

STEELEC AGENCIES CC

DISTRIBUTORS OF ELECTRICAL & PAINT PRODUCTS

Durban

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Westmead, 3610,

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Queensburgh 4070

Telephone +27 31 700 2360
Attention: SHANE

Fax Number +27 31 700 2350
E-mail: accounts@steelec.co.za

CREDIT APPLICATION FORM

				Account Number	
Trading Name				Business Format	
Registered Company Name				Sole Proprietor [] Partnership [] Close Corp [] (Pty) Ltd [] Unlisted Ltd [] Listed Ltd []	
Registration Number / /	Date Established / /	Holding Company		VAT Number (Attach copy)	
Postal Address		Street Address		Company's Regd. Address	
				Rented [] Owned []	
Telephone Number		Facsimile Number		Web Page	
Auditors		Auditor Telephone	Landlord	Landlord Telephone	
Auditors Address			Landlord's Address		

Directors / Partners / Owner

Name	Initial	%	ID Number	Home Address	Home Telephone

Key Contact Personnel

Title	Last Name	First Name	Position	Direct Telephone	Facsimile Number	E-Mail Address
			Fin Director			
			Accountant			
			Buyer			

Banking Information

Bankers	Branch	Branch Code	Account Number	Account Type	Payment Method
				Current <input type="radio"/> Commercial <input type="radio"/> Savings <input type="radio"/> Foreign <input type="radio"/>	Cheque <input type="radio"/> EFT <input type="radio"/> L/C <input type="radio"/> Draft <input type="radio"/>
				Current <input type="radio"/> Commercial <input type="radio"/> Savings <input type="radio"/> Foreign <input type="radio"/>	Cheque <input type="radio"/> EFT <input type="radio"/> L/C <input type="radio"/> Draft <input type="radio"/>

Trade References

Company Name	Contact Person	Telephone Number	Credit Limit	Terms	Comment (Office Use only)

