

## SECTION B – Terms and Conditions of Sale

THE APPLICANT or its duly authorised agent does hereby apply for credit facilities with WEST AFRICAN GROUP and in consideration thereof THE APPLICANT does hereby accept the following terms and conditions, which terms and conditions shall apply to sales whether or not expressly referred to in each purchase order, invoice or other document of purchase or delivery by the WEST AFRICAN GROUP or THE APPLICANT:

**1. Credit terms**

THE APPLICANT agrees that the amount reflected in a Tax Invoice as issued by WEST AFRICAN GROUP shall be due and payable unconditionally either: (a) Cash on Delivery; or (b) if THE APPLICANT is a Credit Approved Customer, within 30 days from the end of the month in which a Tax Invoice has been issued by WEST AFRICAN GROUP. Settlement is effected only on receipt of cash or funds via electronic transfer into WEST AFRICAN GROUP'S bank account or due honour of cheque or similar payment instrument and shall be made to WEST AFRICAN GROUP free of exchange and without deductions of any nature. Any credit facilities granted to THE APPLICANT by WEST AFRICAN GROUP is entirely at the discretion of WEST AFRICAN GROUP, and may be withdrawn at any time.

**2. Change of address**

THE APPLICANT undertakes to notify WEST AFRICAN GROUP in writing within 7 (seven) days of any change of address.

**3. Change of ownership**

THE APPLICANT undertakes to notify WEST AFRICAN GROUP, in writing, within twenty 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. 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 WEST AFRICAN GROUP.

**4. Domicilium**

THE APPLICANT and the signatory hereto chooses Domicilium Citandi et Executandi (in other words, the address at which the Applicant and the signatory will accept all notices, legal documents and the like, whether or not the Applicant and/or the signatory is still at the address chosen) for all purposes arising out of this application at the physical address stipulated in Section A, clause 3.2 of this application.

**5. Consent to sharing information and retention periods**

**5.1** For the purposes of making credit risk management decisions and preventing fraud, THE APPLICANT hereby warrants that WEST AFRICAN GROUP has permission and authority to:-

**5.1.1** Carry out a credit enquiry on THE APPLICANT and the Directors/Members/Partners/Trustees/Principals of THE APPLICANT from time to time with one or more credit bureaus, credit information agents, credit insurance companies or other creditors (trade references) of THE APPLICANT'S in terms of this agreement.

**5.1.2** WEST AFRICAN GROUP may transmit details to credit bureaus, credit information agents, credit insurance companies or other creditors of THE APPLICANT'S of how THE APPLICANT has performed in meeting his/her/its obligations in terms of this agreement.

**5.1.3** If THE APPLICANT fails to meet his/her/its commitments to WEST AFRICAN GROUP, WEST AFRICAN GROUP may record THE APPLICANT'S non-performance with credit bureaus, credit information agents, credit insurance companies or other creditors of THE APPLICANT.

**5.2** Such information shall be retained for periods as stipulated in any applicable law, but no longer than the duration of the validity of this agreement. Where THE APPLICANT has not used a facility under this agreement for 12 months, THE APPLICANT will be required to re-apply for such a facility.

**6. Pricing revisions**

**6.1** Prices quoted by WEST AFRICAN GROUP are determined from time to time and are subject to revision, at the discretion of WEST AFRICAN GROUP. WEST AFRICAN GROUP shall be entitled to increase the cost of goods sold or services rendered / to be rendered to THE APPLICANT with prior written notice to take into account any increase in cost to the WEST AFRICAN GROUP by virtue of foreign exchange fluctuations, currency regulations, changes in duties or taxes, increases in the cost of raw materials, labour or transport or any other causes beyond the control of the WEST AFRICAN GROUP.

**6.2** WEST AFRICAN GROUP'S prices are not subject to any discounts unless expressly agreed to in writing by WEST AFRICAN GROUP.

**7. Valid orders**

**7.1** In the event of any order being given to WEST AFRICAN GROUP either verbally, telephonically, via SMS, e-mail or 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 authorised by THE APPLICANT, and such order will be deemed to constitute valid delivery. It is further the sole responsibility of THE APPLICANT to determine that goods ordered are suitable for the purposes of the intended use.

**7.2** Orders placed as such on the WEST AFRICAN GROUP are subject to acceptance by them in writing and shall be firm and irrevocable and may not be cancelled or modified without the prior written consent of the WEST AFRICAN GROUP.

**8. Delivery**

**8.1** THE APPLICANT agrees that the signature of any agent, contractor, sub-contractor or employee of THE APPLICANT on WEST AFRICAN GROUP'S official delivery note/invoice/waybill, or the delivery note of any authorised independent carrier will constitute valid delivery of the goods purchased.

**8.2** Any delivery date stated on any order confirmation is approximate only and WEST AFRICAN GROUP shall not be bound by that date, but will make all reasonable efforts to deliver by that date.

