

CONFIDENTIAL CREDIT APPLICATION & SALES AGREEMENT

Kearneys' Metals, Inc.

2660 South Dearing Avenue, Fresno, California 93725
Phone: (800) 655-2590/Facsimile: (559) 442-4688

GENERAL INFORMATION

COMPANY NAME: _____ ATTENTION: _____

ADDRESS: _____ CITY: _____ STATE: _____ ZIP: _____

TELEPHONE: _____ FACSIMILE: _____

TAX I.D. NUMBER _____ REQUESTED CREDIT LINE: _____

BUSINESS STRUCTURE (PLEASE CHECK ONE):

CORPORATION _____ PARTNERSHIP _____ SOLE PROPRIETORSHIP _____ LLC _____

NATURE OF BUSINESS: _____ YEARS BUSINESS ESTABLISHED: _____

TAXABLE ____ RESALE ____ (PLEASE PROVIDE A COPY OF THE SALES TAX RESALE CERTIFICATE)

NAME OF OWNER, PARTNERS OR OFFICERS (AS APPLICABLE)

(PLEASE ATTACH ADDITIONAL PAGES IF NECESSARY)

NAME/TITLE: _____ NAME/TITLE: _____

ADDRESS: _____ ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____ CITY: _____ STATE: _____ ZIP: _____

SOCIAL SECURITY NUMBER: _____ SOCIAL SECURITY NUMBER: _____

BANK REFERENCE INFORMATION

NAME: _____ TELEPHONE NUMBER: _____

ADDRESS: _____ CITY: _____ STATE: _____ ZIP: _____

TYPE OF ACCOUNT: _____ ACCOUNT NUMBER: _____

TRADE REFERENCE INFORMATION (PLEASE LIST FOUR)

NAME: _____ TELEPHONE /Fax NUMBER: _____

ADDRESS: _____ CITY: _____ STATE: _____ ZIP: _____

NATURE/DURATION OF RELATIONSHIP: _____ ACCOUNT NUMBER: _____

NAME: _____ TELEPHONE /Fax NUMBER: _____

ADDRESS: _____ CITY: _____ STATE: _____ ZIP: _____

NATURE/DURATION OF RELATIONSHIP: _____ ACCOUNT NUMBER: _____

NAME: _____ TELEPHONE /Fax NUMBER: _____

ADDRESS: _____ CITY: _____ STATE: _____ ZIP: _____

NATURE/DURATION OF RELATIONSHIP: _____ ACCOUNT NUMBER: _____

NAME: _____ TELEPHONE /Fax NUMBER: _____

ADDRESS: _____ CITY: _____ STATE: _____ ZIP: _____

NATURE/DURATION OF RELATIONSHIP: _____ ACCOUNT NUMBER: _____

AUTHORIZED AGENTS OF COMPANY

(PLEASE ATTACH ADDITIONAL PAGES IF NECESSARY)

The following individuals are agents or employees of the company executing this Confidential Credit Application (the "Company"), who are hereby expressly authorized to act on behalf of the Company in relation to the purchase of certain goods from Kearneys' Metals, Inc., a California corporation ("Kearneys"). Company hereby agrees to update the following list of names upon any change of authority. Nevertheless, Company hereby agrees that, Kearneys' may rely on the authority of any agent or employee of Company, whether or not they are listed below, that signs any invoices or documents on behalf of Company.

This CREDIT SALE AGREEMENT is made by and between KEARNEYS' METALS, INC., a California corporation, with its principal office at 2660 South Dearing Avenue, Fresno, CA. 93725 ("Kearneys") and the entity whose name and address first appears on the Credit Application above (the "Applicant" or the "Purchaser"; jointly with Kearneys' the "Parties"), effective on the date appearing alongside the signature of the Applicant below.