Terms and Conditions

<ol style="list-style-type: none"> 1. The above information is true and correct. 2. Ownership of the goods supplied will only pass to the purchaser on receipt of payment in full. 3. No personal cheques will be accepted in settlement of purchases. 4. The standard payment terms are Cash On Delivery unless otherwise agreed in writing. 5. Unless a definite price has been expressly confirmed in writing for the execution of an order, our list price ruling at the date of delivery shall apply. 6. All Orders are accepted subject to availability of stock. Where part delivery is made, payments for each part of an order so executed shall become due and payable within the agreed credit terms unless otherwise agreed in writing. 7. The risk in and to the goods purchased shall pass to the Purchaser on delivery thereof, notwithstanding delivery of the goods ownership shall remain vested in the Seller and shall not pass to the Purchaser until payment has been made in full. 8. The Purchaser nominates their business address as recorded in this application as their chosen domicilium citandi et executandi for service of all notices and processes in connection with any claim arising out of the granting of credit facilities to the Purchaser. 9. In the event of the Purchaser failing to make payment of any amount on due date the full amount in respect of all goods sold and delivered by Steelec Agencies to the Purchaser shall immediately become due, owing and payable. 10. Interest will be charged on all overdue balances at 2% over the ruling Prime Overdraft Rate charged by FNB. Should the aforesaid interest not be paid in full, same shall be added to the principle sum and the total sum shall become the principal debt, which shall bear interest in the same manner as set out above. 11. The Purchaser shall be liable for all legal costs calculated on the Attorney and own client scale and any collection commission in connection with any legal proceedings instituted by Steelec Agencies against the Purchaser in connection with this agreement. 12. The Purchaser, by their signature hereto, consent to the jurisdiction of the Magistrate Court having jurisdiction by virtue of Section 28 of the Magistrates Court Act, for the determination of any claim arising from this agreement which would otherwise be beyond jurisdiction of the Magistrate Court due to the amount of the claim. However, Steelec Agencies reserves the right to take any such legal proceedings in any other court of competent jurisdiction. 13. All returns are subject to a 15% handling fee. 14. No goods will be invoiced on a demo basis, unless special arrangements have been made with Steelec Agencies. 15. Steelec Agencies shall not be liable for any consequential loss suffered by the purchaser in respect of delays in delivery, defective goods and from any other cause howsoever arising. 16. Steelec Agencies shall not deliver any goods to the Purchaser whilst their account is in arrears or where the Purchaser commits an act of insolvency, or is placed under provisional or final judicial management, liquidation or sequestration. 17. Steelec Agencies shall not, under any circumstances, be liable for any defects, shortages in delivery or failure of the goods to comply with the Purchaser's specifications. It is the purchaser's responsibility to verify that the goods collected and/or received correspond with their original order and the invoice. No claims will be entertained after collection or receipt of goods. 18. In the event of an order being given to Steelec Agencies on the Purchaser's special order form, the Purchaser shall be stopped from denying the validity of such order, notwithstanding the fact that such order may be given or signed by a person not authorized by the Purchaser. 19. No extension of time or any other relaxation or indulgence granted by Steelec Agencies to the Purchaser shall operate as or be deemed to be a waiver by Steelec Agencies of its rights under this agreement, or a novation of any of the terms and conditions of this agreement. 20. In the event of the Purchaser committing any breach of the terms of this 	<p>agreement, all of which are deemed to be material, Steelec Agencies, at its sole option and without prejudice to any of its rights in law, shall be entitled to either take possession of the goods sold and delivered to the Purchaser, in respect of which ownership has not been passed and/or demand immediate payment of all monies outstanding notwithstanding that payment in respect of any goods might not then be due and payable.</p> <ol style="list-style-type: none"> 21. A Delivery Note and/or invoice signed on behalf of the Purchaser shall constitute prime facie proof that the goods have been delivered to and received by the Purchaser in good condition, whether signed by the Purchaser, an employee, agent or representative of the Purchaser. 22. Steelec Agencies may alter or withdraw, at any time, this credit facility, provided prior notice of such change is given in writing to the Purchaser. 23. A sworn statement before a Commissioner of Oaths by a Director or Manager of Steelec Agencies shall constitute prima facia proof of the indebtedness and the amount thereof owing by the Purchaser to Steelec Agencies at any time and shall, for all purposes, be binding on the Purchaser. 24. No amendments, alterations, variations, additions and/or cancellation of these terms and conditions, whether consensual, unilateral and/or bilateral shall be of any force and effect unless reduced to writing and signed by both parties. 25. These terms and conditions shall apply to all orders for the purchase of goods placed on Steelec Agencies by the Purchaser or their agents or representatives, whether by telephone, fax, telegram or official order. 26. The Purchaser warrants that the information contained in this application is true and correct and undertakes to immediately notify Steelec Agencies in writing of any change of details given including change of ownership, name and/or address. Such change shall in no way derogate from the Purchaser's liability to Steelec Agencies. 27. Credit will only be passed on goods if returned within seven (7) days of receipt to the Steelec Agencies Dispatch Department and accompanied by the original invoice, original packaging, all manuals, accessories, cables etc. as originally supplied by Steelec Agencies. 28. Goods damaged in any way will not be considered for credit or exchange. 29. A duly signed <u>Steelec Agencies Goods Returned Note</u> is the only proof acceptable by Steelec Agencies that goods were in fact returned. 30. Steelec Agencies Sales Personnel are NOT authorised to accept goods for return to Steelec Agencies cc. 31. The Purchaser hereby irrevocably and in ram suam cedes, pledges, assigns, transfers and makes over unto and in favour of Steelec Agencies cc all his/hers/its right, title, interest, claim and demand in and to all claims howsoever arising which the Purchaser may now or at any time hereafter have against all and any persons, companies, corporations, firms, partnerships, associations, syndicates and other legal personae ("Purchaser Debtor") without exceptions as continuing covering security for the due payment of every sum of money which may now or at any time hereafter be or become owing by the Purchaser to Steelec Agencies cc from whatsoever cause or causes arising which the Purchaser may be or become bound to perform in favour of Steelec Agencies cc, it being acknowledged that this cession is a cession in securitatum debiti and is not an out-and-out cession. Should it transpire that the purchaser entered into prior deeds of cession or otherwise disposed of any of the rights, 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 Purchaser's reversionary rights. <p>Note Copies of the following documents must accompany this application form.</p> <ul style="list-style-type: none"> • VAT Registration certificate • Cancelled letterhead • Copy of Director's ID document • Certificate of Incorporation/registration <p>Estimated Credit Limit</p>
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Your application for credit dated _____ refers.