**8.3** In the event shipments are to be made over a period of time, THE APPLICANT shall allow for adequate lead time and shall specify by purchase order or otherwise in writing to the WEST AFRICAN GROUP the quality, packing and delivery date desired for deliveries of the product during such period.

**8.4** Whilst WEST AFRICAN GROUP will endeavour to ensure that goods are delivered timeously, it shall not be responsible for any delays in the delivery of such goods, and THE APPLICANT shall not be entitled to refuse acceptance of such late deliveries.

**8.5** The WEST AFRICAN GROUP reserves the right to pack the product other than as specified by THE APPLICANT.

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- 8.6** The risk in and to the goods shall pass from WEST AFRICAN GROUP to THE APPLICANT at the time of delivery 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 WEST AFRICAN GROUP'S delivery note, proof of posting if the goods are posted to THE APPLICANT or delivery to the South African Transport Services or Road Carrier if the goods are railed or transported by WEST AFRICAN GROUP. The Post Office / South African Transport Services or Road Carrier shall act as the agent of THE APPLICANT.
- 8.7** No goods shall be returned or changed without the WEST AFRICAN GROUP's prior written consent.
- 8.8** THE APPLICANT is responsible for maintaining reasonable insurance cover in respect of THE APPLICANT's outstanding obligations against any loss, theft or damage to the goods under this agreement.
- 8.9** If after delivery of the goods subject to this credit agreement, the parties agree to substitute all or a part of the goods described then this agreement shall apply to those substituted goods.
- 9. Warranties**  
Seller makes no warranty, whether of merchantability, fitness or otherwise expressed or implied, concerning the product other than it shall be of the specifications stated. The Seller makes every effort to furnish suitable products for the purposes intended. However, as the use of these products is beyond the control of the Seller, no guarantee or warranty can be given as to the ultimate result. The Purchaser is cautioned to determine, by testing, the suitability of samples or products supplied. All products sold and samples submitted for testing are supplied at the sole risk of the Purchaser without any warranties expressed or implied. If, however, any goods supplied by the Seller on inspection and in the Seller's opinion prove to be defective the Seller will, at the Seller's option, either replace the goods or refund the purchase price paid. The Seller shall have no liability whatsoever beyond such replacement or refund for any injury, loss or damage arising from any cause whatsoever. The Purchaser agrees to inspect the product supplied hereunder immediately after delivery and to give notice in writing of any claim within seven (7) days of delivery. Failure to give notice in writing as aforesaid within the specified time constitutes an unqualified acceptance of the product and a waiver of all claims with respect thereto.
- 10. Copyright**  
THE APPLICANT acknowledges WEST AFRICAN GROUP's intellectual property rights in the goods where applicable and shall not infringe such intellectual property rights.
- 11. Payment to WEST AFRICAN GROUP**  
WEST AFRICAN GROUP does not appoint the Post Office as its agents for payments by post. All payments shall be made to WEST AFRICAN GROUP'S place of business from where the goods were ordered. In the event of any payments being mislaid; lost in the post; or transferred to the incorrect banking account THE APPLICANT shall still be liable to WEST AFRICAN GROUP for payment. Should WEST AFRICAN GROUP at any time advise THE APPLICANT of any change to WEST AFRICAN GROUP'S banking account details THE APPLICANT shall confirm such change with a Director of WEST AFRICAN GROUP before effecting any further payments, provided however that nothing contained herein shall be interpreted as obliging WEST AFRICAN GROUP to afford THE APPLICANT any such indulgence to effect payment after due date.
- 12. Reservation of ownership**  
Until such time as THE APPLICANT has paid the purchase price in full in respect of any purchase of goods, the ownership in and to all such goods shall remain vested in WEST AFRICAN GROUP. WEST AFRICAN GROUP 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 the goods so returned being the lower of the price at which the goods are sold or the value thereof as determined by WEST AFRICAN GROUP. THE APPLICANT hereby waives any right it may have for a spoliation order against WEST AFRICAN GROUP in the event that WEST AFRICAN GROUP takes possession of any goods. Until the termination of this agreement or the passing of ownership over the goods passes to THE APPLICANT, THE APPLICANT must inform the WEST AFRICAN GROUP of the location of the goods subject to this agreement and notify the WEST AFRICAN GROUP in writing by registered mail within ten (10) days of any change in location of the goods.
- 13. Responsibility for losses, damages or delays**  
WEST AFRICAN GROUP will not be in any way responsible for losses; consequential losses; damages or delays caused by or arising from natural disasters, unavoidable accidents of any kind, acts of the State's enemies, riots, lockouts, cessation of labour, transport delays, shortened hours of labour, insurrection, war, the imposition of any trade boycotts or sanctions of trade restrictions by any government, authority, company or organization or person or persons, whether within the Republic of South Africa or anywhere else, or any other cause or contingency whatsoever beyond the control of WEST AFRICAN GROUP. If because of any such event, the WEST AFRICAN GROUP is unable to supply a part of or the total quantity contracted for, it shall be exempted to such extent from its obligations hereunder with regard to the particular delivery involved, upon giving prompt notice of such event to THE APPLICANT.
- 14. Defaulting in payment**  
In the event of THE APPLICANT defaulting in making payment of any amount that has become due and owing, then the full balance outstanding (whether due or not) will immediately become due and payable without notice to THE APPLICANT.
- 15. Interest on overdue accounts**  
WEST AFRICAN GROUP shall be entitled to charge THE APPLICANT interest at the rate of **2%** (two percent) per month from the moment any debt becomes overdue, provided however that nothing contained herein shall be interpreted as WEST AFRICAN GROUP affording THE APPLICANT any indulgence to make payment after due date.
- 16. Proof of Claims**  
A certificate signed by a manager or any director of WEST AFRICAN GROUP - whose position and signature shall not be necessary to prove - reflecting the amount owing by THE APPLICANT to WEST AFRICAN GROUP, in respect of any credit facilities granted to THE APPLICANT relating to THE APPLICANT'S dealings with WEST AFRICAN GROUP, and of the fact that such amount is due, owing and unpaid shall be considered as adequate proof – on its mere production – of the outstanding amount 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 claims 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.
- 17. Consent to jurisdiction**  
Notwithstanding the amount which may at any time be owing by THE APPLICANT to WEST AFRICAN GROUP, the parties do hereby consent, in terms of Section 45 of the Magistrates Court Act (No 32 of 1944 as amended), to the Jurisdiction of the Magistrate's Court for the determination of any action or proceeding which may be brought by WEST AFRICAN GROUP against THE APPLICANT arising