RECITALS

WHEREAS, the Applicant wishes to purchase goods and/or services ("Products") from Kearneys' under credit terms; and

WHEREAS, Kearneys' wishes to sell Products to the Applicant under credit terms:

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and promises set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, and the Parties intending to be legally bound by the following, the Parties agree as follows:

1. **Credit Line.** Pursuant to this Credit Sale Agreement (this "Agreement"), Kearneys' may, in its sole and absolute discretion, grant the Applicant (who, following approval of this Agreement by Kearneys' shall be referred to as the "Purchaser"), certain credit privileges, and Kearneys' shall have the right to increase or decrease or terminate the Purchaser's credit privileges under this Agreement at any time, and without prior written notice to Purchaser. The beginning amount of the Credit Line available to Purchaser is set at \$ _____.

2. **Payment.** All invoices shall be due from and payable by Purchaser in cash within thirty (30) days of the date thereof, unless otherwise indicated on the applicable invoice. A discount of 1% will be available for payments received within ten days of the date of the invoice. All invoices not paid within thirty days of the date thereof shall be considered delinquent and shall accrue interest at a rate of one and one half percent (1½%) per month from the date of delinquency through the date of payment. Payments shall be applied to Purchaser's oldest outstanding invoice

first. A return check fee in an amount charged by Kearneys' bank, which amount may change from time to time, will be charged to Purchaser's account if, for any reason, Purchaser's check is not honored by the bank on which it is drawn.

3. **Warranty Disclaimer.** ANY AND ALL WARRANTIES ARE DISCLAIMED BY KEARNEYS' INCLUDING ALL EXPRESSED OR IMPLIED WARRANTIES, EXCEPT THAT KEARNEYS' ONLY WARRANTIES THAT THE GOODS PURCHASED AND TO BE PURCHASED BY PURCHASER FROM KEARNEYS' WILL CONFORM TO THE DESCRIPTIONS AND SPECIFICATIONS STATED OR REFERENCED ON THE APPLICABLE INVOICE. KEARNEYS' MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED (INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, USAGE OR TRADE), TO ANY PERSON OR ENTITY WITH REGARD TO THE GOODS COVERED HEREBY AND FORBIDS PURCHASER TO REPRESENT OTHERWISE TO ANYONE WITH WHICH IT DEALS.

4. **Defects; Inspection; Notification.** Purchaser shall inspect any and all goods received from Kearneys' within seven (7) days of the receipt thereof and shall notify Kearneys' of any claimed defect, shortage or inaccuracy therein within three (3) days thereafter or Purchaser shall have been deemed to have waived its right to seek any remedy or recovery for failure to perform from Kearneys'. Purchaser shall make any such goods available to Kearneys' for inspection for determination as to the source, scope and nature of the alleged defect, shortage or inaccuracy. If Kearneys' confirms that any such defect, shortage or inaccuracy is the responsibility of Kearneys', Purchaser shall have those rights and remedies noted in Paragraph 5.

5. **Exclusivity of Remedy; Limitation of Damages.** PURCHASER'S SOLE AND EXCLUSIVE REMEDY FOR ANY DEFECTIVE GOODS PROVIDED TO PURCHASER BY KEARNEYS' SHALL BE, AT KEARNEYS' OPTION, TO REPAIR, REPLACE THE DEFECTIVE GOODS, OR REFUND THE PURCHASE PRICE. KEARNEYS' SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO, ANY CLAIM FOR BREACH OF WARRANTY (EXPRESS OR IMPLIED), TORT (INCLUDING NEGLIGENCE) OR STRICT LIABILITY, FOR ANY ACTUAL, INCIDENTAL, CONTINGENT, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, ARISING FROM OR OUT OF THIS AGREEMENT OR THE GOODS PURCHASED UNDER THIS AGREEMENT.

