



KHAYA iT

EARLYWORX 908 (Pty) Ltd trading as **KHAYA iT**

Reg No 2004/027522/07

P O Box 92164, Norwood, 2117, South Africa

77 African Street, Gardens, Johannesburg, 2192

Tel: 083 705 0000 Fax: 011 728 4581 e-mail: [info@khayait.com](mailto:info@khayait.com)

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## Dear Applicant

Please ensure that the following accompanies your original dealership application:

- **A copy of director's/member's/owners ID document**
- **A cancelled business cheque**
- **A copy of company/CC registration forms (e.g CK1, CM1 or CM46)**

### **PLEASE NOTE that:**

- **Initial purchases will be cash only (or as otherwise agreed) until we have established your credit status.**
- **No personal/savings account details will be accepted, we require banking details in the name of your company.**
- **No faxed or e-mailed applications will be accepted, the originals are needed.**
- **Please ensure that every page of the application has been initialed and the last page signed and then effect delivery of the application to our offices.**
- **We require trade references, especially if you require a credit facility.**
- **In the event that payment is made from any account other than those indicated in the application form, you are required to notify our accounts department in order that your account can be credited with such payment.**

Thank You,  
Rudi Ernst  
KHAYA iT  
Tel: 083 705 0000 Fax: 086 633 0517 (Direct)  
e-mail: [rudi@khayait.com](mailto:rudi@khayait.com)



**KHAYA iT**

**DEALER APPLICATION  
("INCLUDING DEED OF SURETYSHIP")**

		Acc No:
		e-mail:
Trading name of business		
Registered name of business		
Previous trading/registered names if applicable		
Incorporated form of business		Reg. Number of incorporation
VAT registration number		Date of establishment of business
Registered name of holding companies		
Name of subsidiary and associated companies		
Business activities		
Physical address		
Are deliveries to be made to this address? If not, then where?		
Postal address		Code
Are invoices to be sent to this postal address? If not then where?		
Registered address		Code
Tel. Area code & no. ( )		Fax. Area code & no ( )
Premises owned or leased		Name of landlord:
Postal address of landlord		
Details of Proprietors / Directors / Members / Partners – Please indicate the financial director / manager		
Full name		ID No. (or date of birth)
Residential address		
Full name		ID No. (or date of birth)
Residential address		
How long has the proprietor(s) owned the business?		
Auditor's/Financial Officer's name		Tel. Area code & no ( )
Banker details: Institution		Branch Date opened
Account type		Account name Account number
Trade Reference 1: Name		Tel. Area code & no ( )
Address		Credit limit R
Trade Reference 2: Name		Tel. Area code & no ( )
Address		Credit limit R
Trade Reference 3: Name		Tel. Area code & no ( )
Address		Credit limit R
Trade Reference 4: Name		Tel. Area code & no ( )
Address		Credit limit R
List all sureties, cession of debtors, notarial bonds, judgments.		
List liquidations against the business or any of its principals		
Have moratoriums or offers of compromise ever been made to any creditors?		
Account contact person		Credit amount required per month R

Authorisation:

The signatory who's signature appears below hereby accepts the terms and conditions of sale contained in this dealer application on behalf of the abovementioned business, and warrants that he/she is duly authorized hereto by the said business, on his behalf as surety for and co-principal debtor with the dealer / customer in terms of the Terms and Conditions of Sale below and hereby warrants that he has read, understood and agreed to the said Terms and Conditions.

Payment by cheque:

The business hereby declares that no cheques will be issued in payment unless there are sufficient funds and that such funds will remain available in order that all such cheque payments will be honoured and under no circumstances will any cheque be stopped.

"I, the signatory below and on behalf of the dealer, hereby certify that all above information is correct."

Signed: \_\_\_\_\_ At: \_\_\_\_\_ Date: \_\_\_\_\_

Name printed of signatory		Company designation of Signatory	
Accepted:	Date:	Amount R	Approved period:

**TERMS AND CONDITIONS OF SALE AND DEALERSHIP  
INCLUDING DEED OF SURETYSHIP**

**1. INTERPRETATION-**

- 1.1 In this agreement -
- 1.2 clause headings are for convenience and shall not be used in its interpretation;
- 1.3 unless the context clearly indicates a contrary intention-
  - 1.3.1 an expression which denotes -
    - 1.3.1.1 any gender includes the other genders;
    - 1.3.1.2 a natural person includes an artificial person and vice versa;
    - 1.3.1.3 the singular includes the plural and vice versa;
  - 1.3.2 the following expression shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings -
    - 1.3.2.1 "dealer / customer" or "dealer"- shall mean the person or entity whose name appears on the dealer application above or annexed hereto next to the caption "Registered name of business", or if no such application is annexed hereto, or no name appears thereon, or in any other circumstances, any person or persons at whose request or on whose behalf the supplier undertakes to supply any goods, do any business, or provide any advice or service;
    - 1.3.2.2 "signatory" - shall mean the individual who signs this agreement and the annexed dealer application on behalf of the dealer;
    - 1.3.2.3 "supplier" - Earlyworx 908 (Pty) Ltd trading as "KHAYA iT" and its successors in title;
    - 1.3.2.4 "goods" - any items or services of whatsoever nature that are supplied to the dealer / customer in terms of this agreement;

