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Reg. No: 2009/ 018260/07

## APPLICATION FOR CREDIT FACILITY

### **INCORPORATING A SURETYSHIP AND CESSION OF CLAIMS**

with/in favour of NCS South Africa (Pty) Ltd (hereinafter referred to as "The Supplier")

**Supplier's Representative's Name and Cell Number:**

**Supplier's Physical Address:**

**Supplier's Email Address:**

#### 1. **Details of Purchaser** (hereinafter referred to as "The Purchaser")

2. Registered name : \_\_\_\_\_

3. Registration/Identity/Master's reference number : \_\_\_\_\_

4. Trading name of business : \_\_\_\_\_

5. Previous trading/registered names : \_\_\_\_\_

6. Form of business (Mark "X" where applicable)

Sole trader     Partnership     Closed Corp     (Pty) Ltd     Limited Co     Trust

Date of establishment of business: \_\_\_\_\_

7. VAT registration number (attach certificate) : \_\_\_\_\_

8. Registered name of holding company : \_\_\_\_\_

9. Names of subsidiary and associate companies : \_\_\_\_\_

10. Business activities : \_\_\_\_\_

11. Physical address and Code : \_\_\_\_\_

12. Are deliveries to be made to the above physical address? If not, then where?

\_\_\_\_\_

13. Postal address and Code : \_\_\_\_\_

\_\_\_\_\_

14. Are invoices to be sent to the above postal address? If not, then where?

\_\_\_\_\_

15. Registered address and Code (if different from physical address) : \_\_\_\_\_

\_\_\_\_\_

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16. Telephone number : (      ) \_\_\_\_\_  
 E-mail : \_\_\_\_\_  
 Fax number : (      ) \_\_\_\_\_  
 Cell or additional Telephone number : (      ) \_\_\_\_\_  
 Website: www. \_\_\_\_\_

17. Premises (Mark "X" where applicable)  
 Owned or  Leased?  
 Name of Landlord : \_\_\_\_\_  
 Postal address of Landlord : \_\_\_\_\_  
 \_\_\_\_\_

**18. Details of Proprietors: (Mark "X" where applicable)**

Directors  Shareholders  Members  Partners  Trustees (add separate page if >3)

Full Names			
ID No. (or DoB)	Residential Address	Tel. No	Shareholding Interest %
Have you ever been declared insolvent?	Date of rehabilitation	If yes, to whom?	
<input type="checkbox"/> Yes or <input type="checkbox"/> No			
Have you issued Surety?	Why?		
<input type="checkbox"/> Yes or <input type="checkbox"/> No			
If married, how? Under	Special Circumstances		
<input type="checkbox"/> Community of Property or <input type="checkbox"/> Ante-nuptial (ANC)			

Full Names			
ID No. (or DoB)	Residential Address	Tel. No	Shareholding Interest %
Have you ever been declared insolvent?	Date of rehabilitation	If yes, to whom?	
<input type="checkbox"/> Yes or <input type="checkbox"/> No			
Have you issued Surety?	Why?		
<input type="checkbox"/> Yes or <input type="checkbox"/> No			
If married, how? Under	Special Circumstances		
<input type="checkbox"/> Community of Property or <input type="checkbox"/> Ante-nuptial (ANC)			

<b>Full Names</b>			
<b>ID No. (or DoB)</b>	<b>Residential Address</b>	<b>Tel. No</b>	<b>Shareholding Interest %</b>
<b>Have you ever been declared insolvent?</b>	<b>Date of rehabilitation</b>	<b>If yes, to whom?</b>	
<input type="checkbox"/> Yes or <input type="checkbox"/> No			
<b>Have you issued Surety?</b>			
<input type="checkbox"/> Yes or <input type="checkbox"/> No	Why?		
<b>If married, how? Under</b>			
<input type="checkbox"/> Community of Property or <input type="checkbox"/> Ante-nuptial (ANC)	Special Circumstances		

19. How long has the proprietor(s) owned the business? \_\_\_\_\_

20. Trade References (Permission granted to obtain confidential details)

<b>Trade Reference 1</b>		
<b>Company Name</b>	<b>Acc No.</b>	<b>Tel. No</b>
<b>Trading since?</b>	<b>Terms</b>	<b>Credit Limit (ZAR):</b>
<b>Trade Reference 2</b>		
<b>Company Name</b>	<b>Acc No.</b>	<b>Tel. No</b>
<b>Trading since?</b>	<b>Terms</b>	<b>Credit Limit (ZAR):</b>
<b>Trade Reference 3</b>		
<b>Company Name</b>	<b>Acc No.</b>	<b>Tel. No</b>
<b>Trading since?</b>	<b>Terms</b>	<b>Credit Limit (ZAR):</b>
<b>Trade Reference 4</b>		
<b>Company Name</b>	<b>Acc No.</b>	<b>Tel. No</b>
<b>Trading since?</b>	<b>Terms</b>	<b>Credit Limit (ZAR):</b>
<b>Trade Reference 5</b>		
<b>Company Name</b>	<b>Acc No.</b>	<b>Tel. No</b>
<b>Trading since?</b>	<b>Terms</b>	<b>Credit Limit (ZAR):</b>

21. **Suretyship**

I, the undersigned, \_\_\_\_\_ in my capacity as \_\_\_\_\_, do hereby bind myself as surety for and co-principal debtor in solidum with the Purchaser for the due performance by the Purchaser of all its obligations to the Supplier arising from this application for credit facility and any transactions conducted between the Supplier and the Purchaser whether presently due, owing and payable or becoming due, owing and payable in the future. I hereby agree and declare that all admissions and acknowledgements of indebtedness by the Purchaser shall be binding on me. I hereby waive any rights that I may have to first require the Supplier to make any demand of the Purchaser, to proceed against or claim payment from the Purchaser or any third party, to take action or obtain judgment in any court against the Purchaser, to make, file or prove any claim in the winding-up or dissolution of the Purchaser, or to enforce or seek to enforce any suretyship or security granted by the Purchaser or any third party before making payment under this suretyship. I hereby waive any and all rights to rely on the prescription of either any principal obligation of the Purchaser or any accessory obligation created by this suretyship. I further waive and renounce any benefit which I am entitled to in law, without detracting from the generality of which include the benefits of excussion, division, cession of action which benefits I understand and the full force and effects and meaning of which have been explained to me.

Dated at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

Signature \_\_\_\_\_ (Print Name) \_\_\_\_\_  
 For the "Purchaser" and in my personal capacity as Surety and Co-Principal Purchaser

22.

Bank Details		
Institution	Branch	Date Opened
Account Name	Account Number	On EFT?

23. Auditors / Accounting Officer's Name and Address : \_\_\_\_\_

Tel area code & no. : \_\_\_\_\_

Fax area code & no. : \_\_\_\_\_

24. List all sureties, cession of debtors, notarial bonds, given to suppliers/institutions :

25. Is your debtor's book factored :  Yes or  No  
 If yes, with whom : \_\_\_\_\_

26.

