

Dear Customer

We thank you for your interest in becoming a customer of SMD Technologies. Herewith please find our application for credit facilities incorporating our standard terms and conditions of sale and suretyship acceptance.

To avoid any delays, we kindly request that you note the following:

1. Please complete the form in full as all the information requested is critical to processing your application promptly.
2. Kindly initial all pages as indicated (bottom right corner) and sign in full on behalf of "The Applicant" on the last page.
3. The form should only be signed by an authorised representative of your company.
4. Please include the following with your application:
 - a. Copy of company registration documentation;
 - b. Proof of banking details;
 - c. Certified copy of directors ID;
 - d. VAT certificate (if applicable)

Applications for credit facilities can only be considered upon receipt of a completed and signed application, as well as requested supporting documents. Note that your credit application may take five to ten working days to process and that upon completion, you will be advised as to the status thereof.

Please also note that you may be contacted by our credit insurance providers (CGIC) to confirm your company details. They may also request you provide additional documents, such as latest financials and/or management accounts.

This is done in order to minimise credit risk and eliminate the possibility of fraud.

Completed applications together with supporting documents (if applicable) should be forwarded to our offices as follows:

E-mail: newclient@smdtechnologies.co.za
Tel: 011 608 3633

We further require that the original application form be forwarded to the following postal address:

P.O. Box 72142,
Parkview, Johannesburg
South Africa
2122

We thank you for your interest and look forward to a long and mutually beneficial business relationship.

Yours faithfully

Accounts Receivable
SMD Technologies Pty Ltd
Tel: 011 608 3633

THIS APPLICATION FOR CREDIT FACILITIES INCORPORATES STANDARD TERMS AND CONDITIONS OF SALE AND SURETYSHIP ACCEPTANCE.

SECTION A – BASIC INFORMATION

I/We, _____

(Hereinafter referred to as "THE APPLICANT") hereby make application for credit facilities for the opening of an account with **SMD TECHNOLOGIES (PTY) LIMITED**, registration number 2015/107801/07 (hereinafter referred to as "SMD TECHNOLOGIES"). In support of this application, the following information is furnished:

1. Legal entity type (please tick)

Sole Ownership	Partnership	Close Corporation	Private Co (Pty) Ltd	Public Co. (Ltd)	Trust
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2.1 Registered Name of "THE APPLICANT" _____

2.2 Trading name _____

2.3 Company Registration number (if registered) _____

2.4 VAT Number _____

2.5 Business Activities _____

2.6 Description of Business _____

2.7 What category do you fit into: Physical Shop Online Retailer Wholesaler (including re-selling to online retailers) Other –

2.8 Postal Address _____

Code _____

2.9 Physical Address of THE APPLICANT in terms of Section B, clause 4 of the Terms and Conditions of Sale

2.10 Delivery Address (if multiple locations please attach schedule)

2.11 Telephone Numbers Area Code (_____) _____

2.12 Telefax Number Area Code (_____) _____

2.13 Cellular Number _____

2.14 e-Mail Address _____

2.15 Name, Address, and Contact number of Landlord _____

2.16 Person responsible for account payment (name, contact number and email address)

2.17 Business Function of THE APPLICANT _____

2.18 Persons authorised to place orders on behalf of the company (name and identity number)

3.1 SMD Technologies Sales Representative:

3.2 SMD Technologies Sales Representative - Signature: _____

4. Date Business Commenced Trading

D	D	M	M	Y	Y	Y	Y
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Please initial here _____

- 5.1 Bankers _____
- 5.2 Branch _____
- 5.3 Account Number _____
- 5.4 Account Holder Name _____
- 5.5 Branch Code _____
- 5.6 Type of account _____
- 5.7 Date account opened _____
- 5.8 Holding Company name _____
- 5.9 Percentage share holding _____
- 5.10 Name of Auditors / Accounting Officer _____ Tel Number _____
- 5.11 Date of last audited financial statements _____ (please attach hereto)