**2. THESE TERMS AND CONDITIONS PREVAIL**

- 2.1 It is recorded that the only basis upon which the supplier is prepared to do business with the dealer / customer is that, notwithstanding anything in the dealer / customer's enquiry, specification, acceptance, order or other documentation or any other documentation or discussion/s to the contrary, the terms and conditions contained herein shall operate in respect of any and all business between the dealer / customer and the supplier.
- 2.2 All and any business undertaken, including any advice, information or service provided whether gratuitously or not by the supplier is and shall be subject to the terms and conditions contained herein, including the terms, conditions and disclaimer contained on the supplier's website from time to time, and each term and condition shall be deemed to be incorporated in and to be a term and condition of any agreement between the supplier and the dealer / customer.
- 2.3 To the extent that this agreement appears on the reverse of an invoice or any other documentation of the supplier and there is no relevant dealer / customer application the dealer / customer shall be deemed to be the person to whom the invoice or other document is addressed, and the signatory shall be deemed to be the person signing the invoice or other documentation. The terms and conditions of this agreement shall apply *mutatis mutandis* to such person and signatory.

**3. NO VARIATIONS OR AMENDMENTS**

- 3.1 This agreement constitutes the whole agreement between the dealer / customer and the supplier relating to the subject matter hereof, without derogating from the generality of 2.2 above. Unless the context indicates otherwise this agreement incorporates, *mutatis mutandis*, all and any dealership agreements between the parties extant immediately prior to the date of last signature hereto.
- 3.2 Subject to what is set out in clause 3.1 above, if there is any conflict between the provisions of this agreement and erstwhile dealership agreements (if any) or any other terms or conditions, at any time, the provisions of this agreement shall prevail.
- 3.3 No variation, amendment, alteration or consensual cancellation of this agreement or any provision or term thereof or of any agreement, bill or exchange or other document issued or executed pursuant to or in terms of this agreement and no settlement of any disputes arising under this agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this agreement or of any agreement,

