

**THIS APPLICATION FOR CREDIT FACILITIES INCORPORATES STANDARD TERMS
AND CONDITIONS OF SALE AND SURETYSHIP ACCEPTANCE.**

SECTION A – Questionnaire

We, _____

(hereinafter referred to as "THE APPLICANT") hereby make application for credit facilities for the opening of an account with
ROSSI AFRICA (Pty) Ltd - registration number 2018/114454/07 ; (hereinafter referred to as "THE CREDITOR").

In support of this application, the following information is furnished:

1. Legal entity type (please tick)

Sole Ownership	Partnership	Close Corporation	Private Co.	Public Co. (Ltd)
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2.1 Registered Name of "THE APPLICANT" _____

2.2 Trading name _____

2.3 Company Registration number (if registered) _____

2.4 Company VAT number _____

3.1 Postal Address _____
_____ Code _____

3.2 Physical Address of THE APPLICANT in terms of Section B, clause 1 of the Terms and Conditions of Sale

3.3 Delivery Address _____

3.4 Registered Office Address _____

3.5 Telephone Numbers Area Code (_____) _____

3.6 Telefax Number Area Code (_____) _____

3.7 Cellular Number _____

3.8 e-Mail address _____

3.9 Name, Address, and Contact number of landlord _____

3.10 Person responsible for account payment: _____

4.1 Date Business Commenced Trading

D	D	M	M	Y	Y	Y	Y
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- 5.1 Bankers _____
- 5.2 Branch _____
- 5.3 Account Number _____
- 5.4 Branch Code _____
- 5.5 Type of account _____
- 5.5 Date account opened _____
- 5.6 If account has been open for less than 3 years, please state details of previous account _____

- 6.1 Holding Company name _____
- 6.2 Percentage share holding _____
- 6.3 Name of Auditors / Accounting Officer _____
- 6.3.1 Street address _____
- 6.3.2 Telephone Number Code (_____) _____
- 6.4 Date of last audited financial statements _____
(please attach hereto)

7 Details of principals (Sole Owner / Partners /Members / Directors)

Full Name	ID Number	Home Address	Home Phone

8 Trade References

Company Name	Telephone Number

Please initial here

9. Details of property/ies owned by Principals (Sole Owner / Partners /Members / Directors).

Please indicate only properties owned in the personal name of the principal.

Principal name	Stand number and Township	Value	Bonded for	Bondholder
		R	R	
		R	R	
		R	R	
		R	R	
		R	R	

10 The following credit limit request is for assessment purposes only and does not form part of this contract:

10.1 Amount of credit required R_____

10.2 Estimated monthly purchases R_____

11. Dealership Justification

11.1 Nature of Business _____

12. **Consent to Credit Check and Conditions:**

12.1 I/We hereby authorize **the CREDITOR** its associates and subsidiaries and/or duly appointed agents to make use of the information contained herein and to contact any person named herein to determine whether or not to grant me/ the APPLICANT credit facilities.

12.2 I/We hereby consent that **the CREDITOR** or any of its duly appointed agents may

12.2.1 perform a credit search on the APPLICANT's record with one or more of the registered Credit Bureaus when assessing the APPLICANT's application for a trade account;

12.2.2 record the existence of the APPLICANT's account with any Credit Bureau and record details of how the APPLICANT is conducting its account under this agreement and that any defaults in payment to **the CREDITOR** may be disclosed to the any Credit Bureau.

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13. **TURNOVER DISCLOSURE:**

13.1 Does the APPLICANT's **annual turnover** at date of this application exceed **R 1 million**?

YES	NO
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13.2 Does the APPLICANT's **asset value** at date of this application exceed **R 1 million**?

YES	NO
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13.3 Does the APPLICANT's **annual turnover** at date of this application exceed **R 2 million**?

YES	NO
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13.4 Does the APPLICANT's **asset value** at date of this application exceed **R 2 million**?

YES	NO
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14. **NOTICE IN RESPECT OF NATIONAL CREDIT ACT 34 OF 2005**

This application contemplates an agreement where goods or services are supplied to the APPLICANT and payment for such goods or services is received at a specified later date. No charge, fee or interest as contemplated in the National Credit Act will become payable by the APPLICANT as a result of this agreement. Accordingly the proposed agreement does not constitute a Credit Agreement for purposes of the National Credit Act 34 of 2005 ("*the NCA*"). If, however, the APPLICANT fails to pay any amount due in terms of the proposed agreement on or before the stipulated due date, the Creditor will be entitled, but not be obliged, to levy interest at a rate of 2% per month or such other maximum rate of interest as may be prescribed in respect of incidental credit agreements pursuant to the NCA and any regulation published thereunder.

