



Johannesburg (use for legal notices):	Telephone number: +27 11 844 9900, Physical: Knightsbridge Office, Ground Floor, Block C, 33 Sloane Street, Bryanston, Sandton, 2191 Postal: Suite 60, Private Bag X51, Rivonia, 2128
<u>Please submit the following documentation with this application:</u>	- Copy of Customer registration certificate/CK2; - Copy of director's ID; - Copy of a Customer cancelled cheque
- Copy of Customer Vat clearance certificate;	
- Copy of Customer letterhead;	

**TERMS AND CONDITIONS OF SALE, CREDIT APPLICATION, CESSION OF BOOK DEBTS, COVERING DEED OF SURETYSHIP**

I, the undersigned (the "Customer") do hereby apply to **Kathea Communication Solutions (Pty) Ltd** (Seller registration number 1998/012447/07, VAT number 4550183695) (the "Seller") for the opening of an account for the purchase of goods, materials and/or services all of which are to be governed by the terms and conditions of sale of the Seller as annexed hereto, marked "Annexure A" (Terms and Conditions) and "Annexure B" (Deed of Suretyship). In signing this "Terms and conditions of sale, Credit Application, Cession of Book Debts and Covering Deed of Suretyship" ("the Application") I hereby confirm that I have read and understood the contents of the Application (which includes Annexure A and Annexure B) and that there are no matters contained in the Application which are unfamiliar or unclear to me. I understand that to the extent that there are any conflicting terms in any Customer agreement concluded in addition to this Application, that this Application shall take precedence.

<b>CUSTOMER DETAILS:</b>			
<input type="checkbox"/>	Public Co.	<input type="checkbox"/>	Private Co.
<input type="checkbox"/>		<input type="checkbox"/>	Close Corporation
<input type="checkbox"/>		<input type="checkbox"/>	Sole Proprietorship
Registered name _____			
Registration number _____		Number of years trading ____ VAT Number _____	
Trading Name _____			
Name of Holding company or majority shareholder/s _____			
_____			
Telephone number _____		Email address _____	
Postal Address _____			
Delivery address _____			
Physical address _____			
Domicilium citandi et executandi (physical address for serving of court notices or other legal documentation)			
<b>FINANCIAL INFORMATION:</b>			
Name of Auditors _____		Annual turnover _____ Credit Limit Required: _____	
Name of Bank _____		Branch Name _____ Branch Code: _____	
Account Number _____		Contact person _____ Tel no. _____	
(please provide at least 3 regular and relevant suppliers – i.e. not utility, stationers, courier or telephone service providers)			
<b>Trade Reference:</b>	<b>Supplier name</b>	<b>Contact name</b>	<b>Telephone number</b>
			<b>Credit limit</b>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____

**Details of Director(s)/Member(s)/Partner(s)/Owner(s) (Attach separate list if space not sufficient):**

Name: \_\_\_\_\_ Capacity: \_\_\_\_\_ ID Number: \_\_\_\_\_

Mobile: \_\_\_\_\_ Residential Address: \_\_\_\_\_

Name: \_\_\_\_\_ Capacity: \_\_\_\_\_ ID Number: \_\_\_\_\_

Mobile: \_\_\_\_\_ Residential Address: \_\_\_\_\_

Name: \_\_\_\_\_ Capacity: \_\_\_\_\_ ID Number: \_\_\_\_\_

Mobile: \_\_\_\_\_ Residential Address: \_\_\_\_\_

Name: \_\_\_\_\_ Capacity: \_\_\_\_\_ ID Number: \_\_\_\_\_

Mobile: \_\_\_\_\_ Residential Address: \_\_\_\_\_

**CUSTOMER TO SIGN THIS SECTION**

I, the undersigned, duly authorized signatory of the Customer, do hereby warrant that the information recorded in this Application is true and correct in each and every respect and may be relied upon, and undertake to notify the Seller in writing of any change of details. I acknowledge that any credit facilities granted by the Seller to the Customer shall be at the sole discretion of the Seller as to the nature, duration and extent thereof.

I, the undersigned, the duly authorized signatory of the Customer, do hereby accept and undertake irrevocably to be bound by the terms and conditions of sale, as set out in "Annexure A" to this application which terms and conditions I acknowledge having read and understood and agree that these terms and conditions are applicable to all transactions relating to the sale and purchase of goods, materials and/or services from any facility made available by the Seller.

Duly Authorized Signatory: \_\_\_\_\_ Full Name: \_\_\_\_\_

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

**SELLER TO SIGN THIS SECTION**

I the undersigned, duly authorized signatory of the Seller, do agree to these terms and conditions of Sale on behalf of the Seller.