In addition to the terms and conditions embodied in the application, the following special conditions shall apply:-

1. All the Directors/Members or Partners of the Debtor shall bind themselves as sureties and co-principal debtors to Steelec for the due payment of all monies owed or which shall become due owing and payable by the Debtor to Steelec CC. The Deed of Suretyship attached hereto must be signed in accordance with this condition and returned to us.
2. The amount of credit to be advanced to the Debtor shall at all times be in the sole discretion of Steelec CC.
3. A failure to comply with the provision of condition 1 hereof shall result in all credit arrangements entered into prior to the date hereof being cancelled forthwith and the amount then outstanding shall immediately be payable.

The facilities offered to the Debtor shall be implemented on receipt of the Deed of Suretyship annexed hereto being returned to us duly signed as requested in terms of condition 1 hereto.

Yours faithfully

S. Steele C.A.(S.A.)

Deed of Suretyship

To: STEELEC CC (hereinafter referred to collectively and individually as "the Creditor")

1. Suretyship

I/We the undersigned

(hereinafter referred to collectively and individually as "the Surety/Sureties")

do each of us hereby bind ourselves to each of the Creditor(s) as sureties jointly and severally for and co-principal debtors *in solidum* with each and every of the other of the Sureties, so that each one of the undersigned hereby binds itself/himself to each one of the Creditors as surety for and co-principal debtor *in solidum* jointly and severally with each and every one of the other of the undersigned surety, the principal debtor in relation to each of the undertakings as surety and co-principal debtor (hereinafter referred to as "the Debtor") for the performance on demand of all obligations which the Debtor may have in the past owed or may presently or in the future owe to each of the Creditors separately and individually or to their successors in title or assigns, whether such obligation arises from (but is not limited to):

money already or hereafter to be advanced, goods sold or to be sold and delivered, work done or to be done, services rendered or to be rendered, past, present and future contractual obligations of any and all sorts or sorts, without limitation; or promissory notes, cheques or bills of exchange already or hereafter to be made, drawn, accepted or endorsed; or damages from breach of contract; or guarantees given or to be given by the Debtor to the Creditor on behalf of third parties; or guarantees given to or to be given by the Creditor on behalf of the Debtor; or any indebtedness which may take the place of any novated debt, even if such novation is of a debt in existence during the existence of this suretyship and the novation takes place after the termination of this suretyship but at a time when the Surety is liable for the existing debt; or a debt arising in delict; or disbursements made for the Debtor, including interest; or discount commission owed by the Debtor; or legal costs incurred, including attorney and client costs and collection commission including the costs of excusing the Debtor; or stamp duties and all other necessary or usual charges and expenses; or the Creditor having acquired by cession or assignment or in any other manner the rights which any third party may have against the Debtor to payment of any monies whatsoever, whether such cession takes place prior to or after the liquidation/sequestration of the Debtor; or (without the foregoing in any way limiting what follows) any cause of indebtedness or obligation whatsoever; and whether any such cause of action or obligation presently exists or may come into existence in the future.

2. Separate Suretyships

- 2.1 Any reference to "a Creditor" or "Creditors" herein shall be a reference to each of the Creditors separately and individually.
- 2.2 A separate suretyship is entered into by each Surety in favour of each Creditor for the indebtedness or future indebtedness of each Debtor to each Creditor.
- 2.3 Where more than one Creditor acquires any rights by way of cession from any Debtor or any Surety, such rights shall be held jointly and severally.

3. Acknowledgments and releases

It is agreed:

- 3.1 All admissions or acknowledgements by the Debtor to the Creditor shall be binding on the Surety, including tacit and implied acknowledgements.
- 3.2 The Creditor shall be at liberty, without affecting its rights hereunder, to release, abandon, realize or sell securities and to give time or compound or make any other arrangements with the Debtor; or the Surety or any of them; or any other sureties, guarantors or indemnifiers for the Debtor; whether before or after any obligation has fallen due for performance.
- 3.3 Any leniency, extension of time or waiver which may be granted to the Debtor; and/or a Surety in terms hereof; and/or any other sureties for the Debtor; and/or any third party; whether before or after the obligation has fallen due for performance shall not be construed as a waiver of any of the rights or claims of the Creditor against any Surety hereunder and the Surety hereby waives any right to rely on any defence involving or based on waiver, estoppel or prejudice to the Surety as surety.
- 3.4 Notwithstanding any part payment by the Surety or on its behalf, the Surety shall have no right to any cession of action in respect of such part payment; take any action against the Debtor or any other surety for the Debtor; in respect thereof unless and until the indebtedness of the Debtor to the Creditor shall have been discharged in full.
- 3.5 The Surety shall not be released from liability hereunder if the Creditor makes any payment to the Debtor which ought not to have been made, withholds performance of any obligation to the Debtor which ought to have been performed or in any other manner prejudices the rights of the Surety or the Debtor.
- 3.6 The Surety shall, if so required by the Creditor, render the performance due by the Debtor even if such performance is one of *ad factum praestandum* and a failure to perform shall be a breach by the Surety.
- 3.7 The nature, extent, amount and terms of any agreement between the Debtor and the Creditor shall at all times be within the discretion of the Creditor and the Surety shall not be released from any liability by reason of the entering into of any such agreement or the failure on the part of the Creditor to perform in whole or in part under any such agreement.
- 3.8 If any obligation is novated the Surety shall be liable for the original obligation or the novated obligation at the election of the Creditor and whether or not the Surety was aware of the novation.
- 3.9 The Surety waives his or its rights to rely upon prescription of either any principal obligation or any accessory obligation created by this deed.

4. Extensions of time

If the principal debt or any part thereof is due for payment and the Creditor compromises the Debtor, gives the Debtor any indulgence or extended time or extended terms for payment, then the creditor will still be entitled to forthwith recover from the Surety the amount due and owing by the Debtor prior to any compromise, indulgence or extended time or extended terms of payment granted by the Creditor to the Debtor.

5. Appropriations

The Creditor is irrevocably authorised to apply any monies received by the Creditor from any Surety in terms of this suretyship against the indebtedness to the Creditor of the Debtor in such manner as the Creditor in its entire discretion may think fit, including the appropriation by the Creditor of a payment to any debt due by the Debtor which for any reason is not secured hereunder.

6. Entire Agreement

- 6.1 No variation, relaxation, waiver of, addition to, deletion from or consensual cancellation of this suretyship or any of the terms thereof (including this clause) shall be of any force or effect unless reduced to writing and signed by the Surety and confirmed by the Creditor in writing.
- 6.2 It is agreed that this suretyship constitutes the whole of the agreement between the Surety and Creditor; there are no conditions suspending its operation which may terminate the liability of the Surety; no warranties, promises, representations or inducements of whatsoever nature have been made or given by the Creditor or any other person including the Debtor to the Surety to enter into this suretyship or to bind the Surety to the terms hereof.

7. Cession by creditor

The Creditor may at any time without the consent of the Surety, cede or assign or transfer and make over all or some of its right, title and interest in, to and arising out of this suretyship or any part thereof.

8. Covering suretyship

This suretyship is a continuing covering suretyship for the present and future obligations of the Debtor to the Creditor.

9. Suretyship remains in force

This suretyship shall remain in force and effect notwithstanding any interim or final settlement of account and the subsequent incurring of any new obligation by the Debtor and notwithstanding the death or other legal disability of the Surety.

10. Release

- 10.1 It is agreed that the Surety may only be released from this suretyship by written notice from the Creditor releasing the Surety. Any such release shall be restrictively interpreted to apply only to the Creditor giving the release, the Surety receiving the release and the Debtor in respect of which the release is given.

10.2 Should this suretyship be terminated by any aforesaid notice or for any other reason, the Surety shall be and remain liable for all obligations of the Debtor as at the date of termination of the suretyship.

11. Revival

11.1 If any performance which has the effect of reducing and/or discharging the liabilities of the Surety hereunder is set aside under the Insolvency Laws or for any reason whatsoever by order of court; or refunded to the Debtor, or the Debtor's trustees or liquidator by agreement; or any security is set aside by the court or released by agreement; the Surety shall be liable to the Creditor as surety for the Debtor in respect of the Debtor's obligations to the Creditor arising from or revived by the setting aside and/or refund of such payment, or the setting aside or release of such security, notwithstanding that the same may take place after the termination of the liability of the Surety hereunder in other respects.

11.2 All references herein to the indebtedness or debts of the Debtor shall accordingly be deemed to include any indebtedness arising from or revived by the setting aside and/or refund of such payment or the setting aside or release of such security.

