MERCURY INTER-TRADE PTY LTD
Reg. No. 1985/003508/07

APPLICATION FOR CREDIT FACILITIES & SURETYSHIP

COMPANY DETAILS ("the Customer")

Registered Company Name			
Trading name			
Company type			
Registration Number		VAT Registration number	

TRADING TERMS

Credit limit applied for		Payment terms	

CONTACT DETAILS

Company phone number			
Primary contact person			
Telephone number		Email	
Billing contact person			
Telephone number		Email	

ADDRESS DETAILS

Postal address	
Physical address and chosen *domicilium citandi et executandi*	
Registered address	
Landlord contact details	

DISCLOSURE IN TERMS OF SECTION 4 OF THE NATIONAL CREDIT ACT, 2005 ("NCA") AND THE CONSUMER PROTECTION ACT, 2008 ("CPA") IN THE EVENT OF THE CUSTOMER BEING A JURISTIC ENTITY.

The Customer's asset value / annual turnover on the date of signing this application for credit:	**The Customer's asset value / annual turnover on the date of signing this agreement:**
Exceeds R1 million Yes/No If No, the NCA will be applicable to this agreement	Exceeds R2 million Yes/No If No, the CPA will be applicable to this agreement

BANKING DETAILS

Account holder name	
Bank name	
Branch name and code	
Account number and type	

Initial here	

TRADE REFERENCES

Trading name	Contact person	Contact details	Average spent p/m

Directors/Trustees or Partners/Sole Proprietor			
Full name	**Identity number**	**Address**	**Cell**

Shareholders/Members			
Full name	**Identity number**	**Address**	**Cell**

Financial records: Please attach:

1. Audited Financial statements for the last financial year. If the financial year end was more than 6 months ago, the Credit Insurer will require the recent 6 months Management Accounts (inclusive of Balance Sheet & Income Statement), in order to assess the application;
2. Income tax clearance certificate;
3. Company registration documents;
4. Copy of Signatory's and Directors' ID documents;
5. Close Corporation registration documents (All pages);
6. CIPC Documents (all pages);
7. VAT Certificate;
8. Bank letter;
9. Proof of residence of signatory and utility bill of company/close corporation (utilities account);
10. If the application is by a TRUST, a copy of the entire Trust Deed and letters of authority will also be required as well as proof of address.

11. ACCEPTABLE SIGNATORIES
    - 11.1 Sole Proprietor, the Owner
    - 11.2 Partnership Partners
    - 11.3 Close Corporation Members
    - 11.4 Private Company Directors
    - 10.5 If any person other than the above is signing, for and on behalf the Company, a copy of the Board Resolution letter giving that person authority to sign must be supplied. The Resolution should state their full name and ID number. A copy of their ID must also be attached.

12. A "Request for Credit Letter" on the Applicant's Company Letterhead, addressed to Mercury Inter-Trade asking for the amount of credit required and terms of payment requested.

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SIGNATURE PROVISIONS

I/We the undersigned, warrant that the information given above is true and correct and that I/we have the authority to represent the Customer. I/We have read and understood the Mercury Inter-Trade (Pty) Ltd's (hereinafter "Mercury Inter-Trade") terms and conditions, which terms and conditions will govern all transactions between the Customer and Mercury Inter-Trade ("the Supplier").

PAYMENT NOTICE

In the event that a notification is received purporting to communicate that the Supplier has changed its banking details (even if it purports to emanate from the Supplier), the Customer will be responsible for validating the correctness of the communication directly TELEPHONICALLY with the Supplier. Any payments made into a banking account other than the Supplier's bank account, will be at the sole risk of the Customer and will not be credited to the account of the Customer.

Upon approval of the Customer's application for credit or upon delivery to the Customer on credit, the attached trading terms and conditions will become applicable to every transaction between the Customer and the Supplier.

<table>
<tr><td colspan="2">Signed at ______________________on this the _______day of _______________________ 20______</td></tr>
<tr><td>As witnesses:

1. ______________________________

2. ______________________________</td><td>Full name of Customer's representative and title:

____

____

Signature: _______________________________
Duly authorised to sign on behalf of the Customer.</td></tr>
</table>

STANDARD TERMS AND CONDITIONS OF SALE

1. These are the terms and conditions of sale which apply to all goods sold and services rendered by the Supplier to the Customer. These terms and conditions shall take precedence over any terms and conditions which may be contained in the Customer's order or other documentation and may only be altered with the express written agreement of the Supplier.

NOTICE TO CUSTOMER WITH REGARD TO LIMITATION OF LIABILITY OF SUPPLIER, ASSUMPTION OF LIABILITY BY CUSTOMER, INDEMNIFICATION BY THE CUSTOMER AND ACKNOWLEDGEMENT OF THE FACT BY THE SUPPLIER:

To the extent that the Customer is a natural person, or a juristic person as defined in the Consumer Protection Act 68 of 2008 ("CPA") whose asset value and annual turnover is, at the time of the conclusion of this agreement, both less than the threshold determined by the Minister in Section 6 of the CPA (currently R 2 million) then the Customer's attention is drawn to the following specific conditions of Mercury Inter-Trade's Terms and Conditions of Trade as required by Section 49 of the CPA, **CLAUSES: 7.4, 8.3,8.8,8.15,9.2,11.1-11.3, 12.5, 13.1,13.2,17.2, 17.6.**

2. DEFINITIONS

2.1. "Customer": means the Applicant as reflected in the credit application;

2.2. "Goods": means any tangible object supplied by the Supplier to the Customer in terms hereof;

2.3. "The order": means the written and verbal orders received from the Customer to which these terms and conditions apply;

2.4. "Supplier": means Mercury Inter-Trade (Pty) Ltd (hereinafter "Mercury Inter-Trade"), Registration number: 1985/003508/07 and VAT number: 4780101467;

2.5. "These terms and conditions": mean these terms and conditions of sale, the contents of the Customer's orders and any written acceptance of the Customer's orders by the Supplier.

