

# **ACCESSORIES SPARES CENTRE (PTY) LTD**

**(Registration Number: 2015/164304/07)**

## **APPLICATION FOR TRADE ACCOUNT AND STANDARD TERMS AND CONDITIONS OF SALE, AND DEED OF SURETYSHIP**

**a) DEFINITIONS:**

- i) "Credit agreement"- refers to the application for credit facilities.
- ii) "Days"- refers to calendar days, which includes weekends and public holidays
- ii) "Suretyship"- refers to the suretyship agreement which is annexed to the credit agreement.
- iii) "CPA"- Consumer Protection Act 68 of 2008 and regulations as amended from time to time
- iv) "NCA"- National Credit Act 34 of 2005 and regulations as amended from time to time.
- v) "POPI"- Protection of Personal Information Act 4 of 2013 and regulations as amended from time to time.

**b) INTERPRETATION OF CREDIT AGREEMENT AND SURETYSHIP:**

- i) Words using the singular tense shall be deemed to include the plural tense.
- ii) Words indicating one gender shall include other genders.
- iii) A reference to a party in the credit agreement and/or suretyship shall include that party's successors and lawful assigns.

We, .....  
 ("the customer") hereby make application for a trade account and credit facilities with Accessories Spares Centre (Pty) Limited ("the Company"). A deed of suretyship (hereinafter referred to as the "suretyship") is attached to the application for credit facilities. In support of this application, the following information is furnished:

Please Mark The Relevant Box With (X).

- |                            |  |
|----------------------------|--|
| 1. Company                 |  |
| Close Corporation          |  |
| Sole Proprietorship        |  |
| Partnership                |  |
| Trust                      |  |
| Foreign Registered Company |  |

2. FULL LEGAL NAME OF BUSINESS \_\_\_\_\_
- TRADING NAME \_\_\_\_\_
- Registration Number \_\_\_\_\_
- VAT Number \_\_\_\_\_
- Date Established \_\_\_\_\_
- Type of Business \_\_\_\_\_

Annual Turnover:	Less than R2 million	<input type="checkbox"/>	More than R2 million	<input type="checkbox"/>
Assets:	Less than R2 million	<input type="checkbox"/>	More than R2 million	<input type="checkbox"/>

If the customer's annual turnover or asset value is more than R2 million (the current threshold) then the Consumer Protection Act 68 of 2008 ("CPA") will not be applicable to this agreement and suretyship. This is within the ambit of section 5 and 6 of the CPA.