6. Details of principals (Sole Owner / Partners /Members / Directors/ Trustees) - SA CITIZENS & FOREIGN NATIONALS

Full Name	ID Number (SA Citizens only)	Home Address	Home Phone
Full Name	Passport Number & Date of Birth (Foreign Nationals Only)	Home Address	Home Phone

7. Trade References

Company (Supplier) Name	Credit Terms/Limit	Telephone Number	Email Address
		Area Code ()	
		Area Code ()	
		Area Code ()	
		Area Code ()	

8. The following credit limit request is for assessment purposes only and does not form part of this contract:

Directors: Avi Mishan; Simca Diskin; Clive Sacks; Bruce Steen; Rotondwa Nengovhela
 25 Nguni Drive, Long Meadow Business Estate
 PO Box 72142 Parkview 2122, Tel: 011 608-3633;
 Email: sales@smdtechnologies.co.za Registration Number: 2015/107801/07

SMD

INITIAL HERE

8.1 Amount of credit required R _____

8.2 Estimated monthly purchases R _____ -

9. In terms of Section 4 (1) (a) (i) of the National Credit Act and Section 5 (2) (b) of the Consumer Protection Act please state:

9.1 Does THE APPLICANT'S **ASSET VALUE** or **ANNUAL TURNOVER** exceed R 1 million?

YES	NO
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9.2 Does THE APPLICANT'S **ASSET VALUE** or **ANNUAL TURNOVER** exceed R 2 million?

YES	NO
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Please initial here _____

10 In terms of the Companies Act 71, of 2008 please state:

10.1 Is THE APPLICANT currently under Business Rescue?

YES	NO
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10.2 Does THE APPLICANT intend to apply for Business Rescue within the next three months?

YES	NO
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11.1 List all sureties, cession of debtors, notarial bonds, judgements:

11.2 List liquidations against the business or any of its principals:

11.3 Have moratoriums or offers of compromise ever been made to any creditors?

Please initial here _____

SMD

SECTION B – Terms and Conditions

TERMS AND CONDITIONS

1. INTERPRETATION

- 1.1 In this agreement and the recitals, unless clearly inconsistent with or otherwise indicated by the context:
- 1.1.1 any reference to the singular includes the plural and *vice versa*;
- 1.1.2 any reference to natural persons includes legal persons and *vice versa*; and
- 1.1.3 any reference to a gender includes the other genders.
- 1.2 Where appropriate, meanings ascribed to defined words and expressions in 2, shall impose substantive obligations on the parties.
- 1.3 The clause headings in this agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
- 1.4 Words and expressions defined in any sub-clause shall bear the meanings assigned to such words and expressions in this entire agreement.
- 1.5 In the event that the date for the performance of any obligation or the exercise of any right in terms of this agreement falls on a day which is not a business day, then the relevant date for performance of any obligation or the exercise of any right in terms of this agreement shall be the immediately succeeding business day.
- 1.6 When any number of days or other period is prescribed in this agreement, it shall be calculated exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a business day, in which event the last day shall be the immediately succeeding business day.
- 1.7 The expiry or termination of this agreement shall not affect such of the provisions of this agreement as expressly provided that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 1.8 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 1.9 The use of the word "**including**" followed by a specific example or examples shall not be construed or interpreted as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording and/or such specific example or examples.
- 1.10 In the interpretation of this agreement, the *contra proferentum* rule of interpretation shall not apply nor shall this agreement be construed in favour of or against any party by reason of the extent to which any party or its professional advisors participated in the preparation of this agreement.
- 1.11 The words "**material**" and "**materially**" means, when used as an adjective in conjunction with an event, condition, circumstance, effect, or other item, that there is a substantial likelihood that a reasonable person will in the matter concerned attach importance to the event, condition, circumstance, effect, or item in evaluating the party to which it relates and/or the event, condition, circumstance, effect, or other item contemplated in this agreement.
- 1.12 This agreement shall be governed by and interpreted in accordance with the laws of the RSA.