- bill of exchange or other document issued pursuant to or in terms of this agreement shall be binding unless recorded in a written document signed by an authorized representative of the supplier. Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given and shall not relate to any other term or provision of this agreement.
- 3.4 No extension of time or waiver or relaxation of any of the provisions or terms of this agreement or any agreement, bill or exchange or other document issued or executed pursuant to or in terms of this agreement, shall operate as an estoppel against the supplier in respect of its rights under this agreement, nor shall it operate so as to preclude the supplier thereafter from exercising its rights strictly in accordance with this agreement.
- 3.5 The supplier shall not be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract between the supplier and the dealer / customer or not.
- 3.6 No person other than a duly authorized representative of the supplier has any authority to delete, amend or in any respect vary any of these conditions or accept any other conditions or agree to a consensual cancellation hereof.
- 3.7 The dealer / customer agrees to also be bound by all terms and conditions or disclaimers as might appear on the website of the supplier from time to time, including on the URL [www.khayait.com](http://www.khayait.com).
- 4. QUOTATIONS**
- 4.1 Any quotation given is not an offer by the supplier to sell the goods but constitutes an invitation by the supplier to the dealer / customer to do business with the supplier.
- 4.2 A quotation may be revoked at any time by the supplier.
- 4.3 The supplier may accept or reject in whole or in part any order placed upon it by the dealer / customer pursuant to the quotation. Accordingly, a contract shall only come into force between the supplier and the dealer / customer if after receipt by the supplier of the dealer / customer's order or acceptance of the quotation, the supplier confirms to the dealer / customer that such a contract has been concluded or if the supplier supplies, or tenders to supply, the goods in question to the dealer / customer.
- 4.4 The quotation is based on rates of exchange, freight charges, insurance, railage, costs of labour and materials and other charges ruling at the date of the quotation. Any variation occurring subsequent to the date of the quotation in any of the aforesaid rates or charges, as the case may be, shall entitle the supplier to vary the amount of the quotation accordingly.
- 5. PLACING OF ORDERS**
- 5.1 If telephone orders are placed by the dealer / customer, the supplier may at its request require such orders to be confirmed in writing by the dealer / customer, prior to acceptance by the supplier.
- 5.2 An order may not be withdrawn until accepted or rejected by the supplier. Any such order shall upon acceptance thereof by the supplier be irrevocable by the dealer / customer.
- 6. PURCHASE PRICE AND PAYMENT**
- 6.1 Orders are accepted by the supplier only on the basis that the prices charged will be those ruling at the date of dispatch of the goods, unless otherwise expressly stated. A copy of the suppliers ruling prices from time to time may be obtained from the supplier by the dealer / customer on request.
- 6.2 Unless otherwise expressly stated, prices are exclusive of value added tax which shall be for the account of the dealer / customer. The dealer / customer shall pay or reimburse to the supplier the amount of any value added tax simultaneously with the purchase price.
- 6.3 The dealer / customer shall be obliged to pay to the supplier in addition to the contract price herein-
- 6.3.1 the amount of any tax, duty or other charge of any nature whatsoever imposed by any law, regulation or enactment of whatsoever nature which comes into force on the date after the date on which any price charged is determined;
- 6.3.2 any other additional costs, including transport costs, of any nature whatsoever arising due to factors beyond the control of the supplier.
- 6.4 In particular, but without limiting the generality of the foregoing, the supplier shall be entitled to increase the purchase price in respect of any goods supplied in order to make provision for any increases in costs arising as a result of or during the period of any delay caused by the dealer / customer.
- 6.5 Any expense incurred by the supplier at the instance of the dealer / customer in modifying or otherwise altering or making additions to the design, quantities or specifications for standard goods, and any expenses arising as a result of suspension of work by the supplier due to instructions given, or a failure to give instructions by the dealer / customer, shall be added to the purchase price in respect of the relevant goods.
- 6.6 The purchase price in respect of any goods sold by the supplier to the dealer / customer in terms of this agreement shall be payable -
- 6.6.1 by the dealer / customer to the supplier, at the supplier's head office or at such other place as the supplier may direct from time to time and payment shall be deemed to have been made or due there;
- 6.6.2 in cash;
- 6.6.3 in South African currency without deduction or set-off and free of any exchange; and
- 6.6.4 during or before the expiry of the credit period indicated on the dealer / customer application which is annexed hereto, which period shall commence upon the issuing of an invoice by the supplier, or if there is no credit period indicated, or no credit period has been approved in terms of 6.6, or no dealer / customer application is annexed, cash or order;
- 6.6.5 by a sixty percent deposit upon placement of an order and accordingly before delivery by the supplier to the dealer / customer of the goods, and the balance thereafter as provided for elsewhere in this agreement.
- 6.7 After the completion of the dealer application by the dealer / customer the supplier shall at its own discretion be entitled to -
- 6.7.1 make such enquiries as it may deem necessary to determine whether or not to grant the dealer / customer credit as applied for in the dealer / customer application, or on any other terms, or at all;
- 6.7.2 determine whether or not to grant the dealer / customer credit as applied for in the dealer / customer application, and
- 6.7.3 inform the dealer / customer of the determination made pursuant of 6.7.2 above.
- 6.8 Until a determination is made by the supplier as contemplated in 6.7.2 above and to the extent that it does not, any goods supplied by the supplier to the dealer / customer shall be supplied on a cash on order basis only, and specifically in terms of 6.6.5 above.

- 6.9 The supplier shall not be obliged to make a determination in terms of 6.6.2 above and to the extent that it does not, any goods supplied by the supplier to the dealer / customer shall be supplied on a cash on order basis only.
- 6.10 The purchase price does not include charges for off-loading of the goods at the dealer / customer's premises. The dealer / customer shall provide at its cost the necessary labour, equipment or facilities required for all loading of the goods.
- 6.11 The dealer / customer has no right to withhold payment for any reason whatsoever. The dealer / customer is not entitled to set off any amount due to the dealer / customer by the supplier against any debt owed by the dealer / customer to the supplier nor shall any payment be withheld by virtue of any alleged counterclaim against the supplier by the dealer / customer.
- 6.12 The dealer / customer hereby agrees that any item handed in for repair may be sold by the supplier to defray the cost of such repairs if the item remains uncollected within 30 days of the repair being completed.

## **7. RISK**

- 7.1 The risk of damage to or destruction of any relevant goods passes to the dealer / customer on delivery thereof by the supplier to the dealer / customer.
- 7.2 On delivery the dealer / customer will be deemed to have accepted the goods ordered by it, which goods will be deemed to be in proper working order and free of defects.

## **8. REPAIRS AND SUPPORT**

- 8.1 Any repair times given by the supplier are merely estimates and the supplier shall not be bound thereby.
- 8.2 In the event that a dealer / customer refuses to accept the quotation for the repair of goods that are not covered by warranty, a quotation fee will be charged which may vary from time to time, in the sole discretion of the supplier.
- 8.3 The supplier shall have the right of retention and lawful lien over goods submitted for repairs until such time as the dealer / customer effects payment for the repairs and /or quotation fee in full.
- 8.4 The supplier shall not be obliged to render support beyond third tier telephonic support and the dealer / customer shall be obliged to render whatever support to the end-purchaser of the goods to the extent necessary to secure that the goods are in proper working order on an ongoing basis.