2.6. "FICA": means the Financial Intelligence Centre Act, 38 of 2001.

2.7. "NCA": means the National Credit Act, 34 of 2005;

2.8. "CPA": means the Consumer Protection Act 68 of 2008 and any promulgated regulations thereto and as amended from time to time;

2.9. "Price": means the Price agreed between the Supplier and the Customer for the goods, plus value added tax thereon.

3. GENERAL

3.1. All services supplied by the Supplier shall be supplied subject to these terms and conditions only. These terms may only be altered with the express prior written agreement of the Supplier.

3.2. Any conflicting statements or special terms contained in any acceptance order or other documentation issued by the Customer shall not be effective unless such conflicting statement or special terms have been expressly agreed to in writing by the Supplier.

3.3. The Customer undertakes to notify the Supplier forthwith in writing of any change of address or change in ownership of the Customer.

3.4. The decision whether or not to grant or withdraw credit to the Applicant is in the sole discretion of Mercury Inter-Trade.

3.5. A Credit Agreement between the Applicant and Mercury Inter-Trade will not have been concluded until Mercury Inter-Trade has communicated its acceptance of this Credit Application to the Customer, which acceptance (or rejection, as the case may be) shall be communicated in writing.

3.6. The credit limit granted to the Applicant will fall within the sole discretion of Mercury Inter-Trade and will be conditional upon any specific securities required by the credit insurers.

3.7. The Applicant warrants that its annual turnover and asset value exceeds the threshold (R1 000 000) set out in the regulations to the NCA and the NCA is therefore not applicable to this agreement.

3.8. The Applicant warrants that its annual turnover and asset value exceeds the threshold (R2 000 000) set out in the regulations to the CPA and the CPA is therefore not applicable to this agreement.

4. QUOTATIONS

4.1. Any quotation by the Supplier is open for acceptance for a period of 30 days from the date appearing on the quotation, unless revoked earlier in terms of written notice to the Customer or otherwise agreed to in writing between the Supplier and the Customer or the quotation provided specifies a different period than 30 days.

4.2. The Price quoted by the Supplier is based on the product specifications as provided by the Customer.
4.3. The Supplier reserves the right to amend the Price quoted should the product specification is different from the initial product specification provided by the Customer.

5. ORDERS

5.1. The client shall place orders in writing, detailing the type of product, quantity, delivery or collection date and time and Mercury Inter-Trade's reference, where appropriate.

5.2 Should the order be cancelled and cancellation involve the return of goods already delivered; the provisions of clause 8 shall apply *mutatis mutandis*.

5.3 A certificate by a director of the Supplier shall, *ipso facto*, be proof of the ancillary charges incurred as a result of the cancellation and shall be sufficient to discharge the burden of proof for the purposes of pleading and no further evidence relating thereto need to be adduced at any trial or application for judgement or at which a document is rendered as evidence.

5.4 The Supplier reserves the right to immediately and without notice suspend deliveries to any customer who is in arrears with payments due to the Supplier.

6. PRICES

6.1. The Supplier shall charge its usual, alternatively prevailing prices for services supplied and the information contained on the invoices shall be *prima facie* proof of the prices agreed between the parties and of the services supplied. The prices do not include taxes.

6.2. Should the Supplier agree to deliver the goods to the Customer, then, in addition to the purchase price payable for the goods, the Customer shall pay additionally to the Supplier all costs of delivery of the goods to the address stipulated in the Customer's order, including, without limiting the generality of the aforegoing, the cost of insurance, if applicable.

6.3. Prices may cover obligations on hand by Mercury Inter-trade like packaging and dispatch expenses, custom duties, taxes, freight charges in force at the time of delivery, and any other obligations, so that prices are delivered as agreed with the Customer.

6.4. Mercury Inter-Trade can amend the selling price of the Goods at any time. The selling price increase or decrease shall not affect orders being processed and previously approved by Mercury Inter-Trade. In the event that the Customer ordered Goods at an incorrect price, Mercury Inter-Trade shall communicate the correct price and, if appropriate, approve the order, provided the Customer expressly accepts it (the correct price) within the next two days.

6.5. Payment is to be made by bank transfer. Payment shall be made within 30 days from the Supplier's statement date.

6.6. Mercury Inter-Trade can stop or cancel any pending orders until the Customer effects payment or can request advance payment on any new order. In the event of total or partial non-payment on any order Mercury Inter-Trade shall be entitled to terminate the unpaid sale and any order underway and the Customer shall be obliged to return the goods to Mercury Inter-Trade in the same condition.

6.7. Unless otherwise agreed in writing, the Goods will be supplied at the ruling price on the date of dispatch from the factory, warehouse or branch.

6.8. Prices are subject to adjustment for any increases in the cost of Goods on and/or delivery that may arise between the date of quotation and the delivery of the Goods, arising directly or indirectly from any cause whatsoever, whether statutory or otherwise.

