: Corporation **or** LLC Partnership **or** Sole Proprietorship Public Company: Yes **or** No
Billing Address _____
City _____ State _____ Zip _____
Delivery Address _____
City _____ State _____ Zip _____
Business Phone _____ Fax _____
Date Formed _____ State Formed _____ Nature of Business _____

Identify below all Applicant officers, partners and owners/Members:

Name _____ Title _____ SSN _____
Name _____ Title _____ SSN _____
Name _____ Title _____ SSN _____
Has any applicant officer, partner or owner/Member file BANKRUPTCY in the past 7 years? Yes No
Are there any pending lawsuits against the Applicant? Yes No

Trade References – List Applicant’s Three Large Current Suppliers (preferably chemical):

1. Name _____
Address _____
City _____ State _____ Zip _____
Phone _____ Fax _____
2. Name _____
Address _____
City _____ State _____ Zip _____
Phone _____ Fax _____
3. Name _____
Address _____
City _____ State _____ Zip _____
Phone _____ Fax _____

Bank Reference

Bank Name _____
Address _____
City _____ State _____ Zip _____
Phone _____ Account Number _____
Account Representative _____

Purchase/Payable Information

Credit limit requested \$ _____ Estimated monthly purchases \$ _____
Purchaser/Buyer Contact _____
Phone _____ Fax _____ E-mail _____
Accounts Payable Contact _____
Phone _____ Fax _____ E-mail _____

Tax Exemption Status

Will sales be tax exempt?

Yes No

If "yes," please list your resale certification number _____

Applicant must provide resale certificate for sales tax exemption.

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provide that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal Agency that administer compliance with this law concerning this creditor is the Federal Trade Commission, Division of Credit Practices, 6th and Pennsylvania Avenue NW, Washington D.C. 20580.

Account Agreement

Applicant warrants the above information to be 100% accurate and complete. Applicant applies to Wintersun Chemical and/or its affiliates, subsidiaries, successors and assigns ("Wintersun") for the right to make commercial purchases on an open account basis. Applicant acknowledges that by purchasing any goods from Wintersun subsequent to the submission of this application, Applicant shall be deemed to have accepted these terms and conditions (this "Agreement"). However, Wintersun shall have no obligation whatsoever to make any sale to Applicant or to extend credit to Applicant – should credit be granted by WIntersun, Wintersun may increase, decrease or terminate any credit availability at any time in its sole discretion.

1. Wintersun is not a lending institution; if credit is granted, this is not a revolving account. Applicant promises to pay its account in full within the payment terms. All past due amounts will accrue a service charge (or delinquent charge) at the rate of eighteen-percent (18%) per annum (1.5% per month) or the maximum rate of default interest allowed in the state where the goods are sold. The fact that a service charge will be imposed does not authorize payment of the account to be made in installments or in any other manner than provided herein. Applicant agrees to pay all pre-judgment and post-judgment attorneys' fee, costs, collection agency costs/fees and expenses incurred by Wintersun relating to this Agreement and/or any Applicant or personal guarantor default. Without limitation, Applicant shall pay a \$50.00 fee for all returned or "NSF" checks. All amounts due for purchases from WIntersun and related companies are payable at **1250 E. Belmont St. Ontario, CA 91761**. When invoices are past due, or if the Applicant's account has reached its assigned credit limits, Wintersun retains the right and sole discretion to hold shipments pending payment in full, impose account COD or other restrictions, and/or pursue any available remedy at law. Applicant is fully responsible for all purchases if the requested or issued credit limit is exceeded.

2. **For all goods sold, WINTERSUN EXPRESSLY DISCLAIMS ALL WARRANTIES OR GUARANTEES, EITHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OR MERCHANTABILITY OF FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT – WINTERSUN BEARS NO RESPONSIBILITY AS TO HANDLING, APPLICATION, USE, MISUSE, DISPOSAL OR OTHER DISPOSITION OF ANY GOODS SOLD. APPLICANT AGREES TO DEFEND, INDEMNIFY AND HOLD WINTERSUN AND ITS OWNERS, EMPLOYEES OR AGENTS FULLY HARMLESS FROM ANY CLAIMS OR LIABILITY FOR INJURY OR DAMAGES ARISING OUT OF, OR IN ANY WAY RELATING TO, THE SALE, HANDLING, APPLICATION, USE, MISUSE, DISPOSAL OR OTHER DISPOSITION OF ANY GOODS SOLD TO APPLICANT. In no circumstance shall Wintersun be liable for SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES of Applicant or claims of any third party against Applicant or WIntersun WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL THEORY OR FORM OF ACTION. IN NO EVENT WILL WINTERSUN'S LIABILITY TO APPLICANT EVER EXCEED THE TOTAL AMOUNT OF MONEY PAID BY APPLICANT FOR THE GOODS PURCHASED. All claims of Applicant relating to alleged (1) quantity, leakage of delivery errors, (2) pricing errors, and/or (3) defective, non-conforming and/or unacceptable goods shall be WAIVED BY APPLICANT UNLESS MADE IN DETAILED WRITING TO Wintersun within forty-five (45) days after delivery or pickup of the goods. Wintersun shall not be liable to Applicant or any third party for delays or**

defaults in providing goods due to war, labor dispute, accident, fire, flood, government action, or any other act of god or any cause beyond Wintersun's direct control. Applicant expressly and knowingly WAIVES the right to a jury trial for any claims against Wintersun relating to its goods and/or this Agreement.