## **9. IMPORTED GOODS**

- 9.1 Where the goods or any part thereof are to be imported, this agreement is subject to the condition that the supplier's order is accepted and confirmed by the supplier's own suppliers and that delivery is made thereunder in due course.

## **10 DELIVERY**

- 10.1 Partial delivery shall not affect the payment period where a credit period has been approved and where no credit period has been approved the dealer / customer shall pay the full purchase price, notwithstanding partial delivery.
- 10.2 Any delivery date indicated by the supplier shall merely be regarded as the estimated date of delivery and shall not bind the supplier to effect delivery on or near such date.
- 10.3 The dealer / customer shall accept delivery whenever it is tendered and shall not be entitled to resile from the agreement nor to withhold or defer any payment nor to a reduction in price nor to any other right or remedy against the supplier, its servants, agents or any other persons for whom it is liable in law (in whose favour this constitutes a *stipulatio alteri*) whether for losses, costs, damages, expenses, interest or otherwise (not limited *eiusdem generis*) on account of delays in effecting delivery, partial delivery or non-delivery, whether occasioned by any negligent (including grossly negligent) act or omission on the part of the supplier, its servants, agents or any other persons for whom it is liable in law, or not.
- 10.4 If delivery of any particular order is to be effected in consignments, the supplier shall not be obliged to deliver any part of the order until the purchase price which is due in respect of the part of the order which has already been delivered has been paid.
- 10.5 The supplier shall have the right to deliver any portion of the goods sold without delivery, or making provision for delivery of all the goods sold, and to invoice the dealer / customer therefore and the dealer / customer shall accept such goods when tendered.
- 10.6 If the goods are to be delivered by road, the dealer / customer shall be obliged to procure that the delivery destination shall be easily accessible to road transport vehicles. The dealer / customer shall be responsible for off-loading the goods at the delivery destination. If the goods are to be delivered by rail, the dealer / customer shall be responsible for collection of the goods at the railhead.
- 10.7 The dealer / customer shall be obliged to inspect all goods upon delivery and shall endorse the delivery note as to any missing or damaged goods. No claims for missing or damaged goods shall be valid unless the delivery note has been endorsed as aforesaid and unless, in addition, the dealer / customer notifies the supplier in writing within 3 business days of the delivery of the goods of the claim question and the goods relating to such claim, furnishing full details in regard thereto. The dealer / customer shall bear the onus of proving that upon delivery any goods are missing or damaged or that the dealer's / customer's order was in any way not complied with.
- 10.8 If the supplier is unable to deliver the goods to the dealer / customer due to any act or omission on the part of the dealer / customer, it shall be entitled to charge the dealer / customer for the storage of the goods.
- 10.9 The dealer / customer shall be obliged to furnish information necessary to enable delivery of the relevant goods to be effected and if the dealer / customer fails or refuses to do so, or if it fails or refuses to take delivery, the goods shall, without prejudice to the provisions of clause 7. be deemed to have been delivered to the dealer / customer upon notification
- 10.10 If the supplier agrees to engage a third party to transport the goods, the supplier is hereby authorised to engage a third party on the dealer / customer's behalf and on the terms deemed fit by the supplier. The dealer / customer hereby indemnifies the supplier against any claims that may arise from such agreement against the supplier. The dealer / customer shall reimburse the supplier for any costs incurred in arranging special delivery, including but not restricted to, the costs of necessary disbursements and insurance. Any documentation purporting to evidence the said extra costs will be deemed to be prima facie proof thereof.

## **11 WARRANTIES AND GUARANTEES**

- 11.1 No warranties, guarantees or representations, express or implied or tacit whether by law, contract or otherwise and whether they induced the contract or not, which are not set forth in this agreement shall be binding on the supplier, the dealer / customer irrevocably waiving any right (common law or otherwise) it may have to rely thereon, and the goods are purchased on the basis that they are taken voetstoots and with

