

SECTION 3:**APPLICANT BANKING DETAILS AND TRADE REFERENCES**

Trade Reference (Company Name)	Tel Number	Fax Number

Bankers (Name)	Branch Code	Account Number	Tel No.
Date (Year) Account Opened:			

SECTION 4:**OTHER INFORMATION**

Security: Has Applicant furnished Creditor or Banker with Security:	NO	YES
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IF YES: Name of Secured Creditor	Security Type	Value	Contact Tel No:

Expected Monthly Purchases:	
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Insert Company Stamp Here:

SECTION 5:**TERMS AND CONDITIONS (ON NEXT PAGE)**


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SECTION 5:**TERMS AND CONDITIONS OF SALE
SURETYSHIP
CONSENT**

The following terms and conditions between Pennyware Distributors, a Division of Parker Manufacturing (Pty) Limited ("THE CREDITOR") and THE APPLICANT shall form part of and apply to this contract and all future contracts or other agreements entered into, unless specifically excluded or amended by THE CREDITOR, such exclusion or amendment to be in writing:

A:TERMS AND CONDITIONS

THE APPLICANT or its duly authorised agent (whose signature appears below) does hereby apply for credit facilities with THE CREDITOR and in consideration thereof THE APPLICANT does hereby irrevocably accept the following terms and conditions:

1. Unless the context otherwise requires, the words importing the singular shall include the plural and vice versa and the one gender shall include the other gender and vice versa.
2. This document constitutes the entire agreement between the parties and any other terms thereof whether express or implied or excluded here from and any variations, additions, cancellations or alterations to this contract will not be of any force or effect unless reduced to writing and signed by the parties hereto, or their duly authorized signatories.
3. A certificate signed by the credit manager or director of THE CREDITOR reflecting the amount owing by THE APPLICANT to THE CREDITOR in respect of the credit facilities granted to THE APPLICANT in terms hereof relating to THE APPLICANT'S dealings with THE CREDITOR and of the fact that such amount is due, owing and unpaid shall be proof of the effects therein stated for the purpose of any action (whether by way of provisional sentence or otherwise), or application, proof of debt on insolvency or for any purpose whatsoever where the amount of such claim is required to be established and it shall rest with THE APPLICANT to prove that such amount is not owing and/or due and unpaid.
4. The credit terms granted to THE APPLICANT are, unless amended in writing and signed by a director/credit manager of THE CREDITOR, 30 (thirty) days Net from statement date. A fee, charge or interest, as specifically provided for in terms of the National Credit Act, 34 of 2005, shall be charged in the event of THE APPLICANT failing to make payment on due date.
5. In the event of THE APPLICANT defaulting in payment of any amount that has become due and owing, which action shall amount to a breach of this agreement, then THE CREDITOR shall have the right to enforce the relevant provisions of this agreement, and to declare the whole balance of all amounts owing/outstanding (whether due or not) in terms hereof, to be immediately due, owing and payable, without further notice to THE APPLICANT.
6. If THE APPLICANT objects to any item on the statement of its account, THE APPLICANT must deliver a written notice of that objection to THE CREDITOR within 7 days of his becoming aware thereof, failing which THE APPLICANT accepts that such statement is true and correct in all respects.