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out of any transaction between the parties, it being recorded that WEST AFRICAN GROUP shall be entitled, but not obliged, to bring any action or proceeding in the said court.

**18. Recovery of legal /collection costs**

Should WEST AFRICAN GROUP instruct its attorneys or collection agent to collect any overdue amounts, or to take any action against THE APPLICANT in the implementation or protection of WEST AFRICAN GROUP'S rights, WEST AFRICAN GROUP shall be entitled to the recovery of all legal or collection costs arising there from, on the scale as between attorney, agent or collection agency and own client.

**19. Cession of Book debts**

**19.1** THE APPLICANT does hereby irrevocably cede, pledge, assign , transfer and make over unto and in favour of WEST AFRICAN GROUP all of its right, title , interest , claim and demand in and to all 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 whomsoever ("THE APPLICANT 's debtors") without exception as a continuing covering security for the due payment of every sum of money which may now be due or at any time hereafter be or become owing by THE APPLICANT to WEST AFRICAN GROUP.

**19.2** 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 from time to time be subject to this session 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 WEST AFRICAN GROUP'S behalf and provided further that WEST AFRICAN GROUP shall at any time be entitled to terminate THE APPLICANT'S right to collect such monies/ debts.

**19.3** THE APPLICANT shall be obliged to deliver all relevant information in documentary form or otherwise to WEST AFRICAN GROUP upon demand to enable WEST AFRICAN GROUP to claim monies owed to THE APPLICANT from third parties.

**20. Non-waiver of rights**

Any condonation of any breach of any of the provisions hereof or other act or relaxation, indulgence or grace on the part of WEST AFRICAN GROUP shall not in any way operate as or be deemed to be a waiver by WEST AFRICAN GROUP of any rights under this contract, or be construed as a novation thereof.

**21. Severability of clauses**

Each clause of these conditions of sale 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. The headings in these terms and conditions of sale are for convenience only and are not to be taken into account for the purposes of interpreting the agreement.

**22. Entire agreement**

This contract contains the entire agreement between the parties and any other terms thereof 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 authorised signatories. The agreement shall be governed by the laws of the Republic of South Africa. THE APPLICANT and THE SURETY / SURETIES, by their signatures hereunder, confirm that the information submitted in this application is true and correct in all respects and that they are entirely familiar with the terms and conditions contained herein.

**23. Binding Effect**

This agreement shall be binding on the successors and assigns of the Purchaser and the Seller provided, however, that the Purchaser shall not assign this agreement in whole or in part without prior written consent of the Seller.

**24. Breach**

In the event that either party being in breach of any of the terms of this agreement and failing to remedy such breach within a period of ten (10) days after receipt by that party of a written notice requiring such breach to be remedied, the party aggrieved hereby shall be entitled, without prejudice to any other rights which it may have in terms of this agreement or at law: to claim specific performance and damages, cancel this agreement and recover damages, keep this agreement in force and recover damages arising from the breach.