2 DEFINITIONS

- 2.1 In this agreement, unless the context otherwise indicates:
- 2.1.1 "**affiliate**" means an SMD affiliate or a customer affiliate, as the case may be and as the context may require;
- 2.1.2 "**agreement**" means these terms and conditions entered into between the customer and SMD, subject to clause 3 and as may be amended from time to time;
- 2.1.3 "**applicable law(s)**" means any statute, regulation, notice, policy, directive, ruling or subordinate legislation; the common law; any binding court order, judgment or ruling; any applicable industry code, policy or standard enforceable by law;
- 2.1.4 "**brick and mortar store**" means a traditional physical store that offers products to customers for face-to-face sales;
- 2.1.5 "**business day**" means any day other than a Saturday, Sunday or public holiday officially recognized as such in RSA and "business days" has a corresponding meaning;
- 2.1.6 "**Companies Act**" means the Companies Act, No. 71 of 2008, as amended from time to time, together with the regulations promulgated in terms thereof;
- 2.1.7 "**CPA**" means the Consumer Protection Act, 68 of 2008, as amended from time to time, and the regulations promulgated in terms thereof;
- 2.1.8 "**credit approved customer**" means a customer who has been approved for a line of credit on terms and conditions as determined in SMD's sole discretion;
- 2.1.9 "**customer**" means the customer signatory and each customer affiliate, collectively or individually, as the context may require;
- 2.1.10 "**customer affiliate**" means, in relation to the customer signatory (a) a subsidiary or a holding company or a subsidiary of the holding company of the customer signatory. For purposes of this definition the terms "subsidiary" and "holding company" shall have the meaning assigned thereto in section 1 of the Companies Act, provided that these terms shall also include any foreign entity which, had it been registered in terms of that Act, would fall within the ambit of either of these terms; and/or (b) any other entity that, now or in the future, directly or indirectly, effectively controls, is effectively controlled by, or is under common effective control by another entity together with the customer signatory. For the purposes of this definition the term "effective control" shall include control of any entity through any voting pool or other arrangement, the right to the exercise of voting rights, directly or indirectly, resulting in effective control of any entity and/or control of its management, and/or the right to appoint the majority of the members of the board of directors of any entity;

- 2.1.11 **"customer signatory"** means the entity or natural person, as the case may be, that has concluded this agreement with SMD or any of the SMD affiliates, in accordance with the provisions of clause 3, thereby binding each customer affiliate to this agreement;
- 2.1.12 **"EFT"** means an electronic fund transfer of money;
- 2.1.13 **"goods"** means goods as defined in the CPA and shall further include the products in whatever form (including goods, services, merchandise and/or produce) ordered by the customer from SMD or supplied to the customer by SMD;
- 2.1.14 **"intellectual property"** means patents, rights to inventions, printing plates copyright and related rights, trademarks, trade names, domain names, rights in get-up, rights in goodwill, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in Confidential Information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including without limitation all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world;
- 2.1.15 **"order"** means an order for goods placed by the customer with SMD;
- 2.1.16 **"online platform"** means a website or application by means of which goods are sold over the internet;
- 2.1.17 **"parties"** means SMD, and the customer and "party" means either one of them as the context may indicate;
- 2.1.18 **"personal information"** shall have the meaning ascribed to it in Chapter 1 of POPIA;
- 2.1.19 **"POPIA"** means the Protection of Personal Information Act, No 4 of 2013, as amended from time to time, including any regulations and/or code of conduct made under the Act;
- 2.1.20 **"processing"** shall have the meaning ascribed to it in Chapter 1 of POPIA;
- 2.1.21 **"record"** shall have the meaning ascribed to it in Chapter 1 of POPIA;
- 2.1.22 **"responsible party"** shall have the meaning ascribed to it in Chapter 1 of POPIA;
- 2.1.23 **"RSA"** means the Republic of South Africa;
- 2.1.24 **"signature date"** means the date of signature of this agreement by the party signing last in time;
- 2.1.25 **"SMD"** means SMD Technologies Proprietary Limited, Registration no. 2015/107/801/07, with its domicilium citandi et executandi at 23 Nguni Drive, Longmeadow Business Estate West, Modderfontein;
- 2.1.26 **"SMD affiliate"** means, in relation to SMD, (a) a subsidiary or a holding company or a subsidiary of the holding company of SMD Technologies. For purposes of this definition the terms "subsidiary" and "holding company" shall have the meaning assigned thereto in section 1 of the Companies Act, provided that such terms shall also include any foreign entity which, had it been registered in terms of that Act, would fall within the ambit of either of such terms; and/or (b) any other entity that, now or in the future, directly or indirectly, effectively controls, is effectively controlled by, or is under common effective control by another entity together with SMD Technologies. For the purposes of this definition the term "effective control" shall include control of any entity through any voting pool or other arrangement, the right to the exercise of voting rights, directly or indirectly, resulting in effective control of any entity and/or control of its management, and/or the right to appoint the majority of the members of the board of directors of any entity. For this purpose, and without limiting the foregoing, any entity in which SMD Technologies holds at least 20% (twenty percent) of the voting rights shall be deemed to be under the effective control of SMD Technologies;
- 2.1.27 **"VAT Act"** means of the Value Added Tax Act, No 89 of 1991, as amended from time to time, together with the regulations promulgated in terms thereof.