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15. **NOTICE TO CONSUMER WITH REGARD TO LIMITATION OF LIABILITY OF SUPPLIER, ASSUMPTION OF LIABILITY BY CONSUMER, INDEMNIFICATION BY THE CONSUMER AND ACKNOWLEDGEMENT OF THE FACT BY THE CONSUMER:**

To the extent that the APPLICANT is a natural person, or a juristic person as defined in the Consumer Protection Act 68 of 2008 ("*CPA*") who asset value and annual turnover is, **at the time of the conclusion of this agreement**, both less than threshold determined by the Minister in Section 6 of the CPA (currently R 2 million) then the APPLICANT's attention is drawn to the following specific conditions of **the CREDITOR'S Terms and Conditions of Sale** as required by Section 49 of the CPA. **CLAUSES: 6, 8.8, 13.3, 14.2, 15.3, 16.1, 16.3, 16.4, 16.6, 16.8, 16.10 & 17**

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SECTION B –Terms and Conditions of Sale

THE APPLICANT or its duly authorised agent does hereby apply for credit facilities with THE CREDITOR and in consideration thereof THE APPLICANT does hereby irrevocably accept the following terms and conditions.

NB! THE APPLICANT'S attention is drawn to Clause 23 (DEED OF SURETYSHIP) which binds the signatory of the terms and conditions as surety and co-principal debtor with the Applicant and Clause 24 (CESSION OF BOOK DEBTS).

All quotations and offers are made by THE CREDITOR and all orders are placed by THE APPLICANT with THE CREDITOR only on condition that the terms and conditions ("Terms and Conditions") shall apply to the exclusion of all other terms and conditions, save insofar as any particular terms and conditions are expressly agreed to in writing by THE CREDITOR and THE APPLICANT.

1. **Interpretation & Definitions**

- 1.1. "THE CREDITOR" means ROSSI AFRICA (Pty) Ltd, a Company trading in Electrical Cables and accessories.
- 1.2. "THE APPLICANT" means the person, persons, firm or company to whom the quotation is addressed or to whom the offer is made for this sale and shall include their respective legal representatives, administrators, successors and/or permitted assignees.
- 1.3. "Delivery of an Item" means delivery to THE APPLICANT shall be deemed to have occurred on the first to occur of the date that the Item is delivered to THE APPLICANT and the date that the Item is delivered to a carrier for conveyance to THE APPLICANT.
- 1.4. "Items", unless the context requires otherwise, means the cable, metals, materials, products, equipment, installations, samples, prototypes and experimental or preliminary work or the provision of services which are the subject of a binding quotation, offer or order. Clause headings following clause numbers do not form part of THE CREDITOR's terms and conditions and are provided only for reference.
- 1.5. "Agreement" means these Terms and Conditions, together with the Application (as applicable) and includes any document contemplated by these Terms and Conditions and the Application.
- 1.6. "Application" means the Application for Commercial Credit in the form prescribed by THE CREDITOR from time to time and as submitted by THE APPLICANT.
- 1.7. "South African Law" means the Competition Amendment ACT of 2009, Consumer Protection Act 68 of 2008, the National Credit Act No. 34 of 2005 and Companies Act No. 71 of 2008.
- 1.8. "Business Day" means a day that is not a Saturday, Sunday, public holiday or bank holiday in South Africa.
- 1.9. "Change of Control" means in relation to a body corporate, the occurrence of an event or circumstance where a person who is not presently able to do any of the following things becomes able to do one of the following things (whether directly or indirectly or through one or more intervening persons, companies or trusts):
 - 1.9.1. control the composition of more than one half of the body's board of directors;
 - 1.9.2. be able to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a general meeting of the members of the body; or
 - 1.9.3. hold or have a beneficial interest in more than one half of the issued share capital of the body.
- 1.10. "Guarantor" means (where applicable) the person or persons named as such in the guarantee as specified by THE CREDITOR in accordance with clause 7 of the Credit Application.

2. **VALIDITY**

- 2.1. THE CREDITOR's quotation or offer will remain open for acceptance for the period stated in THE CREDITOR's quotation or offer, or if no such period is stated, the period of thirty days from the date that the quotation or offer is delivered to THE APPLICANT. If the validity period has expired, THE CREDITOR's offer shall lapse and prices will be subject to review at the time the order is placed.
- 2.2. THE CREDITOR's quotation or offer may be revised in whole or part or withdrawn prior to expiration of the validity period or acceptance of the quotation or offer by THE APPLICANT.

3. **ACCEPTANCE:**

- 3.1 A quotation or offer by THE CREDITOR shall become binding upon THE CREDITOR and THE APPLICANT only upon receipt from THE APPLICANT of an unconditional written acceptance in such form as THE CREDITOR may require from time to time. Such an unconditional written acceptance will be deemed to include a written order placed by THE APPLICANT with THE CREDITOR, which order is strictly in accordance with the terms of the relevant quotation or offer and these Terms and Conditions.
- 3.2 If an order is not in writing or is not strictly in accordance with the terms of the relevant quotation or offer, THE CREDITOR may at its absolute discretion elect to accept or reject the order. Without limiting clause 6 below, such an order will only become binding on THE CREDITOR and THE APPLICANT if THE CREDITOR notifies THE APPLICANT in writing of acceptance of the order.
- 3.3 Order forms and other documents provided to THE CREDITOR by THE APPLICANT as confirmation of orders previously placed must be clearly marked with the word Confirmation. Confirmation documents not so marked will be treated as original orders.