7. TERMS OF PAYMENT

7.1. Unless otherwise agreed in writing by the Supplier, the purchase price for the goods plus Vat together with the cost of delivery of the goods, if applicable, shall be paid by the Customer to the Supplier via EFT into a bank account to be nominated by the Supplier to the Customer in writing from time to time.

7.2. Payment of the purchase price for the goods or services shall be made within the credit terms as agreed between the parties in writing. Save as aforesaid, all payments will be made without set-off or deduction, and free of exchange. The terms of payment set out above, shall apply equally to price variation claims.

7.3. The Supplier will not make any exception to clause 6.1. in respect of invoices in dispute or under query. The balance of payment due should be settled as per these terms and once issues relating to invoices under dispute have been resolved, the amount overpaid will be refunded or credited to the Customer's account.

7.4. **The Supplier shall be entitled to charge interest on all overdue amounts, calculated daily and compounded monthly, at the rate of interest of 2% (two per cent) per month on the outstanding amount due and payable,**

in respect of any period during which payments are overdue, calculated from due date to date of payment and compounded monthly.

8. DELIVERY

8.1. If the Supplier agrees to deliver the goods to the Customer or its customers, the goods will be delivered by the Supplier or an external carrier, by road or otherwise, as the Supplier in its sole discretion may decide. If the goods are delivered by road, then delivery shall be deemed to have been made when the goods are off-loaded at the Customer's nominated premises, provided that when the carrier has been nominated by the Customer, delivery shall be deemed to have taken place at the time that the goods are delivered or collected by the Customer's nominated carrier. All risk in and to the goods shall pass to the Customer upon delivery. The Customer shall be obliged to accept the delivery of the goods at the date specified or requested by the Customer in writing in the order of the Customer referred to in clause 4 and which has been accepted by the Supplier.

8.2. Should the Customer or its Customers' fail to accept delivery on such date, the risk of loss or damage to the goods together with all and any expenses pursuant thereto, including but not limited to insurance, storage and further delivery charges shall be borne by the Customer and paid to Mercury Inter-Trade on request. When delivery is spread over a period, each separate delivery thereof shall be invoiced when dispatched. Each statement shall be treated as a separate account and payable in terms of clause 6.

8.3. **Where there is a shortage or excess in any goods delivered to the Customer or where the goods so delivered are of a different standard or condition than ordered, the Customer shall give written notice to the Supplier of such shortage within 24 (twenty-four) hours of delivery.**

8.4. Mercury Inter-Trade shall not accept any claim made after the period set in the previous clause. If the Customer's claim is justified and sent within the stipulated period, Mercury Inter-Trade's obligation shall be limited to the replacement of the Goods. In no case shall Mercury Inter-Trade be made liable for any damages suffered by the Customer, derived from the delay or failure to deliver the Goods or in delivering a different grade or type of goods than ordered, specifically losses as a result of loss of profit, production or margin losses.

8.5. Should there be a delay in the receipt or collection of Goods on the part of the Customer, Mercury Inter-Trade shall store the Goods at the expense and risk of the Customer, in its own storage facility or in that of third parties.

8.6. The Supplier shall endeavour to deliver the goods at the earliest possible time but in no instance can the Supplier accept liability for any loss or damage arising from the late delivery of the goods and time shall not be of the essence of the contract. No liability shall attach to the Supplier as a result of the failure to deliver if such failure is due to circumstances beyond the Supplier's control.

8.7. Mercury Inter-Trade will make its best endeavours to deliver orders within the delivery times agreed with the Customer, provided that resources and production capacity allow for it. In the event that Mercury Inter-Trade only effect partial dispatch or delivery of the Goods, only Goods delivered shall be invoiced.

8.8. **The Customer's, its employee's, agent's, representative's or courier's signature on the TAX Invoice or Proof of delivery document upon receipt of goods will be *prima facie* proof of delivery in a court of law that products are received in good order and correct quantities were supplied and delivered.**

8.9. Delivery of Goods will take place between the hours of 08h00 to 17h00 Monday to Friday, excluding public holidays.

8.10. Deliveries outside normal working hours could be subject to an extra charge unless agreed to by Parties in writing.

8.11. The Supplier shall endeavour to effect delivery of the Goods on the agreed date and time to the Customer at the Customer's premises or the Customer's nominated delivery site address, provided that the Supplier receives a minimum of 48 hours' notice of the intended delivery date if the agreed date has changed or if no date has been previously agreed.

8.12. The Supplier shall not be responsible for delays in delivery or non-delivery of Goods whatsoever due to causes beyond the Supplier's control (e.g. adverse weather conditions, road congestion, labour-related actions, shortage of stock, delays on the part of subcontracted transport), Nor will the Supplier accept liability for damages or for any loss the Customer may suffer pursuant thereto, of whatsoever nature arising from the late delivery or non-delivery of Goods.

8.13. Subject to the provisions of clause 8.12 the Customer shall not be entitled to cancel or repudiate any order/s and/or purchase/s and/or refuse delivery and/or claim damages and/or set-off payment from the Supplier due to late and/or defective delivery. The Supplier's responsibility shall be to notify the Customer expeditiously of the events giving rise to the delay in delivery or non-delivery in circumstances where such delay of delivery or non-delivery is expected to extend beyond one day after the time/date of the agreed delivery schedule.