Duly Authorized Signatory: \_\_\_\_\_ Full Name: \_\_\_\_\_

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

## Terms and Conditions of Sale

1. PRICES & QUOTATIONS
- 1.1 The price of the goods sold or services rendered shall be the usual price set out in the Seller's invoice to the Customer at the time of the sale of the goods.
- 1.2 The Seller's price lists shall be considered merely as a guide by the Customer, and the Seller has the right, from time to time, to vary the prices of its goods without prior notice having to be given to the Customer.
- 1.3 Unless otherwise indicated on the quote, quotations remain valid for a period of 7 (seven) calendar days from date of the quotation. All quotations are subject to availability of goods.
- 1.4 Quotations may be changed at any time before acceptance by the Customer.
- 1.5 The price of the goods sold to the Customer is strictly net and not subject to any discounts unless otherwise agreed.
- 1.6 Quoted prices are subject to vendor approval confirmation, which if not provided, will invalidate the quote.
2. PAYMENT
- 2.1 Payment terms are strictly Cash with Order ("COD"), save where the Customer is a credit approved customer in which event payment will be due within 30 calendar days of invoice date.
- 2.2 In respect of COD Customers, payment shall be due prior to acceptance of a purchase order or in any event prior to collection or before delivery. If the Customer fails to collect or accept delivery of the goods ordered from the Seller, payment shall automatically become due no later than 14 (fourteen) calendar days after the Seller has provided written or verbal notification to the Customer that goods are available for delivery or collection.
- 2.3 The Customer agrees to pay into the bank account, as indicated by the Seller from time to time, the amount reflected on the Seller's invoice in the currency specified and shall not be entitled to claim set off or deduction in respect of any payment due by the Customer to the Seller for goods supplied or services rendered.
- 2.4 The Customer shall carry all bank charges relating the payment transaction, ensuring that the Seller receives the amount indicated on the Seller's invoice after deduction of all such costs.
- 2.5 If the Customer fails to provide allocation information within 30 days of payment, then the Seller may appropriate and/or allocate all payments made by the Customer to such accounts as the Seller, in its sole and absolute discretion, decides.
- 2.6 The Seller shall have the right to suspend deliveries without notification and to exercise its rights in terms of clause 3 if any amount due by the Customer is unpaid.
- 2.7 The Customer agrees that if any amount owed by it is not settled in full (a) on demand; or (b) within the period agreed in clauses 2.1 and/or 2.2 above the Seller will be entitled to:-
- 2.7.1 immediately institute action against the Customer; and/or
- 2.7.2 cancel the sale and take possession of any goods delivered to the Customer, including goods sold, disposed of or installed by the Customer, which have not been paid for in full, and claim damages.
- These remedies are without prejudice to any of the Seller's other rights.
- 2.8 Should any amount not be paid by the Customer on due date, then the full outstanding amount in respect of all purchases by the Customer shall immediately become due, owing and payable irrespective of the dates when the goods were purchased, and the Customer shall be liable to pay interest in respect of amounts unpaid at the Seller's banker's prime lending rate plus 2% as prescribed for credit agreements in compliance with the National Credit Act (Act 34 of 2005) or equivalent legislation, as amended. Interest shall be calculated from the due date of such payment to the date of final payment thereof.
- 2.9 Electronic Funds Transfer is the only acceptable method of payment.
3. WITHDRAWAL OF CREDIT FACILITIES
- 3.1 The Seller reserves the right to withdraw any credit facility at any time without prior notice, and the nature and extent of such facility shall be at the Seller's sole discretion.
- 3.2 Even though the Seller may grant the Customer a credit limit or a credit facility up to a certain amount, the Seller reserves the right to increase or decrease this amount at its sole discretion. The credit limit shall not be deemed to be the limit of a Customer's indebtedness to the Seller.
4. DEPOSIT
- 4.1 If the Seller does not provide credit to cover the full cost of the order, the Customer shall pay a partial or full deposit on acceptance by the Seller of the Customer's purchase order:
- 4.2 Such a deposit is refundable if the Seller cannot deliver within a reasonable period but is not refundable under any other circumstances.
- 4.3 The deposit forfeited under the above circumstances shall be forfeited as a pre-estimation of the damages suffered by the Seller, without prejudice to any other rights that the Seller may have, including, without limitation, the right to cancel the contract, reclaim if it so wishes any goods already delivered to the Customer, claim the balance from the Customer or to claim further damages from the Customer.
5. ORDERS
- 5.1 The Seller will accept written orders only. All such orders must have a unique reference number. All such orders and any variations to orders agreed in writing will be binding, subject to these terms and conditions, and may not be cancelled without written consent from the Seller.
- 5.2 Should the Customer purport to attach any conditions to or in respect of any business conducted from time to time which vary, amend or are in conflict with a term or condition set out herein, then notwithstanding anything to the contrary stipulated by the Customer, the unamended terms and conditions set out herein shall prevail and be of full force and effect.
- 5.3 Any term contained in the purchase order which seeks to provide for cancellation in the event of the Seller's failure to deliver within a specified period of time shall be of no force and effect.
- 5.4 Orders shall constitute irrevocable offers to purchase the specified goods at the usual prices of the Seller as at the date when the Customer places the order for goods, and the order shall be capable of acceptance by the Seller for the delivery of the goods, by written acceptance or confirmation of the order.
6. DELIVERY
- 6.1 Upon delivery, which is defined in 6.2, the Customer confirms that the goods were indeed delivered and inspected, and that the Customer is satisfied and confirms that the goods delivered duly represent, in quantity and quality, the goods ordered by the Customer at the prices agreed as reflected on the invoice issued, and that the Customer is satisfied that the goods are free from any defects.
- 6.2 Delivery occurs when the Customer and/or its authorized representative and/or its nominated agent:
- 6.2.1 Signs the Seller's delivery note; or
- 6.2.2 Collects the goods directly from the Seller's supplier or agent; or
- 6.2.3 The Seller or its nominated agent demonstrably performs in terms of the incoterms agreed for the particular transaction.
- 6.3 Any delivery note (copy or original) in the possession of the Seller and purportedly signed by the Customer and/or its authorized representative and/or its nominated agent, or third party documentation proving delivery of the delivery type described in 6.2.2 and 6.2.3, shall be *prima facie* (legitimate) proof for the purposes of any litigation on its mere production in evidence.
- 6.4 The Seller shall be entitled to split the delivery of the goods ordered in the quantities and on the dates it decides, with the prior consent of the Customer, which consent shall not be unreasonably withheld.
- 6.5 The Seller is entitled to engage a third party on its behalf to transport all goods purchased by the Customer to the delivery address stipulated by the Customer.
- 6.6 Should the Customer wish to receive delivery of the goods by a more expensive method of transportation than that normally engaged by the Seller, the Customer shall make such request in writing and, in the event that the Seller agrees to arrange such special delivery, the additional charges shall be debited to the Customer's account and shall become payable by the Customer on delivery of the goods.
- 6.7 The Seller does not guarantee that the goods will be delivered on any particular date or time, and the Customer shall not have any right of action against the Seller in respect of any loss occasioned by any reasonable delay in delivery of any goods and/or services rendered, nor may the Customer cancel any order by reason of such reasonable delay.
- 6.8 Whilst every effort will be made to dispatch goods as advised, the Seller does not guarantee dispatch on any specific date or time and shall not be liable for any damages of any nature whatsoever for failure to effect delivery or timeous dispatch for any reason beyond the Seller's reasonable control, including but not limited to inability to secure