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4. INSPECTION, TESTING AND CERTIFICATION OF COMPLIANCE:

- 4.1 Selected Items, at THE CREDITOR's option, are subject to inspection before dispatch by THE CREDITOR or the supplier THE CREDITOR represents.
- 4.2 Orders for Items which must comply with national standards must specify details of the standard. If tests are to be performed at THE APPLICANT'S request the order must specify details of the routine or special test and whether test certificates are required.
- 4.3 All tests and inspections shall be carried out by THE CREDITOR's personnel at THE CREDITOR's premises and shall be prima facie proof of the

5. DELIVERY DURATION AND QUOTED DELIVERY OR COMPLETION TIMES:

- 5.1 Subject to conditions contained in Clause 18 hereunder the CREDITOR use all reasonable endeavours to keep any stated date and time for performance of its obligations but accepts no liability for any loss or damage resulting from delay save to the extent that such delays are directly caused by the CREDITOR'S negligence.
- 5.2 In the event of an anticipated delay the CREDITOR shall inform the APPLICANT in writing thereof.
- 5.3 When goods are delivered in instalments the contract shall be construed as a separate contract for each instalment of these terms and conditions.
- 5.4 In all cases where delivery is by carrier the carrier shall be deemed to be the agent of the APPLICANT and delivery to such carrier shall be deemed delivery to the APPLICANT unless delivery takes place at the CREDITOR's premises.
- 5.5 Shortage or damages of goods must be reported to the CREDITOR within 7 days from date of receipt of the goods.
- 5.6 Signature by the APPLICANT or any representative of the APPLICANT to any delivery note, invoice or waybill will constitute *prima facie* proof of proper delivery and acceptance by the APPLICANT.
- 5.7 In the event of any discrepancy between the goods on the invoice and the goods delivered to the APPLICANT, the APPLICANT must report such discrepancy within 7 days from date of receipt of the goods.

6. CANCELLATION OR DEFERRAL OF ORDER:

Should an order be placed it cannot be cancelled or delivery deferred unless prior written notice is given by THE CREDITOR and then only on terms which will indemnify THE CREDITOR against loss together with any other charges or expenses referred to in clause 8.8.

7. PRICES:

- 7.1 All Items will be priced subject to the following provisions unless otherwise specified in writing by THE CREDITOR:
 - 7.1.1 THE CREDITOR's quotation or offer is based on:
 - 7.1.1.1 prices current at the date of the quotation or offer;
 - 7.1.1.2 the quantity and/or pack size specified for the relevant Item and is subject to variation if the quantity or pack size is altered in any way;
- 7.2 THE APPLICANT having to bear (and prices being subject to) any variations from time to time in rates of freight, insurance costs, customs duties, exchange rates, costs of materials and other costs, which variations have or are likely to have the effect of increasing the cost of production, supply or delivery of the relevant Item and irrespective of whether those variations occurred before or after the time that THE APPLICANT ordered the relevant Item.
 - 7.2.1 THE APPLICANT orders shall be on the basis that:
 - 7.2.1.1 all prices are strictly net;
 - 7.2.1.2 prices charged shall be those ruling on the day of dispatch or date of invoice if Items are held awaiting shipment.

8. VALUE ADDED TAX (VAT) AND OTHER CHARGES:

All Items may be subject to additional charges based on the following provisions:

- 8.1 Prices quoted exclude VAT unless otherwise specified by THE CREDITOR. THE CREDITOR reserves the right to recover VAT from THE APPLICANT for any taxable supply to THE APPLICANT delivered in South Africa. Any existing or new taxes or Government charges (other than income tax payable by THE CREDITOR) from time to time imposed on or in respect of an Item will be to THE APPLICANT 's account.
- 8.2 Where Items are cut to length because the length ordered is a non-standard packaged length, the cutting charge will be no less than THE CREDITOR's currently prevailing minimum cut length charge, unless otherwise specified by THE CREDITOR.
- 8.3 Drums, cases, packages, reels and any other related Items specified by THE CREDITOR from time to time will be supplied in accordance with the standard price lists from time to time issued by THE CREDITOR or its suppliers unless otherwise stated by THE CREDITOR. Where THE APPLICANT requests goods to be packed in a manner other than normally observed by THE CREDITOR or where special packaging for intrastate, interstate or overseas delivery is required, THE APPLICANT will be responsible for all relevant charges.
- 8.4 The supply of certificates of testing, inspection or compliance with national and international standards at the request of THE APPLICANT in accordance with clause 4 will be subject to an additional charge of not less than THE CREDITOR's currently prevailing minimum charge unless otherwise specified by THE CREDITOR.
- 8.5 Unless otherwise specified, all Items are delivered Free in Store ("FIS") by THE CREDITOR. Where THE APPLICANT nominates any alternative method of carriage THE APPLICANT will be responsible for all charges associated with such carriage.
- 8.6 Where THE APPLICANT nominates the arrangements for insurance of the Items THE APPLICANT will be responsible for any costs and all relevant charges associated with any insurance policy obtained by THE APPLICANT.
- 8.7 THE CREDITOR may charge a service fee associated with the cost of equipment hire and delivery as agreed between THE CREDITOR and THE APPLICANT from time to time ("Service Fee"). The Service Fee will be at THE CREDITOR's rate currently in effect on the date the order is dispatched and will be applied to each invoice below the total net value determined by THE CREDITOR from time to time.
- 8.8 **If there is a deferred delivery which is specifically requested by THE APPLICANT or due to the inability of THE APPLICANT to accept the Items for any reason on or after the due date for delivery or due to some other cause beyond the reasonable control of THE CREDITOR in circumstances where THE CREDITOR is ready to deliver and/or install the Items, then THE APPLICANT shall be liable for any extra charges, losses or expense incurred by THE CREDITOR.**

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9. PACKING, METHOD OF DELIVERY AND POINT OF DELIVERY:

Should an order be placed, the sale of all Items will be subject to the following conditions:

- 9.1 For ease of handling and protection during transit, selected Items, at THE CREDITOR's option, shall be packaged.
- 9.2 The method of delivery will be nominated in THE CREDITOR's quotation or offer unless otherwise specified by THE CREDITOR.
- 9.3 Unless otherwise agreed with THE CREDITOR, the point of delivery will be as nominated by THE CREDITOR, provided that access is reasonable in the opinion of THE CREDITOR.
- 9.4 THE APPLICANT at its own expense shall provide all necessary facilities, labour and equipment to off-load the Items at the nominated point of delivery unless otherwise specified by THE CREDITOR. THE APPLICANT must accept delivery of the Items at any time during normal business hours of THE CREDITOR.
- 9.5 THE CREDITOR, at its option, may elect to purchase from THE APPLICANT cable drums which are in reusable condition, in which case THE APPLICANT must at its expense promptly return such cable drums to THE CREDITOR. THE CREDITOR must then pay THE APPLICANT for those returned cable drums at a price reasonably determined by THE CREDITOR.

10. ERRORS IN COMPANY DOCUMENTS:

Clerical errors and misprints in computation, typing or otherwise in THE CREDITOR's documents including catalogues, price lists, delivery dockets, invoices, statements or credit notes shall be subject to correction by THE CREDITOR by means of reissue of the document or by adjusting dockets regarding the original transaction. Subject to the South African Consumer Law, any such errors or misprints will not entitle THE APPLICANT to a reduction or variation in the purchase price of the Items or in THE APPLICANT's obligations under the Agreement.

11. PAYMENT, INTEREST & REBATES

- 11.1 The Purchase Price for the goods shall be paid in full within 30 days from date of statement ("*due date*") free from any deduction.
- 11.2 Should the APPLICANT fail to make payment of any amount on due date the CREDITOR shall be entitled, **but not obliged**, to charge interest at a rate of 2% per month from due date or such other maximum rate of interest as may be prescribed in respect of incidental credit agreements pursuant to the NCA and any regulation published thereunder.
- 11.3 The APPLICANT shall not be entitled to any discount unless otherwise agreed in writing and any discount agreed shall be forfeited should the APPLICANT fail to make payment of any amount due on the due date.
- 11.4 No rebates are payable on any sale by THE CREDITOR unless agreed to in specific written trade agreements with THE APPLICANT.

12. RETENTION:

THE CREDITOR will not, unless expressly confirmed in writing by THE CREDITOR, agree to any retention clauses of THE APPLICANT's order forming part of the Agreement.

13. OWNERSHIP AND RISK:

- 13.1 Risk in the goods shall pass to the APPLICANT on delivery of the goods to the APPLICANT.
- 13.2 Notwithstanding the provisions of Clause 13.1 ownership in the goods will remain vested in the CREDITOR until the Purchase Price of the goods has been paid in full.
- 13.3 **If the APPLICANT fails to take delivery of the goods or delay delivery of the goods, the risk in the goods shall pass to the APPLICANT on the date when delivery of the goods were tendered to the APPLICANT, unless such delay or failure is as a result of circumstances beyond the control of the APPLICANT.**