8.14. The provisions of clause 8.13 shall not apply to a Consumer.

8.15. **Given the nature of Plastic Manufacturing, the customer accepts that the volume produced and delivered may vary by up to 10% from the quantity stipulated and accepted on the order for each line item. Any order against the quantity delivered Falls within this 10% tolerance shall be deemed to have been fully met.**

8.16. The Customer accepts responsibility and liability for whatever means or method it chooses to adopt for the handling, placing, storage and consolidation of the Goods after discharge from the delivery vehicle. Furthermore, the Customer accepts responsibility and liability for any lack of quality, fault or failure of the Goods resulting from such handling, placing, storage or Consolidation of the Goods.

8.17. The Customer shall ensure that routes to and from the points of delivery of Goods on site are safe and suitable for the delivery vehicles, and that full and free access is available for the delivery vehicles of the Supplier or its transport providers.

8.18. The Customer shall ensure that the delivery vehicles of the Supplier or its transport Providers offload the Goods at the Customer's desired point. In the event of the Goods being offloaded at an incorrect point due to a fault on the part of the Customer, the Supplier shall not be liable for any loss arising there from, whether direct, consequential, special or general.

8.19. The Parties hereby indemnify each other, their agents and employees and holds them harmless against any loss, damage or liability sustained or incurred by either party, agents or Employees arising from any cause whatsoever while on the Customer's premises, provided the loss, damage liability was not occasioned by negligence of the other party.

8.20. The Customer, its employees or agents shall sign the Supplier's delivery note and this Constitute prima facie proof
(sufficient evidence) that the type and quantity of Goods recorded thereon was delivered and accepted by the Customer. In the event of a dispute regarding the delivery of the Goods and/or the quantity or quality, the onus of proving that the Goods was not delivered and/or that the quantity or quality thereof was not in accordance with the Customer's order, shall rest with the Customer.

8.21. Should the Customer decide to utilise its own transport vehicles and or any third party, it shall not hold the Supplier liable for any damages that result as a result of the use of such transport.

8.22. If the Supplier has any reason in its absolute discretion to be concerned about the creditworthiness of the Customer, the Supplier shall have the right to suspend and/or withhold deliveries of Goods to the Customer.

8.23. Subject to any provision to the contrary herein contained, the Customer shall be entitled to cancel the order or return the Goods but the Supplier shall be entitled to charge a cancellation fee or a reasonable fee for the return of the Goods.

9. RETURN OF GOODS

9.1. Goods are not sold with warranties and guarantees of specifications from the Supplier.

9.2. **The Customer acknowledges that should goods be returned for credit or refund, the goods may be accepted but subject to a 15% handling and administrative charge of the invoice value, plus vat, which shall immediately be debited to the Customer, the Customer shall also arrange delivery of the goods to be returned to the Supplier at its cost.**

9.3. All payments and return of goods to representatives or agents of the Supplier are entirely at the risk of the Customer.

9.4. Goods should be returned directly to the Supplier's primary place of business from where the goods were collected or the Supplier's closest depot in the exact same condition and volume as when collected, it will fall within the Supplier's sole discretion whether or not to test the returned goods and whether to accept returned goods.

9.5. If the Supplier is required to collect the item the transport costs will be for the Customer's account.

10. VARIATIONS

The Supplier shall not be obliged to accept or act upon any changes, modifications or additions to the original Customer's instructions or if such changes, modifications or alterations were given subsequent to the Supplier's acceptance of the Customer's order. No variations of these terms and conditions or additions hereto shall be of any force or effect unless reduced to writing and signed by both the Supplier and the Customer.

11. LIABILITY

11.1. **The Supplier shall not be liable to the Customer for any damages including, but not limited to, special, indirect, consequential loss and/or damages or loss of profits arising from the performance or non-performance, delict, breach of warranty, negligence or otherwise by the Supplier of its obligations in terms of these terms and conditions. This exclusion of liability shall relate to claims for breach of contract as well as for alleged negligence on the part of the Supplier.**

11.2. **The Customer is responsible for damages derived from inappropriate use, storing or handling of goods in particular, when instructions or warnings issued by Mercury Inter-Trade have not been complied with.**

11.3. **The Customer agrees that the Supplier shall not incur any liability under the Occupational Health & Safety Act No. 85 of 1993 (specifically Section 10 of that Act).**

11.4. The Customer acknowledges that in the event of it being a proprietorship, partnership, a company or a close corporation and converting from a proprietorship, partnership, a company to close corporation or from a

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proprietorship, partnership or close corporation to a company at any time hereafter, as the case may be, any surety / signatory in terms of this application for credit shall nevertheless still remain bound as surety.

11.5. The goods shall be regarded as having been sold "voetstoots" without warranty against latent defects therein. No liability whatsoever shall arise furthermore on the part of the Supplier for any representation or warranty made or alleged to have been made at any time in respect of the goods sold by the Supplier to the Customer.

11.6. The Customer hereby indemnifies the Supplier for any loss or damage.

12. BENEFIT, RISK AND OWNERSHIP

12.1. The risk of damage to the goods shall vest with the Customer while the goods are in possession of the Customer, if the goods are damaged whilst in possession of the Customer, the Customer shall be liable to pay the replacement costs in the amount of the purchase price. The risk passes to the Customer upon collecting the goods from the Supplier or delivery of the goods to the Customer's premises and the risk passes to the Supplier upon return or receipt of the goods at the Supplier's premises unless otherwise agreed between the parties when insurance terms are agreed.