Judgements			
By Whom?	Amount	Reason	Outcome
By Whom?	Amount	Reason	Outcome

27. List all liquidations, sequestrations against the business or its principals :

28. Have moratoriums or offers of compromise ever been made to any creditors?

29. Can the latest Audited Financial Statements be made available? If so, please attach

30. Anticipated Monthly Purchases: R\_\_\_\_\_ Credit Limit Requested : R\_\_\_\_\_

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- 31. Surety offered to substantiate credit limit Type available
- 32. Account Contact Person : \_\_\_\_\_  
 Tel. No : \_\_\_\_\_  
 Order Numbers used ? \_\_\_\_\_

The Purchaser hereby chooses domicilium citandi et executandi for delivery of all notices (or: Physical address under 9):  
 An alternative domicilium agreed to is the physical addresses of any Proprietors listed under 16-19 (Director, Member or the Owner(s) or Partner(s).

I/We warrant that the information contained herein is true and correct in every respect. I/We undertake to notify The Supplier in writing immediately of any change in this information.

I/We agree that The Supplier may use the service of any registered credit bureau or other supplier of information, to assist in assessing The Purchaser's credit worthiness, now and at any time in the future. I/We also agree that The Supplier may source information (including conduct and payment patterns) from any reference source set out on page 1 of this application, or from any other industry supplier. I/We agree that The Supplier may disclose information regarding the applicant's (Purchaser's) credit worthiness and conduct of the account to any registered credit bureau and other suppliers in the industry.

The Purchaser specifically contracts to adhere to the payment terms of The Supplier, namely:  
**Payment Terms: 30 Days from date of statement.**

The Purchaser hereby declares that no cheques will be issued in payment unless there are sufficient funds available and that such funds will remain available in order that all cheque payments will be honored and that under no circumstances will any cheque be stopped.

**I/We am duly authorized to sign this application and confirm I have received a copy of the Standard Terms and Conditions of Sale, which Terms and Conditions are hereby accepted.**

Print Name(s) : \_\_\_\_\_

Signature : \_\_\_\_\_

Capacity of Signatory : \_\_\_\_\_

Date : \_\_\_\_\_

Place : \_\_\_\_\_

Witness : (1) \_\_\_\_\_ Place : \_\_\_\_\_ Date : \_\_\_\_\_

(2) \_\_\_\_\_ Place : \_\_\_\_\_ Date : \_\_\_\_\_

**FOR COMPLETION BY SUPPLIER REPRESENTATIVE**

1. Rep's signature \_\_\_\_\_
2. Recommended Credit Limit by Rep R \_\_\_\_\_
3. Special circumstances or conditions
4. Is the Company Project Driven : YES/NO
5. Is the Company Government Contracted : YES/NO
6. Market Sector (1)
7. Market Sector (2)
8. Date Credit Application Received by Credit Controller \_\_\_\_\_  
Credit Limit Approved R \_\_\_\_\_ Terms \_\_\_\_\_
9. Approved by:  

Branch Manager: _____	Date: _____
Credit Controller: _____	Date: _____
Credit Manager: _____	Date: _____
Financial Director: _____	Date: _____
Managing Director: _____	Date: _____
10. Collateral Needed: (Up to R100 000 CL)  
Effectuated by: \_\_\_\_\_  
(Up to R300 000 CL)  
(>R300 000 CL) Date: \_\_\_\_\_



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## STANDARD TERMS AND CONDITIONS OF SALE INCORPORATING A SURETYSHIP AND CESSION OF CLAIMS

as applicable to an application for credit

### 1. INTERPRETATION

1.1 For purposes of these standard terms and conditions of Sale and the Credit Application to which these terms are attached –

- 1.1.1 **"Agreement"** means the standard terms and conditions of sale set out in this document and the Credit Application to which these terms are attached;
- 1.1.2 **"Credit Application"** means the Application for Credit Facility to which these terms are attached;
- 1.1.3 **"Parties"** means The Supplier and The Purchaser and "Party" shall mean any one of them as the context may require;
- 1.1.4 **"Prime Rate"** means the publicly quoted basic rate of interest, compounded monthly in arrears and calculated on a 365-day year irrespective of whether or not the year is a leap year, from time to time published by The Seller's principal bankers as being its prime overdraft rate, as purportedly certified by any representative of that bank whose appointment and designation it will not be necessary to prove.
- 1.1.5 **"The Purchaser"** means the Party defined as such on the front page of the Credit Application
- 1.1.6 **"The Supplier"** means the Party defined as such on the front page of the Credit Application;
- 1.1.7 Any reference in this Agreement to –
- **"business hours"** shall be construed as being the hours between 08h30 and 17h00 on any business day. Any reference to time shall be based upon South African Standard Time;
  - **"days"** shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time;
  - **"laws"** means all constitutions; statutes; regulations; by-laws; codes; ordinances; decrees; rules; judicial, arbitral, administrative, ministerial, departmental or regulatory judgments, orders, decisions, rulings, or awards; policies; voluntary restraints; guidelines; directives; compliance notices; abatement notices; agreements with, requirements of, or instructions by any governmental body; and the common law, and "law" shall have a similar meaning.
  - **"person"** means any natural person, company, close corporation, trust, partnership, joint venture, association, unincorporated association, Governmental Body, or other entity whether or not having separate legal personality; and
- 1.1.8 The words **"include"** and **"including"** mean "include without limitation" and **"including without limitation"**. The use of the words "include" and "including" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- 1.1.9 If the due date for performance of any obligation in terms of this Agreement is a day which is not a business day then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately following business day.
- 1.1.10 The rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting of this Agreement, shall not apply.
- 1.1.11 No provision of this Agreement shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (stipulatio alteri) who is not a Party to this Agreement.
- 1.1.12 The use of any expression in this Agreement covering a process available under South African law, such as winding-up, shall, if either of the Parties to this Agreement is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction.
- 1.1.13 Any reference in this Agreement to **"this Agreement"** or any other agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document, as amended, varied, novated or supplemented from time to time.
- 1.1.14 In this Agreement the words **"clause"** or **"clauses"** refer to clauses of this Agreement.

### 2. PREAMBLE

2.1 The Purchaser agrees that:

- 2.1.1 By accepting credit from the Supplier, it accepts these standard terms and conditions of sale and agrees to be bound hereby;

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- 2.1.2 This Agreement will govern all current and future contractual relationships between the Parties and is applicable to all existing and future debts between the Parties.
- 2.1.3 This Agreement is final and binding and comes into existence (i) upon signature by the Purchaser of this Agreement and delivery of the signed Agreement to The Supplier or (ii) upon commencement of business between The Purchaser and The Supplier, whichever is the earlier.
- 2.1.4 In the event that the Parties commence business with each other before conclusion hereof then this Agreement shall apply retrospectively including any suretyships that are applicable in terms of this Agreement.
- 2.1.5 Any conflicting conditions stipulated by The Purchaser (for instance through a purchase order) are expressly excluded and the contents of this Agreement shall prevail.