14. RETURN OF ITEMS SUPPLIED:

- 14.1 In the event that the APPLICANT wishes to return goods to the CREDITOR which are not defective and which was correctly supplied and delivered to the APPLICANT, the APPLICANT will only be entitled to return such goods if the CREDITOR agrees to in writing and ONLY if the goods were not specifically manufactured for and in accordance with the specifications of the APPLICANT.
- 14.2 **In the event that the CREDITOR agrees to the return of goods as contemplated in Clause 10.1 the goods must be returned to the CREDITOR within 5 business days from date on which the CREDITOR has agreed to the return of such goods, at the APPLICANT's risk and expense and in its original packaging, unmarked and in the exact condition which they were supplied to the APPLICANT failing which no credit will be passed.**

15. WARRANTIES:

- 15.1 THE CREDITOR's goods come with guarantees that cannot be excluded under the South African Consumer Law. THE APPLICANT is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. THE APPLICANT is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 15.2 This warranty against defects is in addition to THE APPLICANT's rights under the South African Consumer Law.
- 15.3 Subject to the following provisions, all Items come with a warranty against defects for a period of twelve months from the time of dispatch or if agreed in writing between THE CREDITOR and THE APPLICANT for a period of twelve months from the time of installation.
- 15.3.1 If any defect or failure in the Items supplied becomes apparent under proper use within the warranty period, THE CREDITOR will either, at its option, supply fresh goods in replacement or arrange repair of the original Item.
- 15.3.2 This warranty only applies where THE CREDITOR and the supplier are satisfied that the defect or failure is due solely to faulty workmanship or the use of faulty materials.
- 15.3.3 **THE APPLICANT will not be entitled to make a claim under this warranty against defects where:**
 - 15.3.3.1 **the Items have received maltreatment, inattention, interference or other improper use by any person other than THE CREDITOR;**
 - 15.3.3.2 **the Items have been damaged due to incorrect use or repair by THE APPLICANT or any person not authorised by THE CREDITOR;**
 - 15.3.3.3 **the Items have been damaged by any person other than THE CREDITOR; or**

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15.3.3.4 THE APPLICANT has failed to comply with any directions provided by THE CREDITOR.

- 15.3.4 To claim the warranty, THE APPLICANT should contact Rossi Africa (Pty) Ltd Customer Service on (012-751 3367) or (086 561 6925 - fax) or email wayne@kamarossi.co.za to decide to return the product, and where required to obtain a replacement.
- 15.3.5 All costs involved in claiming the warranty, including the cost of freight to and from the supplier's warehouse (if applicable) are the responsibilities of THE APPLICANT.

16. DISCLAIMERS AND LIABILITY

Subject to a failure to meet any consumer guarantees which may apply under the South African Consumer Law:

- 16.1 **Product data, specifications, drawings, design details and performance figures contained in THE CREDITOR's published literature and advice given by THE CREDITOR is provided only as a guide and fully permitted by law, THE CREDITOR does not accept any liability whatsoever (including arising from negligence) for its accuracy and for injuries, expense or loss or for the results obtained by THE APPLICANT or any of its servants, agents or contractors. If THE APPLICANT relies upon such information or advice it is entirely at THE APPLICANT's own risk.**
- 16.2 All orders are accepted on the understanding that THE APPLICANT will be responsible for determining that the Items sold or manufactured by THE CREDITOR are suitable for a particular application.
- 16.3 **THE APPLICANT's items are accepted for processing by THE CREDITOR or by the supplier THE CREDITOR represents, at THE APPLICANT's own risk. Whilst THE CREDITOR will use its endeavours to carry out the instructions of THE APPLICANT, all items are accepted, treated, processed and stored entirely at the risk of THE APPLICANT and fully permitted by law, no liability whatsoever (including arising from negligence) is accepted by THE CREDITOR.**
- 16.4 **Owing to the obligations placed upon it, THE CREDITOR reserves the right not to accept liability for deficiencies, damaged or faulty Items (except within the terms of the warranty against defects in clause 15), or errors in dispatch, unless notice in writing is given to the carrier and THE CREDITOR within seven days from receipt of the consignment. Neither can it accept any claim for loss of Items advised but not delivered unless notice is given in writing to THE CREDITOR and the carrier within twenty-one days of the date of the advice note, or in the case of exported Items, within a reasonable time from date of shipment.**
- 16.5 Fully permitted by law, no liability will be accepted by THE CREDITOR or the supplier THE CREDITOR represents nor is any guarantee or other undertaking given or implied in respect of any act or omission by THE CREDITOR in respect of the following:
- 16.5.1 if performance figures are not obtained unless the specification to which THE CREDITOR is working lays down such figures or unless THE CREDITOR has made a specific guarantee in writing;
- 16.5.2 for any injury, loss or damage suffered by THE APPLICANT or any of its servants, agents or contractors, which may in any degree be attributed to the use of items or installation supplied by THE APPLICANT or to the adoption of data, design materials or advice given by THE CREDITOR as to the use of such items or installation notwithstanding any want of care on the part of THE CREDITOR in compiling or giving any advice or information;
- 16.5.3 for liquidated damages suffered by THE APPLICANT or others consequent to the supply of Items later than the date of dispatch confirmed by THE CREDITOR, unless expressly confirmed in writing by THE CREDITOR;
- 16.5.4 for loss, damage, or delay caused by government order, war, civil commotion, force majeure, accidents, fires, strikes, lockouts, or delay in obtaining raw materials through shortage or advantage in price thereof or any other cause beyond the reasonable control of THE CREDITOR; or
- 16.5.6 for any loss or damage, direct or consequential, or for any accident, or the effects of any accident or other expenses sustained by THE APPLICANT or any other person, arising from any defect or failure in Items supplied by THE CREDITOR.
- 16.6 **Subject to any applicable consumer guarantees under the South African Consumer Law, under no circumstances will THE CREDITOR be liable to THE APPLICANT for one or more of the following:**
- 16.6.1 **damage caused to an Item by incorrect use or repair by THE APPLICANT or any person not authorised by THE CREDITOR;**
- 16.6.2 **damages caused to any Item by any person other than THE CREDITOR; or**
- 16.6.3 **failure by THE APPLICANT to comply with the directions of THE CREDITOR in using the Items.**
- 16.7 To the maximum extent permitted by law, the liability of THE CREDITOR for a breach of a non-excludable condition is limited at THE CREDITOR's option, to:
- 16.7.1 in the case of services provided to THE APPLICANT:
- 16.7.1.1 the re-supply of the services; or
- 16.7.1.2 the payment of the cost of having the services supplied again,
- 16.7.1.3 at the election of THE CREDITOR; and
- 16.7.2 in the case of goods supplied to THE APPLICANT:
- 16.7.2.1 the replacement of the goods or the supply of equivalent goods;
- 16.7.2.2 the repair of the goods;
- 16.7.2.3 the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- 16.7.2.4 the payment of the cost of having the goods repaired, at the election of THE CREDITOR.
- 16.8 **No guarantee is given that Items will not be affected by attack by termites, rats or other animals or organisms, unless otherwise specified by THE CREDITOR. Where an organic repellent is incorporated in PVC sheathed cable offered for use and buried directly in the ground, THE CREDITOR advises that this protection cannot be regarded as completely effective. Where Nylon or double brass tapes are used for better protection, THE APPLICANT should note that THE CREDITOR will still not accept liability should such attack occur.**
- 16.9 To the fullest extent permitted by law (and subject to any rights under the South African Consumer Law), the provisions contained in this clause 16 are in lieu of and exclude all other warranties (not including the warranty against defects in clause 15), conditions and liabilities, expressed or implied, whether under common law statute or otherwise and whether relating to negligence, deliberate conduct or any other cause, in relation to Items supplied by THE CREDITOR, and no variation of these provisions shall be binding on it unless expressly accepted in writing by THE CREDITOR.
- 16.10 **Subject to this clause 18 and any rights under the South African Consumer Law (including any consumer guarantees that may apply), THE CREDITOR is not liable to THE APPLICANT or to any other person for:**

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- 16.10.1 any loss or damage of any kind caused by or resulting from any act or omission of THE APPLICANT or any of its employees, agents or contractors; or
- 16.10.2 any loss of profits or anticipated profits, economic loss, loss of business opportunity, loss or damage resulting from wasted management time or any special, incidental, indirect or other consequential loss or damage, even if notified of the possibility of that potential loss or damage and irrespective of whether it is due to breach of contract or any other cause.

17. INDEMNITY:

- 17.1 THE APPLICANT must indemnify and keep indemnified THE CREDITOR and each of its directors, officers, servants, agents and contractors from and against all claims, actions, demands, liabilities, loss, damage, costs, charges and expenses of whatsoever nature which may be brought against THE CREDITOR or any of its directors, officers, servants, agents or contractors or which THE CREDITOR or any of its directors, officers, servants, agents or contractors may pay, sustain or incur by reason of or in any way connected with any one or more of the following:
- 17.1.1 any breach by THE APPLICANT of any of its warranties or obligations set out in these Terms and Conditions;
- 17.1.2 any wilful, unlawful or negligent act or omission of THE APPLICANT or any of its servants, agents or contractors; and
- 17.1.3 the presence of THE APPLICANT 's servants, agents or contractors on THE CREDITOR's premises and any injury or death occurring to those persons or loss or damage to their personal effects.

18. FORCE MAJEURE:

- 18.1 Neither party shall be liable to the other party for inability to perform or delayed performance in terms of the Contract, should such inability or delay arise from any cause beyond the reasonable control of such party, the existence or happening of which cause has been drawn to the attention of the other party within a reasonable time of the occurrence of such cause ("*Force Majeure event*").
- 18.2 For purpose of this clause a Force Majeure event shall, without limitation to the foregoing, be deemed to include strikes, lockouts, labour disputes, accidents, plant and machinery breakdowns, fire, explosions, theft, war (whether declared or not), invasion, acts of foreign enemies, hostilities, riot, civil insurrection, flood, earthquake, lightning, act of local or national government, martial law, failure or delay on the part of the CREDITOR's supplier(s) of services, of bought materials, to meet delivery dates, or any failure or delay on the part of the APPLICANT or the APPLICANT's agent or other contractors to provide the CREDITOR with free issue materials, specifications, or defects or changes in such specifications, or any other cause beyond the reasonable control of the party affected.

