

APPLICATION FOR CREDIT FACILITIES INCORPORATING DEED/S OF SURETYSHIP

N.B. This document consists of 5 pages

**Application for Credit Facilities with:
African Brands Trading & Consulting
Reg. No D/2003/1129
"THE CREDITOR"**

A. CONFIDENTIAL

FULL NAME OF "THE APPLICANT".....

TRADE NAME/ STYLE OF THE APPLICANT.....

PO BOX.....TOWN.....CODE.....

TEL.....FAX.....

PHYSICAL DELIVERY ADDRESS.....

SUBURB.....TOWN.....Co/CC No.....

REGISTERED OFFICE OF Co/cc.....ID No.....

PERSON RESPONSIBLE FOR ACCOUNT.....

EMAIL ADDRESS OF ABOVE PERSON.....

PERSON RESPONSIBLE FOR BUYING.....

ADDRESS.....

SOLE OWNER PARTNERSHIP (PTY) LTD CC

YEAR BUSINESS COMMENCED.....

NAME & ADDRESS OF AUDITORS.....

BANKERS.....BRANCH.....

ACCOUNT No.....DATE A/C OPENED.....

TRADE REFERENCES

FOR OFFICE USE

1).....TEL.....

2).....TEL.....

3).....TEL.....

4).....TEL.....

FULL NAME, ADDRESS, TELEPHONE & I.D. No. OF PROPRIETOR/ DIRECTORS/ MEMBERS/ PARTNERS

1).....

2).....

3).....

4).....

Initials Initials Initials

CREDIT LIMIT REQUESTED: N\$......(FOR ASSESSMENT PURPOSES ONLY AND DOES NOT FORM PART OF THIS CONTRACT)

N.B. PLEASE ATTACH COPY OF COMPANY REGISTRATION, VAT REGISTRATION AND ID DOCUMENTS

N.B. PLEASE NOTE CREDIT TERMS ARE 30 DAYS ON STATEMENT

ANY ADDITIONAL INFORMATION WHICH MAY BE OF ASSISTANCE.....
.....
.....

B.

THE APPLICANT or its duly authorized agent does hereby apply for credit facilities with THE CREDITOR and in all consideration thereof THE APPLICANT (as well as any surety for THE APPLICANT – whose signature appears below) does hereby irrevocably accept the following terms and conditions.

1. A certificate signed by the secretary/ manager or any 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 prima facie proof of the effects therein stated for the purpose of any action (whether by way of provisional sentence or otherwise), 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.
2. All overdue sums/amounts shall bear interest at the maximum permissible rate of interest as determined by the Usury Act (Formerly known as the Limitation and Disclosure of Finance Charges Act) No. 73 of 1968 as amended (or any other relevant law), from time to time, such interest shall be reckoned monthly in advance from due date of payment.
- 3.1 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 Magistrate's Court Act (No. 32 of 1944 as amended), to the Jurisdiction of the Magistrate's 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 or proceeding in the said court and that all costs incurred in any action against THE APPLICANT in any competent court including costs on an attorney/ client scale and attorney collection commissions will be paid by THE APPLICANT.
- 3.2 Notwithstanding the terms of clause 3.1 above, THE CREDITOR shall be entitles, but not obliged, whether legal action has been commenced or not, to submit any dispute between the parties to arbitration. The arbitration shall be held in the town/ city of principal business of THE CREDITOR within 60 (sixty) days after it has been demanded before a mutually agreed person, and failing agreement to be selected by the President of the Law Society of Namibia. The arbitration shall be held in a summary manner and the strict rules of evidence shall not apply. The arbitration 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 60 (sixty) day period and in an informal manner. The arbitration 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 to be observed or taken into account by him in arriving at his decision. 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 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 entitles to make an order for costs in regard to the arbitration.
4. In the event of THE APPLICANT defaulting in making payment of any amount that ahs become due and owing then the full balance outstanding (whether due or not) will immediately become due and payable without notice to THE APPLICANT.

Initials	Initials	Initials
_____	_____	_____

DEED OF SURETYSHIP

- 5.1 I, by my signature hereto (which appears below) do, in addition to the above, hereby bind myself in my private and individual capacity as surety for and co-principal debtor in solidum with THE APPLICANT in favour of THE CREDITOR for the due performance of any obligation of THE APPLICANT and for the payment to THE CREDITOR by THE APPLICANT of any amounts which may at any time become owing to THE CREDITOR by THE APPLICANT from whatsoever cause arising and including, but without limiting the generality of the foregoing, any claims for damages and actions against THE APPLICANT acquired by way of cession. This suretyship shall be a continuing covering guarantee/ surety which may only be cancelled, in writing, by THE CREDITOR and then only, provided that all sums then owing by THE APPLICANT (whether due or not) to THE CREDITOR has been paid in full. I hereby renounce the benefits of the legal exceptions "Non causa Debiti", Ördinid Seu Excussionis Et Divisionis" and "Cession of Action", with the force, meaning and effect of which I declare myself to be fully acquainted. I furthermore bind myself irrevocably to all terms and conditions of clause 1., 2., 3., 4., and 22. hereof.
- 5.2 I furthermore record that if more than one person has appended his signature hereto, there shall come into existence a separate distinct and independent contract of suretyship/ guarantee, which is brought into existence by each signatory hereto. If for any reason this suretyship/ guarantee is not binding (for whatsoever reason) on any one signatory then the obligations of the remaining signatories shall nevertheless be and remain of full force and effect.

C.