transport, labour, power, materials, equipment or supplies or by any reason of any act of God, war, civil disturbance, riot, state of emergency, strike, lock out or other labour dispute, fire, flood, drought or legislation. The Customer shall not be entitled to cancel any order by reason of such delay.

6.9 Short delivery of and/or defects in the goods have to be notified in writing to the Seller's head office within 7 (seven) calendar days of delivery of the goods, failing which the Seller will not be liable to entertain any such claim.

6.10 Where the Seller is requested by the Customer to withhold or postpone delivery, in the event that the Seller agrees to do so, all the risk in and to all ordered goods shall pass to the Customer on the date of the Seller agreeing to such a request and the Customer shall pay the costs of storage, demurrage, interest, insurance and any other charges occasioned by the postponement of delivery.

## 7. OWNERSHIP AND RISK

7.1 All risk in and to all goods sold by the Seller to the Customer shall pass to the Customer on delivery, however, ownership in all goods sold and delivered shall remain vested in the Seller until the full purchase price has been paid, and in the event of a breach of these terms and conditions by the Customer, or if the Customer is sequestrated or placed under liquidation or judicial management or commits any act of insolvency or enters into any compromise with its creditors or fails to satisfy a judgment granted against it within 3 (three) calendar days of the date of judgment or changes the structure of its ownership, the Seller shall be entitled to take possession of the goods irrespective of whether or not the goods have been installed without prejudice to any further rights vested in the Seller. The Customer hereby indemnifies the Seller against all claims, losses, damages, liabilities and expenses of whatsoever nature, including consequential claims, should the Seller remove goods as a result of non-payment on the part of the Customer. Nothing contained in this clause precludes the Seller from proceeding in terms of this clause with a Court order.

7.2 Goods in the possession of the Customer bearing either the Seller's name or trade mark or labels shall be deemed to be those for which payment has not yet been made, and should any breach of these terms and conditions occur, may be re-possessed by the Seller in terms of clause 7.1 above.