Auditors/Accountants names

\_\_\_\_\_

Email address of the customer

\_\_\_\_\_

3. Postal Address

\_\_\_\_\_

Postal Code: \_\_\_\_\_

4. Physical Address

\_\_\_\_\_

Postal Code: \_\_\_\_\_

5. Delivery Address

\_\_\_\_\_

\_\_\_\_\_

6. Telephone Number/s

\_\_\_\_\_

Cellular Phone Number/s

\_\_\_\_\_

Email address

\_\_\_\_\_

7. Shareholders/Directors/Members/Partners/  
Trustees

Name: \_\_\_\_\_

Identity number: \_\_\_\_\_

Address: \_\_\_\_\_

Tel: \_\_\_\_\_

Cell: \_\_\_\_\_

Email: \_\_\_\_\_

Name: \_\_\_\_\_

Identity number: \_\_\_\_\_

Address: \_\_\_\_\_

Tel: \_\_\_\_\_

Cell: \_\_\_\_\_

Email: \_\_\_\_\_

Name: \_\_\_\_\_

Identity number: \_\_\_\_\_

Address: \_\_\_\_\_

Tel: \_\_\_\_\_

Cell: \_\_\_\_\_

Email: \_\_\_\_\_

Name: \_\_\_\_\_

Identity number: \_\_\_\_\_

Address: \_\_\_\_\_

Tel: \_\_\_\_\_

Cell: \_\_\_\_\_

Email: \_\_\_\_\_

Name: \_\_\_\_\_

Identity number: \_\_\_\_\_

Address: \_\_\_\_\_

Tel: \_\_\_\_\_

Cell: \_\_\_\_\_

Email: \_\_\_\_\_

8. Is your business premises leased or owned? \_\_\_\_\_

If leased, name and address of landlord \_\_\_\_\_

9. How long have you been in your present premises? \_\_\_\_\_

10. Physical Address for service of court processes, notices and communication \_\_\_\_\_

(domicilium citandi et executandi) \_\_\_\_\_ Postal Code: \_\_\_\_\_

11. Banking Details:

Bank \_\_\_\_\_

Branch \_\_\_\_\_

Account Number \_\_\_\_\_

Account Name \_\_\_\_\_

Year Account Opened \_\_\_\_\_

12. Amount of Credit Requested (monthly basis) \_\_\_\_\_

13. **Please tick correct answer:**

Have your directors or members signed personal suretyships in favour of any creditors?  Yes  No

Have your directors, shareholders or members ever been directors, shareholders or members of any business that has gone into liquidation?  Yes  No

Have your book debts been ceded? If so, to whom: \_\_\_\_\_ date ceded: \_\_\_\_\_  Yes  No

Are your latest financial statements available for inspection?  Yes  No

14. **Details of fixed property owned by you**

In what name is the property registered?	Year Purchased	Current Market Value	Bond Holder	Bond Value

15. **Documents required**

Identity Documents of Directors/Members/Trustees/Shareholders  
 Company/CC Registration Documents  
 Utility Bill of Directors/Members/Trustees/Shareholders  
 Utility Bill of Company  
 VAT Registration Certificate  
 Trust Deed  
 Letters of Authority


16. **TRADE REFERENCES****Industry Related Companies**

<b><u>Company Name</u></b>	<b><u>Account Number</u></b>	<b><u>Credit Limit</u></b>	<b><u>Year account opened</u></b>	<b><u>Telephone Number</u></b>
1)				
2)				
3)				
4)				
5)				

17. **INFORMATION RELATING TO THE CREDIT LIMIT: FOR THE ATTENTION OF THE CUSTOMER AND COMPANY:**

17.1 The credit limit granted by the company to the customer in terms of the credit agreement works on a continuous basis. All single and separate transactions add up to the credit limit collectively.

17.2 The company endeavours not to provide goods to the value exceeding the credit limit. For this purpose, value of goods excludes interest when calculating the value of goods in relation to the granted credit limit.

**DECLARATION:**

I warrant that:

- I am duly authorised to act on behalf of the customer and to sign this application and to agree to the Conditions herein;
- On the subsequent pages, terms and conditions are provided by the company which are incorporated into the credit agreement and deed of suretyship. I have read, acquainted myself with and fully understood these terms and conditions and their effects and consequences.
- When reading and interpreting a suretyship, where a term contained in the suretyship is not in accordance with a term and condition of the application for trade account, the term contained in the suretyship shall take preference.
- I have received a copy of the application and I understand the contents.
- I warrant that all of the information herein is true and correct

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

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

Full Names: \_\_\_\_\_

Designation: \_\_\_\_\_

**FOR THE COMPANY'S OFFICE USE ONLY:****18.1** Date: \_\_\_\_\_**18.2** Monthly credit limit granted to the customer (excludes interest when calculating the value of goods in relation to the credit limit) \_\_\_\_\_**18.3** Signed by an authorised representative of the company: \_\_\_\_\_**18.4** Full name of authorised representative of the company: \_\_\_\_\_**18.5** Designation of authorised representative of the company: \_\_\_\_\_

## STANDARD TRADING TERMS AND CONDITIONS

### 1. CONDITIONS OF TRADE

The sale of goods by the Company shall be done under these trading terms and conditions and no subsequent verbal agreement, arrangements, undertakings, quotations or specifications shall be binding on the Company. In the event that the customer has its own standard trading terms it is expressly agreed that these terms shall take precedence and shall apply to any sale by the Company.

### 2. PRICE

The price of goods sold by the Company shall be the price reflected on the Company's invoice. Prices are all exclusive of value added tax and subject to change without prior notification.

