



Crown: (011) 627 7000  
 Bloemfontein: (051) 432 4758  
 Cape Town: (021) 534 3491  
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 East London: (043) 731 1169  
 Nelspruit: (013) 753 3405  
 Port Elizabeth: (041) 451 2233  
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 Tzaneen: (015) 307 1344



Bidvest Afcom (Pty) Ltd (Reg. No 1961/001762/07), a trading agent of Bidvest Commercial Products (Pty) Ltd (Reg. No. 2011/010523/07) ("the Company") (including all of its trade styles, successors in title and assigns)

e-mail: [info@bidvestafcom.co.za](mailto:info@bidvestafcom.co.za)  
 Webpage: [www.bidvestafcom.co.za](http://www.bidvestafcom.co.za)

Amended 11/05/2021

**APPLICATION FOR CREDIT FACILITIES INCORPORATING PERSONAL GUARANTEE & CESSION**

**CONFIDENTIAL**

FULL NAME OF THE APPLICANT:

TRADE NAME/STYLE OF APPLICANT:

ARE YOU PART OF A GROUP: YES  NO  IF YES, NAME OF GROUP:

INDUSTRY TYPE:

PO BOX:  TOWN:  CODE:

TEL:  FAX:

PHYSICAL/DELIVERY ADDRESS:

SUBURB:  TOWN:  Co/cc NUMBER:

REGISTERED OFFICE OF Co/cc:  ID NO.:

SOLE OWNER  PARTNERSHIP  (PTY) LTD  LTD  CC  TRUST

PERSON RESPONSIBLE FOR ACCOUNT:

E-MAIL:

PERSON RESPONSIBLE FOR BUYING:

E-MAIL:

YEAR COMMENCED BUSINESS:  VAT Reg. No.:

NAME AND ADDRESS OF AUDITORS:

NAME OF ACCOUNT:

BANKERS:  BRANCH:

ACCOUNT NO.:  BR CODE:  DATE ACC OPENED:

**TRADE REFERENCES**

**E-MAIL ADDRESS**

1)	TEL:	
2)	TEL:	
3)	TEL:	

**DETAILS OF OWNERS/PARTNERS/MEMBERS/DIRECTORS OR TRUSTEES**

FULL NAME	ID NUMBER	TELEPHONE
		TEL: CELL:
		TEL: CELL:
		TEL: CELL:
		TEL: CELL:

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ARE YOU SUBJECT TO A DEBT RE-ARRANGEMENT IN TERMS OF THE NATIONAL CREDIT ACT?

IF YES, GIVE DETAILS:

#### FOR COMPANIES / CLOSE CORPORATIONS

NETT ASSET VALUE OF YOUR BUSINESS: <R1 000 000  Between R1 000 000 and R2 000 000  >R2 000 000

ANNUAL TURNOVER: <R1 000 000  Between R1 000 000 and R2 000 000  >R2 000 000

LIMIT REQUESTED: R  (for information purposes only, *does not inter alia*, constitute an obligation on behalf of the Company

to supply on the terms set out below and shall not be capable on any basis whatsoever of restricting the total liability from time-to-time of the Applicant or any guarantor for the Applicant.)

**N.B. PLEASE NOTE OUR CREDIT TERMS ARE 30 DAYS NETT OF DATE OF MONTHLY STATEMENT**

ANY ADDITIONAL INFORMATION WHICH MAY BE OF ASSISTANCE:

The Applicant (or its agent or representative) applies to enter into an agreement with the Company for the supply of goods by the Company and applies for trade facilities with the Company on the terms and conditions set out below. The terms of trade facilities, personal guarantee, cession and terms and conditions of sale are collectively referred to as the "terms and conditions of sale" in this agreement.