7.3 Prior to delivery, the Customer shall adequately insure the goods to be delivered and/or supplied by the Seller against any form of loss or damage until the full purchase price has been paid by the Customer to the Seller for such goods. Pending payment to the Seller for goods purchased, all the benefits in terms of the insurance policy relating to the insurance of such goods are hereby ceded to the Seller.

7.4 The Customer shall inform the landlord of the premises at which the goods are kept that such goods are the sole and absolute property of the Seller until such time as the full purchase price has been paid to the Seller by the Customer.

7.5 The Customer hereby indemnifies the Seller against all claims, losses, damages, liabilities and expenses of whatsoever nature, including consequential claims, arising from or in connection with, the Customer failing to comply with its obligations in terms of this clause 7.

## 8. RETURNED GOODS AND ORDER CANCELLATIONS

8.1 The Seller is under no obligation to accept the return of goods. If, however, the goods are defined by the Seller as stocked items, and were purchased from the Seller, then the Customer may apply to the Seller for permission to return goods. If written permission is given by the Seller for such return, then it will be on the following basis:

8.1.1 Goods, save for the goods dealt with clause 8.1.4 below, will be accepted for credit, subject to a restocking charge of 15% (fifteen percent) of the invoice price of the goods so returned if the goods are delivered to the Seller's Head Office, Customer Services, within 21 (twenty one) calendar days of delivery, unused, with sealed disk packs, original contents and shrink wrapping intact.

8.1.2 No goods returned to the Seller after a period of 21 (twenty-one) calendar days from delivery will be accepted for credit.

8.1.3 Goods returned for credit will only be accepted from those Customers who initially purchased the stock from the Seller.

8.1.4 Goods defined as non-stocked items or goods specifically ordered for the Customer (Back-to-Back orders) will not be accepted by the Seller for credit.

8.1.5 If on inspection of the returned goods the Seller's Customer Services determine that the goods have been opened or used or that the sealed disk packs, contents and shrink wrap are not intact, the Seller will be under no obligation to accept the returned goods, however,

the Seller may at their sole and absolute discretion agree to accept the goods and a restocking charge of 50% (Fifty percent) of the invoice price of the goods so returned will be payable by the Customer to the Seller.

8.2 Purchase orders issued to the Seller may not be cancelled. The Seller may at their sole and absolute discretion agree to the cancellation of an order received from the Customer. Such a decision will be based on whether the Seller is able to cancel its order with its Supplier for the supply of those goods and if the item is a regularly stocked item. Any relaxation of this no cancellation policy in any one instance should not be construed as a change to the standard terms and conditions.

## 9. REFUND POLICY

9.1 If goods are accepted for return, subject to clause 8 above, then credit card transactions may be reversed once the credit note has been passed against the relevant invoice.

9.2 If goods are accepted for return, subject to clause 8 above, then debit card transactions, electronic fund transfers, cheque payments and cash payments will require a 7 working day administrative period. All requests for refund to be submitted in writing to the accounts receivable administration clerk and must include confirmation of the Customer's banking information.

## 10. NEGOTIABLE INSTRUMENTS

10.1 Acceptance of a promissory note, bill of exchange or any other negotiable instrument by the Seller from the Customer shall not be deemed to be a waiver of the Seller's rights under these terms and conditions. In relation to cheque(s) furnished by the Customer to the Seller, the Customer waives its rights to insist on notice of dishonour or protest being given to it in the event of the cheque being dishonoured.

## 11. BREACH

11.1 Subject to the provisions of clauses 2 and 7 above, in the event of a breach by the Customer of any of these terms and conditions, and should the Customer fail to remedy such breach within 48 (forty eight) hours after receipt of notice to that effect from the Seller, or should the Customer repeatedly breach any of these terms and conditions in such manner as to justify the Seller in holding that the Customer's conduct is inconsistent with the intention or ability of the Customer to carry out these terms and conditions, or if the Customer is sequestrated or placed under liquidation or enters judicial management or commits any act of insolvency or enters into a compromise with its creditors or fails to satisfy a judgment granted against it within 3 (three) calendar days of the date of judgement or changes the structure of its ownership, the Seller shall be entitled to cancel these terms and conditions forthwith and without prejudice to its right to claim specific performance and/or damages.

11.2 The Seller's rights in terms of clause 11.1 shall not be exhaustive and shall be in addition to its common law rights or any other right it has in terms of these terms and conditions.

11.3 No claim, except as provided in clause 8, against the Seller, pursuant to these terms and conditions, will arise unless the Customer has, within 7 (seven) calendar days of the alleged breach or defect occurring, given the Seller 30 (thirty) calendar days written notice to rectify any defect or breach of these terms and conditions.

## 12. WARRANTIES, REPRESENTATIONS & INDEMNITIES

12.1 The Seller makes no warranties or representations to the Customer regarding the goods or services or their fitness for a particular purpose other than those contained in the Manufacturer's product specific warranty as at the time of delivery or collection of the goods.