**3. FACILITY AND VALIDITY**

- 3.1 The Supplier reserves the right, at any time, to withdraw or amend any credit facilities which may have been granted to The Purchaser.
- 3.2 All specifications, price lists, performance figures, advertisements, brochures and other technical data furnished by The Supplier in respect of the goods or services, orally or in writing, will not form part of the Agreement in any way, unless agreed to in writing by The Supplier.
- 3.3 The Purchaser shall be liable for all debts notwithstanding the fact that it may have exceeded the credit limit agreed upon.

**4. APPROPRIATENESS OF GOODS OR SERVICE AND NO WARRANTIES**

- 4.1 The Supplier makes no representations, promises, warranties or undertakings to the Purchaser or any other person in respect of any goods or services or otherwise in connection with this Agreement and The Purchaser acknowledges that it does not rely on any warranties or representations made by The Supplier in regard to the goods and services, other than those specifically contained in this Agreement.
- 4.2 The Purchaser agrees that neither The Supplier nor any of its employees, directors, officers, shareholders, suppliers or agents will be liable for any negligent or innocent misrepresentations made to The Purchaser.
- 4.3 It is the sole responsibility of The Purchaser to determine that the goods or services ordered are suitable for the purposes of intended use.
- 4.4 The Supplier reserves the right, at its sole discretion, to provide alternative goods at the prevailing prices to those ordered by The Purchaser, should such goods be superseded, replaced or the manufacture thereof terminated.

**5. PRICING**

- 5.1 The price of goods is reflected on The Supplier's official price list, applicable on the date that the goods are delivered to the Purchaser and are subject to variation without notice.

**6. DELIVERY AND RISK**

- 6.1 The Supplier shall be entitled in its sole discretion to split the delivery/ performance of the goods or services ordered in the quantities and on the dates it decides in its sole discretion. Should The Purchaser order quantities which do not conform with factory packed quantities, The Seller may vary the quantities ordered to correspond to the nearest factory packing, in which case The Supplier may also vary the total price directly pro-rata with the quantities delivered.
- 6.2 The Supplier shall be entitled to separately invoice each delivery / performance actually made.
- 6.3 A delivery note shall be signed by The Purchaser or its authorized representative, employee or agent. If The Purchaser appoints its own transport contractor or agent to accept delivery of any product from The Supplier, The Supplier's sole responsibility for providing proof of delivery will be limited to proving that the product was accepted by the transport contractor. In this case, risk will pass to The Purchaser on delivery of the product to the transport contractor.
- 6.4 Any delivery note or waybill (copy or original) signed by The Purchaser or any of its representatives, employees, agents, or a third party engaged to transport the goods on The Purchaser's behalf shall constitute conclusive and prima facie proof that the type and quantity of product / service recorded therein was delivered to, and accepted by, The Purchaser and that delivery thereof was made to The Purchaser.
- 6.5 The risk of damage to, destruction or theft of goods shall pass to The Purchaser on conclusion of delivery as envisaged in 6.4 above and The Purchaser undertakes to comprehensively insure the goods for such risk.
- 6.6 If The Purchaser agrees to delivery by a third party appointed or nominated by The Supplier, The Supplier is hereby authorized to engage any such third party to transport the goods on The Purchaser's behalf and on the terms deemed fit by The Supplier in its discretion.
- 6.7 Delivery, installation and performance times given are merely estimates and are not binding on The Supplier. The Purchaser indemnifies The Supplier against any claims which may arise here from.
- 6.8 Where The Supplier has delivered goods, off-loading shall be carried out by The Purchaser's employees at the sole risk of The Purchaser; should The Supplier's employees assist in such off-loading, at the request of The Purchaser or otherwise, such unloading will remain at the sole risk of The Purchaser.
- 6.9 The Supplier shall not be obliged to verify the authority of the representative, employee or agent signing on behalf of The Purchaser and The Supplier shall be entitled to assume –
  - 6.9.1 the authenticity of, and to act in reliance upon, any document appearing to it to be authentic (including but not limiting any written acceptance of a delivery); and
  - 6.9.2 the authority of, and to act in reliance upon, the instruction or acceptance of/by any person appearing to it to be authorized.

**7. DEFECTS OR RETURNS**

- 7.1 The Supplier's liability for any defective or faulty goods or services is restricted to the cost of replacement thereof.
- 7.2 No claim by The Purchaser against The Supplier under this Agreement in relation to any defective or faulty goods or services shall arise unless The Purchaser has within 7 (seven) days of the alleged defect or fault occurring, given The Supplier 30 days written notice to rectify any such defect or fault.
- 7.3 To be valid, any claims of The Purchaser in relation to any defective or faulty goods or services must be supported by the original Tax Invoice and proof of compliance by The Purchaser with clause 7.2.
- 7.4 The Supplier will uplift any defective goods, should the Purchaser return any defective goods to the premises of The Supplier it will be at The Purchaser's own cost and where possible packed in the original packaging of the goods. The Supplier reserves the right levy a 10% handling and admin charge for returns. Nonstocked goods may not be returned for credit.
- 7.5 All guarantees and cause for return are immediately null and void should any goods be tampered with or should the seals on goods be broken by anyone other than The Supplier; or should the goods be operated or stored outside the Manufacturers specifications; or contrary to the directions accompanying the goods or in any technical literature published by The Seller; or if the goods were applied in any manner which in the opinion of The Supplier caused the alleged defect or failure.

**8. LIMITATION OF LIABILITY**

- 8.1 Notwithstanding anything to the contrary contained in this Agreement, no liability shall attach to The Supplier in relation to nor any of its employees, directors, officers, agents, contractors or subcontractors for any losses, damages, expenses, costs or any other claims of whatsoever nature –
  - 8.1.1 for any loss of profit or any other indirect, special or consequential loss
  - 8.1.2 arising from any misuse or abuse of the goods or services by The Purchaser or any of its customers, contractors, agents, directors or officers
  - 8.1.3 non suitability of any goods or services
  - 8.1.4 any delay in the delivery of any goods or services.