#### Terms and Conditions of Sale

1. **INTERPRETATION:**  
Unless the context otherwise requires, words importing the singular shall include the plural and *vice versa* (the other way around), a natural person shall include a juristic person and *vice versa* (the other way around) and one gender shall include the other gender.
2. **APPLICABLE LAW**  
This agreement and all modifications and amendments to this agreement shall be governed by and construed under and in accordance with the laws of the Republic of South Africa.
3. **DOMICILIUM:**  
The Applicant and I (the guarantor(s)) whose signatures appear as guarantors under the personal guarantee) choose our *domicilium citandi et executandi* (place of notice) for all purposes arising out of these terms and conditions of sale, application for trade facilities and personal guarantee at the address stipulated on page 1 of this application.
4. **CHANGE OF ADDRESS:**  
The Applicant and I undertake to notify the Company immediately in writing of any change of address.
5. **CHANGE OF OWNERSHIP IN THE APPLICANT:**  
The Applicant undertakes to notify the Company, in writing, within 7 (seven) days of any change of ownership of the Applicant. The Applicant acknowledges that upon any change of ownership in the Applicant any outstanding amount whether due or not shall be deemed to be immediately payable by the Applicant to the Company.
6. **OWNERSHIP OF GOODS:**  
Until such time as the Applicant has paid the purchase price in full in respect of any purchase of goods from the Company, the ownership of all such goods shall irrevocably remain with the Company. Subject to any applicable law, the Company shall in its sole discretion without notice to the Applicant be entitled to take possession of any such goods (wherever they may be found) which have not been paid for, in which event the Applicant shall be entitled to a credit in respect of the goods so returned at the price at which the goods are sold or the value of the goods as determined by the Company. The Applicant and the guarantors indemnify the Company in respect of any claim against the Company arising from this clause. In the event that the Company exercises its rights in terms of this clause, the Applicant authorises the Company to seize and remove any such goods which have not been paid for from any location.
7. **ORDERS:**  
Subject to any applicable law, in the event of any order being given to the Company on an order form reflecting the Applicant's name as the entity from which the order arises, such order shall be deemed to have emanated from the Applicant, despite 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 a valid order.
8. **DELIVERY OF GOODS:**
  - 8.1. The Company will make every reasonable endeavour to ensure timeous delivery of the goods on the terms and conditions agreed between the Applicant and the Company. The Company shall not be liable for late deliveries due to circumstances which are beyond the Company's control such as, but not limited to, the events set out in clause 27.
  - 8.2. Signature by the Applicant or by any representative of the Applicant of the Company's delivery note, shall be regarded as acceptance by the Applicant that the goods reflected in such delivery note have been properly and completely delivered.
9. **RISK IN AND TO THE GOODS:**  
The risk in and to the goods shall pass from the Company to the Applicant on the date of delivery to the Applicant (or its nominee) despite the fact that ownership will not pass to the Applicant until full payment of the purchase price has been made to the Company.

