

STANDARD TERMS AND CONDITIONS (including Deed of Suretyship)

1. DEFINITIONS

The following expressions bear the meanings assigned to them below and cognate expressions bear corresponding meanings:

- 1.1 "the Act" – means the National Credit Act 34 of 2005
- 1.2 "the agreement" – means the application for credit facilities and these terms and conditions.
- 1.3 "Applicant" - means the legal person named on the credit application, or if no name appears thereon, or in any other circumstances, any person or persons at whose request or on whose behalf NSS undertakes to supply any goods, do any business, or provide any advice or service.
- 1.4 "Credit Limit" – means the amount of credit that NSS has agreed in writing to advance to the Applicant and appears on the application for credit facilities.
- 1.5 "goods" – shall mean any goods of whatsoever nature sold by NSS to the Applicant in terms of this agreement.
- 1.6 "NSS" – shall mean National Stainless Steel Centre (Proprietary) Limited, a Private Company duly registered and incorporated in terms of the company laws of the Republic of South Africa, including *inter alia* its representatives, assigns, agents and employees.
- 1.7 "signatory or signatories" - shall mean the individual/s who signs the agreement and the credit application on behalf of the Applicant.

2. APPLICABILITY OF THESE TERMS AND CONDITIONS

- 2.1 Goods sold and services rendered by NSS to the Applicant are and shall be subject to these terms and conditions. Each condition shall be deemed to be incorporated in and to be a condition of the agreement between NSS and the Applicant.

3. PRICE, PAYMENT AND CREDIT

- 3.1 Unless otherwise specifically agreed by NSS, all sums shall be paid to NSS in terms of clause 3.3 below, and the full amount must be paid without any deduction.
 - 3.2 Unless otherwise expressly stated, prices are exclusive of value added tax which shall be for the account of the Applicant (unless the Applicant has given proof to NSS that the goods are Zero rated or exempt). The Applicant shall pay or reimburse to NSS the amount of any value added tax simultaneously with the purchase price.
 - 3.3 The purchase price and all sums payable in respect of any goods sold by NSS to the Applicant in terms of the agreement shall be payable by the Applicant to NSS, at NSS's head office: -
 - 3.3.1 in cash
 - 3.3.2 in South African currency and free of any exchange; and
 - 3.3.3 during or before the expiry of the credit period indicated on the agreement, which period shall commence upon the date of issue of an invoice by NSS, or if there is no credit period indicated shall be payable in cash on order.
 - 3.4 After the completion of the agreement by the Applicant NSS shall, in its own discretion, be entitled to make such enquiries as it may deem necessary to determine whether or not to grant the Applicant credit as applied for in the agreement, or on any other terms, or at all.
 - 3.5 Once NSS has resolved to either grant the Applicant credit as applied for in terms of the agreement, or to decline the Applicant such credit, NSS will notify the Applicant in writing accordingly.
 - 3.6 Until NSS has determined whether or not to grant the Applicant credit in terms of the agreement, all and any goods sold by NSS to the Applicant shall be supplied on a "cash-on-order" basis only.
 - 3.7 The Applicant may at any time, on written notice, request NSS to increase its credit limit. Nothing, in this clause shall be construed as obliging NSS to adhere to such a request.
 - 3.8 The Applicant shall not exceed the credit limit granted to the Applicant by NSS in terms of the agreement.
 - 3.9 In the event that the Applicant does exceed the credit limit, such increase shall not be construed as an amendment of the Applicant's credit limit and shall only operate as a temporary increase of the credit limit. The Applicant will, in addition to being liable for the credit limit, be liable for payment of all amounts in excess of the credit limit.
- 3.10 The Applicant has no right to withhold payment for any reason. The Applicant is not entitled to set off any amount due to the Applicant by NSS against any debt owed by the Applicant to NSS nor shall any payment be withheld by virtue of any alleged counterclaim against NSS by the Applicant.

- 3.11 Standard procedure for ordering from NSS is the following:
 - 3.11.1 the applicant will submit a purchase order to NSS;
 - 3.11.2 NSS will provide the applicant with a quote following receipt of the purchase order; and
 - 3.11.3 NSS will commence with work once customer has communicated acceptance of the quote to NSS.
- 3.12 Should NSS render services or supply goods to the Applicant if the procedure in 3.11 is not followed, this will be in NSS's sole discretion, and at the Applicant's risk.

4. RISK and OWNERSHIP

- 4.1 Risk in the goods shall pass to the Applicant upon delivery.
- 4.2 Notwithstanding delivery of any goods by NSS to the Applicant, ownership in the goods shall remain vested with NSS until the Applicant has paid NSS all amounts owing in respect thereof, including all incidental costs relating thereto, which incidental costs will include actual cost incurred by NSS in obtaining payment including but not limited to legal costs on the attorney and client scale, collection commission and interest.