**9. INVOICING AND PAYMENT**

- 9.1 The Purchaser agrees that the amount contained in a tax invoice or statement issued by The Supplier shall be due and payable unconditionally and without deduction:
  - 9.1.1 cash on order; or
  - 9.1.2 if The Purchaser is a Credit Approved Customer, within the agreed credit period referred to in the Credit Application or if no period has been agreed then within 30 days of the date of the tax invoice or statement.
- 9.2 All payments to be made by The Purchaser under or arising from this Agreement will be made by direct deposit or electronic transfer of immediately available and freely transferable funds, free of any deductions or set-off whatsoever, in the currency of the Republic of South Africa to account nominated by the Supplier from time to time.
- 9.3 The Purchaser has no right to withhold payment for any reason whatsoever and agrees that no extension of payment of any nature shall be provided to The Purchaser, unless reduced to writing and signed by the duly authorized representative of The Supplier.
- 9.4 All trade discounts shall be forfeited if payment in full is not made on the due date.
- 9.5 The quoted price is strictly net (exclusive of VAT and any other surcharges) and not subjected to any settlement discount, unless otherwise agreed in writing between The Supplier and The Purchaser. If any settlement discount is agreed to in writing, it shall only apply and be allowed if payment is received at the offices of The Supplier timeously as set out herein. Settlement discount only applies to the actual price of the goods (i.e. excluding VAT, transport costs, insurance and similar charges)
- 9.6 The Purchaser agrees that should any payment under or arising from this Agreement fail to be made on the due date thereof then, without prejudice to such other rights as may accrue to The Supplier consequent upon such failure, such overdue amounts will bear interest at the Prime Rate, from the due date for payment to the date of actual payment, both dates inclusive.
- 9.7 Should any amount not be received by The Supplier on or before due date all other amounts payable but not yet due by The Purchaser to The Supplier shall immediately and without notice to The Purchaser become due and payable together with interest as referred to in 9.6

**10. RESERVATION OF OWNERSHIP**

- 10.1 All goods supplied by The Supplier remain the property of The Supplier until such goods have been fully paid for whether such goods are attached to other property or not. The Purchaser is responsible for insuring such goods.
- 10.2 The Purchaser irrevocably authorizes The Supplier, without recourse to any court of law, to enter its premises to repossess any goods delivered and indemnifies The Supplier completely against any damages whatsoever relating to the removal of repossessed goods.

**11. RECOVERY ACTION AND COSTS**

- 11.1 In the event of a default by The Purchaser under this Agreement, The Purchaser will be liable for all legal and recovery costs, which will include but not be limited to –
  - 11.1.1 legal costs on the scale as to attorney and own client, including all cost of an advocate instructed by the attorney.
  - 11.1.2 collection charges, tracing fees valuation fees incurred any other costs, including stamp duties, and costs of any security that The Supplier may demand.

- 11.1.3 VAT added thereon; and
- 11.1.4 where appropriate, the cost of an arbitration, including the costs of the arbitrator/s, and (i) The Purchaser explicitly agrees that it forfeits any discount that may have been applicable and (ii) to the extent permissible in law The Purchaser waives any right to taxation of any costs.
- 11.2 The Purchaser agrees that The Supplier will not be required to furnish security in terms of Rule 62 (1) (c) of the Rules of Court of the Magistrates Court Act 32 of 1944 or in terms of Rule 47 of the of the High Court Act 59 of 1959.
- 11.3 Notwithstanding the amount of a claim The Supplier shall have the right, at its sole discretion, to institute any action in either the Magistrates Court or the High Court.

**12. DEFAULT EVENTS**

- 12.1 In the event that –
  - 12.1.1 The Purchaser fails to pay punctually any amount due and payable to The Supplier and fails to remedy such default within 5 business days from the date of dispatch by The Supplier of written notice to that effect; or
  - 12.1.2 The Purchaser commits any other breach of any of the terms of this Agreement and fails to remedy such default within the remedy period given therefore (if any) or if no remedy period is provided therefore, within 5 business days from the date of written notification to that effect from The Supplier; or
  - 12.1.3 a default judgement is entered The Purchaser and it fails, within 10 business days after such entry of judgement, to satisfy or take steps to rescind the same; or
  - 12.1.4 The Purchaser compromises or attempts to compromise any debt with any of its creditors; or
  - 12.1.5 The Purchaser is wound up or liquidated (whether provisionally or finally) or placed under judicial management order or is wound up, or its members pass a resolution to liquidate or wind up the company (other than for the purposes of internal reorganization), or commit any act of insolvency or enters into business rescue proceedings;
  - 12.1.6 The Purchaser is sequestrated or placed under administration (whether provisionally or finally), or a voluntary surrender order or receivership, then without prejudice to any other rights that it may have at law or under this Agreement, The Supplier shall be entitled to –
    - 12.1.7 accelerate payment of any amount outstanding and owing to The Supplier;
    - 12.1.8 suspend or terminate the provision of credit facility or the provision or supply of any goods or services to The Purchaser; or
    - 12.1.9 to claim immediate specific performance of all or any of The Purchaser's obligations under this Agreement, with or without claiming damages, whether or not such obligation has fallen due for performance; or
    - 12.1.10 to cancel this Agreement, with or without claiming damages, and take possession of any goods delivered to The Purchaser, in which case written notice of the cancellation shall be given to The Purchaser, and the cancellation shall take effect on the giving of the notice.
- 12.2 If The Supplier cancels or purports to cancel this Agreement then, notwithstanding anything to the contrary herein, all amounts outstanding and owing to The Supplier under this Agreement shall immediately be due and payable by The Purchaser to The Supplier.
- 12.3 The Purchaser shall be deemed to be in default if the surety under the suretyship commits an event of default as contemplated in this clause, it being acknowledged that the surety is also a co-principal debtor of The Purchaser in favour of The Supplier.
- 12.4 The Parties agree that any costs awarded will be recoverable on an attorney-and-own-client scale unless the Court specifically determines that such scale shall not apply, in which event the costs will be recoverable in accordance with the High Court tariff, determined on an attorney-and-client scale.
- 12.5 The Supplier's remedies in terms of this clause 12 are without prejudice to any other remedies to which it may be entitled in law.

**13. DISPUTE RESOLUTION**

- 13.1 In the event of there being any dispute or difference between all or some of the Parties arising out of this Agreement (including but not limited to any dispute or difference as to the validity or otherwise of this Agreement, or as to the enforceability of this Agreement), the said dispute or difference shall on written demand by any Party be submitted to arbitration in Johannesburg in accordance with the Arbitration Foundation of Southern Africa ("**AFSA**") rules, which arbitration shall be administered by AFSA.
- 13.2 Should AFSA, as an institution, not be operating at that time or not be accepting requests for arbitration for any reason, or should AFSA refuse to accept the particular request for arbitration for whatever reason, then the arbitration shall be conducted in accordance with the AFSA rules for commercial arbitration (as last applied by AFSA) before an arbitrator appointed by agreement between the parties to the dispute or failing agreement within 10 business days of the demand for arbitration, then any party to the dispute shall be entitled to forthwith call upon the chairperson of the Johannesburg Bar Council to nominate the arbitrator, provided that the person so nominated shall be an advocate of not less than 10 years standing as such. The person so nominated shall be the duly appointed arbitrator in respect of the dispute. In the event of the attorneys of the parties to the dispute failing to agree on any matter relating to the administration of the arbitration, such matter shall be referred to and decided by the arbitrator whose decision shall be final and binding on the parties to the dispute.
- 13.3 Any party to the arbitration may appeal the decision of the arbitrator or arbitrators in terms of the AFSA rules for commercial arbitration.
- 13.4 Nothing herein contained shall be deemed to prevent or prohibit a party to the arbitration from applying to the appropriate court for urgent relief or for judgment in relation to a liquidated claim.
- 13.5 Any arbitration in terms of this clause (including any appeal proceedings) shall be conducted in camera and the Parties shall treat as confidential details of the dispute submitted to arbitration, the conduct of the arbitration proceedings and the outcome of the arbitration.
- 13.6 This clause will continue to be binding on the Parties notwithstanding any termination or cancellation of the Agreement.

