

# Terms and Conditions of Sale

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 hereto chooses Domicilium Citandi et Executandi 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 of the effects therein stated for the purpose of any action (whether by way of provisional sentence or otherwise), proof of debt on insolvency or 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 the Magistrates Court Act (No 32 of 1944 as amended), to the Jurisdiction of the Magistrate's Court 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 notice 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 within fourteen 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 days of any change in 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 and 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 CREDITOR in the event that THE CREDITOR takes possession of any goods.
9. **Valid orders**  
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.
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 CREDITOR 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 it's 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, **30 (thirty) days nett**, where such days are calculated from the date of statement. 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 2% per month above the prime lending rate of First National Bank a division of Firstrand Bank Ltd subject to the maximum lending rate on all accounts outstanding from due date, 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 consents to THE CREDITOR sharing information on his account with THE CREDITOR, with other credit grantors and credit information agents. Information shared with such credit grantors and agents is used to make credit granting decisions, to prevent fraud and manage risk.

**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** 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.

**15.3** 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 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.

**15.4** 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 or delivery to the South African Transport Services or 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.

**15.5** 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.

**15.6** 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.

**15.7** 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 of three months against faulty workmanship.

**15.8** All goods taken by THE CREDITOR on evaluation, approval demonstration or consignment shall be deemed sold if not returned with 7 days from delivery in perfect condition, in the original packaging and with all accessories and manuals intact.

**15.9** 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. Warranties**

**16.1** 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.

**16.2** 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.

**16.3** THE APPLICANT will have no warranty or guarantee claims under this agreement unless THE CREDITOR has received notice within fourteen 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.

**16.4** 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.

**16.5** 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 operated outside of the Manufacturer's specifications.

**17. 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.

**18. 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 easus fortuitus 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 or 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 generis with the causes aforementioned or not.

**19. 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.

**18. 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.

**20. 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 unenforceable, that clause/clauses shall not affect the balance of these conditions of sale, which shall remain of full force and effect.

**21. 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 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 which 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", "Ordinis Seu Excussionis et Divisionis" 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.

**22. Cession of book debts**

- 22.1 THE APPLICANT does hereby irrevocably and in rem suam cede, pledge, assign, transfer and make over unto and in favour of THE CREDITOR all of its right, title, interest, claim and demand in and to all claims/debts/book debts of whatsoever nature and description and however arising which THE APPLICANT may now or at any time hereafter have against all or any persons, companies, firms, partnerships associations, syndicates and other legal personae whomsoever (the Applicant's debtors") without exception as a continuing covering security for the due payment of every sum of money which may now be due or at any time hereafter be or become owing by THE APPLICANT to THE CREDITOR from whatsoever cause or obligation howsoever arising which THE APPLICANT may be or become bound to perform in favour of THE CREDITOR.
- 22.2 Should it transpire that THE APPLICANT at any time entered into prior deeds of cession or otherwise disposed of any of the right, title and interest, in and to any of the debts which will from time to time be subject to this cession, then this cession shall operate as a cession of all the Applicant's reversionary rights. Notwithstanding the terms of the foregoing cession, THE APPLICANT shall be entitled to institute action against any of its debtors provided that all sums of money which THE APPLICANT collects from its debtors shall be collected on THE CREDITOR'S behalf and provided that further THE CREDITOR shall at any time be entitled to terminate THE APPLICANT'S rights to collect such monies/debts.
- 22.3 THE APPLICANT agrees that THE CREDITOR shall be entitled at any time or times hereafter to give notice of this cession to all or any of THE APPLICANT'S rights.
- 22.4 THE APPLICANT further agrees that THE CREDITOR shall, at any time, be entitled to inspect any of THE APPLICANT'S books or records and in addition shall be entitled to take possession of such books and records (of whatsoever nature) to give effect to the terms of this cession.

**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.