7. Notwithstanding the amount which may at any time be owing by THE APPLICANT to THE CREDITOR, the parties do hereby consent, in terms of Section 45 of the Magistrates' Court Act (No 32 of 1944 as amended), to the Magistrates' Court having jurisdiction for the determination of any action or proceeding otherwise beyond the jurisdiction of the said court which may be brought by THE CREDITOR against THE APPLICANT arising out of any transaction between the parties. It being recorded that THE CREDITOR shall be entitled, but not obliged, to bring any action, application or proceeding in the said court and that all costs incurred in any action or application against THE APPLICANT in any competent court shall include costs on an attorney/client scale and attorneys' collection commission, payable by THE APPLICANT. In the event that THE CREDITOR employs the services of counsel in any action, application or proceedings, which decision will be within the sole discretion of THE CREDITOR, THE APPLICANT hereby agrees to pay counsel's fees in any action or application brought by THE CREDITOR against it, on the Bar Council Tariff as determined by the relevant bar council and such costs are to include counsel's preparation costs and costs of preparing pleadings.
8. THE CREDITOR shall be entitled, but not obliged, whether legal action has commenced or not, to submit any dispute between the parties to arbitration.
 - 8.1 The arbitration shall be held in the town/city of the principal place of business of THE CREDITOR, from where the goods were ordered, and shall be held within 60 (sixty) days after it has been demanded. The arbitration shall be held before a mutually agreed person, and failing agreement, the arbitrator shall be selected by the President of the Law Society of the relevant province. The arbitration shall be held in a summary manner and the strict rules of evidence shall not apply.
 - 8.2 The arbitrator shall decide on the issues of pleadings and discovery but shall do so on the basis that the matter is to be expedited and brought to arbitration within the 60 (sixty) day period and in an informal manner. The arbitrator shall decide the matter submitted to him according to what he considers just and equitable in the circumstances and therefore the strict rules of law need not be observed or taken into account by him in arriving at his decision.
 - 8.3 The parties hereto agree that the decision of the arbitrator shall be binding on each of them, and shall be made an Order of any court of competent jurisdiction, should it be necessary in order to execute under the arbitrator's order. The arbitrator's decision shall further be final and binding upon the parties and the arbitrator shall be entitled to make an order for costs in regard to the arbitration. There shall be excluded hereby, any right to appeal against any such decision.
 - 8.4 THE CREDITOR shall be entitled to all costs incurred in any such arbitration proceeding brought against it by THE APPLICANT, on an attorney/client scale, which costs shall include attorneys' collection commission, all of which is payable by THE APPLICANT.
 - 8.5 The parties hereto agree that in the event that a bill of costs is required to be taxed, they will refer same to the Arbitration Forum's Taxation Service and the unsuccessful party thereto shall at no time prior to submission of the bill, withhold their consent to referral.
 - 8.6 In the event that THE CREDITOR employs the services of counsel in the arbitration proceedings, which decision will be within the sole discretion of THE CREDITOR, THE APPLICANT hereby agrees to pay counsel's fees in any such matter brought by THE CREDITOR against it, on the Bar Council Tariff as determined by the relevant bar council. Such costs are to include counsel's preparation costs and costs of preparing pleadings. THE APPLICANT and I/we (the signatories on the last page hereof) hereby choose our domicilium citandi et executandi for all purposes of this agreement, including the Deed of Suretyship, at the respective physical addresses set forth in paragraph A of page 2 hereof. The same applies to any ancillary document which is accepted by THE CREDITOR, on which appears the name of THE APPLICANT.
9. All/any notices to any party shall be addressed to it at its domicilium as stipulated and either sent by pre-paid registered post or delivered by hand. In the case of notice:
 - 9.1 sent by pre-paid post, it shall be deemed to have been received, unless the contrary is proved, on the fourth day after posting; delivered by hand, it shall be