5. LIMITATION of LIABILITY and INDEMNITY

- 5.1 NSS shall not be liable to the Applicant for any loss or damages, however such loss or damage may arise, whether in respect of or in connection with any instructions, business, advice, information or service or otherwise, unless it is proved that the loss or damage was caused by the gross negligence of NSS.
- 5.2 NSS shall have no liability in respect of any injury, loss or damage (direct, indirect or consequential) arising out of the use of, or inability to use, the goods sold by NSS and whether or not occasioned by NSS's negligence (gross or otherwise) or any act or omission on its part. For the purposes hereof, any reference to NSS shall include its servants, agents or contractors or any other person for whose act or omissions NSS may be liable in law. This also constitutes a *stipulatio alteri* in favour of such other person/s; the benefits of which may be accepted by them at any time.
- 5.3 NSS shall not in any circumstances be liable to the Applicant for any consequential or indirect loss howsoever caused.

6. ENTIRE AGREEMENT, NON-VARIATION AND INDULGENCE

- 6.1 The agreement forms the entire agreement between the Applicant and NSS. No variation of, addition to or amendment of the agreement shall be of any force or effect unless reduced to writing and signed by NSS and the Applicant.
- 6.2 No relaxation, indulgence, extension of time, temporary increase in the credit limit afforded by NSS to the Applicant shall operate as an estoppel against NSS or a waiver of NSS's rights in terms hereof or any other rights that NSS may have in law, nor shall it be deemed to be a novation of the agreement.
- 6.3 NSS shall not be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the agreement or not.

7. WARRANTIES AND GUARANTEES

- 7.1 No warranties, guarantees or representations, express or implied or tacit whether by law, contract or otherwise and whether they induced the agreement or not, which are not set forth in the agreement shall be binding on NSS. The Applicant hereby irrevocably waiving any right (common law or otherwise) it may have to rely thereon.
- 7.2 The goods sold by NSS to the Applicant are sold voetstoots. By accepting delivery of the goods, the Applicant confirms having inspected the goods and being satisfied that the goods are free of both latent and patent defects.

8. GENERAL

- 8.1 All specifications, descriptive matter, drawings, instruction manuals and other documents furnished to or by NSS do not form part of the agreement and may not be relied upon, unless NSS and the Applicant both agree otherwise in a written document, signed by both parties. All descriptive matter, specifications, drawings, instruction manuals and particulars given by NSS which may form part of the agreement are approximate only and NSS cannot be held responsible for loss due to any discrepancies therein.
- 8.2 NSS shall have the right in its sole discretion to institute any action for monies owing by the Applicant in either the relevant Magistrate's Court or the High Court, in the Republic of South Africa notwithstanding that the quantum claimed may exceed the jurisdiction of the Magistrate's Courts.
- 8.3 The Applicant chooses its domicilium citandi et executandi ("domicilium") for the purposes of the giving of any notice, the payment of any sum, the serving of any process and for any other

purpose arising from the agreement at its addresses and email addresses as set out in the agreement.

- 8.4 Each paragraph or clause in the agreement is severable the one from the other and if any paragraph or clause is found by any competent court to be defective or unenforceable for any reason whatsoever, the remaining paragraphs or clauses shall be of full force and effect and continue to be of full force and effect.
- 8.5 Any transaction is subject to cancellation by NSS due to force majeure from any cause beyond the control of NSS, including, without restricting their generality: inability to secure labour, power, materials or supplies, or by reason of an act of God, war, civil disturbance, riot, state of emergency, strike, lockout, or other labour disputes, fire, flood, drought, or legislation.
- 8.6 The Applicant shall forthwith after the conclusion of the agreement, furnish NSS with all information reasonably required by NSS to enable it to comply with its obligations.
- 8.7 The agreement shall be interpreted and implemented in accordance with the law of the Republic of South Africa.