12.2 Goods are guaranteed according to the Manufacturer's product specific warranties only, as at the time of delivery or collection of the goods.

12.3 Services rendered carry no guarantee whatsoever.

12.4 All guarantees are immediately null and void, should any equipment be tampered with, or should the "seals" on equipment be broken by anyone other than the Seller or its appointed nominee, or should the goods be operated outside the Manufacturer's specifications.

12.5 To be valid, guarantee claims must be supported by the original tax invoice, and the goods must be in their original packaging and must be accompanied by all accessories and manuals, which must be intact.

12.6 No warranties other than those provided in these Terms and Conditions, express or implied, shall apply. The Seller specifically disclaims the implied warranty of merchantability or fitness for a particular purpose. No representation or warranty, including but not limited to statements of capacity and suitability for use or performance, made by employees of

- the Seller shall be considered to be a warranty by or binding on the Seller. Any such statements shall not give rise to any liability of whatsoever nature on the part of the Seller. The Seller, its employees, subcontractors or subsidiaries renounce all liability in respect of the Seller's special, indirect or consequential damages including but not limited to loss of profits.
- 12.7 Under no circumstance will the Seller be liable for any damage arising from any misuse of the goods supplied and/or services rendered.
- 12.8 The Customer agrees that neither the Seller nor any of its employees will be liable for any innocent misrepresentations made to the Customer, nor shall the Customer be entitled to cancel any contract on those grounds.
13. REPAIRS
- 13.1 Any liability arising in terms of the Manufacturer's warranty is restricted to the cost of repair or replacement of faulty goods or the granting of a credit note. It is in the sole discretion of the Seller as to which remedy will be afforded to the Customer.
- 13.2 In the case of repairs undertaken by the Seller, repair times given are merely estimates and are not binding on the Seller.
- 13.3 The Customer hereby agrees that any item handed in for repair may be sold by the Seller to defray the cost of such repairs if the item remains uncollected for a period of 30 (thirty) days after notification that the repair is complete.
14. LIMITATION OF LIABILITY
- 14.1 The Seller shall not be liable for any loss, injury, death, damage, costs, expenses, loss of profits or other special damages or any consequential loss or other damages arising from any cause whatsoever (whether or not the Seller is negligent or grossly negligent) suffered or incurred by the Customer and/or its employees, contractors, sub-contractors, agents, authorised representatives and/or any third party.
- 14.2 The Customer indemnifies and holds harmless the Seller for any claims described in clause 14.1 above instituted by the Customer and/or its employees, contractors, sub-contractors, agents, authorised representatives and/or any third party.
15. LEGAL PROCEEDINGS
- 15.1 In the event of the Customer breaching any of its obligations and/or failing to timeously make payment of any amount due to the Seller, the Customer agrees to pay, and shall be liable to pay, all legal costs incurred by the Seller in enforcing its rights in terms of these terms and conditions on the attorney/own client scale including collection charges, tracing agent's fees, air fares and expert's witness fees.
- 15.2 The Seller shall have the right at its sole discretion to institute any action arising out of or in connection with these conditions and/or any business dealings with the Customer in any Magistrate's Court having jurisdiction notwithstanding that the cause of action may exceed the jurisdiction of that court and the Customer hereby consents to the jurisdiction of the Magistrate's Court for this purpose. Nothing herein contained, however, shall preclude the Seller from electing to institute action in the appropriate High Court having jurisdiction.
- 15.3 These terms and conditions shall be governed and construed according to the laws of the Republic of South Africa and shall be subject to the exclusive jurisdiction of the courts of the Republic of South Africa.
16. NOTICES & DOMICILIUM CITANDI ET EXECUTANDI
- 16.1 Any document will be deemed duly received by the Customer within:-
- 16.1.1 3 (three) working days of pre-paid registered mail to any of the Customer's business or postal addresses or the domicilium address of the Customer, or to the personal address of any director, member or owner of the Customer; or
- 16.1.1.1 24 (twenty-four) hours on being delivered by hand to the Customer or any director, member or owner of the Customer; or
- 16.1.1.2 48 (forty-eight) hours if sent by overnight courier; or
- 16.1.1.3 24 (twenty four) hours of being e-mailed to the Customer's e-mail address.