11.3 The Creditor shall accordingly be entitled to retain this suretyship document notwithstanding any termination of the Surety's liability hereunder in other respects and it is agreed that this suretyship document is and shall at all times remain the property of the Creditor.

12. Proof

12.1 Any obligation of the Debtor and/or the amount of the indebtedness of the Debtor and of the Surety hereunder to the Creditor at any time (including interest, the rate of interest and the method of calculation thereof) shall be determined and conclusively proved by a certificate under the signature of any one director of the Creditor.

12.2 It shall not be necessary to prove the appointment or signature of the person signing any such certificate.

12.3 Such certificate shall be conclusive proof of the obligation and/or amount of the Surety's indebtedness hereunder including conclusive proof of an amount which would otherwise be illiquid; and valid against the Surety in any competent court for the purpose of obtaining summary judgment against the Surety thereon; and conclusively deemed to be sufficient particularity for the purposes of pleading or trial in any action instituted by the Creditor against the Surety under this suretyship.

13. Additional Security

The rights of the Creditor under this suretyship shall not be affected or diminished if the Creditor at any time obtains any additional or other suretyships, guarantees, securities or indemnities from the Surety or any other third party whatsoever in connection with the obligations of the Debtor and/or the Surety.

14. Disability of Debtor

14.1 If the Debtor is placed under liquidation or judicial management or sequestration (whether provisionally, finally, compulsorily or voluntarily); or suffers any other legal disability; or becomes subject to the provision of any law for the assistance or benefit of debtors; or a compromise, composition or other arrangement with any creditor of the Debtor; the Creditor shall be entitled to prove against the estate of the Debtor for the full amount of any indebtedness due to it, whether actual or contingent, and to accept any dividend on account and in reduction of the indebtedness without prejudice to the rights of the Creditor against the Surety.

14.2 The Surety further acknowledges that in any of such events and for as long as any of the obligations of the Debtor remain undischarged, the Surety shall not be entitled to prove any claim against the Debtor without the prior written authority of the Creditor; the Creditor holds *in securitatem debiti* all and any claims that the Surety might have or might in future acquire against the Debtor in terms of the cession herein contained.

14.3 Should the Debtor be placed under judicial management, whether provisional or final, then in which event the obligations of the Surety under this suretyship shall cover all debts incurred by the Debtor to the Creditor whilst under judicial management.

15. Multiple Sureties

15.1 The Surety undertakes not to prove, make or take action in respect of any claim against any other Surety or the estate of any other Surety whether such claim arises from or in connection with any payment made by the Surety or any other Surety to the Creditor in terms hereof or by reason of any other cause of indebtedness until all claims of the Creditor against the Debtor and any other Surety have been paid in full.

15.2 The obligations of the Surety in terms of this clause 15 also, without detracting from the generality of the foregoing, preclude the Surety from proving a claim against any other Surety, or the estate of any other Surety where such other Surety has been sequestrated; or has been placed under winding up, whether provisional or final; or has assigned his or its estate; or has been placed under judicial management, whether provisional or final or under administration; or has died, or has died and his estate is being administered as insolvent in terms of the Administration of Estates Act; the Surety having waived all rights of recourse and cession of actions against other Sureties until all the claims of the Creditor against all the Debtors have been met in full.

16. Cession

16.1 As security for the discharge of the obligations assumed by the Surety in terms hereof, the Surety hereby individually and *in securitatem debiti* cedes to the Creditor any claims which now are or which may hereafter become due to the Surety by the Debtor or any third party from any cause of indebtedness whosoever (including but not limited to claims arising from signature of this suretyship by the Surety and from payments made by the Surety by virtue of this suretyship).

16.2. The Surety does hereby irrevocably and *in rem suam* authorise and appoint the Creditor with full power to sign and execute all and any documents on behalf of the Surety which may be necessary to give effect to or to enforce the rights afforded to the Creditor in terms of this cession herein contained.

16.3.1 The Surety hereby further agrees that, if prior to the signature of this suretyship the Surety has ceded such claims to anyone whomsoever, this cession shall be deemed to be a cession of all reversionary rights of the Surety in and to any such claims after payment of all amounts secured by the prior cession(s) or after the loss or abandonment for any reason of any rights of the cessionary/cessionaries thereunder.