14. The Parties declare that it is their intention that this clause will regulate the manner in which they will resolve any dispute or difference regarding the validity or otherwise of this Agreement, regardless of the fact that one of the parties may dispute the validity or enforceability of the Agreement.
15. The Parties agree that the written demand by a party to the dispute in terms of clause 33.1 that the dispute or difference be submitted to arbitration, is to be deemed to be a legal process for the purpose of interrupting extinctive prescription in terms of the Prescription Act, No 68 of 1969.

**16. FORCE MAJEURE**

- 16.1 Notwithstanding anything to the contrary herein contained, The Supplier shall not be liable to The Purchaser in respect of the non-performance of any of its obligations if and to the extent that such non-performance is as a result of or has been caused by force majeure, which shall mean any event beyond the reasonable control of The Supplier or which could not reasonably have been foreseen by it, and shall include, but not be limited to, –
- 16.1.1 any act of God, war, civil disturbance, riot, state of emergency, strike, lockout or other labour dispute, fire, flood, drought, rain, storm, rough seas, wind or any existing or new legislation, general power failures, breakdown of telecommunication networks or computers, political intervention, imposition of sanctions, riot, insurrection embargoes, quarantine or any governmental barring directive or order, any inability to secure labour, power supply, materials or supplies; or
- 16.1.2 any other cause beyond the reasonable control of The Supplier.
- 16.2 Any order by the Purchaser is subject to cancellation by The Supplier due to any event contemplated in clause 16.1

**17. CERTIFICATE OF INDEBTEDNESS**

A certificate signed by any director or manager (whose appointment, authority or qualification need not be proved) for the time being of The Supplier shall be –

- 17.1 prima facie proof of any amount outstanding and owing by The Purchaser to The Supplier under this Agreement; and
- 17.2 valid, together herewith, for any purpose and as a liquid document (alternatively as proof of a liquidated amount) in any court or forum of competent jurisdiction for the purpose of obtaining provisional sentence, summary judgement or any other judgement against The Purchaser,

and The Purchaser acknowledges its indebtedness in respect of any amount so certified.

**18. NOTICES AND DOMICILIA**

- 18.1 The Parties select as their respective *domicilia citandi et executandi* the physical addresses set out in the Credit Application, and for the purposes of giving or sending any notice provided for or required under this Agreement, the physical addresses as well as the email addresses set out in the Credit Application.
- 18.2 All notices and legal processes to be given in terms of this Agreement will be given in writing and will —
- 18.2.1 be delivered by hand or sent by email;
- 18.2.2 if delivered by hand during business hours, be presumed to have been received on the date of delivery. Any notice delivered after business hours or on a day which is not a business day will be presumed to have been received on the following business day; and
- 18.2.3 if sent by email during business hours, be presumed to have been received on the date of successful transmission of the email. Any email sent after business hours or on a day which is not a business day will be presumed to have been received on the following business day.
- 18.3 Notwithstanding the above, any notice given in writing, and actually received by the Party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this clause 18.

**19. CHANGE IN PARTICULARS**

The Purchaser shall inform The Supplier in writing within 7 days of any change in its directorship, membership, shareholders, owners, partners or address and The Purchaser's failure to do so will constitute a material breach of this Agreement.

**20. PERMISSION TO USE YOUR PERSONAL INFORMATION**

- 20.1 The Purchaser hereby voluntarily authorises the Supplier to process the Purchaser's and/or its employees personal information (including name, credit card & banking details, physical address, telephone numbers & any other information provided to the Supplier).
- 20.2 The Purchaser indemnifies the Supplier against any action by the employees of the Supplier insofar as processing of their personal and special personal information is concerned.
- 20.3 Processing shall include the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation, use; dissemination by means of transmission, distribution or making available in any other form; or merging, linking, as well as blocking, degradation, erasure or destruction of information. This consent is effective immediately and will endure until the relationship between the Purchaser and the Supplier has been terminated.
- 20.4 By agreeing to the terms of this Agreement the Purchaser expressly consents to the processing of its information for marketing purposes and knows and understands that by agreeing to same that it may receive marketing materials in the form of SMS's, emails and the like from the Company.

- 20.5 The Supplier is the responsible party in respect of such personal information, as envisaged in POPI and the regulations thereto and its address and contact details appear at the top of page 1 hereof.
- 20.6 The Supplier herewith warrants to take appropriate, reasonable technical and organisation measures to prevent: loss of, damage to or unauthorised destruction of the Purchaser's personal information and unlawful access to or producing of the Purchaser's personal information.
- 20.7 In the event that the Supplier's becomes aware of any unauthorised use of the Purchaser's personal information, the Supplier will notify the Purchaser thereof.

**21. PROTECTING YOUR SPECIAL PERSONAL INFORMATION**

- 21.1 By agreeing to the terms of this Agreement the Purchaser expressly consents to the processing of special personal information as defined in the Protection of Personal Information Act, 4 of 2013, by the Supplier.

**22. YOUR RIGHTS IN TERMS OF THIS CONSENT**

- 22.1 It shall remain the Purchasers obligation to update their personal information and special personal information as defined in the Protection of Personal Information Act, 4 of 2013.

**23. TRANS-BORDER FLOW OF INFORMATION**

- 23.1 The Purchaser hereby expressly consents to the processing of its personal information by way of the trans-border flow of information. This will occur where personal information has to be sent to service providers outside of the Republic of South Africa for storage or further processing processes on the Purchaser's behalf

**24. SURETYSHIP**

- 24.1 The person signing this Agreement on behalf of The Purchaser signatory hereby warrants that he is authorized to bind the Purchaser and hereby:
  - 24.1.1 binds himself/herself as surety for and co-principal debtor with the Purchaser for the due performance by the Purchaser of all of its obligations to The Supplier arising from this Agreement and the credit application to which it applies and, in addition, any transactions conducted between The Supplier and The Purchaser whether in terms of this Agreement or not;
  - 24.1.2 waives any rights that he/she may have to first require The Supplier to make any demand of The Purchaser, to proceed against or claim payment from The Purchaser or any third party, to take action or obtain judgment in any court against The Purchaser, to make, file or prove any claim in the winding-up or dissolution of The Purchaser, or to enforce or seek to enforce any suretyship or security granted by The Purchaser or any third party before making payment under the suretyship contained in this Agreement;
  - 24.1.3 waives any and all rights to rely on the prescription of either any principal obligation of The Purchaser or any accessory obligation created by the suretyship contained in this Agreement;
  - 24.1.4 waives and renounces any benefit which he is entitled to in law, without detracting from the generality of which include the benefits of excussion, division, cession of action which benefits he understands and the full force and effects and meaning of which have been explained to him and agrees that this agreement and its terms and conditions are applicable to him mutatis mutandi.