- 16.2 The Customer hereby chooses its *domicilium citandi et executandi* (physical address for serving of court notices, other legal documentation or communications) for all purposes under these terms and conditions as the physical address as set out on Page 1 of this Agreement. The Seller hereby chooses its *domicilium citandi et executandi* (physical address for serving of court notices, other legal documentation or communications) for all purposes under this Agreement as Knightsbridge Office Park, Ground Floor Block C, 33 Sloane Street, Bryanston, Sandton, South Africa or as otherwise notified.
17. DISCLOSURE OF INFORMATION
- 17.1 The Customer understands that the information given in this credit application form is to be used by the Seller for the purposes of assessing his credit worthiness. The Customer confirms that the information given by him in this credit application form is accurate and complete. The Customer further agrees to update the information supplied, as and when necessary, in order to ensure the accuracy of the above information, failing which the Seller will not be liable for any errors or mistakes resulting there from.
- 17.2 The Seller has the Customer's consent, at any time, to contact and request information from any persons, credit bureaus or businesses, including those mentioned in the credit application form and to obtain any information relevant to the Customer's credit assessment.
- 17.3 The Customer agrees and understands that information pertaining to the Customer and given in confidence to the Seller by a third party will not be disclosed to the Customer.
- 17.4 The Customer hereby consents and authorizes the Seller, at any time, to furnish credit information concerning the Customer's dealing with the Seller to a credit bureau and to any third party seeking a trade reference regarding the Customer in his dealings with the Seller.
18. NATIONAL CREDIT ACT 34 OF 2005 – WARRANTY BY CUSTOMER
- 18.1 The Customer by his signature hereto warrants that at the date of signature hereof and each date which the Customer purchases goods from the Seller that:
- 18.1.1 The aggregate annual sales or turnover of the Customer exceeds R1,000,000 (One million rand); and/or
- 18.1.2 The net asset value of the Customer exceeds R1,000,000 (One million rand).
- 18.2 The Customer hereby irrevocably unconditionally agrees to indemnify and keep indemnified, the Seller, on demand, for any and all, liabilities, damages, penalties, actions, judgments, costs, expenses or disbursement of any kind whatsoever which may be imposed on, incurred by or asserted against the Seller in any way resulting from or arising of a breach of any warranty contained in clause 18.1 above.
19. CESSION OF DEBTORS
- 19.1 The Customer hereby irrevocably cedes, assigns and transfers, makes over unto and in favour of the Seller, all the Customer's right title and interest in and to its claims against its debtors, both present and future and from whatsoever cause arising, as security for all or any of the amounts which the Customer may now or at any time in the future owe to the Seller.
- 19.2 The Customer irrevocably and in terms hereof authorises the Seller in its absolute discretion to claim from all or any of the Customer's debtors the whole or any portion of the indebtedness or give a valid receipt for discharge for such indebtedness, to take any action in its name in any court of competent jurisdiction and to proceed in execution thereunder against all or any of the said debtors to cede, transfer, negotiate, pledge or otherwise deal with all or any of the said debtors, to exchange promissory notes, cheques, agreements, documents of title or any other security held by the Customer.
- 19.3 The security created by the cession shall be a continuing one notwithstanding any fluctuation in the amount of indebtedness of the Customer to the Seller.
- 19.4 The Customer hereby undertakes on demand to furnish the Seller with such information concerning its debtors as may be reasonably required, to enable the Seller to give effect to the provisions of this clause.
- 19.5 Should it transpire that the Customer entered into prior deeds of cession, then this cession shall operate as a cession of all the Customer's reversionary rights.
20. INTELLECTUAL PROPERTY
- 20.1 Intellectual property means all current and future rights of copyright, (including copyright in any computer programmes and/or related documentation including user manuals) patents, trademarks, marks, trade names, designations, logos and other devices rights in databases, inventions, trade secrets, know-how, rights in designs, topographies, trade and business names, domain names, marks, logos and devices and all other intellectual property rights, proprietary rights or other rights of a similar nature as having a similar effect, whether registered or unregistered and howsoever embodied and applications for any of those rights (where such applications can be made) capable of protection in