16.3.2 The Surety warrants that the only prior cessions are those disclosed to the Creditor in terms of the schedule hereto.

16.4 The whole of such cession shall remain of full force and effect until all liabilities of the Debtor to the Creditor have been extinguished.

16.5 The cession hereby conferred upon the Creditor is conferred as continuing covering security for past, present, future, prospective and/or contingent liabilities of the Debtor to the Creditor and is subject *mutatis mutandis* further to clause 8,9 and 10 hereof.

16.6 Should there at any stage be no debtor who owes any obligation to any Creditor the cession herein contained shall lapse but shall immediately and simultaneously revive if any debtor thereafter owes any obligation to any Creditor and the Surety is still bound in terms thereof.

17. Cash Security

For as long as the Creditor may think fit, as its option and in its sole and absolute discretion, any money paid by the Surety to the Creditor may be treated as cash security from the Surety to be held by the Creditor free of interest until the obligations of the Debtor and/or the Surety shall have been fully discharged, or may be applied to such debt or debts of the Debtor as the Creditor may deem fit.

18. Immediate Performance

Should the Debtor fail to discharge any of its obligations to the Creditor or any one of its other creditors, the Creditor shall be entitled notwithstanding any contrary arrangement with the Debtor, to demand from the Surety immediate performance of all the obligations then owing by the Debtor to the Creditor whether or not the due date for the performance of the obligations shall have arrived.

19. Warranties and Indemnity

- 19.1 The Surety warrants that all contracts entered into or to be entered into by the Debtor with the Creditor were or will be at the time of the conclusion thereof within the scope, authority, power and objects of the Debtor; all resolutions of and signatures by directors of the Debtor were, or in the case of future contracts, will be properly and with due authority passed and/or executed and/or made; all such contracts are or will be, and will at all times remain valid and legally enforceable; the execution of this suretyship is to the benefit of the Surety; the Surety has a material interest in securing the indebtedness covered by this suretyship.
- 19.2 If there shall be any breach of the terms of the warranties in 19.1, the Surety shall be deemed, at the option of the Creditor, to have hereby assumed the liability or obligation to the Creditor which any such contract purported to impose upon the Debtor.
- 19.3 The Surety hereby indemnifies and holds the Creditor harmless against any damage or loss of whatsoever nature which the Creditor may sustain arising out of or in connection with the enforcement, suspension, cancellation or invalidity for any reason of any obligation of the Debtor to the Creditor.

20. Waiver of Presentment

The Surety hereby waives presentment, notice of dishonour and protest of any promissory note, bill of exchange, cheque or other negotiable instrument made, drawn, accepted, endorsed or discounted by the Debtor, the Surety or any other surety, or to be so made, drawn, accepted, endorsed or discounted by the Debtor, the Surety or any other surety, hereby agreeing and admitting that the liability of the Surety hereunder in respect of any such instrument shall not be in any way affected by any failure to present, give notice or dishonour or protest.

21. Consent to Jurisdiction

- 21.1 In terms of Section 45 of the Magistrates' Courts Act 32 of 1944, the Surety hereby consents to the jurisdiction of the Magistrate's Court otherwise having jurisdiction in respect of any action to be instituted against the Surety by the Creditor in terms hereof.
- 21.2 It shall nevertheless be entirely within the discretion of the Creditor as to whether to proceed against the Surety in such Magistrate's Court or any other court having jurisdiction.

22. Obligation to Pay

- 22.1 If any dispute arises between the Debtor and the Creditor and the Debtor contends that the debt is not due and owing, then the Surety will accept the written contention of the Creditor that such debt is due and owing; and hereby waives any defence or contention which the Debtor may raise; and will pay the amount claimed forthwith.
- 22.2 The Creditor shall repay to the Surety the said sum or sums to the extent that a court of competent jurisdiction (including any appeal court) finally determines that the contentions of the Debtor are correct.
- 22.3 The aforesaid sum or sums shall be repaid free of interest up to the date of final judgment

23. Interest

- 23.1 Any sum due by the Surety shall carry interest reckoned from the date on which sum became owing by the Debtor or interest bearing whichever is the later at the rate at which the Debtor is obliged to pay interest by agreement.
- 23.2 Failing agreement as to the rate of interest to be paid by the Debtor, the Surety undertakes to pay interest on any sum due to the Creditor at the publicly quoted prime overdraft rate of the First Rand Bank calculated daily on the amount outstanding from time to time and capitalized monthly.
- 23.3 A certificate by any manager of the First Rand Bank shall be *prima facie* proof of the prime overdraft rate from time to time and it shall not be necessary to prove such signature or the capacity of the manager.
- 23.4 Prime overdraft rate shall mean the publicly quoted rate of interest charged by the First Rand Bank to its corporate customers in the private sector for overdrafts of an equivalent amount.