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10. **GOODS SOLD AS IS:**  
Subject to any applicable law, any goods sold to the Applicant shall be regarded as having been sold as is, without warranty against latent defects and no liability shall arise on the part of the Company for any representation or warranty made or alleged to have been made at any time in respect of the goods sold by the Company to the Applicant.
11. **FAILURE TO OBJECT TO ANY ITEM APPEARING ON THE COMPANY'S STATEMENT:**  
If the Applicant should fail to object to any item appearing on the Company's statement of account within 10 (ten) days of date of the dispatch of the statements, the account shall be deemed to be in order and correct in all respects.
12. **PAYMENTS:**
- 12.1. Unless otherwise agreed in writing, payment terms are strictly 30 (thirty) days from statement date. The Applicant as set out on the first page of this document may not withhold or defer payment to the Company for any reason whatsoever.
- 12.2. If the Applicant defaults in making payment of any amount that has become due, owing and payable to the Company, then the full balance outstanding (whether due or not) will immediately become due and payable to the Company without notice to the Applicant.
- 12.3. The Company does not appoint the Post Office or any other body as its agent for payments by post or otherwise. All payments shall either be made to the Company's physical place of business from where the goods were ordered or transferred directly to the Company's nominated bank account. In the event of any payments being mislaid or lost in the post or elsewhere the Applicant shall still be and remain liable to the Company for payment.
13. **PROOF OF AMOUNT DUE, OWING AND UNPAID TO THE COMPANY:**  
A certificate signed by the company secretary, any manager or any director of the Company reflecting the amount owing by the Applicant to the Company in relation to the Applicant's dealings with the Company and the fact that such amount is due, owing and unpaid shall be *prima facie* (on the face of it) proof of such facts for the purpose of any action (whether by way of provisional sentence or otherwise), proof of debt on insolvency or for any purpose where the amount of such claim is required to be established and it shall rest entirely with the Applicant to prove that such amount is not owing, due and/or unpaid.
14. **RETURN OF GOODS:**  
In circumstances where the Applicant wishes to return non-defective goods to the Company for credit, The Company may, in its sole and absolute discretion (subject to applicable law), agree to the return of such goods subject to the goods being new, unused, in their original packaging and in a saleable condition. The Applicant shall be obliged to furnish adequate written proof of having purchased the goods from the Company.
15. **SET-OFF:**  
It is agreed that set-off shall operate automatically as a matter of law at the moment reciprocal debts between the Company and the Applicant come into existence and independently of the will of the parties and it shall not be necessary for either the Company or the Applicant to raise set-off. Upon the operation of an automatic set-off, the debts of the parties shall be mutually extinguished to the extent of the lesser debt.
16. **CESSION OF COMPANY'S RIGHTS AND DELEGATION OF COMPANY'S OBLIGATIONS:**  
The Company shall be entitled to cede all or any of its rights and delegate all or any of its obligations to any third party without prior notice to the Applicant at any time.
17. **NON WAIVER / NOVATION OF COMPANY'S RIGHTS:**  
Any condonation of any breach of any of the provisions of these terms and conditions of sale or other act or relaxation, indulgence or grace on the part of the Company shall not in any way operate as or be deemed to be a waiver by the Company of any rights or be construed as a novation of any rights.
18. **WITHHOLDING OF TRADE FACILITIES & CANCELLATION OF AGREEMENT:**  
Without notice to the Applicant, the Company shall be entitled to withhold any trade facilities at any time and cancel this agreement.
19. **ENTIRE AGREEMENT:**
- 19.1. These terms of trade facilities, personal guarantees, cession and terms and conditions of sale contain the entire agreement between the parties and any other terms whether express or implied are excluded from these terms and conditions of sale and any variations, cancellations or additions shall not be of any force or effect unless reduced to writing and signed by the parties or their duly authorised signatories. Accordingly, these terms and conditions of sale shall not be capable of being altered, amended or modified in any respect unless signed by the Company and by the Applicant (as well as any guarantor(s)).
- 19.2. The Applicant acknowledges that no terms at variance with the terms and conditions of sale and which have been sought to be introduced by the Applicant at any time shall be of any force or effect unless the Company has, in writing, expressly and unambiguously agreed that the terms so sought to be introduced by the Applicant shall apply. Without limiting the above, the Company shall not be regarded as having so expressly agreed by virtue merely of the Company having agreed to execute an order in which inconsistent terms have been introduced by the Applicant and despite the fact that the Company has not rejected such inconsistent terms.  
Where any form of security has been furnished, at any time, to the Company on behalf of the Applicant (including but not limited to any Deed of Suretyship and / or Deed of Cession), the provisions of these terms and conditions of sale shall in no way whatsoever affect or diminish the Company's rights in and to such security.
20. **WINDING UP OF APPLICANT:**  
Should the Applicant at any time be wound up, whether provisionally or finally, (which liquidation or sequestration, whether provisional or not, shall be deemed to be a material breach by the Applicant of this contract) or commence steps to enter into business rescue proceedings, or in the event of the Applicant being an individual or partnership and having his/its estate sequestrated, whether provisionally or finally, any goods delivered by the Company to the Applicant and in respect of which payment has not been made at the date of the winding up or sequestration (whether payment in respect thereof be due or not) shall immediately be returned to and recoverable by the Company, wherever such goods may be found.
21. **CONVERSION OF APPLICANT:**  
The Applicant and any guarantor acknowledge that in the event of the Applicant being a sole proprietorship, partnership, a company or a close corporation and converting from a sole proprietorship, partnership, or company to a close corporation or from a sole proprietorship, partnership or a close corporation to a company at any time, any guarantor or signatory of these terms and conditions of sale shall remain bound as a guarantor.