12.2. Notwithstanding the delivery of any Goods to the Customer, ownership of the Goods shall not pass until the Supplier has received payment in full in respect of the Price of such Goods. In the event of payment not being timeously effected, the Supplier reserves the right to recover possession of such Goods immediately, without notice and without the necessity to first cancel the Agreement of sale in respect of such Goods.

12.3. Risk in the Goods shall pass to the Customer at the point of delivery of the Goods (i.e. where signed acceptance of the goods takes place, or in the case of collection of the Goods, on despatch from the Supplier's premises).

12.4. Where the Customer has appointed its own transport provider to effect delivery of the goods, the Supplier's responsibility for providing proof of delivery of Goods will be limited to proving that the Goods were accepted by a person purporting to be the transport provider. In this case, risk shall pass to the Customer on delivery of the goods to the transport provider.

12.5. **Retention of Title**

12.5.1The Supplier shall, in its sole discretion, without notice to the Customer be entitled to take possession of any goods which have not been paid for and in respect of which payment is overdue, in which event the Customer shall be entitled to a credit in respect of the goods so returned being the price at which the goods are sold or the value thereof as determined by the Customer. The Customer hereby waives any right it may have for a spoliation order against the Supplier in the event that the Supplier takes possession of any goods until title to (the Goods) passes, the Customer shall:

12.5.1.2 give the Supplier the right to enter the Customer's premises to recover the goods;

12.5.1.3 oblige the Customer to store the goods separately from those belonging to the Customer or third parties;

12.5.1.4 oblige the Customer to mark the goods as belonging to the Supplier;

12.5.1.5 enable the Supplier to check that goods are appropriately marked and stored;

12.5.1.6 and specify the trigger events enabling the Supplier to enforce the retention of title clause.

13. BREACH

13.1. **In the event of the Customer committing any breach of these terms and conditions including but not limited to the failure to make payment of the purchase price on the due date, the Supplier shall be entitled forthwith to enforce clause 12.5. The exercise of this right shall not preclude the Supplier from its right to claim damages from the Customer occasioned by its breach. The Supplier shall, in the alternative, be entitled to enforce the provisions of these terms and conditions and claim payment of the full amount due by the Customer, any instalments of the price falling due in the future to become due and payable immediately.**

13.2. **In such event the Supplier shall at its discretion, be entitled to charge interest on overdue amounts as provided in clause 7.4 above.**

13.3. If the Customer breaches these terms and conditions and the Supplier elects not to cancel the agreement of sale, the Supplier shall be entitled to suspend performance of any of its obligations until the Customer has complied with its obligations. Any relaxation, leniency or indulgence which the Supplier may extend to the Customer shall not in any way constitute a waiver of the Supplier's rights in terms hereof.

13.4. Any condonation of any breach of any of the provisions hereof or other act of relaxation, indulgence or grace on the part of the Supplier shall not in any way operate as or be deemed to be a waiver by the Supplier of any rights under this contract or be construed as a novation thereof.

14. WARRANTY

This clause shall not apply to a Consumer:

14.1. The Supplier warrants that the Goods delivered complies with the details shown on the delivery note or invoice and complies with the Supplier's standard specification for such Goods.

14.2. The onus shall be on the Customer to ensure by examination before use that the Goods delivered is within specification.

14.3. Liability for breach of the warranty set out in clauses 22.1 and 22.2 shall only arise where the customer has established, in addition to any other proof required by law, that:

14.3.1. the Customer has inspected the Goods before use;

14.3.2. the Goods has not been worked or processed since delivery;

14.3.3. the Supplier was afforded every reasonable opportunity to inspect the Goods or any sample taken there from, and to submit the Goods or sample to its own examination and testing;

14.3.4. the Customer notified the Supplier in verbally within 48 hours of its tests having revealed an alleged non- conformity with specification, provided that written notification shall be given by the Customer within 7 days from date of delivery;

14.3.5. all records of handling, sampling, and testing and the interpretation of any tests were made available to the Supplier for inspection;

14.3.6. the Goods was not misused, neglected, contaminated, improperly handled or altered in any way and that no foreign material was added to the Goods.

14.4. Save as set out in 22.5 below, the Supplier shall not under any circumstances be liable for any loss or damage, whether special or general, direct or consequential, arising out of the sale of the goods by the Supplier to the Customer, or from any other cause whatsoever. The Customer hereby indemnifies the Supplier against all claims of whatsoever nature that may be made against the Supplier arising from the use by any person of the Goods supplied by the Supplier.

14.5. The Supplier's sole liability in respect of defective Goods shall, in the Supplier's sole discretion, be to replace such Goods or to refund to the Customer the Price of such defective Goods.

15. WARRANTIES FOR A CONSUMER

This clause only applies to a Consumer.

15.1. The Supplier warrants that the Goods delivered complies with the details shown on the delivery note or invoice and complies with the Supplier's standard specification for such goods.

15.2. Liability for breach of the warranty set out in clause 15.1 shall only arise where the consumer has established, in addition to any other proof required by law that:

15.2.1. the Customer inspected the goods before use;

15.2.2. the goods have not been worked or processed since delivery;

15.2.3. the goods were not misused, neglected, contaminated, improperly handled, stored or altered in any way contrary to instructions and that no foreign material was added to the goods after leaving the control of the Supplier.