- any country in the world, in relation to, arising from or directly pertaining to the products, the Seller, or a Manufacturer.
- 20.2 The Customer acknowledges that it has no claim of any nature in or to any part of the Intellectual Property.
- 20.3 The Customer undertakes, both during the term of this Agreement and thereafter, not to attack or dispute the validity or enforceability of the Intellectual Property or any right comprised therein, or cause to be done any act or thing contesting or in any way impairing any part of that right, title and interest and shall not assist any third party to do so.
- 20.4 The Customer further undertakes not to register any domain name which may, in Seller's discretion, be confusingly similar to any item of the Intellectual Property.
- 20.5 The Customer undertakes that it will not during the term, or at any time after termination, of this Agreement:
- 20.5.1 Reverse engineer, copy or procure the copying of any of the Products or use any of the Trademarks other than in accordance with the terms of this Agreement;
- 20.5.2 use any of the Trademarks (i) to imply the Manufacturer's or the Seller's endorsement of products or services not furnished under this Agreement or (ii) on or in relation to any products not supplied by the Seller;
- 20.5.3 in its Communication with third parties, directly or indirectly claim or imply any relationship to the Manufacturer or the Seller other than as approved in advance in writing by the Seller;
- 20.5.4 In its relations with End-Users and suppliers and with all third parties the Customer shall take all reasonable steps necessary to protect the rights and interests of the Seller and the Manufacturer in connection with the Intellectual Property and the Customer shall inform the Seller forthwith on becoming aware of any infringement or misuse, or threatened infringement or misuse, of any such right or interest.
- 20.6 The Customer shall at no cost to the Seller, provide the Seller with all reasonable assistance, including the furnishing of evidence, testimony and documentation, in order for the Seller and the Manufacturer to protect or defend the Intellectual Property.
- 20.7 Subject to clause 20.5.22, the Customer shall sell the Products under the name of the Manufacturer, which name must appear visibly in all marketing materials including publications, brochures and other advertising materials. The Customer shall not alter or remove any Trade Mark or other markings applied to the Products without the prior written approval of the Seller, nor will it attach additional trademarks, logos or designations to the Products.
- 20.8 The Trademarks may only be used by the Customer for the purpose of identifying, advertising, marketing, promoting and distributing the Products to End-users and in terms of this Agreement.
- 20.9 The signs and/or other forms of advertising used by the Customer (including without limitation, advertisements, catalogues, promotions or similar material using Trademarks or any reference thereto), must comply with the corporate identity standards, guidelines and marketing programs laid down by the Seller from time to time, and where initiated by the Customer, shall be subject to the prior written approval of the Seller. The Customer shall cease using the Intellectual Property immediately upon the expiration of this Agreement
21. GENERAL
- 21.1 These terms and conditions shall govern all future contractual relationships between the Seller and the Customer and shall also be applicable to all debts which the Customer may owe to the Seller prior to the Customer's signature hereto.
- 21.2 No amendment and/or alteration and/or variation and/or deletion and/or addition and/or cancellation of these terms and conditions, whether consensual or unilateral or bilateral shall be of any force and effect unless reduced to writing and signed by a director of the Seller.
- 21.3 No warranties, representations or guarantees have been made by the Seller or on its behalf which may have induced the Customer to sign this document.
- 21.4 No relaxation or indulgence that the Seller may give at any time in regard to the carrying out of the Customer's obligations in terms of any contract shall prejudice or be deemed to be a waiver of any of the Seller's rights in terms of these terms and conditions.
- 21.5 The Customer shall not cede his rights nor assign his obligations contained herein unless the Seller agrees in writing to such cession or assignment.
- 21.6 The Seller shall at any time in its sole discretion be entitled to cede all or any of its rights in terms of this application for credit facilities including all terms and conditions to any third party without prior notice to the Customer.
- 21.7 The Customer undertakes to notify the Seller within a period of 7 (seven) calendar days of any change of address or any changes in the information as set out in this contract.
- 21.8 Each of the terms herein, shall be separate and divisible and if any provision of these terms and conditions, which is not material to its efficacy as a whole, is rendered void, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- 21.9 The Customer undertakes to inform the Seller in writing at least 14 (fourteen) calendar days prior to the intended selling or alienating of the whole of or any part of the Customer's business and a failure to do so will constitute a material breach of these terms and conditions entitling the Seller to cancel the contract, entered into between the Seller and the Customer pursuant to these terms and conditions, without further notice to the Customer.
- 21.10 The Customer represents and warrants that the Customer shall not use money or other consideration for any unlawful purpose including any purpose that would violate any applicable anti-bribery or anti-corruption laws. The Customer hereby agrees to indemnify, defend and hold Seller harmless from and against any claims, judgements, fines, penalties and related costs, including legal costs, arising from or related to its breach of this clause 21.10.
- 21.11 This agreement shall be governed by South African law and both parties submit to the non-exclusive jurisdiction of the South African courts.