24. Costs

The Surety shall be responsible for all charges and expenses of whatsoever nature incurred by the Creditor in securing the implementation of the obligations of the Surety hereunder, or of the rights of the Creditor in terms hereof, including, without limitation by virtue of the foregoing, all legal costs, including attorney and client costs, collection commissions and tracing agents fees.

25. Waiver of benefits

- 25.1 The Surety waives and renounces any right to claim an accounting from the Creditor; any benefits which the Surety as surety is entitled to in law, without detracting from the generality of the foregoing, including the benefits of excussion; division; cession of action; *de duobus vel pluribus reis debendi*.
- 25.2 The Surety acknowledges that it knows and understands the meaning and full force and effect of such benefits.

26. Election of Action

If there are two or more Sureties the Creditor shall be entitled to sue any Surety it elects and no other Surety may join in such action without the consent in writing of the Creditor.

27. Severability

- 27.1 It is agreed that each surety given, each paragraph, each clause and each subclause in this surety is severable, the one from the other.
- 27.2 If any surety, paragraph, clause or subclause is found to be defective or unenforceable for any reason by any competent court, the remaining clauses, sureties, paragraphs and subparagraphs shall be and shall continue to be of full force and effect.

28. Formalities complied with

The Surety acknowledges that this suretyship was completed in all respects when the Surety signed it; the rights and obligations of the various Creditors, Debtors and Sureties have been incorporated into one document for convenience only and the failure of any Surety or Debtor to execute this suretyship notwithstanding that such Surety or Debtor is reflected herein as a party; to be bound by this suretyship for any reason after execution; shall not vitiate, diminish or affect the obligations of any other Surety or the rights of the Creditor, it being agreed that the liability of the Surety is not dependent, wholly or in part on the liability of any other Surety or intended Surety.

29. Warranties by individuals signing on behalf of companies

- 29.1 Every natural person signing on behalf of any juristic person personally warrants that the giving of the surety by the juristic person concerned is within the scope of its powers, objects and authority; does not contravene any provisions of the Companies Act 61 of 1973 in particular, but without limitation, section 226 thereof or the Close Corporation Act, 1984; all necessary steps have been taken by the juristic person to give the signatory the power to execute this suretyship on behalf of the juristic person and in particular, but without limitation, the directors (or members in the case of a close corporation) have approved the giving of this suretyship in specific terms.
- 29.2 If any juristic person is not bound by this suretyship for any reason whatsoever including but not limited to a breach of any warranty contained in 29.1, then the person shall be bound as surety in the place of such juristic person and he shall be conclusively deemed to have signed this suretyship in his personal capacity.

30. Domicilium

For the purposes of this suretyship, including the giving of any notice required or permitted hereunder, and any proceedings which may be instituted by virtue hereof, the Surety hereby chooses *domicilium citandi et executandi* at (*address of surety*)

- A _____
- B _____
- C _____
- D _____
- E _____

31. Schedule of prior cessions

(state date, nature and amount owing in each case)

SIGNED at (*place*) _____ on this (*day, month, year*) _____

Witnesses:

- | | | |
|----|-------|--------|
| 1. | | A..... |
| | | B..... |
| 2. | | C..... |
| | | D..... |
| | | E..... |
- (*Signatures, names and addresses of witnesses*)
- for: (*Names and signatures of sureties*)

(NB: Only to be signed by individuals signing on behalf of a juristic person/company)

Certificate

I the undersigned (*name*).....of (*address*).....

do hereby certify that before executing this Deed of Suretyship for and on behalf of (*names of sureties*).....

I had my attention drawn to and read clause 29 which I understood and accepted.

.....
(*Signature*)

(*Stamp duty in calculated on one deed at R 20*)