- the exclusion of all common law and other remedies including aedilician remedies, whether as to the suitability of the goods sold for any specific purposes or (without limiting the generality of the foregoing) otherwise.
- 11.2 To the extent that goods supplied by the supplier are in any way defective, the dealer / customer shall be entitled, within one year of the delivery of the relevant goods, to claim the replacement or repair of the goods to eliminate any defect in workmanship or materials found to be due exclusively to any acts or omissions on the part of the supplier, in the supplier's sole opinion (which shall be binding on the dealer / customer), of which defects the supplier shall have been notified in writing by the dealer / customer within 10 days after the defect arises (which notice shall specify the alleged defect), provided that the supplier shall have been given a reasonable opportunity of inspecting any alleged defect. The supplier's liability shall be limited on return to the supplier of the goods or parts thereof, to what is set out above in this subparagraph.
- 11.3 In order to be valid, a claim in terms of the guarantee as set out in clause 11.2 must be in writing, specifying the alleged defect, and supported by the original tax invoice. In addition the goods must be returned by the dealer / customer to the supplier at the dealer / customer's expense, packaged in their original undamaged packaging material.
- 11.4 The parties agree that the supplier 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 and whether or not occasioned by the supplier's negligence (gross or otherwise) or any act or omission on its part. Without limiting the foregoing the supplier does not warrant that the goods will be fit for the purposes for which they are to be used by the dealer / customer (notwithstanding that the use to which the dealer / customer intends to put the goods is known to the supplier). For the purposes hereof, any reference to the supplier shall include its servants, agents, contractors or any other person for whose acts or omissions the supplier may be liable in law. This also constitutes a stipulatio alteri in favour of such persons the benefits of which may be accepted by them at any time.
- 11.5 The Supplier shall be relieved of all obligations in terms of this clause, if –
- 11.5.1 repairs or modifications have been made by persons other than the supplier, unless such repairs or modifications are made with the prior written consent of the supplier;
- 11.5.2 any goods are operated with any accessory, equipment or part not specifically supplied or approved in writing by the supplier;
- 11.5.3 the goods shall not have been operated or maintained in accordance with the supplier's instruction, or under normal use;
- 11.5.4 the goods shall not have been properly installed.
- 11.6 If repairs or replacements are effected by the supplier, only the parts actually working on and not the complete goods shall be subject to a new guarantee, if any, hereunder.
- 11.7 The dealer / customer shall not advertise or issue or in any other way give or make any warranties, guarantees or representations as to the goods in any form whatsoever or offer to do so, which could result in liability being imposed upon the supplier, save for such warranties or guarantees as are given from time to time by the Supplier to the dealer / customer.
- 11.8 The above warranties are subject to the following conditions:
- 11.8.1 The supplier shall be under no liability to the dealer / customer until the dealer / customer has paid the full amount due to the supplier in respect of the goods concerned.
- 11.8.2 The supplier shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow the suppliers instructions (whether oral or in writing), improper use outside the suppliers specifications, damage to the goods caused by improper maintenance, service or repair by untrained personnel or technicians, and unauthorized alterations or modifications of the goods.
- 11.8.3 The supplier shall be under no liability in respect of parts, materials or equipment which are accepted in the industry to have a limited life expectancy or parts, materials or equipment, which need to be replaced at specified and published service intervals ("consumable parts").
- 11.8.4 The supplier shall be under no liability in the event that spare parts and consumable parts other than those recommended for use by the supplier are fitted, attached or used on the goods.
- 11.9 Notwithstanding anything to the contrary in this agreement, the supplier shall not be liable to the dealer / customer by reason of any representation or implied warranty, condition or other term or any duty at common law, or under the express terms of this agreement, for any consequential loss or damage (whether for loss or profit or otherwise and whether occasioned by the negligence of the supplier or its employees or agents or otherwise) arising out of or in connection with any act or omission of the supplier relating to the supply of the goods, their resale by the dealer / customer or use by any third party.
- 12. HANDLING FEE ON RETURN OF GOODS**
- 12.1 The supplier reserves the right to levy a handling fee of 10% of the purchase price of the relevant goods on such goods returned to and accepted by the supplier. The supplier is not obliged to accept the return of any goods and this clause shall not be used to imply that the supplier shall be obliged to accept the return of any goods.
- 13. NON-CIRCUMVENTION**
- 13.1 The dealer / customer may not, under any circumstances whatsoever, in any capacity including but not limited to that of dealer, customer, client, employee, adviser, agent, consultant, financier, partner, shareholder, and/or trustee of any entity directly or indirectly engaged or interested in any activity which is in competition with the business of the supplier, market, advertise, deal in, trade or sell goods or any products unless such goods / products were purchased from the Supplier or the Supplier gives its prior written consent thereto.
- 13.2 The dealer / customer may not, at any time or under any circumstances whatsoever, accept appointment as a distributor, value-added reseller, licensee, agent or representative, and / or persuade, procure or solicit orders for, or purchase goods or products of the suppliers of the supplier or any of suppliers' affiliates, associated companies, subsidiaries or holding companies dealers, value-added resellers (with the sole exception of the Supplier), affiliates, associated companies, subsidiaries or holding companies.
- 14. OWNERSHIP**
- 14.1 Ownership of the goods shall not pass to the dealer / customer until the contract price (including interest if any) in respect of the goods in question has been paid. The provisions hereof shall apply notwithstanding the installation of such goods in the dealer / customer's premises or the accession thereof to any of the dealer / customer's goods or that the goods may be incorporated into or form part of other goods or change their