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**22. INDEMNITIES:**

- 22.1. Subject to any applicable law, the Applicant acknowledges that the Company is not the manufacturer of the goods. The Applicant accordingly indemnifies and holds the Company harmless against any claim that may be brought against the Company in consequence of such goods being defective and causing any damage whatsoever, whether through accident or negligence, gross negligence, or any other cause.
- 22.2. Subject to any applicable law, the Applicant and the guarantor(s) acknowledge that they will indemnify and hold the Company harmless against any liability in respect of the goods, including under the Occupational Health and Safety Act 85 of 1993 and the Mine Health and Safety Act 29 of 1996. Subject to any applicable law, specific reference to sections 10 and 21 of the respective legislation as it applies to product liability, is disclaimed by the Company.
- 22.3. The Applicant shall be obliged to and warrants that it will ensure that a qualified technician and/or electrician installs all goods purchased from the Company which require installation by such qualified persons. Should the Applicant fail to comply with such obligation, the Applicant indemnifies the Company from any liability of whatever nature arising from the purchase of the goods.
- 22.4. The Applicant acknowledges that it does not rely, in any manner, on any representations and/or advice of the Company in its decision to purchase particular goods from the Company.

**23. JURISDICTION:**

The parties consent to submit to the jurisdiction of any court of competent jurisdiction located in the Republic of South Africa, in any action proceeding arising out of or relating in any manner to this agreement. Despite any clause in these terms and conditions of sale to the contrary, despite any delivery to a place outside the Republic of South Africa, the Applicant and any guarantor for the Applicant consent to the jurisdiction of the appropriate Court of South Africa having jurisdiction over the Company's branch from which the goods were delivered to the Applicant. The provisions of this clause are inserted solely for the benefit of the Company who may exercise the provisions in its sole and absolute discretion.

Whatever the amount owing by the Applicant (or any guarantor of the Applicant) to the Company, the parties consent, in terms of section 45 of the Magistrates Court Act 32 of 1944, to the jurisdiction of the magistrate's court having jurisdiction for the determination of any action or proceeding otherwise beyond the jurisdiction of the court which may be brought by the Company against the Applicant arising out of any transaction between the parties, it being recorded that the Company shall be entitled, but not obliged, to bring any action or proceeding in the said court.

**24. ARBITRATION:**

The parties agree that the Company, in its sole and absolute discretion, may refer any dispute arising out of or relating in any manner to this agreement, including non-payment of any indebtedness by the Applicant (or any guarantor), to arbitration in accordance with the Rules of the Arbitration Foundation of Southern Africa.

**25. COSTS:**

All costs incurred in any action against the Applicant, including costs on an attorney and own client scale and attorney's collection commissions, will be paid by the Applicant should the Company be successful in such action or proceeding. The Applicant will reimburse the Company for all costs incurred in recovering any amount owing by the Applicant to the Company, including but not limited to its legal costs incurred in proceeding against the Applicant, howsoever those costs are incurred and whether they are incurred prior to the institution of action, after the entry of judgment or at any other time.