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deemed to have been received, unless the contrary is proved, on the date of delivery, provided such date is a business day or otherwise on the next business day.

- 9.2 Any party shall be entitled by notice to the other, to change its domicilium provided that the change shall become effective only fourteen (14) days after delivery of the notice in question.
10. THE APPLICANT and I/we warrant that the addresses as stipulated herein, in Section 1 of this application, including the delivery address, are correct for all uses and purposes associated therewith, including delivery of goods. Further, THE APPLICANT and I/we undertake to notify THE CREDITOR forthwith in writing of any change of any address as stipulated herein, including but not limited to THE APPLICANT'S postal, physical and / or delivery addresses and the registered office address of THE APPLICANT and the auditor's address. The onus to prove notification of any such change falls on THE APPLICANT. THE APPLICANT hereby agrees that failure to notify THE CREDITOR in writing of any changes to any address herein, will result in its assumption of any direct or indirect loss and / or damages flowing from the use of and/or reliance on any address stipulated herein, sustained by THE APPLICANT.
11. THE APPLICANT hereby undertakes to notify THE CREDITOR in writing, within (21) twenty one days of it occurring, of any change in ownership of THE APPLICANT'S business, sale of the business to a third party or otherwise, any of its share transactions whereby the majority shareholding is affected or of any changes/rotation of THE APPLICANT'S business, being a sole proprietorship, partnership, trust, a company or a close corporation and of any conversion from a sole proprietorship, partnership, trust, or company to a close corporation or from a sole proprietorship, partnership, trust or a close corporation to a company, or in the event of a sale of merely a percentage of the ownership of the business,
- 11.1 Failing such notice, in any of the abovementioned circumstances, THE APPLICANT hereby agrees that such failure by him amounts to breach of this agreement. The CREDITOR shall have the right to call for the entire balance owing, whether due or not, and which will immediately be deemed to be due and payable by THE APPLICANT to THE CREDITOR. Further, THE CREDITOR has the election to either, without notice:
- 11.1.1 cancel this credit application forthwith; or
- 11.1.2 abide by this application and claim any damages which flow as a consequence of the above breach, whether direct or indirect; and
- 11.1.3 Hold THE APPLICANT and surety(ies) responsible.
- 11.2 The same options as stipulated above apply if THE APPLICANT is a close corporation and it sells its business, either by means of a transfer of 100% (one hundred percent) of its interest therein, or by means of a sale of that business out of the entity of THE APPLICANT. THE APPLICANT must notify THE CREDITOR, in writing, within 7 (seven) days of any such sale. THE APPLICANT hereby agrees that failure to notify THE CREDITOR amounts to breach of this agreement. THE CREDITOR therefore reserves the right to either, without notice:
- 11.3 In the event that THE APPLICANT fails to notify THE CREDITOR of any of the aforesaid changes, he will not be entitled to raise estoppel as a defence. This agreement shall terminate in the event of the death of the sole proprietor or of the business or in the event to the death of all sureties to the agreement.
12. THE CREDITOR 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 to any third party without prior notice to THE APPLICANT. This may in no way be construed as any release of the obligations of the surety and/or signatory hereto, in terms of this agreement.
13. THE APPLICANT does hereby irrevocably and, where necessary, in his personal capacity, cede, pledge, assign, transfer and make over unto and in favour of THE CREDITOR, 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 APPLICANT may now or at any time hereafter have against all or any persons, companies, corporations, firms, partnerships, associations, syndicates and other legal persons whomsoever ("THE APPLICANT'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 APPLICANT to THE CREDITOR from whatsoever cause or obligation howsoever arising which THE APPLICANT may be or become bound to perform in favour of THE CREDITOR.
- 13.1 Should it transpire that THE APPLICANT 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 APPLICANT'S remaining rights.
- 13.2 THE APPLICANT agrees that THE CREDITOR shall be entitled at any time or times hereafter to give notice of this cession to all or any of THE APPLICANT'S debtors.
- 13.3 To give effect to the rights of THE CREDITOR in terms of this cession, THE APPLICANT shall within (3) three days of a written demand by THE CREDITOR, be entitled to inspect and/or provide it with a list of its book debts and/or records and in addition thereto, THE CREDITOR will be entitled to take possession of same, in order to give effect to the terms of this cession.
14. The goods shall be regarded as having been sold "voetstoets", that is, without warranty against latent defects therein. No liability whatsoever shall arise furthermore on the part of THE CREDITOR for any representation or warranty made or alleged to have been made at any time in respect of the goods sold by THE CREDITOR to THE APPLICANT.
15. In the event of any order being given to THE CREDITOR on documentation reflecting THE APPLICANT'S name as the entity from which the order emanated, such order shall be deemed to have emanated from THE APPLICANT, notwithstanding the fact that such order may have been given or signed by a person not authorised by THE APPLICANT and thus THE APPLICANT is deemed to be liable for signature on any delivery note and / or other instrument for an order / delivery of goods, emanating from THE CREDITOR, no matter whom THE APPLICANT has authorised to sign same.
16. It is agreed that set-off shall operate at the moment reciprocal debts between THE CREDITOR and THE APPLICANT come into existence, but at the election of THE CREDITOR alone, should it specifically raise set-off. It shall not be necessary for THE CREDITOR to give notice to THE APPLICANT and upon the implementation of set-off as aforementioned, the debts shall be mutually extinguished to the extent of the lesser debt.
17. Signature by THE APPLICANT, or by any representative of THE APPLICANT, of THE CREDITOR'S delivery note, shall be regarded as acceptance by THE APPLICANT that the goods reflected in such delivery note have been delivered and received in good order.
18. THE APPLICANT acknowledges that THE CREDITOR is not the manufacturer of the goods. THE APPLICANT accordingly indemnifies and holds THE CREDITOR harmless against any claim that may be brought against THE CREDITOR as a consequence of such goods being defective and causing any damage whatsoever, whether through accident, negligence, gross negligence or any other cause, howsoever arising.
19. The risk in and to the goods shall pass from THE CREDITOR to THE APPLICANT on the date of delivery. Delivery shall be deemed to have taken place against signature of THE CREDITOR'S delivery note, proof of posting if the goods are posted to the customer, or delivery to the South African Transport Services or Road Carrier if the goods are railed or transported by THE CREDITOR. The Post Office/South African Transport Services or Road Carrier shall act as the agent of THE APPLICANT.
20. THE APPLICANT acknowledges that should the correct goods be supplied and delivered and should these be returned at THE APPLICANT'S request due to no fault accruing to THE CREDITOR, then such goods will be subject to a 10% (ten percent) handling charge which shall immediately become due and payable by THE APPLICANT. Any/all returns of goods to representatives or agents of THE CREDITOR are entirely at the risk of THE APPLICANT. Goods must be returned directly to THE CREDITOR'S place of business from where the goods were ordered.