**25. CESSION OF CLAIMS**

- 25.1 Purchaser and Surety hereby jointly and severally, irrevocably and in rem suam (concerning (in) one's own affairs) cedes and assign as a pledge unto and in favour of the Supplier, all the right, title, interest in and to all claims of whatsoever nature and description and howsoever arising which the Purchaser and/or Surety may now or at any time hereafter have against all and any persons, companies, corporations, firms, partnership, associations, syndicates and other legal personae whomsoever without exception as continuing covering security for the due payment of every sum of money which may now or at any time hereafter be or become owing by the Purchaser and/or Surety from whatsoever cause or causes arising, it being acknowledged that this cession is a cession in securitatum debiti (as security for the debt) and is not an out and-out cession.
- 25.2 Should it transpire that the Purchaser and/or Surety entered into prior deeds of cession or otherwise disposed of any of the right, title and interest in and to any of the claims which will from time to time be subject to this cession, then this cession shall operate as a cession of all the Purchaser and/or Surety's reversionary rights.
- 25.3 This Cession shall be and remain in full force and effect as a continuing security notwithstanding any fluctuation, or temporary extinction of the Purchaser and/or Surety's indebtedness to the Supplier.
- 25.4 For the purpose of giving effect to the foregoing Cession both the Purchaser and Surety hereby nominate, constitute and appoint the Supplier to be its Attorney and Agent, in rem suam (concerning (in) one's own affairs), with full authority for the Purchaser and/or Surety and in the Purchaser and/or Surety's name to demand, sue for, recover and receive all sums of money hereby ceded and assigned and with the authority to sign all documents on the Purchaser and/or Surety's behalf and in the Purchaser and/or Surety's name in connection with the recovery of the said sums and to give acquittances and receipts for the Purchaser and/or Surety's.
- 25.5 The Purchaser and Surety agree that, on request by the Supplier, they shall be obliged to Hand over to the Supplier all books of account, contracts, invoices, documents and the like which it may require for the purposes of ascertaining the amounts due to the Purchaser and/or Surety for the purpose of recovery of payment.
- 25.6 The Purchaser and Surety shall be obliged to furnish the Supplier with a schedule of all debts due to the Purchaser and/or Surety by its debtors monthly and upon demand. Notwithstanding the foregoing, the Supplier or its nominee shall at all times be entitled to inspect all or any of the Purchaser and Surety's records as the Supplier deems fit. Failure by either

party to give effect to the foregoing shall not in any way prejudice the rights of the Supplier hereunder, and the Supplier shall at all times be deemed to have perfected its security in terms hereof.

**26. APPLICABLE LAW AND JURISDICTION**

- 26.1 This Agreement will in all respects be governed by and construed under the laws of the Republic of South Africa.
- 26.2 Subject to clause 13, the Parties hereby consent and submit to the nonexclusive jurisdiction of the High Court of South Africa, Gauteng Division, (Johannesburg) in any dispute arising from or in connection with this Agreement.

**27. GENERAL**

**Whole Agreement**

- 27.1 This Agreement constitutes the whole of the agreement between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on either of the Parties.
- 27.2 This Agreement supersedes and replaces any and all agreements between the Parties (and other persons, as may be applicable) and undertakings given to or on behalf of the Parties (and other persons, as may be applicable) in relation to the subject matter hereof, without prejudice to any securities or guarantees held by The Supplier.

**Variations to be in Writing**

- 27.3 No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of this Agreement will be of any force or effect unless in writing and signed by the Parties.

**No indulgences**

- 27.4 No latitude, extension of time or other indulgence which may be given or allowed by any Party to the other Party in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any Party arising from this Agreement and no single or partial exercise of any right by any Party under this Agreement, shall in any circumstances be construed to be an implied consent or election by such Party or operate as a waiver or a novation of or otherwise affect any of the Party's rights in terms of or arising from this Agreement or estop or preclude any such Party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof. Failure or delay on the part of any Party in exercising any right, power or privilege under this Agreement will not constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

**No Waiver or Suspension of Rights**

- 27.5 No waiver, suspension or postponement by any Party of any right arising out of or in connection with this Agreement shall be of any force or effect unless in writing and signed by such Party. Any such waiver, suspension or postponement will be effective only in the specific instance and for the purpose given.

**Provisions Severable**

- 27.6 All provisions and the various clauses of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this Agreement which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as pro non scripto and the remaining provisions and clauses of this Agreement shall remain of full force and effect. The Parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.

**Continuing Effectiveness of Certain Provisions**

- 27.7 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

**Assignment**

- 27.8 The Supplier may at its sole discretion cede and assign its rights and obligations in terms of this agreement without the prior consent of The Purchaser. Upon notification of such cession, The Purchaser shall be become liable to effect payment to the cessionary.
- 27.9 Neither this Agreement nor any part, share or interest herein nor any rights or obligations hereunder may be ceded, delegated or assigned by the Purchaser without the prior signed written consent of The Supplier, save as otherwise specifically provided herein.

**Confidentiality**

- 27.10 For the purposes of this Credit Application "Confidential Information" means all and any information or data of whatever nature and in whatever form relating to the Supplier and to the goods supplied by it to the Purchaser and/or information

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which constitutes confidential information which is disclosed at any time and includes, without limitation, any technical, security, information technology, commercial, contractual, financial, scientific, marketing, trading and merchandising methods, business information and know-how, trade secrets, inventions, software, marketing strategies, technical specifications and data in whatever form, which information is communicated to the Purchaser or any party to which it discloses the Confidential Information whether such information is formally designated as confidential or not.

- 27.11 All Confidential Information disclosed by the Supplier to the Purchaser is acknowledged by the Purchaser –
  - 27.11.1 to be proprietary to the Supplier; and
  - 27.11.2 to not to confer any rights of whatsoever nature in such Confidential Information on the Purchaser or any other party.
- 27.12 The Purchaser irrevocably and unconditionally agrees and undertakes -
  - 27.12.1 to treat and safeguard the Confidential Information as strictly private, secret and confidential.
    - 27.12.1.1 not to use or permit the use of the Confidential Information for any purpose other than that for which the goods were bought and in accordance with the provisions of this Credit Agreement and, in particular, not to use or permit the use of the Confidential Information, whether directly or indirectly, to obtain a commercial, trading, investment, financial or other advantage over the Supplier or otherwise use it to the detriment of the Supplier.
    - 27.12.2 except as permitted by this Credit Agreement not to disclose or divulge, directly or indirectly, the Confidential Information in any manner to any third party for any reason or purpose whatsoever.
    - 27.12.3 not to decompile, disassemble or reverse engineer or otherwise modify, adapt, alter or vary the whole or any part of the Confidential Information.
    - 27.12.4 to keep all Confidential Information safe and secure and to take all such steps as may be reasonably necessary to protect it against theft, damage, loss and/or unauthorised access.
    - 27.12.5 to comply with any reasonable requests, received from the Supplier from time to time, to enable the Supplier to comply with its obligations under POPI or any other applicable data protection and privacy laws.
    - 27.12.6 to destroy or return to the Supplier (within 3 days of receipt of a written request to do so by the Supplier) all media containing any Confidential Information.
    - 27.12.7 within 3 days of receipt of a written request to do so by the Supplier, to provide the Supplier with written confirmation that all such records have been returned and/or destroyed.
    - 27.12.8 to use at least the same standard of care in protecting the Confidential Information as it takes in protecting its own proprietary, secret and confidential information.
    - 27.12.9 not make any copies of the Confidential Information or reproduce it in any form without the prior written consent of the Supplier, save as required for the legitimate use of the goods sold by the Supplier to the Purchaser.
    - 27.12.10 to inform the Supplier immediately on becoming aware that Confidential Information has been disclosed to any unauthorised third party.