- essential character. All goods, whether fixed to immovable property or not, shall be deemed to remain movable property and be deemed to be severable without injury to either property.
- 14.2 The supplier reserves the right to inform the owner/landlord of the premises in which the goods are or at any time may be, of the provisions of this clause. The dealer / customer shall be obliged to advise the supplier of the name and address of the landlord of any such premises and shall promptly advise the supplier of any change in the name and/or the address of any landlord or of any new landlord.
- 14.3 The dealer / customer shall take all such steps as may be necessary to notify interested third parties that ownership of the relevant goods has not passed from the supplier to the dealer / customer. In particular the dealer / customer shall inform the owner/landlord of the premises in which the goods are or at any time may be, of the provisions of this clause. The dealer / customer shall produce written proof of such notices to the supplier on demand.
- 15. SUBSTITUTE GOODS OR PARTS**
- 15.1 The supplier shall be entitled to substitute for any goods specified in this agreement such other goods which the supplier in its sole discretion may regard as suitable substitutes therefore.
- 15.2 The supplier reserves the right to alter specifications as conditions warrant without notice. Should conditions render unavailable any materials or goods specified herein or otherwise required in order to fulfil this agreement, a substitution deemed by the supplier to be suitable for the performance of its obligations will be supplied.
- 16. DOCUMENTATION**
- All specifications, descriptive matter, drawings, marketing material and other documents furnished by the supplier do not form part of the contract and may not be relied upon, unless they are agreed in writing by the supplier to form part of this contract. All descriptive matter, specifications, drawings and particulars given by the supplier which form part of the contract are approximate only and the supplier cannot be held responsible for loss, harm or damages due to discrepancies therein.
- 17. INSURANCE**
- The supplier shall have the option to require the dealer / customer, at its own expense, and prior to taking delivery of the goods, to insure the goods and thereafter keep the goods insured until such time as the goods have been paid for in full. Such insurance shall be taken with such insurers as may be approved by the supplier in writing, for such amount and on such terms as may be approved by the supplier in writing. The insurance policy shall record the interest of both the supplier and the dealer / customer in writing. The dealer / customer shall, if so required by the supplier, cede to the supplier all its rights in terms of such insurance policy. The supplier shall exercise the said option by giving the dealer / customer written notice that it is doing so at any time prior to the delivery of the goods by the supplier to the dealer / customer.
- 18. BREACH**
- 18.1 Subject to clause 18.2 if the dealer / customer breaches any of the terms or conditions hereof or any other agreement with the supplier or fails to pay any amount payable by it on due date or commits any act of insolvency or endeavours to compromise generally with its creditors or does or causes to be done anything which may prejudice the supplier's rights hereunder or at all, or allows any judgment against it to remain unsatisfied for 7 days or is placed into provisional or final liquidation or judicial management or under provisional or final sequestration or if his estate is voluntarily surrendered, the supplier shall have the right, without prejudice to any other right which it may have against the dealer / customer, to elect to –
- 18.1.1 treat as immediately due and payable all outstanding amounts which would otherwise become due and payable over the unexpired period of the agreement and to claim such amounts as well as any other amounts in arrears including interest and to cease performance of its obligations hereunder as well as under any other contract with the dealer / customer until the dealer / customer has remedied the breach;
- 18.1.2 cancel this agreement and retake possession of any of the goods sold.
- 18.2 The supplier shall not be obliged to comply with its obligations hereunder in any respect whatsoever for so long as the dealer / customer is indebted to the supplier in any amount whatsoever in respect of any cause whatsoever or fails to comply with any other obligations to the supplier, whether arising out of this contract or otherwise. In particular without limiting the generality of the foregoing, if delivery of any particular order is to take place in stages, the supplier shall not be obliged to deliver any part of the order until the purchase price which is due in respect of the part of the order which has already been delivered, has been paid.
- 18.3 No claim under this contract will arise against the supplier unless and until the dealer / customer has given the supplier 30 (thirty) days written notice sent by prepaid registered post to rectify any defect or breach of contract.
- 18.4 The dealer / customer agrees that the amount due and payable to the supplier shall be determined and proven by a certificate issued by the supplier and signed on its behalf by any person duly authorised by the supplier, which authority need not be proven. Such certificates shall be binding and shall be *prima facie* proof of the indebtedness and the amount of such indebtedness of the dealer / customer, including, but not limited to, for the purpose of summary judgment applications and provisional sentence proceedings.
- 18.5 The dealer / customer hereby indemnifies the supplier against any and all damage of whatsoever nature, howsoever 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 dealer / customer.
- 18.6 The dealer / customer hereby agrees that the supplier shall not be required to furnish security in terms of rule 62 of the Rules of Court of the Magistrate's Court.
- 18.7 The supplier shall have the right to institute any action in either the relevant Magistrate's Court or the High Court at its sole discretion.
- 19. DOMICILIUM AND NOTICES**
- 19.1 The parties choose *domicilium citandi et executandi* ("*domicilium*") for the purposes of the giving of any notice, the payment of any sum, serving of any process and for any other purpose arising from this agreement at their addresses and telefacsimile numbers as set in the dealer / customer application annexed hereto.
- 19.2 In the event that the *domicilium* address reflected above differs from that set out in the dealer / customer application annexed hereto the supplier shall in its sole discretion regard either of the addresses as the dealer / customer's *domicilium*.
- 19.3 Each of the parties shall be entitled from time to time, by written notice to the other, to vary its *domicilium* to any other address which is not a post office box or poste restante.