15.3. The Consumer warrants that it is a consumer as defined in the CPA;

15.4. The Consumer shall inform the Supplier immediately when its status as a Consumer has changed. When the status of a Consumer has changed then the provisions applicable to a Consumer in terms of these terms and conditions shall no longer apply to the Consumer.

15.5. The Supplier shall be entitled to conduct its own investigations to verify whether or not a Consumer is still a Consumer. In this regard the Consumer shall on request provide the Supplier with all the relevant information, including audited financial statements, to enable the Supplier to verify the status of the Consumer.

16. RESOLUTION OF TECHNICAL DISPUTES

16.1. In the event of a dispute arising between the Supplier and the Customer regarding the quality, quantity or performance of the Goods supplied by the Supplier, such dispute shall initially be referred to the Supplier's local representative and the Customer's manager, who shall, meet and use commercially reasonable endeavours to resolve such dispute.

16.2. If they are unable to resolve the dispute then the Supplier and the Customer shall each appoint a representative with appropriate knowledge and standing, who shall likewise meet within 5 working days after such referral and use commercially reasonable endeavours to resolve the dispute.

16.3. If the dispute still remains unresolved, then the parties may refer the matter to:

16.3.1. An independent expert appointed by; or

16.3.2. Arbitration in accordance with the Rules of the Arbitration Foundation of Southern Africa proceed directly to the jurisdiction of the courts in terms of Clause 10; or

16.4. Neither the Supplier nor the Customer may resort to the jurisdiction of the courts in terms of Clause 10 without first following the procedure in Clauses 24.1, 24.2 and 24.3, except to obtain urgent relief from the courts.

16.5. In the event of a dispute or complaint by a Consumer who purchased the Goods from a customer who is a retailer or distributor regarding the quality, quantity or performance of the goods supplied, the Customer must take all reasonable steps to assist the Consumer as required in terms of the CPA. The Customer shall advise the Supplier of the complaint and all steps taken to resolve the dispute or complaint.

16.6. Should the Customer not succeed in resolving the dispute or complaint then the Customer shall advise the Supplier accordingly and the Supplier shall use reasonable endeavours to resolve the complaint as soon as possible in accordance with the provisions of clauses 24.1 and 24.2.

16.7. In the event of a dispute or complaint by a Consumer, who purchased the Goods directly from the Supplier, regarding the quality, quantity or performance of the Goods supplied, the Supplier shall use reasonable endeavours to resolve the dispute or complaint as soon as possible in accordance with the provisions of clauses 16.1 and 16.2.

16.8. Despite the above, the Consumer is not prevented from referring any unresolved dispute between the Supplier and the Consumer to the National Consumer Commission established under the CPA.

16.9. Nothing in this clause prevents the Customer to take legal action against the Supplier.

17. DISPUTES

17.1. In the event of the Supplier or its agents instructing attorneys to collect or institute legal action against the Customer for an amount due and owing to the Supplier, or in respect of any other breach of this agreement, the Customer agrees to pay all legal costs on the scale as between attorney and own client, including that of an attorney and counsel, incurred by the Supplier. The Customer will also be liable for any sheriff, tracing, collection or valuation fees incurred as well as for any other reasonable costs incurred.

17.2. **If the Customer should fail to object to any item appearing on the Suppliers' statement of account within 14 (fourteen) days of date of dispatch of the statements, the amounts shall be deemed to be accepted by the Customer and payable as per the terms agreed.**

17.3. The Customer agrees that the amount due and payable to the Supplier may be determined and proven by a certificate issued by the Supplier or one of its agents and signed on its behalf by anyone purporting to be a duly authorised person, which authority need not be proven. Such a certificate shall be binding and shall be *prima facie* proof of the indebtedness of the Customer.

17.4. In the event of the Supplier or its agent instructing a Debt Collector or Attorney to collect from the Customer an amount owing to the Supplier, the Customer agrees to pay collection commission in accordance with the terms of the Debt Collector's Act (Act. 114 of 1998).

17.5. The Supplier 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 and deed of suretyship to any third party without prior notice to the Customer.

17.6. **The Customer undertakes to notify the Supplier in writing within 7 (seven) days of any change in ownership of the Customer's business, or should the Customer be a company or Close Corporation, of its share transactions whereby the majority shareholding or membership interest is affected, failing which notice the entire balance owing, whether due or not, will become due and payable immediately by the Customer. In addition to the aforegoing, the Customer acknowledges that the full outstanding amount, whether due or not, will immediately be deemed to be forthwith payable by the Customer to the Supplier.**

18. HEADINGS

The headings to the clauses in these conditions are for reference purposes only and shall not affect their interpretation.

19. SUSPENSION OR CANCELLATION OF DELIVERY

19.1. The Supplier reserves the right to suspend, delay or cancel the delivery of some or all of the goods or to require advance payment for the goods or services if: The Customer shows any signs of insolvency or is unable to pay its debts, or seeks to effect any compromise with any of its creditors or compound any of its debts; or the Customer is placed under an order of sequestration, business rescue or liquidation, whether such order be provisional or final; or the Customer is the subject of any resolution passed to enable it to be wound-up or dissolved; or any judgement is given against it in any court of law and, if appealable, is not appealed against within the period allowed for the lodging of such an appeal or, if not subject to an appeal, remains unsatisfied for a period of 10 (ten) days; or the Customer is in breach of any of its obligations to the Supplier.