19. BREACH AND TERMINATION:

- 19.1 Should either party be in breach of any material obligations in terms of the Contract, and fail to remedy such breach or take positive steps towards remedying such breach within 14 days of written notice to do so from the other party, then the non-defaulting party shall be entitled to cancel the contract without prejudice to such other rights as the non-defaulting party may have in terms of this agreement.
- 19.2 In the event that the CREDITOR cancels the agreement, as provided for in Clause 19.1, then and in that event, the full outstanding balance due to the CREDITOR by the APPLICANT, whether due or not, will immediately become due and payable to the CREDITOR.
- 19.3 If the APPLICANT:
- 19.3.1 being an individual dies or is provisionally or finally sequestered or surrender his or her estate; or
- 19.3.2 being a partnership, is dissolved; or
- 19.3.3 being a CREDITOR or close corporation is placed under provisional or final liquidation or judicial management;
- 19.3.4 commits an act of insolvency as defined in any statute or in terms of the common law in force in the Republic of South Africa from time to time; or
- 19.3.5 compromises or attempts to compromise with its creditors
- then, and in such event the CREDITOR may, on 10 business days written notice to the APPLICANT, summarily cancel the agreement without prejudice to any other rights which the CREDITOR may have, in which event the full outstanding balance, whether due or not, will immediately become due and payable by the APPLICANT to the CREDITOR.

20. JURISDICTION, LEGAL PROCEEDINGS & COSTS:

- 20.1 The APPLICANT shall be liable to the CREDITOR for all legal expenses on an attorney and own client scale incurred by the CREDITOR in the event of default or breach of this agreement by the APPLICANT or any litigation in regard to the validity or enforceability of this agreement.
- 20.2 The APPLICANT shall be liable for any tracing, collection or valuation fees incurred by the CREDITOR should the APPLICANT default on its obligation under this agreement
- 20.3 A certificate issued by any Director or Manager of the CREDITOR in respect of any indebtedness of the APPLICANT shall be *prima facie* evidence of the APPLICANT's indebtedness to the CREDITOR.
- 20.4 The Parties agree that any legal proceedings may be instituted in any Magistrate's Court having jurisdiction regarding any legal action arising out of this agreement, despite the fact that such action may not fall within the monetary jurisdiction of the Magistrate's Court. Notwithstanding this consent either party will have the right to institute action against each other in any competent Court having jurisdiction. Including any High Court.

21. PERSONAL INFORMATION:

- 21.1 The APPLICANT understands that the personal information given to the CREDITOR is to be used for the purposes of assessing credit worthiness and in order to perform in terms of these Terms and Conditions. The APPLICANT confirms that the information given to the CREDITOR is accurate and complete. The APPLICANT further agrees to update the information supplied as and when necessary in order to ensure the accuracy of the above information failing which the CREDITOR will not be liable for inaccuracies.
- 21.2 The CREDITOR will not use the APPLICANT's personal information for any purpose (other than as stated above) without the APPLICANT's express consent. The CREDITOR will not use or disclose the APPLICANT's personal information to third parties without the APPLICANT's consent, unless the use or disclosure is –
- 21.2.1 required to carry out the performance of these Terms and Conditions or any other agreement between the parties;
- 21.2.2 required in order to comply with applicable law, order of court or legal process; and/or
- 21.2.3 disclosure is necessary to protect and defend the legitimate interests of the CREDITOR.

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- 21.3 The CREDITOR has the APPLICANT consent at all times to contact and request information from any persons, credit bureau or businesses to obtain any information relevant to the APPLICANT's credit assessment, including but not limited to information regarding the amounts purchased from suppliers per month, length of time APPLICANT's has dealt with each supplier, type of goods purchased
- 21.4 The APPLICANT agrees and understands that information given in confidence to the CREDITOR by a third party on the APPLICANT will not be disclosed to the APPLICANT.
- 21.5 The APPLICANT hereby consents to and authorises the CREDITOR at all times to furnish credit information concerning the APPLICANT's dealing with the CREDITOR to a credit bureau and to any third party seeking a trade reference regarding the APPLICANT in his dealings with the CREDITOR.

22. DOMICILIUM CITANDI ET EXECUTANDI:

- 22.1 The APPLICANT chooses as its *domicilium citandi et executandi* the physical address as provided for in the Credit Application, where it will accept service of letters, notices, accounts and/or other legal documents relating to this agreement.

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- 22.2 The CREDITOR chooses as its *domicilium citandi et executandi* (INSERT CREDITOR'S ADDRESS HERE) where it will accept service of all letters, notices, accounts and/or other legal documents relating to this agreement.
- 22.3 Either party may change its *domicilium citandi et executandi* upon 10 business days written notice to the other party to any other address in the Republic of South Africa which is not a post office box or *poste restante*.