### 3. PAYMENT

3.1 Payment is to be made by the customer within thirty (30) days from date of statement being issued to the customer by the company.

3.2 All payments shall be free of bank charges and foreign exchange fluctuations and it shall remain the responsibility of the customer to ensure that the full invoice value is received by the Company into its bank account on due date.

3.3 Should any amount not be paid on due date, the whole amount in respect of any other purchases that have been made shall immediately become due, owing and payable and the customer shall be liable to pay interest on all overdue amounts at the prime overdraft rate of Standard Bank of South Africa plus 2%, commencing from the day the payment became overdue.

3.4 The customer shall not be entitled to claim set-off or deduction in respect of any amounts due to the Company. All payments made shall be appropriated by the Company in its sole discretion to any outstanding indebtedness due by the customer. Should any payment be overdue, the Company shall be entitled to immediately suspend delivery of any goods that have been ordered by the customer notwithstanding that the customer may have paid for such goods.

### 4. WITHDRAWAL OF CREDIT FACILITIES

The Company shall be entitled, at any time, to withdraw any credit facilities granted by the Company to the customer without prior notification or explanation. The nature and extent of the credit facilities afforded to the customer shall at all times be within the Company's sole discretion.

### 5. ORDERS

5.1 All orders submitted by the customer shall be considered to be offers to purchase and shall only become valid when received by the Company at its designated business address and accepted by the Company. The dispatch of goods to the customer shall be confirmation by the Company of the acceptance of such order/s.

### 6. DELIVERY

6.1 When required, the Company shall deliver the goods to the address stipulated by the customer. In doing so, the Company (or its designated carrier) shall act as agent for the customer and the risk in and to the delivery of the goods shall lie with the customer from the time when the goods leaves the Company's premises. Consequently, the customer is advised that it should, at its own cost, insure the goods whilst in transit.

6.2 Should the customer elect to collect the goods from the Company, the risk in and to the goods shall pass to the customer at the time the goods are physically handed to the customer at Company's premises notwithstanding that the customer may not have departed from the Company's premises.

6.3 Delivery shall be deemed to have been effected when the goods are delivered to the designated address or the customer has collected the goods from the Company. A signed proof of delivery of the goods (by any employee or agent of the customer) shall be prima facie proof until the contrary is proved that the goods have been properly delivered.

6.4 From delivery of the goods the customer shall have seventy two (72) hours to raise any queries or disputes with regard to the condition of the goods delivered and the quantity thereof. Should the customer fail to raise any queries within the said time period it shall be deemed that the goods have been properly delivered and the customer shall have no further claim against the Company arising therefrom.

**7. OWNERSHIP AND RISK**

- 7.1 Notwithstanding that the risk in and to the goods shall pass to the customer on dispatch of the goods, ownership shall remain with the Company until payment in full has been made. Consequently, the Company shall, if it is of the reasonable opinion that it will not be paid for the goods that it has sold, be entitled to take immediate legal steps to recover possession of its goods.
- 7.2 The customer shall, until it has paid for the goods, be obliged to insure the goods with a reputable insurer for their replacement value and customer hereby irrevocably cedes the proceeds of such insurance to the Company. In addition, the customer shall advise the landlord of any premises that it occupies of the Company's rights of ownership in and to the goods.
- 7.3 In the event that the customer is sequestered or liquidated (provisionally or finally), or attempts to compromise with its creditor or is placed under any form of debt review or business rescue process, or any resolution or steps are taken to activate any such processes the Company shall be entitled to immediately suspend all of its obligations in terms of the agreement including the credit facilities and the delivery of any undelivered goods.