FURTHER TERMS AND CONDITIONS OF SALE

- 1. THE APPLICANT and I (the signatory at Page 5 hereof) hereby choose Domicillium Citandi et Executandi for all purposes arising out of this application and Deed of Suretyship at the address stipulated at paragraph A of Page 1 hereof.
- 2. THE APPLICANT and I undertake to notify THE CREDITOR forthwith in writing of any change of address.
- 3. If THE APPLICANT should fail to object to any item appearing on THE CREDITOR'S statement of account within fourteen (14) days of date of the despatch of statements, the account shall be deemed to be in order.
- 4. Unless the context otherwise requires, the words importing the singular shall include the plural and visa versa, a natural person shall include an artificial person and visa versa and the one gender shall include the other gender and visa versa.
- 5. THE APPLICANT undertakes to notify THE CREDITOR, in writing, within seven (7) days of any change in ownership of THE APPLICANT'S business, or should THE APPLICANT be a company, of its share transactions whereby the majority shareholding is affected, failing which notice the entire balance owing, whether due or not, will immediately be deemed to be due and payable by THE APPLICANT. In addition, to the foregoing, THE APPLICANT acknowledges that immediately upon any change of ownership in THE APPLICANT any outstanding amount whether due or not, shall be deemed to be forthwith payable by THE APPLICANT to THE CREDITOR.
- 6. Until such time as THE APPLICANT has paid the purchase price in full in respect of any goods, the ownership in and to all such goods shall remain vested in THE CREDITOR. THE CREDITOR shall, in its sole discretion, without notice to THE APPLICANT, be entitled to take possession of any such goods which have not been paid for and in respect of which payment is overdue, in which event THE APPLICANT shall be entitled to a credit in respect of goods so returned being the price at which the goods are sold or the value thereof as determined by THE CREDITOR. THE APPLICANT hereby waives any right it may have for spoliation order against THE CREDITOR in the event that THE CREDITOR takes possession of any goods.
- 7.1 THE APPLICANT does hereby irrevocably and in Tem Suam cede, pledge, assign, transfer and make over unto and in favour of THE CREDITOR, all of its rights, 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 and any persons, companies, corporations, firms, partnerships, associations, syndicates and other legal personae whomever ("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.

Initials

Initials

Initials

- 7.2 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 form time to time be subject to this cession, then this cession, shall operate as a cession of all THE APPLICANT'S reversionary rights. Notwithstanding the terms of the foregoing cession THE APPLICANT shall be entitled to institute action against any of its debtors provided that all sums of money which THE APPLICANT collects from its debtors shall be collected on THE CREDITOR'S and provided that THE CREDITOR shall at any time be entitled to terminate THE APPLICANT'S right to collect such monies/ debts.
- 7.3 THE APPLICANT agrees that THE CREDITOR shall be entitled at any time or times to give notice of this cession to all or any of THE APPLICANT'S debtors.
- 7.4 THE APPLICANT further agrees that THE CREDITOR shall, at any time, be entitled to in respect any of THE APPLICANT'S books or records and in addition shall be entitled to take possession of such books and records (of whatsoever nature) to give effect to the terms of this cession.
8. The goods shall be regarded as having been sold as 'voetstoets' without warranty against the 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.
9. In the event of any order being given to THE CREDITOR on an order form reflecting THE APPLICANT'S name as the entity from which the order emanates, 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 authorized by THE APPLICANT and such order will be deemed to constitute valid delivery.
10. It is agreed that set-off shall operate automatically as a matter of law at the moment reciprocal debts between THE CREDITOR and THE APPLICANT come into existence and independently of the will of the parties and it shall not be necessary for either THE CREDITOR or THE APPLICANT to specifically raise set-off. Upon the operation of an automatic set-off aforementioned, the debts shall be mutually extinguished to the extent of the lesser debts.
11. Signature of 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 properly and completely delivered.
12. 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 in consequences of such goods being defective and causing damage whatsoever, whether through accident or negligence, gross negligence or any other cause.
13. The risk in and to the goods shall pass from THE CREDITOR to THE APPLICANT on the date notwithstanding that ownership will not pass to THE APPLICANT until full payment of the purchase price. 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 Namibian Transport Services or Road Carries if the goods are railed or transported by THE CREDITOR. The Post Office/ Namibian Transport Services Or Road Carrier shall act as the agent of THE APPLICANT.
14. 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 and deed of surety ship to any third party without prior notice to THE APPLICANT.
15. 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 shall not in any way operate as or be deemed to be a waiver by THE CREDITOR of any rights under this contract, or be construed as a novation thereof.
16. Each clause of these conditions of sale (at Pages 3 and 4) is severable, the one from the other and if any one or more clauses are found to be invalid or unenforceable, that clause/ clauses shall not affect the balance of these conditions of sale, which shall remain of full force and effect.
17. This contract contains the entire agreement between the parties and any other terms whether express or implied or excluded herefrom and any variations, cancellations or additions to this contract shall not be of any force or effect unless reduced to writing and signed by the parties or their duly authorized signatories.
18. Should THE APPLICANT at any time be wound up, whether provisionally or finally, (which liquidation or sequestration shall be deemed to be material breach by THE APPLICANT or in the event of THE APPLICANT being an individual or partnership and having his/ its estate sequestered, whether provisionally or finally, any goods delivered by THE CREDITOR to THE APPLICANT and in respect of which payment has not been made at the date of the winding up or sequestration (whether payment in respect thereof be due or not shall immediately be returned to and recoverable by THE CREDITOR and the agreement pursuant to which such goods were sold shall be deemed to have been cancelled in respect of the goods so returnable/ recoverable.

Initials

Initials

Initials