19.2. Any suspension, delay or cancellation as a result of any of the aforegoing events shall not affect any other right which the Supplier may have against the Customer based on these terms and conditions of sale or otherwise.

20. INABILITY TO SUPPLY OR DELIVER

If the Supplier cannot supply or deliver timeously, some or all of the goods for any reason beyond its control, including but not limited to lack of instruction from the Customer, stock shortage, industrial dispute or break-down, production delays, government action, state of war, riot, or civil disturbance, natural pandemics, disasters

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or acts of God, the Supplier may, in its discretion, cancel the whole or any part of the agreement of sale forthwith. In the event of such cancellation the Supplier shall not be liable for any loss whatsoever (including any consequential loss of profits, special damages, or any indirect loss) thereby caused.

21. GOVERNING LAW

21.1. These terms and conditions shall be governed by and interpreted in accordance with the laws of the Republic of South Africa.

21.2. The Customer consents to the jurisdiction of the Magistrates' Court, notwithstanding that the claim amount may exceed the normal jurisdiction of the Magistrates' Court.

21.3. The Customer nominates as its addresses for service of all notices or processes arising from this agreement as the address reflected on the face hereof under the heading "Registered office/Physical address", for service upon the Customer of all notices and processes in connection with any claim for any sum due to the Supplier or any ceded claim. The Customer also agrees to accept service of summons or any court application by email which email address is stated hereinabove.

21.4. In respect of Customers domiciled outside the borders of South Africa the Supplier reserves the right to require additional guarantees for payment.

21.5. Should the Customer be domiciled outside the Republic of South Africa, this Agreement and all contracts of sale between the Customer and the Supplier shall be governed and interpreted in accordance with the laws of the Republic of South Africa and the South African Courts shall have sole jurisdiction in respect thereof.

21.6. The contractual relationship between Mercury Inter-Trade and the Customer, shall be governed exclusively by South African laws.

21.7. The parties agree to exclude the possibility of litigation in any jurisdiction other than specified in this agreement, however if the Customer fails to meet payment obligations derived from the current standard terms and conditions Mercury Inter-Trade can institute legal action within its discretion at the court of the Customer's place of business.

22. CONSENT

The Customer specifically consents that the Supplier may carry out a credit enquiry in respect of the Customer; may access a Credit Bureau's data base before granting any credit to the Customer; may, where credit is granted, transmit details to a Credit Bureau of how the Customer has performed in meeting with its obligations under the account, and share such information with other Creditors or Credit Bureaus or Financiers or Credit Insurers for the purposes of assessing further applications for credit by the Customer (and its members, directors, or partners as the case may be) and for occasional debt tracing, debt collection and fraud prevention purposes; if credit is granted in favour of the Customer and the Customer fails to meet its financial commitments to the Supplier, the Supplier may record the Customer's default with a Credit Bureau; may refer information relating to the Customer's credit performance to a Credit Bureau for banking and credit assessment, statistical analysis, and credit scoring purposes and use such information to identify products (including those supplied by third parties) which may be relevant to the Customer; may record the existence of a Customer's account with the Supplier at a Credit Bureau(s).

23. BUSINESS RESCUE

The Customer warrants that, as at the signature date of this application, it is duly registered, in business, its annual returns are up to date and it is not in business rescue in terms of Chapter 6 of the Companies Act 2008 ("business rescue") and has not made any application to be placed under business rescue or in liquidation. Furthermore, the Customer warrants that it does not have any intention of making application for business rescue and is not aware of any current or pending circumstances relating to the business that could give rise to an application for business rescue or liquidation. The Customer agrees that in the event that the Customer is placed under business rescue the conclusion of any compromise of the debt under such approved business rescue plan will not reduce the liability of any person or entity that has signed surety for the debts due by the Customer to the Supplier and such surety shall remain liable for the full amount of the debt that was due before such compromise, notwithstanding that it is acknowledged, agreed and understood by the Customer that the surety may be entitled to have recourse against the Customer for amounts paid by the surety to Mercury Inter-Trade pursuant to such suretyship.

24. CESSION

24.1. The Customer does hereby irrevocably and *in rem suam* cede, pledge, assign, transfer and make over unto and in favour of the Supplier, all of its right, title, interest, claim and demand in and to all claims/debts/book debts of whatsoever nature and description and howsoever arising which the Customer may now or at any time hereafter have against all and any persons, companies corporations, firms, partnerships, associations, syndicates and other legal personae whomsoever ("The Customer's debtors") without exception as a continuing covering security for the due payment of every sum of money which may now or at any time hereafter be or become owing by the Customer to the Supplier from whatsoever cause or obligation howsoever arising which the Customer may be or become bound to perform in favour of the Supplier.

24.2. Should it transpire that the Customer at any time entered into prior deeds of cession or otherwise disposed of any of the right, title and interest in and to any of the debts which will from time to time be subject to this cession, then this cession shall operate as a cession of all the Customer's reversionary rights. Notwithstanding the terms of the aforegoing cession, the Customer shall be entitled to institute action against any of its debtors provided that all sums of money which the Customer collects from its debtors shall be collected on the Supplier's behalf and provided further that the Supplier shall at any time be entitled to terminate the Customer's right to collect such monies/debts.