**8. LEGAL PROCEEDINGS AND DOMICILIUM CITANDI ET EXECUTANDI (PHYSICAL ADDRESS FOR SERVICE OF COURT PROCESSES, NOTICES AND COMMUNICATION)**

- 8.1 Should it become necessary for the Company to take legal action against the customer, the customer shall liable for all costs incurred by the Company on the scale as between attorney and client.
- 8.2 The customer agrees that any claim against it may be launched by the Company in any court of competent jurisdiction including a Magistrate's Court notwithstanding that the amount claimed would ordinarily exceed the jurisdiction of such court.
- 8.3 A certificate signed by any manager or director of the Company (whose authority need not be proved) will be prima facie proof of the amount outstanding and due by the customer to the Company until the contrary is proved.
- 8.4 Should the customer be a foreign registered entity by completing this application it hereby submits to the jurisdiction of the South African Courts, the application of South African law and in particular, to the jurisdiction of the Durban High Court.
- 8.5 The customer acknowledges that the address that it has selected as its *domicilium citandi et executandi* address in the credit agreement / application for credit facilities shall be the address for service of all legal documents and processes relating to the credit agreement.
- 8.6 Such legal documents and processes shall include any notification in terms of the National Credit Act
- 8.7 The company chooses its *domicilium citandi et executandi* for service of legal processes in relation to the credit agreement / application for credit facilities at **(COMPANY TO INSERT APPROPRIATE ADDRESS)**.
- 8.8 Notwithstanding this, the customer may attempt to change its *domicilium citandi et executandi* address on written notice to the company. Such change will only be rendered effective if and when the company acknowledges in writing that the company has accepted such change of the customer's *domicilium citandi et executandi* address.

**9. WARRANTY**

- 9.1 The Company warrants that the goods shall comply with all of its published specifications.
- 9.2 Save for the said warranty the company does not make any representations as to whether the goods will be fit for the purpose for which they are being purchased and under no circumstances shall the Company (including its Directors or Agents), be liable to the customer for any losses, including consequential losses of any form or nature, arising from of the sale of the goods.
- 9.3 Should any of the goods prove to be defective then any claim against the Company shall be restricted only to the replacement of the goods with goods in similar quantity, quality and condition.

**10. CESSION OF BOOK DEBTS**

- 10.1 The customer, as security for all of its obligations in terms of this agreement, hereby cedes, pledges and assigns to the Company all of its right, title and interest in and to any debts due to it. Notwithstanding the fluctuation in the indebtedness of the customer to the Company, the cession shall remain in force until this agreement has been terminated in writing.
- 10.2 Should it transpire that there is already an existing cession of debts by the customer then this cession shall constitute a cession of the customer's residual rights in and to its debts.

**11. POLICY RELATING TO THE RETURN GOODS**

Whilst the Company is under no obligation to accept the return of goods that have been ordered, the customer may apply in writing to the Company for permission to return the goods. The Company will consider each such application on its merits and will in its sole discretion advise the customer of its decision. Should the company agree to the return of the goods, a 10% handling fee will be levied on the product returned.

**12. DISCLOSURE OF PERSONAL INFORMATION**

12.1 The customer by completing this application hereby irrevocably consents to the Company being entitled to make what enquiries it considers necessary regarding the creditworthiness of the customer. The customer irrevocably authorises the credit bureaus to release all of its credit information to the Company.

12.2 The customer warrants that information given in the credit application is true and correct and should circumstances change, the customer shall be under a duty to advise the Company in writing of such change.

**13. INDEMNITY**

As the Company is unaware of the purpose for which the goods are being sold, the customer hereby indemnifies and holds the Company harmless against all and any claims that may be made against the Company, its directors or shareholders by any third party arising out of the sale of the goods.

**14. FORCE MAJEURE**

In the event of any act of God, war, rebellion, riot, civil commotion, labour suspension, fire, accident, machinery malfunction, electricity or water disruptions or shortages outside the reasonable control of the parties hereto shall constitute a force majeure event and performance under this contract shall be delayed until such time as the force majeure event no longer prevents performance and neither party shall have a claim against the other as a result of such delay, provided that this application of this clause, shall not affect the liability of either parties in respect of any matter or claim which arose or existed prior to the occurrence of such force majeure event.

**15. GENERAL PROVISIONS**

15.1 These Standard Trading Terms and Conditions of Sale constitute the whole agreement between the parties. Neither party will be bound by any variation to these conditions unless such variation is in writing and signed by both parties.