**26. FORCE MAJEURE:**

No failure by either party to perform in accordance with any provision of this agreement shall constitute a breach of this agreement if the failure arose as a result of *force majeure*, including acts of God, war, strike, sanctions or changes in laws, regulations, ordinances or the like made by any competent authority or other circumstances outside the control of the parties.

**27. SENSITIVE MATERIAL:**

Neither party shall be required to supply any material or information in violation of any law, regulation, ordinance or other official decree, if such supply or distribution can only be made with the approval of a governmental authority, without approval of that authority.

**28. TRUSTS:**

In the event that the Applicant is a validly constituted trust, the Applicant warrants, irrevocably, that it is entitled to enter into these terms and conditions of sale and that such undertakings contained in these terms and conditions of sale are to the benefit of the trust, its beneficiaries and the trustees. The Applicant warrants that these terms and conditions of sale are to the Applicant's benefit and there are no encumbrances or hindrances to the conclusion of these terms and conditions of sale (incorporating the personal guarantee and trade facilities).

**29. THE PROTECTION OF PERSONAL INFORMATION ACT 4, OF 2013 (POPIA):**

- 29.1 The Applicant (and any guarantor for the Applicant) understands and agrees that: (a) personal information requested by the Company is necessary for processing the terms and conditions of sale, assessing the credit worthiness of the Applicant (and any guarantor for the Applicant) and for maintaining, from time to time, the Applicant's account with the Company; (b) if any of the personal information requested is not provided, the Company may not approve the application for an account with the Company.
- 29.2 The Applicant (and any guarantor for the Applicant) confirms and warrants that the information provided herein is accurate and complete. The Applicant (and any guarantor for the Applicant) agrees to update the information supplied, as and when necessary, in order to ensure the accuracy of the information, failing which the Company will not be liable for any inaccuracies and the Applicant (and any guarantor for the Applicant) fully indemnifies the Company in this regard.
- 29.3 The Applicant (and any guarantor for the Applicant) provides its express consent and authority to the Company, at all times, to: (a) process the personal information of the Applicant (and any guarantor of the Applicant) for the purpose of concluding the terms and conditions of sale, for maintaining the Applicant's account and for providing services to the Applicant, including any benefits attached to the Applicant's account; (b) make enquiries to confirm and verify any information provided by the Applicant (and any guarantor of the Applicant); (c) contact and request information from any third party, credit bureaux and businesses so as to obtain any information relevant to the Applicant's current and future credit assessment including, but not limited to, information regarding the amounts purchased from suppliers per month, length of time Applicant has dealt with such suppliers, type of goods or services purchased and manner and time of payment; (d) obtain credit reports from credit bureaux, banks and other agencies from time to time; (e) furnish personal and credit information concerning the Applicant's dealings with the Company to any credit bureaux, credit insurer and to any third party seeking a trade reference regarding the Applicant; (f) process the personal information of the Applicant (and any guarantor of the Applicant) for the purpose of the prevention and detection of fraud and criminal activities, the identification of the proceeds of unlawful activities and the combating of money laundering activities.

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29.4 All personal information obtained and processed by the Company for the purposes as set out above, shall be treated by the Company as confidential and in accordance with the Company's privacy policy which is available on request and on [www.bidvestafcom.co.za](http://www.bidvestafcom.co.za).

29.5 Where the Company's personal information is provided, it consents to the processing thereof, provided the Applicant and any guarantor for the Applicant, undertakes to process all and any such personal information strictly in compliance with POPIA, and subject further that where its personal information is not processed in accordance with POPIA, then the person handing such information indemnifies and holds the Company and / or any third parties who may be or will be affected by such non-compliance, harmless against all and any liabilities, loss or damages, including pecuniary, non-pecuniary, and / or aggravated damages, which they may incur in consequence of such non-compliance, such person (who is processing the personal information) agreeing to pay to the Company and or any affected third party/ies all and any such damages which they may have incurred as a result of such non-compliance, on demand.