24.3. The Customer agrees that the Supplier shall be entitled at any time or times hereafter to give notice of this cession to all or any of the Customer's debtors.

24.4. The Customer further agrees that the Supplier shall, at any time, be entitled to inspect the Customer's books or records and in additional shall be entitled to take possession of such books and records (of whatsoever nature) to give effect to the terms of this cession.

I, the undersigned (Name of the Signatory) ____

(Identity Number) _____________________________

in my capacity as Director of the Customer____(name of Customer)

hereby agree to the Standard Conditions of Sale as stipulated herewith.

Thus done and signed at ____________________________for and on behalf of the Customer duly authorised, on

Date _________________________ Authorised signature__________________________________

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DEED OF SURETYSHIP
MERCURY INTER-TRADE (PTY) LTD
(“the Supplier”)

I, ____(SURETY), the undersigned, do hereby irrevocably bind myself as surety and co-principal debtor in solidum and in favour of Mercury Inter-Trade (Pty) Ltd hereinafter “Mercury Inter-Trade” or “the Supplier”, its successors in title and assigns, for the due fulfilment by ____(THE CUSTOMER) , of all of its obligations to Mercury Inter-Trade, its successors in title and assigns, howsoever arising, whether already incurred or which may from time to time hereafter be incurred.

1. This is a continuing suretyship, and the surety’s liability hereunder shall not be affected by any indulgence granted to the Customer by Mercury Inter-Trade and shall remain of full force and effect notwithstanding any fluctuation in, or temporary extinction of the Customer’s indebtedness to the Supplier. It may not be withdrawn, revoked or cancelled by the Customer without the Supplier's prior written consent.

2. Any consensual cancellation or withdrawal of this suretyship by the Customer and the Supplier shall only be valid and effective if reduced to writing and signed by both parties thereto.

3. The surety hereby chooses his/her *domicilium citandi et executandi* address for all purposes at the address set out under his/her signature hereunder.

4. The surety agrees to pay all legal costs on the scale as between attorney and client in the event that Mercury Inter-Trade, its successors in title and assigns having to enforce the terms of this Suretyship.

5. This Suretyship is not conditional upon the happening of any event, including without limitation, either the signature of any other surety or the granting of any credit facilities.

6. The terms and conditions of the Credit Agreement shall apply *mutatis mutandis* (in precisely the same manner), to the Suretyship.

7. The Sureties further waive the benefits of excussion and division (by renouncing these benefits, the Supplier becomes entitled to sue any one Surety for the full amount owing without first proceeding against or suing the Customer or any other Surety) and of the legal exception *non numeratae pecuniae* (by renouncing this benefit the Surety is precluded from raising the defence that no money or equivalent thereof has passed between the Customer and the Supplier) and *non-causa debiti* (by renouncing this benefit a Surety is precluded from raising the defence that there was no cause of action or reason for the Customer’s indebtedness to the Supplier) and acknowledges himself to be fully acquainted with the meaning of these terms.

8. Any admission of liability by the Customer shall be binding upon the surety.

9. A certificate under the hand of any director or manager of the Supplier (whose appointment need not be proved) as to the existence and the amount of the Customer's indebtedness and the surety's indebtedness to the Supplier at any time, as to the fact that such amount is due and payable, the amount of *mora* interest accrued thereon and as to any other fact, matter or thing relating to the Customer's indebtedness to the Supplier and the surety's

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indebtedness to the Supplier, shall be sufficient and satisfactory proof of the contents and correctness thereof for the purpose of provisional sentence, summary judgment or any other court proceedings of whatsoever nature against the Customer and/or the surety in any competent court and shall be valid as a liquid document for such purpose.

10. The surety(ies) hereby guarantee in favour of and on behalf of the Supplier, the payment of all and / or any debts which are the subject matter of this deed of suretyship.

11. The surety(ies) hereby furnish a guarantee to the Supplier as a principal obligation and assume liability for such principal obligation.

12. The surety(ies) guarantee payment to the Supplier of any amount which may still be owing to the Supplier subsequent to the Supplier having received any amount from the Customer by way of reduction of the Supplier's claim against the Customer, whether having received the amount by way of compromise, settlement or pursuant to any business rescue plan as provided for in the Companies Act No.71 of 2008, irrespective of whether the plan provides for the release of the Customer, or under any circumstance of whatsoever nature.

The surety(ies) irrevocably agree and undertake that the approval of any business rescue plan in terms the Companies Act, 2008, will neither compromise nor discharge the amount due by the surety(ies) to Mercury Inter-Trade, or any part thereof and the surety(ies) agree that they shall remain liable to Mercury Inter-Trade for the full amount of the debt owed by the Customer to Mercury Inter-Trade prior to such approval of the business rescue plan.

SURETY 1

Signed at ______________________on this the _______day of _______________________ 20__

Full Names ____

ID/Passport No: ____

Domicile (*Physical address of surety required under domicile)*

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____

Signature for Surety 1: ______________________________

Witnesses: 1. _________________________________ Name:______________ ID: _______________

2. _________________________________ Name:______________ ID: _______________

Signed at ______________________on this the _______day of _______________________ 20__

SURETY 2

Full Names ____

ID/Passport No: ____

Domicile (*Physical address of surety required under domicile)*

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____

Signature for Surety 2: ______________________________

Witnesses: 1. ________________________________ Name:_____________ ID: _______________

2. ________________________________ Name:_____________ ID: _______________

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