15.2 No indulgence by the company which it may give from time to time shall prejudice or constitute a waiver by the company of any of its rights. Should any of these conditions of sale become invalid or unenforceable; it shall be severable from the rest of the contract which will continue to be binding on the parties.

15.3 These conditions must be interpreted and implemented in terms of the law of the Republic of South Africa as applicable from time to time.

**16. CUSTOMER SIGNING CREDIT AGREEMENT DOES SO IN THEIR CAPACITY AS A BUSINESS PERSON:**

16.1 The customer acknowledges, prior to signature of this credit agreement and suretyship, that they have read the terms and conditions as a businessperson, and confirm that such terms and conditions are not unduly onerous, cumbersome or contrary to public policy.



**17. BREACH AND CANCELLATION:**

17.1 If, in the company's sole discretion:

- the customer fails to pay on due date for any amount due to the company under the agreement; or
  - the customer's estate is provisionally or finally sequestrated; or
  - the customer is undergoing liquidation or business rescue proceedings or any form of judicial management; or
  - the customer commits any act of insolvency; or
- The customer enters into any compromise with its creditors

Then the company can cancel this agreement immediately on written notice to the customer and claim monies due, owing and payable immediately in the form of damages, or other remedies.

17.2 The company shall be entitled to cancel any contract or part thereof with the customer and claim the return of goods.

**18. CESSION:**

The customer shall not be entitled to cede or assign their rights or obligations in terms of this credit agreement to any third party unless the company consents thereto in writing.

**19. WHOLE AGREEMENT BETWEEN THE PARTIES:**

19.1 This credit agreement constitutes the whole agreement between the parties.

19.2 No variation, amendment, deletion, addition shall be of any force and effect unless reduced to writing and signed by both parties.

**20. NON-WAIVER:**

20.1 Any relaxation or indulgence granted by the company to the customer relating to this credit agreement shall in no way prejudice the rights of the company and shall in no way be construed as a novation.

20.2 Any relaxation or indulgence granted by the company to the customer relating to this credit agreement shall in no way be construed as a waiver of the company's rights nor should such relaxation or indulgence be deemed to create an expectation that such relaxation or indulgence shall continue into the future.

**21. JURISDICTION:**

The customer consents to the jurisdiction of the Magistrates Court having jurisdiction under section 28 of the Magistrates Court Act with regard to any action instituted against the customer. The customer acknowledge that the company may institute legal action in any court having jurisdiction, regardless of whether said court is a Magistrates Court.

**22. CHANGE OF OWNERSHIP OF CUSTOMER BUSINESS:**

If there is any change in the ownership of the customer's business, conversion of the customer to a new legal entity, or if there is a change in shareholding or change in members interests (in the case of a company and Close Corporation), without the approval of the company, then this credit agreement shall terminate forthwith and all amounts will become due, owing and payable.

**CERTIFICATE SIGNED BY DIRECTOR OF COMPANY IS PROOF OF INDEBTEDNESS:**

- 22.1 A director of the company (whose authority need not be proven) reserves the right to sign a certificate indicating the amount of indebtedness by the customer to the company at any time and that such amount/s are due and payable (regardless of whether such indebtedness relates to the principal amount or other charges, interest owing, etc). This shall be sufficient proof for the purposes of legal proceedings as to the existence of such debt and that such debt is due and payable. The certificate renders the indebtedness as a liquid amount.
- 22.2 The customer acknowledges that said certificate may be used by the company during legal proceedings for the purposes of obtaining judgment against the surety and/or the customer, and that judgment may be obtained based wholly or partially on the said certificate”.

**24. CUSTOMER ACKNOWLEDGES THAT HE IS KNOWLEDGEABLE OF APPLICABLE LEGISLATION, AND THAT IGNORANCE OF THE LAW IS NOT A DEFENCE:**

- 24.1 The customer acknowledges that he is fully acquainted with relevant local and international legislation and its applicability to this credit agreement and suretyship, including, but not limited to: The Consumer Protection Act 68 of 2008, The National Credit Act 34 of 2005, the Electronic Communications and Transactions Act 25 of 2002, and the Protection of Personal Information Act 4 of 2013.