30. **SEVERABILITY:**  
Each clause of these terms and 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(s) shall not affect the balance of these terms and conditions of sale, which shall remain of full force and effect.

31. **Personal Guarantee**

31.1 I, by my signature hereto (which appears below) do, in addition to the above, hereby bind myself in my private and individual capacity as surety for and co-principal debtor in solidum (jointly and severally) with the Applicant in favour of the Company for the due performance of any obligation of the Applicant and for the payment to the Company by the Applicant of any amounts which may at any time become owing to the Company by the Applicant from whatsoever cause arising and including, but without limiting the generality of the foregoing, any claims for damages and actions against the Applicant acquired by way of cession. This personal guarantee shall be a continuing covering guarantee/surety which may only be cancelled, in writing, by the Company and then only, provided that all sums then owing by the Applicant (whether due or not) to the Company have been paid in full. I hereby renounce the benefits of the legal exceptions *non causa debiti* (no just cause exists for the debt), *ordinis seu excussionis et divisionis* (benefit of excussion or division), and cession of action, with the force, meaning and effect of which I declare myself to be fully acquainted.

31.2 I, furthermore record that if more than one person has appended his signature hereto, there shall come into existence a separate distinct and independent contract of suretyship/guarantee which is brought into existence by each separate signatory hereto. If for any reason this suretyship/guarantee is not binding (for whatsoever reason) on any one signatory, then the obligations of the remaining signatories shall nevertheless be and remain of full force and effect.

32. **Cession**

32.1 The Applicant irrevocably and in *rem suam* (in his own interest) cedes, pledges, assigns, transfers and makes over to and in favour of the Company, all of its rights, title, interest, claims and demand in and to all claims, debts and book debts of any nature and description that the Applicant may now or at any time in the future have against all and any persons, companies, corporations, firms, partnerships, associations, syndicates and other legal persons ("the Applicant's debtors") without exception as a continuing covering security for the due payment of every sum of money which may now or at any time hereafter be or become owing by the Applicant to the Company from any cause or obligation which the Applicant may be or become bound to perform in favour of the Company.

32.2 Should it transpire that the Applicant at any time entered into prior deeds of cession or otherwise disposed of any of the rights, title and interests in and to any of the Applicant's debtors which will from time to time be subject to this cession, then this cession shall operate as a cession of all the Applicant's reversionary rights. Despite the terms of this cession the Applicant shall be entitled to institute action against any of the Applicant's debtors provided that all sums of money which the Applicant collects from the Applicant's debtors shall be collected on the Company's behalf and provided that the Company may terminate the Applicant's right to collect such monies/debts at any time.

32.3 The Applicant agrees that the Company may give notice of this cession to all or any of the Applicant's debtors at any time.

32.4 The Applicant agrees that the Company is entitled to inspect any of the Applicant's books of records at any time and in addition shall be entitled to take possession of such books and records (of any nature) to give effect to the terms of this cession.

33. The Applicant and I (including any other guarantor for the Applicant) warrant that the information submitted on pages 1 and 2 above is true and correct in all respects and that the terms and conditions of sale with the Company are those reflected in this document, which the Applicant and I are entirely familiar with and which are deemed to be incorporated in this personal guarantee and form part of this personal guarantee. The Applicant and I (including all guarantors) warrant that there are no restrictions or impediments in executing the provisions contained in the terms of the trade facilities, terms and conditions of sale, personal guarantees and cession.

Signed by the Applicant or its duly authorised agent / signatory / representative and by me in my personal capacity as guarantor and I warrant that in addition to my signature as guarantor for the Applicant I am authorised to sign on behalf of the Applicant.

1) Signature: ..... 2) Signature: .....

Full Name: ..... Full Name: .....

Dated at ..... on this ..... day of ..... 20.....

Details taken by (witness full name) ..... date .....

Witness signature ..... (Id .....) )

Bidvest Afcom Representative Name ..... Signature .....