9. BREACH

- 9.1 If the Applicant breaches any of the terms or conditions of the agreement or if the Applicant fails to pay any amount due to NSS on the due date for payment or if the Applicant:
 - 9.1.1 Commits any act of insolvency;
 - 9.1.2 Endeavours to compromise generally with any of its creditors;
 - 9.1.3 Causes to be done anything which may prejudice NSS's rights in terms of this agreement or at all;
 - 9.1.4 Allows any judgement against it to remain unsatisfied for a period of (7) seven days;
 - 9.1.5 Is placed under provisional or final liquidation, provisional or final sequestration, judicial management, or if its estate is voluntarily surrendered, or if more than 25% of the issued share capital or members interest of the applicant is transferred, pledged encumbered or ceded to a third party or parties, or is placed into business rescue.
- 9.2 Upon the happening of any one or more of the events in 9.1 and to the extent permitted by the Act, NSS shall be entitled, at its election and without prejudice to any other rights which NSS may have to:
 - 9.2.1 Claim immediate payment of all outstanding amounts due by the Applicant to NSS together with interest thereon;
 - 9.2.2 Immediately take repossession of the goods, (even if the goods have been further worked on or if the Applicant or a third party claims the goods have acceded to other property), in terms of an attachment order and retain possession thereof until such time the Applicant has paid all outstanding amounts in respect of the goods to NSS;
 - 9.2.3 To cease performance of its obligations hereunder as well as in terms of any other contract NSS may have with the Applicant, until the Applicant has remedied the breach;
 - 9.2.4 Cancel the agreement and take possession of any of the goods sold to the Applicant.
- 9.3 NSS shall not be obliged to comply with its obligations hereunder in any respect whatsoever for so long as the Applicant is indebted to NSS in any amount whatsoever in respect of any cause whatsoever or fails to comply with any other obligations to NSS, whether arising out of the agreement or otherwise. In particular, without limiting the generality of the foregoing, if delivery of any particular order is to take place in stages, NSS shall not be obliged to deliver any part of the order until the purchase price which is due in respect of any part of the order which has already been delivered has been paid.
- 9.4 No claim based on the terms of this agreement can arise against NSS unless the Applicant has given NSS 30 (thirty) days written notice sent by prepaid registered post or email calling on NSS to rectify any alleged defect or breach of the agreement.
- 9.5 The Applicant agrees that a certificate setting out the Applicant's indebtedness to NSS, issued by NSS and signed on its behalf by any person duly authorized by NSS (which authority need not be proven) shall be binding and shall be *prima facie* proof of the Applicant's indebtedness to NSS.
- 9.6 The Applicant hereby indemnifies NSS against claims for damages of whatever nature, however such claim may arise and by whomsoever caused in relation to the removal of goods, and without derogating from the generality of the foregoing, the removal of repossessed goods from the premises of the Applicant or wherever same may be found and the storage of such goods pending receipt of payment from the Applicant of all outstanding amounts.

- 9.7 Should NSS take action contemplated in 9.2.2 above, the Applicant hereby waives its right to claim that the goods have acceded to other moveable property; and the Applicant hereby fully indemnifies NSS from liability for any claim by any third party as a result of NSS taking the action contemplated in 9.2.2.

10. COSTS

- 10.1 The Applicant shall be liable for all cost incurred by NSS in the recovery of any amounts owing or the enforcement of any other rights which it has in terms of the agreement, including collection charges and costs on the scale as between attorney and own client (including cost of counsel as on brief) whether incurred prior to or during the institution of legal proceedings or if judgement has been granted, in connection with satisfaction or enforcement of such judgement.

11. SURETYSHIP

- 11.1 The signatory/signatories, by his signature hereto, binds himself in favour of NSS, its successors-in-title and assigns as surety for and co-principal debtor in solidum with the Applicant for the due and punctual performance by the Applicant of all its payment obligations to NSS in terms of the agreement.
- 11.2 The suretyship in 11.1 shall remain of full force and effect notwithstanding any indulgence, concession, leniency or extension of time which may be shown or given by NSS to the Applicant. The suretyship is expressly acknowledged to be a continuing, covering suretyship.
- 11.3 The Signatory/signatories hereby expressly renounce the benefits of *ordinis seu excussionis et divisionis*, also known as the benefits of excussion and division. They hereby confirm that they fully understand the consequences of renouncing these benefits.
- 11.4 The signatory/signatories will not be released from suretyship obligations to NSS notwithstanding the Applicant having been placed into business rescue, having adopted a business rescue plan or compromise with creditors or notwithstanding that the Applicant is placed into provisional or final winding-up.

12. CESSION OF BOOK DEBTS AS SECURITY

- 12.1 The Applicant hereby irrevocably cedes, assigns and transfers, makes over unto and in favour of NSS, all the Applicants right, title and interest in and to its claims against its debtors, both present and future and from whatsoever cause arising, as security for all or any of the amounts which the Applicant may now or at any time in the future owe to NSS.
- 12.2 The Applicant irrevocably and in *rem suam* authorizes NSS in its absolute discretion to claim from all or any of the Applicants debtors the whole or any portion of the indebtedness of anyone or more of them, to give a valid receipt or discharge for such indebtedness, to take any action in its name in any court of competent jurisdiction and to proceed in execution thereunder against all or any of the said debtors, to cede, transfer, negotiate, pledge or otherwise deal with all or any of the said debtors, to exchange promissory notes, agreements, documents of title or any other security held by the applicant.
- 12.3 The security created by the cession shall be a continuing one, notwithstanding any fluctuation in the amount of indebtedness of the Applicant to NSS.
- 12.4 The Applicant hereby undertakes on demand, to furnish NSS with such information, concerning its debtors as may be reasonably required, to enable NSS to give effect to the provisions of this clause.

15 INTEREST

The Applicant shall pay interest on amounts owing to NSS at the publicly quoted basic rate ruling from time to time that NSS's bankers lend on overdraft, which rate shall be proved by way of a certificate signed by any employee of such Bank, compounded monthly in arrear, calculated from the due date thereof until date of payment. Such interest shall be payable on demand.

Signed at _____ on

20 _____ for and on behalf of the Applicant who warrants that he is duly authorized hereto

Signature _____