23. DEED OF SURETYSHIP:

- 14.1 The Signatory hereto binds himself/herself, jointly and severally, as surety and co-principal debtor in favour of the CREDITOR for the due performance by the APPLICANT of every sum of money which may now, or in at any time hereafter, become due and payable to the CREDITOR by the APPLICANT, from whatsoever cause arising which the APPLICANT may now or at any time in the future, be or become liable to perform in favour of the CREDITOR
- 14.2 This Deed of Surety shall constitute a continuing covering liability, notwithstanding any intermediate discharge or settlement of or fluctuations in the account until the CREDITOR will have agreed in writing to cancel the deed of suretyship. Nothing in this clause will place any obligation on the CREDITOR to agree to such cancellation.
- 14.3 The Signatory, as surety, hereby renounced the benefits of "*Excussion*", "*Division*" and "*De doubus vel pluribus reis debendi*" (that the Surety should be sued jointly with other principal debtors).
- 14.4 The Signatory, as surety, hereby chooses as its *domicilium citandi et executandi* the address as indicated hereunder, where it will accept service of letters, notices, accounts and/or other legal documents relating to this agreement:

(PHYSICAL ADDRESS)

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24. CESSION OF BOOK DEBTS:

The APPLICANT hereby irrevocable and in rem suam, cedes, pledges, assigns, transfers and makes over unto and in favour of the CREDITOR, all its right, title, interest, claim and demand in and to all claims of whatsoever nature and description and howsoever arising from the APPLICANT may now or at any time hereafter have against all and any person, companies, corporations, firms, partnerships, associations, syndicates and other legal person whomsoever ("APPLICANT's debtors") without exception as continuing covering security for the due payment of every sum of money which may now or at any time thereafter become owing by the APPLICANT to the CREDITOR from whatsoever cause or causes arising and for the due performance of every other obligation howsoever arising which the APPLICANT may be or become bound to perform in favour of the CREDITOR it being acknowledged that this cession is a cession in secretum debiti and is not an out-an-out cession. Should it transpire that the APPLICANT entered into prior deeds of session or otherwise disposed of any of the right, title and interest in and to any of the debts which will from time to time be subject to this session, then this cession shall operate as a session on all of the APPLICANT's reversionary rights.

25. CONSUMER PROTECTION ACT:

- 25.1 Should the provisions of the Consumer Protection Act be applicable to any transaction concluded between the APPLICANT and the CREDITOR pursuant to these terms and conditions, the provisions of the Consumer Protection Act shall apply if there is any conflict between these terms and conditions and the provisions of the Consumer Protection Act.
- 25.2 The CREDITOR undertakes to fully comply with the provisions of the Consumer Protection Act insofar as it applies to the transactions between the CREDITOR and the APPLICANT.

26. GENERAL:

- 26.1 This Agreement shall apply to all transactions concluded between the Parties.
- 26.2 This Agreement will be interpreted in accordance with the laws of the Republic of South Africa.

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- 26.3 Notwithstanding the provisions of Clause 26.2 the APPLICANT agrees to comply with all export laws, rules and regulations of South Africa and each of the countries to product in transport will enter and not to sell or re-sell the Goods in violation of any such laws, rules or regulations or without the necessary authorisation.
- 26.4 If any provision of this agreement is found, by Court, to be invalid, void or unenforceable, in whole or in part, such invalid, void or unenforceable provision will be deleted from these terms and conditions but the remainder of these conditions will nonetheless remain valid and binding.
- 26.5 No indulgence, leniency or extension of time which any party may grant or show to any other shall in any way prejudice or preclude such party from exercising any of its rights in future.
- 26.6 This Agreement contains the full agreement between the parties as to this subject matter and no amendment, terms, representations, indulgences, leniencies or extensions shall be of any force or effect unless reduced to writing and signed by both the APPLICANT and the CREDITOR or their duly authorised representatives.
- 26.7 The failure by one party to exercise a right or recourse under this Agreement due to negligence of delay, shall in no case constitute a waiver by said party of such right or recourse.

END OF TERMS AND CONDITIONS

THE APPLICANT warrants that the information submitted in this application is true and correct in all respects and that THE APPLICANT is entirely familiar with the terms and conditions contained herein. THE APPLICANT further warrants that he/she has read and understood the contents of clause 24.

Thus, signed by THE APPLICANT or its duly authorised agent/signatory who hereby warrants that he/she is authorised to sign on behalf of THE APPLICANT.

Signed at _____ this _____ day of _____

before the undersigned witnesses.

Name: _____

Designation _____

Signature: _____

Date: _____

As Witness: _____

For and on behalf of THE CREDITOR:

Name: _____

Designation _____

Signature: _____

Date: _____

As Witness: _____

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