6. **Security Interest and Reclamation Rights; Risk of Loss.** To secure payment and performance of all of Purchaser's obligations under this Agreement, Purchaser grants a security interest in all goods delivered and to be delivered by Kearneys' to Purchaser. Kearneys' retains title to all goods sold, until Purchaser performs all its obligations under this Agreement, and the goods have been paid for in full. The security interest granted under this Paragraph shall remain in the goods, including all accessions to and replacements of them, to secure performance of all of Purchaser's obligations under this Agreement. Purchaser acknowledges that, in addition to the security interests granted in this Paragraph, Kearneys' has certain reclamation rights under the California Uniform Commercial Code. Kearneys' reserves the right to reclaim the goods from Purchaser if payment is not received within the terms agreed, after delivery of the goods. Notwithstanding the above, the risk of loss of the goods shall pass to the Purchaser as soon as the goods are delivered to Purchaser.

7. **Authorization by Purchaser.** Purchaser authorizes Kearneys' or its agents or assigns to execute and deliver on its behalf:

- a. any and all checks payable to Purchaser which may be applied to any unpaid balance owing by Purchaser to Kearneys'; and
- b. any UCC-1 financing statements to provide notice of Kearneys' security interests under this Agreement.

8. **Representation and Warranty of Authority.** Purchaser represents and warrants that the undersigned has the full authority, on behalf of Purchaser, to enter into this Agreement and to carry out the obligations under this Agreement. Purchaser further warrants that, for purposes of enforcing this Agreement, Kearneys' may rely on the authority of any agent or employee of Purchaser that signs any purchase orders, invoices or documents on behalf of Purchaser.

9. **Assignment.** Purchaser may not assign this Agreement or any of the goods purchased under this Agreement prior to full payment of the purchase price without Kearneys' prior written consent.

10. **Default.** If Purchaser breaches any term or condition of this Agreement, Kearneys' may, in addition to exercising any other right it has under this Agreement or under California State law, accelerate all sums due to Kearneys' under the terms hereof, and/or terminate this Agreement and discontinue Kearneys' performance under this Agreement, seeking recovery of any and all damages it sustains as the result of such breach.

11. **Costs, Expenses and Fees.** Purchaser shall pay any and all costs and expenses, including, without limitation, attorneys' fees, court costs, and the fees of any collection agency, incurred by Kearneys' in exercising any of its rights and remedies under this Agreement or enforcing any of the terms, conditions, or provisions under this Agreement, including without limitation the recovery of the amount due on any check drawn by Purchaser which is returned to Kearneys' because of insufficient funds. In the event any legal action, controversy, claim, or dispute between Kearneys' and Purchaser arising out of or relating to this Agreement or the breach thereof, the prevailing party in such action shall be entitled to recover from the other party, all of the prevailing party's expenses, attorneys' fees, and costs.

12. **Governing Law and Venue.** This Agreement and all documents it provides for and the rights and obligations of the Parties shall be governed in all respects, including validity, interpretation, and effect, by the laws of the State of California. The venue for any litigation arising in connection with this Agreement shall be in the County of Fresno, State of California, if instituted in the State Courts, or the United States District Court the Eastern District of California (Fresno Division), if instituted in the Federal courts.

13. **Amendments.** No provisions of this Agreement may be amended or modified in any manner whatsoever except by an agreement in writing signed by duly authorized representatives of each of the Parties.

14. **Entire Agreement.** This Agreement and items incorporated herein, including any and all applicable invoices, contain all of the agreements of the parties with respect to the matters contained herein, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose.

The undersigned hereby certifies that the information contained in this Confidential Credit Application and Sales Agreement is true and correct. The undersigned hereby authorizes Kearneys', or any agent thereof, to investigate the references listed above or statements or other data obtained from any person pertaining to the credit history or financial responsibility of the Company and the company's principals identified herein. The undersigned hereby agrees that purchases will be governed by the attached Terms and Conditions of Sale. If any amounts are not paid when due, the undersigned hereby agrees and acknowledges that the undersigned will be liable for interest and attorneys' fees, and any costs associated with collecting the past due amounts.

Approved By:

"Purchaser"

KEARNEYS' METALS, INC.

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____