**28. UPDATING OF THESE TERMS AND AMENDMENTS**

The Supplier reserves the right to change or update portions of or the whole of these terms from time to time. Changes or updates to these terms will be communicated in writing to The Purchaser and will become effective from such date, unless otherwise stated by The Supplier.

**29. PRODUCT LIABILITY WAIVER & LIMITATION OF LIABILITY**

- 29.1 The products manufactured and/or produced ("Our Products") by NCS South Africa (Pty) Ltd ("Us/We/Our") are intended for sale by Us to industrial and commercial customers, agents, distributors and resellers (collectively referred to as "Our Customers").
- 29.2 By agreeing to purchase Our Products, Our Customers agree to be bound to the terms hereof. Any breach of the terms hereof or any other agreement concluded between Us and Our Customers shall result in the immediate termination of Our Customers status as a distributor and/or reseller
- 29.3 In terms hereof, We enjoy a right to inspect our Customers' business premises on 72 hours' notice to Our Customers in order to determine whether proper protocols are in place in regard to the use of Our Products.
- 29.4 In terms of Our Products, We warrant that Our Products will meet Our written specifications and data sheet as provided to Our Customers with Our Products. Nothing herein contained shall constitute any other warranty by Us, whether expressed or implied, including any warranty of merchantability or fitness for a particular purpose, nor is protection from any law or patent to be inferred in relation to Our Products. No representations outside of those contained in the product specifications and data sheet provided to Our Customers shall be binding on Us.
- 29.5 Our Customers expressly and unreservedly acknowledge and accept that –
  - 29.5.1 any and all claims arising from any cause whatsoever (whether such cause is based in, but not limited to, contract, negligence, delict or otherwise) in relation to our commercial relationship with Our Customers and/or Our Products shall be deemed to be waived and unenforceable unless notice of such a claim is submitted by the Customers to Us and received by Us in writing within 30 (thirty) days of the date of the delivery of the Product to Our Customer;
  - 29.5.2 a failure by Our Customers to properly deliver written notice of a claim to Us within the aforementioned 30 (thirty) day period shall be deemed to be an absolute and unconditional waiver by Our Customers of any such claim against Us, irrespective of whether the facts giving rise to such a claim had been discovered as at the date on which the notice of the claim feel due or whether other use or resale of Our Products shall have taken place;
  - 29.5.3 the exclusive remedy available to Our Customers for all proven claims relating to Our Products is the replacement of Our Products and in no event shall We be liable to Our Customers (or any third party) for any special, incidental and/or consequential damages claims relating to Our Products and/or the use of Our Products. In order to prove any claim, Our Customers are required to retain samples / cut- outs to demonstrate any claim that Our Customers may have for replacement product. To the extent that samples / cut-outs are not retained by

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- Our Client, the claim will automatically be rejected. We are entitled to call for cut-outs / samples in relation to Our Products supplied to Our Customers, which cut-outs / samples are to be provided to us by the Customers within 120 hours (or such longer period as We may agree to) of our request; and
- 29.5.4 Our Customers are required to and undertake to disclose to their customers the terms of this product liability waiver and limitation of liability document.
- 29.6 Our Customers agree –
- 29.6.1 to indemnify and hold Us harmless in relation to and defend any and all claims brought by Our Customers' customers or any third parties in relation to Our Products; and
- 29.6.2 to take out appropriate insurance cover relating to their commercial arrangements and/or undertakings with their customers in respect of Our Products, with product liability cover of a minimum amount of R100 000 000 (One Hundred Million Rand). Our Customers agree and undertake to furnish Us with proof of insurance within 48 hours of Our Request that proof of insurance be provided.
- 29.7 Our Customers expressly agree to indemnify Us against any and all claims for any special, incidental and/or consequential damages which may be brought by any of Our Customers' customers against Us.
- 29.8 Our Customers are expected and are assumed to (and undertake to ensure that they and their relevant personnel, representatives, contractors, sub-contractors and/or agents) have sufficient knowledge and/or proficiency and/or expertise in relation to Our Products ("**Expected Knowledge**") and the –
- 29.8.1 applications, capabilities and specifications of Our Products, so as to allow Our Customers to make informed decisions relating to the use and/or applications of Our Products and/or the onward supply of our Products to the customers of Our Customers, as well as any third parties to which Our Products are supplied by Our Customers; and
- 29.8.2 suitability of Our Products in relation to the requirements of the customers of Our Customers and any third parties to which Our Products are supplied by Our Customers.
- 29.9 In addition, Our Customers are expected to inspect and test Our Products in specific applications to satisfy themselves as to the suitability of Our Product to their requirements and/or those of their customers.
- 29.10 The aforementioned Expected Knowledge of Our Customers informs the warranties and indemnities that our Customers unreservedly and irrevocably provide to us (as dealt with herein) in relation to the use, sale and/or onward supply of Our Products to third parties by Our Customers.
- 29.11 Further to the aforementioned Expected Knowledge, and by virtue of the fact that Our Products are manufactured and produced in specific climate settings (specifically a South African climate setting), Our Customers accept sole liability –
- 29.11.1 for and undertake to ensure the suitability of Our Products for use in a climate setting that differs from those in terms of which the specifications of Our Product, together with the data sheet, are provided and/or in terms of which Our Products are manufactured and/or produced.
- 29.11.2 to their customers and/or any third party to which Our Customers supply Our Products and undertake to ensure the suitability of Our Products for use in a climate setting that differs from those in terms of which the specifications of Our Product, together with the data sheet, are provided and/or in terms of which Our Products are manufactured and/or produced. Our Customers accept and agree to fully indemnify Us against any and all claims of whatsoever nature and howsoever arising relating to the use, sale and/or supply of Our Product by Our Customers to their customers and/or any third parties;
- 29.11.3 In relation to –
- 29.11.3.1 the housing and/or repackaging of Our Products; and
- 29.11.3.2 any changes to Our Products that result by virtue of, but not limited to –
- 29.11.3.2.1 the transportation of Our Product (whether by land or sea) to the Customer (notwithstanding that we may have arranged and facilitated any such transport of Our Products on behalf of Our Customers);
- 29.11.3.2.2 the storage of Our Product by the Customer (notwithstanding that We may have arranged and facilitated any such storage of Our Products on behalf of Our Customers); and
- 29.11.3.3 any variations (regardless of the degree of variation) to the formulation of Our Products introduced by the Customers;
- 29.11.4 to their customers and/or any third party to which Our Customers supply Our Products in relation to –
- 29.11.4.1 the supply of Our Products; and
- 29.11.4.2 any changes to Our Products that result by virtue of, but not limited to –
- 29.11.4.2.1 the transportation of Our Product (whether by land or sea) to the Customer or the customer of our Customers (notwithstanding that We may have arranged and facilitated any such transport of Our Products on behalf of Our Customers);
- 29.11.4.2.2 the storage of Our Product by the Customer (notwithstanding that We may have arranged and facilitated any such storage of Our Products on behalf of Our Customers); and
- 29.11.4.2.3 any variations (regardless of the degree of variation) to the formulation of Our Products introduced by the Customers;
- 29.12 Our Customers agree that any and all claims and/or disputes arising out of and/or relating to Our Products and/or the use or application of Our Products by and/or the supply of Our Products to Our Customers and/or their customers and/or any third parties shall be –
- 29.12.1 governed by South African law;
- 29.12.2 determined by way of arbitration, which arbitration proceedings shall –
- 29.12.2.1 be held in Sandton, Johannesburg, Gauteng, South Africa;
- 29.12.2.2 be conducted in camera and treated as private and confidential;
- 29.12.2.3 conducted in accordance with the Commercial Rules of the Arbitration Foundation of South Africa ("**AFSA**"). Should AFSA, as an institution, not be operating at the time that the dispute and/or claim is to be referred, then the arbitration shall be conducted in accordance with the AFSA rules for commercial arbitration as last applied by AFSA before an arbitrator appointed by agreement between the parties to the dispute failing agreement within 10 (ten) business days of the demand for arbitration, then any party