3 AFFILIATES

- 3.1 The signatories record their intention that this agreement shall regulate the relationship not only between themselves but also in respect of all their affiliates.
- 3.2 On each occasion that a new agreement is concluded, the provisions of clause 3.1 shall operate new so as to bind all the parties to this agreement, notwithstanding that they may already be so bound; provided that no party shall there by forfeit any existing rights or be released from any existing obligations.

4 NATURE OF THIS AGREEMENT

Upon signature date or any other date as set out in clause 21.4, the relationship between the parties shall be governed in accordance with the terms and conditions set out in this agreement.

5 QUOTATIONS

- 5.1 Any quotation provided by SMD shall remain valid for a period of 7 business days from the date that the quotation is transmitted to the customer, alternatively until the date of issue of a new price list by SMD, whichever occurs first.
- 5.2 A quotation may be revoked by SMD at any time before written notification of acceptance is received from the customer.
- 5.3 All quotations are subject to the availability of the goods.
- 5.4 A quotation shall become valid and binding upon acceptance by the customer, in writing, which acceptance shall be deemed to take place at the head office of SMD in Johannesburg.

6 VALID ORDERS

- 6.1 In the event that an order is placed by telephone, the order must be confirmed in writing, prior to acceptance by SMD. SMD shall not be responsible for any errors or misunderstandings that may occur when orders are placed telephonically.
- 6.2 Upon receipt of any order received by SMD, which reflects the customer's name as the entity from which the order emanates, SMD shall be entitled to assume that the order has emanated from the customer, notwithstanding the fact that such order may have been given or signed by a person not authorized to do so. Such order shall constitute a valid order and the customer shall be bound by the order.
- 6.3 It is the sole responsibility of the customer to determine that goods ordered are suitable for the purposes of the intended use and the customer indemnifies SMD in the event that the goods are not suitable for the intended use unless the customer has been advised, in writing, by SMD that the goods are suitable for the specified purpose.
- 6.4 No variations to an order shall be binding on SMD unless SMD has accepted the variation and sent an updated quotation to the customer, and the customer has accepted the quotation.

6.5 It is specifically recorded that any terms and conditions accompanying the customer's purchase order, not agreed to in writing by an authorized representative of SMD, shall be of no force and effect.

7 PAYMENT TERMS

7.1 The customer agrees that any amount reflected in a tax invoice shall be due and payable unconditionally as follows:

7.1.1 by way of EFT prior to delivery; or

7.1.2 in the event that the customer is a credit approved customer, within 30 calendar days from the end of the month in which a tax invoice has been issued by SMD, or

7.1.3 on any other payment terms provided to the customer by SMD.

7.2 Any credit facilities granted to the customer by SMD are entirely at the discretion of SMD and may be withdrawn, with immediate effect, at any time without further notice to the customer.