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21. Any condonation of any breach of any of the provisions hereof or other act or relaxation, indulgence or grace on the part of THE CREDITOR, including the acceptance of late payments by them, shall not in any way operate as or be deemed to be a waiver by THE CREDITOR of any of its rights under this contract, to enforce strict compliance by THE APPLICANT of any of his/its obligations in terms hereof, nor shall any of the above actions by THE CREDITOR to be construed as a contractual renewal thereof or a novation of any of the terms and conditions of this agreement.
22. THE APPLICANT acknowledges that no terms at variance with the terms and conditions of this application for credit, and which have been sought to be introduced by THE APPLICANT at any time, shall be of any force or effect unless THE CREDITOR has, in writing, expressly and unambiguously agreed that the terms so sought to be introduced by THE APPLICANT shall apply, and unless so agreed to in writing by THE CREDITOR, THE CREDITOR shall not be regarded as having so expressly agreed by virtue merely of THE CREDITOR having agreed to execute an order in which inconsistent terms have been introduced by THE APPLICANT and notwithstanding that THE CREDITOR has not rejected such inconsistent terms.
23. THE CREDITOR does not appoint any Post Office as its agent for payments by post. All payments shall be made to THE CREDITOR'S place of business, from where the goods were ordered. In the event of any payments being mislaid or lost in the post, THE APPLICANT shall still be liable to THE CREDITOR for payment. Similarly, an electronic payment by THE APPLICANT is not to be construed as a cash purchase. Same shall only be considered a payment, duly received by THE CREDITOR, when the amount has reflected and been correctly verified in THE CREDITOR'S banking account.
24. THE APPLICANT hereby warrants that no representative of THE CREDITOR at anytime before or during the conclusion of this agreement or any action connected therewith, induced purchase of any goods or misrepresented the sale in any manner or form, upon which THE APPLICANT relied, to his detriment. At all times whilst dealing with THE CREDITOR and / or its representatives, THE APPLICANT acknowledges full understanding of this agreement and / or takes full responsibility for all / any consequences pertaining to the purchase of goods connected herewith.
25. THE CREDITOR reserves the right to increase or otherwise vary the credit limit available to THE APPLICANT, annually or from time to time,
26. Each clause of this agreement, or part thereof contained in this document, is severable, the one from the other and if any one or more clause(s) is found to be invalid or unenforceable, such result shall not affect the enforceability of the balance of the conditions of sale, which shall remain of full force and effect.
27. THE APPLICANT and I warrant that the information submitted above is true and correct in all respects and THE APPLICANT and I further warrant hereby that we are entirely familiar with the content hereof, the terms and conditions of which we acknowledge are deemed to be incorporated herein and form part hereof.