to the claim and/or dispute shall be entitled to call upon the chairperson of the Johannesburg Bar Council to nominate the arbitrator, provided that the person so nominated shall be an advocate of not less than 15 years standing as an advocate;

29.12.2.3.1 be administered by AFSA. Should AFSA, as an institution, not be operating at the time that the dispute and/or claim is to be referred, then the administration of the arbitration shall be determined by the appointed arbitrator whose decision in relation to the administration of the arbitration shall be final and binding on the parties to the dispute;

29.12.2.4 not be subject to appeal, unless otherwise agreed to in writing between the parties to the claim and/or dispute.

29.13 Our Customers agree and undertake to comply with all applicable laws, regulations, and industry standards related to the use, storage, handling, transportation, and disposal of Our Products in whichever jurisdiction Our Customers elect to supply Our Products to. The Customer agrees and undertakes to indemnify Us against any and all penalties and regulatory orders that may be made in relation to the supply of Our Products to any jurisdiction outside of South Africa and assume sole responsibility in relation to the supply of Our Products to any jurisdiction outside of South Africa.

29.14 Our Customers agree and acknowledge that we have provided reasonable warnings and instructions for the use, storage, handling, transportation, and disposal of Our Products, and that Our Customers have read and understand such warnings and instructions.

29.15 Our Customers agree that the contents hereof shall be binding upon their respective heirs, successors, and assigns and inure to Our benefit and those of Our respective heirs, successors, and assigns.

### **30. PRODUCT INTEGRITY, ENGINEERING RESTRICTIONS AND INDEMNITY**

Without limiting the provisions contained in the Product Liability Waiver & Limitation of Liability clause,

30.1 The Purchaser shall not, without the Supplier's prior written consent:

- 30.1.1 alter, modify, dismantle, adapt or re-engineer any goods supplied;
- 30.1.2 reverse engineer, decompile, analyse or replicate the design or functionality of the goods;
- 30.1.3 remove, obscure or replace any branding, serial numbers, identification markings or safety labels;
- 30.1.4 incorporate the goods into any other product, system, assembly or process;
- 30.1.5 rebrand, relabel or represent the goods as products of the Purchaser or any third party;
- 30.1.6 modify specifications, tolerances, performance parameters or safety features.

30.2 The Purchaser acknowledges that the goods are supplied strictly in accordance with the Supplier's specifications and manufacturer standards. Any deviation from such specifications shall:

- 30.2.1 immediately void all warranties;
- 30.2.2 discharge the Supplier from any liability arising thereafter;
- 30.2.3 constitute unauthorised use.

30.3 Where the Purchaser incorporates the goods into any composite product, machinery, structure or system, the Purchaser:

- 30.3.1 assumes full design responsibility for the final product;
- 30.3.2 warrants that all engineering validation, testing and regulatory approvals have been obtained;
- 30.3.3 indemnifies the Supplier against all claims arising from the integrated product.

30.4 The Supplier shall not be liable for:

- 30.4.1 consequential or indirect damages arising from modification;
- 30.4.2 performance failure due to altered installation conditions;
- 30.4.3 regulatory non-compliance caused by reconfiguration;
- 30.4.4 third-party product liability claims arising from re-engineered goods.

30.5 The Purchaser indemnifies and holds the Supplier harmless against all:

- 30.5.1 product liability claims;
- 30.5.2 personal injury or death claims;
- 30.5.3 property damage claims;
- 30.5.4 intellectual property infringement claims;
- 30.5.5 recall costs;
- 30.5.6 regulatory penalties or fines,
- 30.5.7 arising directly or indirectly from any alteration, modification, incorporation, reverse engineering or re-engineering of the goods.

30.6 The Purchaser shall maintain adequate product liability insurance covering any modified or integrated product and shall provide proof of such insurance upon request.

30.7 The Purchaser shall ensure that any third party to whom the goods are supplied is bound by equivalent restrictions.

30.8 Nothing in this agreement shall be construed as granting the Purchaser any intellectual property rights in the design, configuration or engineering of the goods.



**31. SIGNATURE**

- 31.1 This Agreement is signed by the Purchaser on the date and at the place indicated below.
- 31.2 This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.
- 31.3 The persons signing this Agreement in a representative capacity warrant their authority to do so.
- 31.4 The Parties record that it is not required for this Agreement to be valid and enforceable that a Party shall have its signature of this Agreement verified by a witness.

HAVING READ AND UNDERSTOOD THE CONSEQUENCES CONTAINED ABOVE:

For and on behalf of the Purchaser and as surety for and co-principal debtor with the Purchaser

**Signature :** \_\_\_\_\_

**Print Full Name(s) :** \_\_\_\_\_

**Place :** \_\_\_\_\_

**Date :** \_\_\_\_\_