7.3 In the event that the customer has not used a facility under this agreement for 12 months, SMD may elect to close the account, in which event the customer shall be required to reapply for a credit facility.

7.4 All payments shall be made by way of EFT into SMD's nominated banking account as per the banking details reflected on the sales order. Alternatively, by way of a card payment at SMD's offices which payment shall attract a surcharge of 3%, excluding VAT, on the value of the card transaction. Payment shall be made to SMD free of exchange and without set-off or deduction of any kind whatsoever.

7.5 In the event of any payment being erroneously transferred into the incorrect banking account the customer shall remain liable to SMD for the entire amount due.

7.6 Should the customer at any time receive a notification that SMD's nominated banking details have changed, the onus shall vest with the customer to confirm such change with an authorized representative of SMD prior to effecting any payment, which obligation shall arise prior to any payment becoming due.

8 DELIVERY

8.1 Delivery shall be deemed to have taken place against signature of the delivery note.

8.2 The customer agrees that the signature of, *inter alia*, any agent, contractor, sub-contractor, employee or any person purporting to act on behalf of the customer on SMD's delivery note and/or invoice and/or waybill and/or any document of a similar nature, or the delivery note of any independent contractor shall constitute *prima facie* proof of delivery of the goods.

8.3 The customer hereby acknowledges that any delivery date provided by SMD is an estimated delivery date and SMD shall not be bound the estimated delivery date.

8.4 SMD shall endeavour to ensure that goods are delivered timeously by the estimated delivery date, however, it shall not be responsible for any delays, whatsoever, in the delivery of such goods, and the customer shall not be entitled to cancel the order or refuse acceptance of any goods not delivered by the estimated delivery date.

8.5 In the event that the customer elects to collect an order and the order is not collected within three days of placing the order, the order may be cancelled at the sole discretion of SMD, in which event a new order will have to be placed, which could result in increased pricing.

8.6 Notwithstanding the ownership of the goods, the risk in and to the goods shall pass from SMD to the customer on delivery and the customer shall be responsible for ensuring that all of the goods in its possession are adequately insured and shall provide confirmation thereof to SMD upon being requested to do so.

9 OWNERSHIP

9.1 Notwithstanding delivery of any goods, ownership shall vest with SMD until such time as payment has been received in full.

9.2 SMD shall, in its sole discretion, without any notice to the customer, be entitled to take possession of any goods which have not been paid for and in respect of which payment is overdue.

9.3 In the event of SMD taking possession of any goods as per clause 9.2, the customer shall be entitled to a credit in respect of the goods at the price at which the goods were sold to the customer or the lessened value thereof in the event that the goods are no longer considered within their original undamaged packaging, which determination shall be made at SMD's sole discretion. Any costs associated with SMD taking possession of the goods shall be set-off by SMD against any credit due to the customers.

9.4 In the event that SMD elects to take possession of the goods, the customer hereby waives any right that it may have in respect of spoliation.

9.5 The customer shall take all steps as may be necessary to notify any interested third parties that ownership of the relevant goods has not passed from SMD to the customer.

9.6 The customer hereby indemnifies SMD against any and all damage and costs in relation to the removal of goods from the premises of the customer or any other premises where the goods may be found.

10 DEFAULT IN PAYMENT

10.1 In the event that the customer fails to make payment of any amount due to SMD on the due date, all amounts due and owing to SMD shall immediately become due, owing and payable.

10.2 Notwithstanding what is set out in clause 10.1 above, SMD shall be entitled to charge the customer interest at a rate of 2% (two percent) per month on the outstanding amount due, owing and payable, calculated from the date that the amount became due until the date of final payment, both days inclusive.