3. At Wintersun sole discretion, jurisdiction and venue of any lawsuit relating to this Agreement may be laid in Ontario, California. The validity, effect, interpretation and performance of this Agreement shall be governed by the laws of the State of California. The terms of this Agreement are severable and the invalidity or illegality of any term shall not affect the others. This Agreement may be executed in counterparts, each of which will constitute an original but all of which constitute one and the same instrument; a faxed, e-mailed or photocopied Agreement shall be as valid as the original. Wintersun's failure to strictly enforce any term or condition herein shall not constitute a waiver of Wintersun's right to strictly enforce such terms or conditions at any time in the future.
4. Applicant agrees that all sales herein are commercial, non-consumer, sales. All sales are final. Any returned goods which Wintersun elects to accept in its sole discretion shall be subject to a minimum 25% restocking charge. Wintersun will not accept returned special order (non-stock) goods. Shipping charges are non-refundable. Applicant may not cancel orders that have already been processed. Unless otherwise agreed to in writing by Wintersun, (a) title and risk of loss to all goods passes to Applicant upon delivery of the goods to selected carrier, unless carrier is Wintersun owned truck; (b) if carrier is Wintersun owned truck, then title and risk of loss to all goods passes to Applicant upon delivery to designated location. Wintersun makes no warranty or representation that the use or sale of the goods, whether alone or in combination with other products, will not infringe the claims of any letters patent, trademarks, registered designs or other proprietary rights of any party and Applicant assumes all risks and liabilities associated therewith.
5. In the absence of default under this Agreement, Wintersun will apply payments as specified by Applicant's reasonable written instructions. In the absence of such instructions. Wintersun will apply payment to outstanding amounts in its reasonable discretion. Applicant shall notify Wintersun, in writing, thirty (30) days prior to any change in the ownership, name or business structure of Applicant and further agrees to be jointly and severally liable for all purchases by the new business structure and/or owners should said notification not be given. Wintersun may, regardless of the payment terms herein or on any invoice, require all outstanding account balances be paid in full on demand upon change in ownership and/or business structure, and may refuse to make further sale or extend further credit pending approval of the new business structure's and/or owner's credit, which approval shall be at Wintersun Chemical's sole discretion. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns, except that Applicant is prohibited from assigning or otherwise transferring its right or obligations hereunder without the prior written consent of Wintersun Chemical. This Agreement takes precedence over and supersedes all oral statements and repetitions and all terms and conditions set forth by Applicant's existing or future purchase order or any other Applicant contract-related document.
6. All goods should be handles only by properly trained persons who are familiar with handling and use procedures and any potential associated hazards. Applicant assumes sole responsibility to learn and understand the risks associated with any of the goods and for instructing its employees, agents, customers and any other persons who might reasonably be expected to come into contact with the goods, in techniques for safe handling and use of the goods and of any potential risks to person and property in any way connected with goods. Applicant also assumes sole responsibility for the safe disposal of all goods in accordance withal applicable laws regulations. Applicant acknowledges that it will instruct its employees and customers (if applicable), in the proper handling, use and disposal of the goods purchased.
7. If the Applicant is a reseller, then the Applicant agrees to comply with all appropriate regulations, law and Environmental, Health & Safety standards related to the sale, shipping , and handling of materials purchased from Wintersun Chemical.
8. To assist Wintersun Chemical in making any credit decision at any time, applicant, Applicant's principals, owners/Members, officers and personal guarantor(s) authorize Wintersun Chemical to from time to time inquire into and obtain from any bank, lending institution, credit reporting agency or other reference or party, whether or not listed in the above Commercial Credit Application, any and all information relating to Applicant's credit worthiness or financial condition and/or Applicant's principal, owners'/Members' , officers' and personal guarantor(s)' personal credit worthiness or financial condition. Applicant understands that Wintersun Chemical may report Applicant's performance under the terms of this Agreement to credit reporting agencies. Applicant agrees to release, indemnify, defend and hold Wintersun Chemical and its owners, employees or agents fully harmless for any and all liability or claims relating in any manner to any periodic credit inquiry or reporting effort.

APPLICATN HAS CAREFULLY READ AND UNDRSTANS EACH PROVISION OF THIS AGREEMENT.

NO VARIOATION OF THESE TERMS AND CONDITIONS WILL BE BINDING UPON WINTERSUN CHEMICAL UNLESS AGREED TO IN WRITING AND SIGNED BY A WINTERSUN CHEMICAL OFFICER RO OTHER AUTHORIZED REPRESENTATIVE.

“APPLICANT”

By _____
Signature

Date: _____

Name and Title

Must be signed by a company officer or authorized representative

For convenience and considerations for the environment, Wintersun invoices are sent electronically. By request, Wintersun offers the option for ACH wire payments; please contact your sales representative or call (800) 930-1688 for details.