**25. THRESHOLD DETERMINATION FOR PURPOSES OF CPA AND ITS APPLICABILITY:**

- 25.1 The customer acknowledges that if they are a juristic person, and their asset value or annual turnover is more than the threshold determined by the minister from time to time, the CPA will not be applicable to this credit agreement and suretyship.

**26. REASONABLENESS AND FAIRNESS OF TERMS:**

- 26.1 The customer acknowledges that this credit agreement and suretyship contain contractual terms which are fair, just and reasonable, and acknowledges that he understands the wording in the context of the credit agreement and suretyship.

**27. CUSTOMER ACKNOWLEDGES THAT CREDIT AGREEMENT AND SURETYSHIP IS IN COMPLIANCE WITH CONSUMER PROTECTION ACT:**

- 27.1 The customer acknowledges that he is substantially aware of the contents of the CPA, and in particular its application to applications for credit facilities and suretyships. As such, the customer has knowledge of the CPA in relation to this credit agreement and suretyship.

**28. CUSTOMER ACKNOWLEDGES THAT INFORMATION IN CREDIT AGREEMENT AND SURETYSHIP IS IN PLAIN AND UNDERSTANDABLE LANGUAGE**

- 28.1 The customer acknowledges that plain language has been used in this credit agreement and suretyship

**29. TERMS AND CONDITIONS EXTEND TO THE SURETYSHIP CREDIT AGREEMENT:**

- 29.1 The customer acknowledges that the terms and conditions entailed herein extend to the suretyship credit agreement, unless a term/condition of the suretyship credit agreement clashes with the credit agreement, in which case the term contained in the suretyship credit agreement shall take preference.
- 29.2 Where the terms extend to the suretyship, the word “customer” as contained in the terms and conditions must be read as “surety” as a common-sense consideration.

30. **CUSTOMER ACKNOWLEDGES THAT THE COMPANY IS NOT A REGISTERED CREDIT PROVIDER IN TERMS OF NCA**
- 30.1 The consumer acknowledges that the company has no duty to become a registered credit provider in terms of section 40 of the NCA, as the credit agreement that may be signed herein is an incidental agreement and therefore not subject to section 40 of the NCA.
31. **COMPLIANCE WITH PROTECTION OF PERSONAL INFORMATION ACT 4 OF 2013 (“POPI”):**
- 31.1 There has been compliance with the provisions of POPI by the company.
- 31.2 In particular, the information required and collected by the company is collected for the purposes of the customer and company entering into a binding agreement relating to credit facilities and a suretyship.
- 31.3 The customer however acknowledges that such information can be shared to credit bureaus by the company in order to assess creditworthiness.
- 31.4 The company does not sell or transmit customer information to third parties for advertising or other purposes unless consent is explicitly obtained from the customer. Any information or emails received by persons are stored at secured third party servers (in accordance with generally accepted standards). Physical agreements and documentation are kept on site at the company’s secured premises in accordance with appropriate safety protocols.
- 31.5 The company does not explicitly record personal information unless such information is contained within a credit agreement, or suretyship, upon completion of such document by the data subject, or receipt of such information subsequent to such information being requested directly from the data subject. The company may collect personal information from a receiving party which is contained in any email or letter received from a data subject, for the purposes of enforcing this agreement and/or suretyship. The manner in which your data is processed is lawful, reasonable and minimalistic. Processing may be necessary for the purposes of pursuing the legitimate interests of the company or a third party to whom the information is supplied.
- 31.6 Records of personal information will not be stored for longer than is necessary for the purposes which the data was collected.
32. **SEVERABILITY OF CLAUSES CONTAINED IN SURETYSHIP:**
- 32.1 Each clause contained in the credit agreement and suretyship is a separate, distinct clause.
- 32.2 In the event that any clause in the credit agreement or suretyship is deemed to be invalid, illegal, unenforceable, against public policy, then that clause shall be deemed to be inapplicable only to the extent of the invalidity, illegality, affront to public policy, etc.
- 32.3 This shall not derogate from the effectiveness of all the remaining clauses and the credit agreement suretyship as a whole.
- 32.4 This credit agreement and suretyship must be read and interpreted in a way so as to ensure validity.