B. DEED OF SURETYSHIP

28. Every natural person who signs this application on behalf of the APPLICANT ("the SURETY") by so signing binds himself in his personal and individual capacity as surety for, and as co- principal debtor jointly and severally with, the APPLICANT, in favour of the CREDITOR, for the full and punctual performance by the APPLICANT to the CREDITOR of all the APPLICANT'S obligations to the CREDITOR in terms of this agreement, including (without limitation) the payment of all monies that may be due by the APPLICANT to the CREDITOR, whether as damages or otherwise.
29. This suretyship is unlimited as to the amount thereof.
30. The SURETY appoints as his *domicilium citandi et executandi*, for the purposes of receiving process commencing legal proceedings against him by the CREDITOR, including arbitration proceedings, the *domicilium citandi et executandi* of the APPLICANT, as contemplated in clause
31. The SURETY appoints, as the notice addresses and fax number to which any written notices, provided for in this agreement or which may otherwise be necessary or expedient as between the CREDITOR and the SURETY, shall be directed, the notice addresses and fax number of the APPLICANT, as contemplated in clause
32. This suretyship shall remain in force as a continuing covering security, during the currency of this agreement, and until all the obligations of the APPLICANT to the CREDITOR have been discharged in full, notwithstanding that payments made by the APPLICANT to the CREDITOR should from time to time discharge the then outstanding balance(s) due by the APPLICANT to the CREDITOR. In the event that the CREDITOR should elect to cancel this agreement by reason of the breach thereof by the APPLICANT, or if this agreement should for any other reason howsoever terminate, this suretyship, and the provisions of this clause shall continue in force as between the CREDITOR and the SURETY until such time as the APPLICANT'S obligations to the CREDITOR have been discharged in full.
33. No undertaking, agreement or representation howsoever, made or purported to be made on behalf of the CREDITOR, the effect or alleged effect of which is that the SURETY is released or discharged, whether wholly or in part, from his obligations in terms of this clause, shall be of force and effect unless contained in a written instrument, signed by the Financial Manager or a Director of the CREDITOR, which expressly records that the Surety is so released or discharged.
34. This Suretyship shall be in addition to any other suretyships or securities which the CREDITOR may hold or hereafter obtain for the performance of the APPLICANT'S obligations to it in terms of this agreement. The CREDITOR shall be entitled, in its sole and absolute discretion, exercised upon such grounds as it deems proper, to release, discharge, compromise or consensually vary such other suretyships or securities, which shall not extinguish, limit, detract from or otherwise attenuate the CREDITOR'S rights as against the SURETY in terms of this clause, it being expressly agreed that any such act by the CREDITOR shall not prejudice the SURETY.
35. In the event that more than one person should bind himself as surety, whether in this agreement or in a separate instrument, for the full and punctual performance by the APPLICANT to the CREDITOR of all the APPLICANT'S obligations to the CREDITOR in terms of this agreement, every such person shall be deemed to have undertaken and entered into a distinct suretyship, severable and separate from every other, and the mere fact that any other such suretyship should for any reason whatsoever prove to be unenforceable shall not extinguish, limit, detract from or otherwise attenuate the CREDITOR'S rights as against the SURETY in terms of this clause, which rights shall remain fully enforceable.

C: CONSENT CLAUSE DISCLOSURE OF PERSONAL INFORMATION

36. THE APPLICANT understands that the personal information given herein is to be used by THE CREDITOR for the purposes of assessing his/its credit worthiness. THE APPLICANT confirms that the information given by him/it is accurate and complete. THE APPLICANT further agrees to update the information supplied, as and when necessary or if requested to do so, in order to ensure the accuracy of the above information, failing which THE CREDITOR will not be liable for any inaccuracies.
37. THE CREDITOR has THE APPLICANT'S consent at all times to contact and request information from any persons, credit bureaus or businesses, including those mentioned in this Credit Application form and to obtain any information relevant to THE APPLICANT'S credit assessment including, but not limited to, information regarding the amounts purchased from suppliers per month, length of time APPLICANT has dealt with such supplier, type of goods or services purchased and manner and time of payment.
38. THE APPLICANT agrees that the information given in confidence to THE CREDITOR by a third party on the APPLICANT will be used for the purposes for which that

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information is given or as provided for by legislation.

39. THE APPLICANT hereby warrants that the information given to the CREDITOR in terms hereof, is both true and correct.

40. THE APPLICANT hereby consents to and authorises THE CREDITOR at all times to furnish personal and credit information concerning THE APPLICANT'S dealings with THE CREDITOR to a credit bureau and to any third party seeking a trade reference regarding THE APPLICANT in his dealings with THE CREDITOR.

Signed by THE APPLICANT or its duly authorised agent / signatory, and signed by me (us) in my (our) personal capacity (ies) as surety (ies) and co-principal debtor/s, who hereby warrants that such individual (s) or entity (ies) is (are) authorised to sign on behalf of THE APPLICANT.

Signed at _____ on this _____ day of _____ 20____, before the undersigned witnesses;

Authorised Signature (Applicant)

Full Name (Applicant)

Position (Applicant)

Signature (Witness)

Full Name (Witness)

Authorised Signature (Applicant)

Full Name (Applicant)

Position (Applicant)

Signature (Witness)

Full Name (Witness)

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