- 19.4 Any notice given and any payment made by any party to any other ("the addressee") shall be in writing and if –
- 19.4.1 delivered by hand during the normal business hours of the addressee at the addressee's *domicilium* for the time being shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee at the time of delivery;
- 19.4.2 posted by prepaid registered post from an address to the addressee at the addressee's *domicilium* for the time being shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee on the fourth day after the date of posting;
- 19.4.3 transmitted by telefacsimile from an address to the addressee's at the addressee's telefacsimile address for the time being shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee on the first business day after the date of transmission.

## **20. GENERAL**

- 20.1 This Agreement is personal to the dealer / customer, which may not without the written consent of the supplier assign, make over, mortgage, charge or dispose of any of its rights hereunder, or subcontract or otherwise delegate any of its obligations hereunder without the prior written permission of the supplier.
- 20.2 The Dealer / customer is an independent entity and nothing in this Agreement shall create, or be deemed to create, a partnership or the relationship of principal and agent or employer and employee between the parties.
- 20.3 The Dealer / customer acknowledges that, in entering into this Agreement, it does not do so on the basis of, and does not rely on, any representation, warranty or other provisions except as expressly provided herein, and all conditions, warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law.

## **21. NO CESSION**

The dealer / customer shall not be entitled to cede or assign any rights and/or obligations which it may have in terms of this agreement to any third party.

## **22. SECURITY FOR OBLIGATIONS**

The supplier reserves the right to require satisfactory security from the dealer / customer for the due performance of any of the dealer / customer's obligations hereunder including but not limited to the payment of the purchase price. If the supplier so requires, the dealer / customer shall deliver to the supplier prior to the supplier complying with any of its obligations hereunder, confirmed irrevocable letters of credit by financial institutions acceptable to the supplier. If such security or guarantees or letters of credit are not furnished within 7 days after any such demand, the supplier shall be entitled to withdraw from the contract in whole or in part.

## **23. COSTS**

- 23.1 The dealer / customer shall be liable for all costs incurred by the supplier in the recovery of any amounts or the enforcement of any rights which it has hereunder, including collection charges and costs on an attorney and own client scale and costs of counsel as on brief whether incurred prior to or during the institution of legal proceedings or if judgment has been granted, in connection with the satisfaction or enforcement of such judgment.
- 23.2 The dealer / customer undertakes to pay the costs of the suretyship and cession contained herein, including any stamp duty payable thereon and agrees that such costs can be debited to the dealer / customer's account upon acceptance.

## **24. SURETYSHIP AND WARRANTY OF AUTHORITY**

- 24.1 The signatory, by his signature hereto, binds himself in favour of the supplier, its successors-in-title and assigns as surety for the co-principal debtor *in solidum* with the dealer / customer for the due and punctual performance by the dealer / customer of all its obligations to the supplier in terms of this agreement.
- 24.2 The suretyship in 24.1 shall remain of full force and effect notwithstanding –
- 24.2.1 any indulgence, concession, leniency or extension of time which may be shown or given by the supplier to the dealer / customer.
- 24.2.2 any amendment/s to this agreement and/or other agreement for the time being subsisting between the parties.
- 24.3 The signatory hereby renounces the benefits of the legal exceptions "*non causa debiti*", "*errore calculi*", "*excussion*", "*division*", "*de duobus vel pluribus reis debendi*"; "no value received" and "revision of accounts", with the meaning and effect of all of which he declares himself to be fully acquainted.
- 24.4 The signatory warrants, as a material warranty which the signatory relies on in entering into this agreement, that he is duly authorised to represent and bind the dealer / customer to this agreement, and that he has read and understood each term and condition of this agreement and accepts them as binding on him and the dealer / customer. The dealer / customer hereby warrants that it regards the terms and conditions of this agreement as binding upon it.
- 24.5 The signatory and the dealer / customer hereby warrant that the signatory to any tax invoice, delivery note or other documentation of the supplier made out in the name of, or to the dealer / customer is duly authorised to bind the dealer / customer in respect of the relevant transaction.
- 24.6 The signatory shall be bound by the provisions of this agreement as if he were the dealer / customer, mutates mutandis, particularly, but without limitation thereto, insofar as the agreement provides for proof of facts, costs of proceedings, service of process, limitations of defenses and jurisdiction.