**Deed of Suretyship**

I/We, the undersigned do hereby unconditionally and irrevocably interpose and bind myself/ourselves unto and in favour of the Seller, its successors or assigns as surety/sureties and co-principal debtor/s jointly and severally *in solidum* for and with the Customer for the repayment on demand for any sum or sums of money owing to the Seller by the Customer on the terms and conditions set out below:

1. This Suretyship is for the due and punctual performance by the Customer to or in favour of the Seller for each and every indebtedness and obligation (past, present and future) of the Customer to the Seller of whatsoever nature and howsoever arising and also in respect of all charges and expenses of whatsoever nature (including any sum owing in respect of the agreed terms and conditions in Annexure A and including attorney and own client costs, collection charges and tracing expenses) incurred by the Seller in securing the implementation of any right or claim against the Customer, and this Suretyship shall remain of full force and effect notwithstanding any fluctuation in, or variation in, or any cessation of the Customer's indebtedness to the Seller.
2. I/We understand that my/our liability for amounts owing by the Customer to the Seller is not limited to any credit limit granted by the Seller to the Customer.
3. I/We further agree that the Seller shall be at liberty without affecting any of its rights hereunder against me/us to release, or to compound or make other arrangements with, the Customer or with us or any other surety/ies for the Customer and that in the event of the estate of the Customer being sequestrated (or if it be a Seller or Closed Corporation, being wound up) as insolvent, no dividends or payments which the Seller may receive from the Customer or other surety/ies or from me/us shall prejudice the right of the Seller to recover from me/us to the full extent of this Suretyship any sum which, after receipt of such dividends or payments, may remain owing by the Customer, but in any event, the fact that the Seller will or may receive any such dividend or payment shall not entitle me/us to any deferment of my/our immediate liability meanwhile to pay under this Suretyship.
4. Any leniency or extension of time which may be granted by the Seller to the Customer in respect of any payment or other obligation, and any cancellation, variation or modification of any of the indebtedness of the Customer to the Seller shall not prejudice or affect, novate or terminate this Suretyship or release me/us whether such leniency and/or extension and/or variation and/or modification be granted or take place prior or subsequent to the due date for any payment or obligation.
5. I/We hereby renounce the benefits of the legal exceptions including, but not limited to, "non numeratae pecuniae" (no value received), "non causa debiti", "errore calculi" (faulty calculation), excussion and division (the benefit of division of co-sureties) with the full force, meaning and effect of which I/we declare myself/ourselves to be fully acquainted.
6. In the event of any conflict between Annexure A and Annexure B, the terms of Annexure B shall prevail.

7. In the event of more than one surety signing this Suretyship, or in the event of any other surety or sureties having signed or subsequently signing a Suretyship in favour of the Seller in respect of any indebtedness in favour of the Seller, then each of us shall still remain fully bound jointly and severally hereunder, and any release by the Seller of any one or more of us and/or such other surety/ies shall in no way affect or reduce or delete the liability of us hereunder insofar as I/we have not been so released.
8. A certificate signed by a director of the Seller stating the amount at that date owing and delivered in writing to me/us at any time and from time to time shall constitute evidence in any legal proceedings, or for any other purpose whatsoever, and shall constitute *prima facie* evidence of its contents and of the amount then owing by me/us to the Seller.
9. In respect of any costs claimable by the Seller from us, such costs shall include attorney and client costs, on the scale as between attorney and own client.
10. For all purposes under this Suretyship, including any notice to us, I/we hereby choose *domicilium citandi et executandi* at my/our address stated below, and any notice or process delivered thereat shall be deemed to have been received by me/us on the date of such delivery, or if sent to me/us by telefax, to my/our chosen telefax number, shall be deemed to have been received on the date of despatch.
11. I/We warrant that all contracts entered into and to be entered into by the Customer with the Seller were or will be at the time of conclusion thereof within the scope, authority, power and objects of the Customer and that the signatory thereto on behalf of the Customer was duly authorised.
12. This Suretyship shall be continuing covering security notwithstanding the death or legal incapacity of the surety until the Customer's obligation to the Seller has been fulfilled.
13. This Suretyship shall be interpreted and governed in all respects by the laws of the Republic of South Africa.
14. The Seller shall have the right at its sole discretion to institute any action against me/us arising out of or in connection with this Suretyship in any Magistrates Court having jurisdiction notwithstanding that the cause of the action may exceed the jurisdiction of that court and I/we hereby consent to the jurisdiction of the Magistrates Court for this purpose. Nothing herein contained, however, shall preclude the Seller from electing to institute action in the appropriate High Court having jurisdiction.
15. Where this Suretyship is signed by the signatory hereto on behalf of a Seller, close corporation, trust or other corporate entity, then such signatory warrants his authority to do so.
16. I/We acknowledge that I/we have read and understood each term of the Terms and Conditions of Sale (Annexure A) and accept them as binding and acknowledge that the content reflects the true intention of both parties and that this agreement has been entered into for the benefit of both the Customer and the Seller.

**EXECUTING THE DEED OF SURETYSHIP**

THUS DONE AND SIGNED AT \_\_\_\_\_ ON THIS THE \_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_

**SURETY PROVIDER 1:** \_\_\_\_\_ (signature) \_\_\_\_\_ (full name)

Physical address and *domicilium citandi et executandi* \_\_\_\_\_

WITNESS: \_\_\_\_\_ (signature) \_\_\_\_\_ (full name)

THUS DONE AND SIGNED AT \_\_\_\_\_ ON THIS THE \_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_

**SURETY PROVIDER 2:** \_\_\_\_\_ (signature) \_\_\_\_\_ (full name)

Physical address and *domicilium citandi et executandi* \_\_\_\_\_

WITNESS: \_\_\_\_\_ (signature) \_\_\_\_\_ (full name)