**NOTICE IN TERMS OF SECTION 49 OF THE CONSUMER PROTECTION ACT 68 OF 2008**

To the extent that the provisions of the Consumer Protection Act apply to any transaction concluded between the Company and the customer and before entering into this transaction, the customer’s attention is drawn to the fact that certain of the terms herein limit the liability of the supplier of the goods (clause 6.4 and 9), constitute an assumption of risk by the customer (clauses 6 and 7), impose an obligation on the customer to indemnify the Company (clause 13) and constitute an acknowledgment of facts by the customer (clauses 6.3, 6.4,8.2,8.3,8.4 and 12).

## DEED OF SURETYSHIP

1. I, the undersigned, ..... ("the Surety") with identity number: ..... do hereby irrevocably suretyship and undertake, as a principal and independent obligation in favour of Accessories Spares centre(Pty) Ltd ("the Company") to pay punctually when called upon to do so any amount that may be due and payable by .....("the customer") to the Company.
2. The surety above acknowledges that he is surety for a co-principal debtor *in solidum* with the company for due payment of all monies which may now or at any time in future become due, owing and payable by the customer to the company from any cause whatsoever. Any financial obligation which the customer is liable to perform now or at any time in the future towards the company must be performed by the surety in the event that the customer defaults on any financial obligation wholly or in part.
3. This suretyship shall remain in full force and effect notwithstanding any fluctuation in the obligations of the customer to the Company and shall only be terminable if in writing and signed by both parties.
4. If the customer is liquidated or sequestrated, submits an offer of compromise to its creditors or is placed in business rescue or is placed under any other legal disability, then the obligations contained herein of the Surety shall remain unchanged and the Surety shall remain responsible for payment of all amounts due by the customer to the Company.
5. The Surety hereby waives the defences of excussion (creditor can only proceed against the surety once they have proceeded against the principal), division (the principal debt must be divided between sureties and/or the principal debtor), the defence that there have been calculation errors in determining the amount owing, the defence that the creditor bears the onus to prove amounts owing.
6. **DOMICILIUM CITANDI ET EXECUTANDI OF SURETY:**  
"I hereby choose my *domicilium citandi et executandi* for all purposes arising out of this suretyship agreement at:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 6.1 The surety acknowledges that the address that they have selected as its *domicilium citandi et executandi* address in the suretyship shall be the address for service of all legal documents and processes relating to the suretyship.
7. Such legal documents and processes shall include any notification in terms of the provisions of the National Credit Act.
8. The company chooses its *domicilium citandi et executandi* for service of legal processes in relation to the agreement at **CLIENT TO INSERT ADDRESS.**
9. The surety may, in writing, request from the company their *domicilium citandi et executandi* at any time. However, the company bears a full discretion regarding whether to accept the proposed change in the *domicilium* address, and the company must communicate this acceptance of the change in the *domicilium citandi et executandi* within 7 days of the date of request of the party desiring to amend their domicilium address. If such acceptance is not communicated by the company to the surety, then this will constitute a rejection of the proposed change in the surety's *domicilium citandi et executandi*.
10. This document constitutes the sole agreement between the parties and may not be varied or cancelled unless in writing and signed by both parties.

**11. CONTINUING, COVERING LIABILITY OF SURETY:**

The surety acknowledges that this suretyship shall establish a continuing, covering liability on behalf of the suretyship for all amounts and obligations that the customer will owe to the company now and in future. The above obligation stands even in the event of death, insolvency, winding up, judicial management (including the customer going into business rescue), sequestration, liquidation, legal disability, and in the event of partial and intermediate discharge, settlement, of or variations in the amounts of money owing from the customer to the company.

**12. LIABILITY INCLUDES VARIOUS AMOUNTS:**

The liability of the surety shall not only include the principal sum (or sums) of indebtedness from the customer to the company, but shall also include all and any amounts relating to the indebtedness, such as interest, stamp charges, commissions, legal costs on an attorney and client scale and all such other charges.