10.3 In addition to what is set out in this clause 10, SMD shall be entitled, in its sole discretion to invoke clause 18 below. 11

CUSTOMER'S WARRANTIES

The customer warrants that:

11.1 the goods are procured for the purposes of resale, either through its own brick and mortar store or its own online platform. The customer understands that it may not, under any circumstances whatsoever, resell the goods on a third-party online platform (for example, but without limitation, Takealot.com, Gumtree, Loot, eBay, Amazon.com, etc.) and/or resell the goods to any customer that it reasonably believes intends to further resell the goods (including resale on any online platform). Notwithstanding any other remedy that SMD may have in accordance with this agreement, in the event that the customer breaches this warranty, SMD shall be entitled, in its sole discretion and without prior notification to the customer, to suspend the customer's account until such time that SMD is reasonably satisfied that the customer is no longer in breach of this warranty;

- 11.2 it will at all times conduct itself in good faith in respect of SMD and the goods and will at no time conduct itself in any manner that will cause harm, loss or damage to the goods and/or reputation of SMD;
- 11.3 no representations have been made by SMD pertaining to the suitability of the goods or any of its qualities and further that the customer has confirmed the suitability of any goods or services prior to placing the order;
- 11.4 it shall notify SMD, in writing, within 20 calendar days of any change in ownership of the customer's business, or should the customer be a company, of its share transactions whereby the majority shareholding is affected. The customer acknowledges that immediately upon any change of ownership in the customer any outstanding amount whether due or not shall be deemed to be forthwith payable by the customer to SMD.

12 INDEMNITY

- 12.1 The customer hereby indemnifies SMD, SMD's officers, agents and employees (hereinafter collectively referred to as "the indemnifieds") against all loss, liability, damage, costs and expenses (including legal costs on the scale as between attorney and own client and all additional costs and disbursements and including consequential loss) of every nature whatsoever which the indemnifieds may suffer or incur directly and/or indirectly as a result of and/or which may be directly and/or indirectly attributable to any breach of any of the provisions of this agreement and/or any negligence by the customer.
- 12.2 The aforementioned indemnification shall remain in effect without limit of time after the termination of this agreement with respect to any act or omission which shall have occurred during or after the term of this agreement, whether discovered before or at any time subsequent to the termination of this agreement.

13 RETURN POLICY

- 13.1 New goods are guaranteed according to either SMD's specific warranties, or the original manufacturer's warranties. Where indicated certain goods may be sold to the customer on the basis of SMD not accepting any responsibility for latent defects in which case any product warranties are specifically excluded.
- 13.2 Returns will be dealt with in accordance with SMD's return policy which is subject to change from time to time and may be requested from SMD.

14 INTELLECTUAL PROPERTY

The customer acknowledges that all intellectual property belonging to SMD shall at all times remain the sole and exclusive property of SMD and that the customer shall at no stage, whatsoever, have any claim in respect thereof.

15 FORCE MAJEURE

SMD shall not be liable to the customer for any delay in or failure to fulfil or perform its obligations under this agreement if and to the extent that such delay or failure is caused by circumstances beyond SMD's reasonable control including, for example, flood, fire, earthquake, war, tempest, hurricane, national industry-wide strike, government restrictions, looting, rioting and/or acts of God. SMD shall notify the customer, as soon as is reasonably possible, of the occurrence of a force majeure event.

16 PRIVACY

- 16.1 The parties shall fully comply with the statutory obligations contained in POPIA, with which the parties warrant that they are fully conversant at signature date, when processing personal information obtained by the responsible party and such personal information is entered into a record. Without limiting the generality of the aforesaid the responsible party shall ensure that the privacy and data protection conditions are strictly adhered to when processing the data subject's personal information.
- 16.2 The parties shall comply with the security and information protection obligations equivalent to those imposed on them in terms of POPIA and other applicable data protection legislation, and failing such legislation, they shall take, implement and maintain all such technical and organizational security procedures and measures necessary or appropriate to preserve the security and confidentiality of the personal information in its possession and to protect such personal information against unauthorized or unlawful disclosure, access or processing, accidental loss, destruction or damage.
- 16.3 Each party ("the indemnifying party") hereby indemnifies and holds the other party harmless from any liability whatsoever arising from the indemnifying party's failure to comply with its statutory obligations contained in POPIA.
- 16.4 Each party shall only provide, collect, use, store or process personal information:
 - 16.4.1 in compliance with POPIA;
 - 16.4.2 as is necessary for the purposes of this undertaking; and
 - 16.4.3 in accordance with the lawful and reasonable instructions of the party providing the personal information. 17