## **25. EXEMPTION AND INDEMNITY**

The dealer / customer and end purchaser shall have no claim of any nature whatsoever for damages, a remission of the purchase price, cancellation or otherwise, against the supplier, its servants, agents or others on whose behalf the supplier would be liable, in respect of any loss or damage sustained by the dealer / customer / end purchaser of any nature whatsoever (including, but not limited to and without derogating from the generality of the foregoing, any loss of data or information whether stored on goods supplied by the supplier or otherwise) or any damage caused to the assets of the dealer / customer or assets kept on its premises by any third parties or in regard to the dealer's / customer's / end purchaser's business of whatsoever nature or sustained by any of its dealers / customers to whom the goods are sold or otherwise, howsoever caused including the negligent (including grossly negligent) acts or omissions of the supplier and its dealers, its servants, agents or others for whom it may be liable in law. This constitutes also a *stipulatio alteri* in favour of such person the benefits of which may be accepted by them at any time.

## **26. CONSEQUENTIAL LOSS**

Under no circumstances whatsoever including as a result of its negligent (including grossly negligent) acts or omissions or those of its servants, agents or contractors or other persons for whom in law it may be liable, shall the supplier be liable for any consequential loss sustained by the dealer / customer / end purchaser. This also constitutes a stipulation alteri in favour of such persons and benefits of which may be accepted by them at any time.

**27. SEVERABILITY**

Each paragraph or clause in this 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 whatever, the remaining paragraphs or clauses shall be of full force and effect and continue to be of full force and effect.

**28. FORCE MAJEURE**

Any transaction is subject to cancellation by the supplier due to force majeure from any cause beyond the control of the supplier, including, without restricting the generality of the foregoing, inability to secure labour, power, materials or supplies, or by reason of an act of G-d, war, civil disturbances, riot, state of emergency, strike, lockout, or other labour disputes, fire, flood, drought or legislation.

**29. CESSION**

29.1 The dealer / customer hereby irrevocably cedes, assigns and transfers, makes over unto and in favour of the supplier, all the dealer's / customer's 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 dealer / customer may now or at any time in the future owe to the supplier.

29.2 The dealer / customer irrevocably and in rem suam authorises the supplier in its absolute discretion to claim from all or any of the dealer / customer's debtors the whole or any portion of the indebtedness of any one 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, cheques, agreements, documents of title or any other security held by the dealer / customer.

29.3 The security created by the cession shall be a continuing one, notwithstanding any fluctuation in the amount of indebtedness of the dealer / customer to the supplier.

29.4 The dealer / customer hereby undertakes on demand, to furnish the supplier with such information concerning its debtors as may be reasonably required, to enable the supplier to give effect to the provisions of this clause.

**30. FURNISHING OF INFORMATION BY DEALER / CUSTOMER**

The dealer / customer shall forthwith after the conclusion of the contract, furnish the supplier with all information reasonably required by the supplier to enable it to comply with its obligations.

**31. LAW AND JURISDICTION**

This agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa and the parties hereby submit to the non-exclusive jurisdiction of the courts.

**32. RECEIPT OF DOCUMENTS, CHEQUES ETC**

No notices, cheques, cash or other documents sent to the supplier through the post shall be deemed to have been received, and no indebtedness in respect of which payment is made by cheque shall be settled, unless and until actually received by the supplier.

**33. HEADINGS**

The clause headings in this agreement are for reference purposes only and shall not be used in the interpretation of this agreement.

**34. INTEREST**

The dealer / customer shall pay interest at the publicly quoted basic rate per annum ruling from time to time at which The Standard Bank of South Africa Limited lend on overdraft, which rate shall be proved by was of a certificate signed by any employee of such bank, compounded monthly in arrears on all amounts owing by the dealer / customer to the supplier which have not been paid on the due date thereof, reckoned from the due date thereof until date of payment. Such interest shall be payable on demand.

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2005.

1. \_\_\_\_\_  
who warrants that he/she is duly authorised hereto and in particular agrees to be bound by the suretyship annexed hereto.

Witnesses

1.1 \_\_\_\_\_

1.2 \_\_\_\_\_

2. \_\_\_\_\_  
who warrants that he/she is duly authorised hereto

Witnesses

2.1 \_\_\_\_\_