**13. CERTIFICATE BY COMPANY DIRECTOR IS PROOF OF INDEBTEDNESS:**

13.1 A director of the company (whose authority need not be proven) reserves the right to sign a certificate indicating the amount of indebtedness by the customer to the company at any time and that such amount/s are due and payable (regardless of whether such indebtedness relates to the principal amount or other charges, interest owing, etc).

13.2 This shall be sufficient proof for the purposes of legal proceedings as to the existence of such debt and that such debt is due and payable. The certificate renders the indebtedness as a liquid amount. The surety acknowledges that said certificate may be used by the company during legal proceedings for the purposes of obtaining judgment against the surety and/or the customer, and that judgment may be obtained based wholly or partially on said certificate.

**14. SURETY BOUND BY ACKNOWLEDGMENTS OF CUSTOMER:**

The surety shall be bound by all acknowledgments and admissions of indebtedness by the customer.

**15. NO EXTENSION OF TIME OR RELAXATION WILL RELEASE SURETY:**

15.1 The surety acknowledges that no extension of time, relaxation, or other indulgence in respect of payment or performance granted from the company to the creditor shall release the surety of any indebtedness or liability under the suretyship.

15.2 The surety acknowledges that no partial or whole release from liability or compromise regarding extent of indebtedness, amount of indebtedness, or any other factor effecting the customer's indebtedness granted from by the company to the customer shall release the surety of any indebtedness or liability under the suretyship.

**16. IF CUSTOMER UNDERGOES CERTAIN EVENTS:**

16.1 In the event of death of the customer, the company will be entitled to prove its claim against the customer (by means of a certificate put up by the company director, or otherwise) and the surety shall be liable for these amounts.

16.2 In the event of the customer's winding up, judicial management (by means of business rescue or otherwise), compromise (or any similar arrangement relating to the affairs of the customer), this shall in no way affect the company being entitled to prove its claim against the customer (by means of a certificate put up by the company director, or otherwise) and the surety shall be liable for these amounts.

**17. SURETY KNOWS AND RENOUNCES LEGAL EXCEPTIONS**

I am aware of the legal exceptions of excussion, *non causa debiti* (the defence that there is no cause of action for the claim of the creditor against the customer/surety), no value received, revision of accounts, division, and “de doubus vel pluribus reis debendi (the surety cannot raise the defence that the creditor ought to claim amounts owing proportionally from other debtors). I hereby renounce the benefits of the above.

**18. JURISDICTION:**

I consent to the jurisdiction of the Magistrates Court having jurisdiction under section 28 of the Magistrates Court Act with regard to any action instituted against the customer or myself as surety. I however acknowledge that the company may institute legal action in any court having jurisdiction, regardless of whether said court is a Magistrates Court.

**19. WHOLE AGREEMENT BETWEEN THE PARTIES:**

- 19.1 This suretyship agreement constitutes the whole agreement between the parties.
- 19.2 No variation, amendment, deletion, addition shall be of any force and effect unless reduced to writing and signed by both parties.

**20. NON-WAIVER:**

- 20.1 Any relaxation or indulgence granted by the company to the surety relating to this suretyship agreement shall in no way prejudice the rights of the company.
- 20.2 Any relaxation or indulgence granted by the company to the customer relating to this suretyship agreement shall in no way be construed as a waiver of the company's rights nor should such relaxation or indulgence be deemed to create an expectation that such relaxation or indulgence shall continue into the future.

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

**SURETY SIGNATURE:**

\_\_\_\_\_  
 Full Name of surety: \_\_\_\_\_  
 Identity number: \_\_\_\_\_

**WITNESS SIGNATURE BELOW:**

\_\_\_\_\_  
 Full Name of witness: \_\_\_\_\_  
 Identity number: \_\_\_\_\_

Would you like to receive our Daily/Weekly/Monthly Specials via email correspondence?  
 If selected yes, please advise email address \_\_\_\_\_

Yes	No
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↑  
 \_\_\_\_\_  
 Signature