CUSTOMER'S CONSENT TO SHARE PERSONAL INFORMATION

The customer hereby consent's that SMD shall be entitled to utilize its personal information to:

- 17.1 conduct a credit enquiry on the customer and/or any directors, members, partners, trustees, shareholders and any other necessary person associated with the customer from time to time with one or more credit bureaus, credit information agents, credit insurance companies or other creditors (trade references) of the customer in terms of this agreement;
- 17.2 transmit details to credit bureaus, credit information agents, credit insurance companies or other creditors of the customer in respect of the customer's performance in respect of meeting its obligations as set out in this agreement;
- 17.3 record any non-performance of payment commitments with credit bureaus, credit information agents, credit insurance companies or other creditors of the customer.

18 BREACH

- 18.1 In the event of the customer committing a breach of any of the provisions of this agreement, and failing to remedy such breach within 7 business days of being called upon by SMD to do so, SMD shall, without prejudice to any other rights it may have, be entitled to:
 - 18.1.1 claim immediate payment of any amount owing to it, as well as payment of all other sums due to; and/or
 - 18.1.2 cancel the agreement and take possession of the goods; and/or
 - 18.1.3 claim any damages SMD may have suffered as a result of the customer's breach.
- 18.2 In the event of a default, SMD shall be entitled, in its sole discretion, to appropriate any payments made by the customer to SMD towards any legal costs incurred by SMD in connection with the recovery of any such default, on an attorney and own client scale, and any interest due in accordance with this agreement and then to any amount owing by the customer.
- 18.3 A certificate signed by any director of SMD, reflecting the amount owing by the customer to SMD in respect of any

amount owing shall be *prima facie* proof of the customer's indebtedness to SMD as well as the quantum of the indebtedness and shall constitute a liquid document. The onus shall vest with the customer to prove that such reflects the certificate is incorrect.

19 TERMINATION

Notwithstanding anything to the contrary herein contained, this agreement may be terminated by SMD forthwith, without prior notification to the customer, if:

- 19.1 an order is made by any court of competent jurisdiction, whether provisional or final, for the winding up or judicial management of the customer;
- 19.2 the customer passes a resolution to institute business rescue proceedings or for its voluntary winding up;
- 19.3 the customer ceases to carry on business or disposes of its business or changes the fundamental nature of its business and/or disposes of the major portion of its assets other than for value;
- 19.4 the customer assigns its rights under this agreement to any third party without the prior written consent of SMD;
- 19.5 the customer compromises generally with its creditors otherwise than in the course of the re-structuring of its capital or the merger of the customer with a third party;
- 19.6 the customer or directors/partners of the customer are convicted and found guilty of a major infringement as determined solely at SMD's discretion, and in SMD's sole opinion such eventuality may impair the ability of the customer to comply with this agreement or harm SMD's reputation.

20 NOTICES AND DOMICILIUM

- 20.1 The customer appoints as their *domicilium citandi et executandi* the physical address and email address set in the dealer application form completed by the customer, for the purposes of giving or sending any notice provided for or required under this agreement and SMD appoints the following address:

23 Nguni Drive, Longmeadow Business Estate West
Lethabong, Modderfontein, 1609
accounts@smdtechnologies.com

- 20.2 A party may change its *domicilium* or its addresses for the purposes of notices to any other physical address or electronic mail address, by written notice to the other party to that effect. Such change of address will be effective 5 (five) business days after receipt by the other party of the notice of the change.
- 20.3 All notices to be given in terms of this agreement will be given in writing, in English, and will be delivered by hand or sent by electronic mail:
 - 20.3.1 if delivered by hand during business hours, be presumed to have been received on the date of delivery. Any notice delivered after business hours or on a day which is not a business day will be presumed to have been received on the following business day; and
 - 20.3.2 if sent by email during business hours, be presumed to have been received on receipt of a read receipt of the email.
- 20.4 Notwithstanding the above, any notice given in writing in English, and actually received by the party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this clause.

21 GENERAL

- 21.1 Each provision of this agreement is separate and severable from the other provisions. Should any provision hereof be found by a court of competent jurisdiction to be invalid or unenforceable for any reason, the parties will consult with one another in good faith in order to agree, if possible, an alternative provision in accordance with the intent and tenor of this agreement. The remaining provisions of this agreement shall nevertheless remain binding and continue with full force and effect.
- 21.2 No indulgence which SMD may grant to the customer shall constitute a waiver of any rights of SMD, and SMD shall not thereby be precluded from exercising any rights against the customer which may have arisen in the past or which might arise in the future.
- 21.3 The customer shall not without the prior written consent of SMD, cede, delegate, assign or otherwise transfer or encumber all or any of its rights or obligations under this agreement.
- 21.4 This agreement sets out the entire agreement and understanding between the parties in connection with the subject matter thereof. No party shall be bound by any express, tacit or implied term, representation, warranty, promise or the like, not recorded herein. Notwithstanding a foregoing, SMD may, in its sole discretion, amend this agreement from time to time. Any such changes or amendments will be contained in a new document available free of charge from SMD on request and the customer's signature or placement of any subsequent order will signify and constitute the customer's acceptance of any changes or amendments to this agreement.
- 21.5 Upon a termination of this agreement for whatever reason, these provisions of this agreement which of necessity need to continue to be of force and effect shall survive termination.

SMD Technologies Proprietary Limited

(who warrants that they are duly authorised)

Signature: _____

Full name: Simca Maurice Diskin

Designation: Director

Date: 27 January 2022

Customer

(who warrants that they are duly authorised)

Signature: _____

Full name: _____

Designation: _____

Date: _____

**SECTION C – ACCEPTANCE OF
SURETYSHIP**

I, the undersigned:

Name: _____

ID Number: _____

by my signature hereto (which appears below) do hereby bind myself in my private and individual capacity as surety and co-principal debtor with THE APPLICANT in favour of SMD TECHNOLOGIES for the due performance of any obligation of THE APPLICANT and for the payment to SMD TECHNOLOGIES by THE APPLICANT of any amounts which may now or at any time be or become owing to SMD TECHNOLOGIES by THE APPLICANT, from whatsoever cause arising and including, but without limiting the generality of the foregoing, any claims 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 SMD TECHNOLOGIES and then only, in the event that the sums then owing by THE APPLICANT (whether due or not) to SMD TECHNOLOGIES have been paid in full. If THE APPLICANT is placed under business rescue, this will constitute a default in terms of this agreement, which justifies SMD TECHNOLOGIES enforcing the suretyship for the full outstanding balance, notwithstanding that the creditors in any Business Rescue proceedings may agree to a reduced settlement of the overall debt. I acknowledge and understand that as surety and co-principal debtor, I waive and renounce the benefits of the legal exceptions:

- Excussion – the right to require SMD TECHNOLOGIES to first proceed against THE APPLICANT for payment of any debt owing to SMD TECHNOLOGIES before proceeding against the surety;
- Cession of Action – the right to require SMD TECHNOLOGIES to give cession of the action for payment of debts to the surety before any action against the surety may be taken;
- The benefit of simultaneous citation and division of debt – the right of a co-surety to be liable only for his/her pro-rata share of the principal debt.

I furthermore bind myself irrevocably to all of the terms and conditions set out in this agreement.

Signature: _____

As Witness (1):

Name: _____

ID Number: _____

Signature: _____

As Witness (2):

Name: _____

ID Number: _____

Signature: _____

SMD

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

witnesses by THE APPLICANT or its duly authorised agent/signatory who hereby warrants that he/she is authorised to sign on behalf of THE

APPLICANT by:

Name: _____

Designation: _____

Signature: _____

As Witness (1):

Name: _____

ID Number: _____

Signature: _____

As Witness (2):

Name: _____

ID Number: _____

Signature: _____

S (M)