

1. APPLICANT INFORMATION

Registered Business Name

(hereinafter referred to as "the Customer")

Type of Business Public Co Private Co Close Corporation

Date of Establishment

Company/CC Registration Number

Physical Address

Code

Postal Address

Code

Tel Cell Fax

Email

Account's Dept Contact Email

Purchasing Dept Contact Email

Name of Auditor

Auditor's Tel No Auditor's Fax No

Company VAT No

2. OWNERSHIP (SHAREHOLDERS/DIRECTORS/MEMBERS/PARTNERS)

State names, physical home address, ID numbers, telephone numbers and % shareholding

Name ID No

Address

Tel % Shareholding

Name ID No

Address

Tel % Shareholding

Name ID No

Address

Tel % Shareholding

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Name ID No
Address
Tel % Shareholding

3. ASSOCIATED COMPANIES

Name Tel
Address

Name Tel
Address

4. BANKING INFORMATION

Name of Bank Branch
Account No Date Account Opened

5. TRADE REFERENCES

Name Tel
Date Account Opened Credit Limit

Name Tel
Date Account Opened Credit Limit

Name Tel
Date Account Opened Credit Limit

6. FINANCIAL INFORMATION

Total number of staff
Annual Turnover of Customer ≤ R 1 000 000 ≤ R 5 000 000 ≤ R 10 000 000 ≥R 10 000 000
Gross Asset Value of Customer ≤ R 1 000 000 ≥ R 1 000 000
Property in which business is situated Owned Rented Leased
Was the company, CC, partnership, owner/s, ever insolvent or placed under administration order Yes No

List all sureties, cession of debtors, notarial bonds, factoring agreements & judgements

List all liquidations, sequestrations against the business or its principals

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7. INITIAL CREDIT LIMIT REQUIRED

Applied for

I, the undersigned, hereby warrant that:

1. I have the necessary authority to represent the Customer herein and bind the Customer to the provisions of this Agreement, which includes Standard Terms and Conditions of Tender, Sale and Supply of Goods and also incorporates a Deed/s of Suretyship; and
2. I have read and understood the provisions contained in this Agreement, including the Standard Terms and Conditions of Tender, Sale and Supply of Goods, and hereby bind the Customer to the provisions of this Agreement.

Thus done and signed by the Customer at _____ on _____ day of _____ 20_____.

FOR AND ON BEHALF OF THE CUSTOMER

Full names and surname

Designation

(who hereby warrants that he/she has read and understands the provisions of this Agreement and hereby binds the Customer thereto, he/she being duly authorised hereto)

Signature (Strictly, no electronic signatures allowed)

AS WITNESS

Full names and surname

Signature (Strictly, no electronic signatures allowed)

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STANDARD TERMS AND CONDITIONS OF TENDER, SALE AND SUPPLY OF GOODS

A. IMPORTANT NOTICE

Please carefully read the provisions of section B below as they contain important information regarding your legal rights, remedies and obligations. Amongst other things, these provisions include various limitations and exclusions and a clause that governs the jurisdiction.

Your attention is further brought to the fact that the provisions of section B may contain:

1. provisions that amount to a limitation of the Supplier's liability and/or risk;
2. provisions that amount to an assumption of risk and/or liability by you;
3. provisions that impose obligations on you to indemnify the Supplier and/or third parties; and
4. acknowledgements of facts by you.

All such provisions (as well as other provisions that are important) appear conspicuously in the same bold text as this clause, thereby bringing your attention thereto. Such provisions are important and therefore are to be carefully considered by you before you sign this document and/or offer any consideration in respect thereof.

If there is any clause, provision, paragraph and/or sentence in section B that you do not understand and/or in respect of which you are uncertain as to your rights, risks and/or obligations, you are not to sign this Agreement before first obtaining advice thereon, including (where necessary) legal advice.

You hereby confirm and agree that before signing this Agreement:

- i. you have been given enough time to read the entire provisions of sections A and B;
- ii. you have taken the time to carefully read all such provisions and understand all of the rights, risks and obligations specified therein; and
- iii. when so reading all such provisions, you have carefully read and paid proper attention to those provisions and clauses that are in bold print.

B. STANDARD TERMS AND CONDITIONS OF TENDER, SALE & SUPPLY OF GOODS

1. INTERPRETATION

- 1.1 In this Agreement -
 - 1.1.1 clause and paragraph headings are for convenience only and are not to be used in its interpretation;
 - 1.1.2 unless the context indicates a contrary intention, an expression which denotes -
 - 1.1.2.1 any gender includes the other genders;
 - 1.1.2.2 a natural person includes a juristic person and vice versa; and
 - 1.1.2.3 the singular includes the plural and vice versa.

- 1.2 Unless otherwise expressly stated, or the context otherwise requires, the words and expressions listed below, when used in this Agreement, will bear the meanings ascribed to them:

"Agreement" means this written agreement comprising the Credit Application Form overleaf, the above provisions of section A and the provisions contained in this section B, however, any reference herein to **"Agreement"** is not to be construed as including a reference to the separate Deed of Suretyship/s appearing after the end of this Agreement.

- 1.2.1 **"Customer"** means the party specified as such in item one on the top of page 2 hereof under the heading **"Applicant Information"**.

- 1.2.2 **"Delivery"**, in respect of Goods, means its plain English meaning and, without derogating from the generality of the

aforegoing, includes:

- 1.2.2.1 the delivery of Goods to the Customer (or to another party stipulated by the Customer for such Delivery) by or on behalf of the Supplier, as evidenced by the Supplier's Delivery Note in respect thereof; or

- 1.2.2.2 the Supplier making the Goods available for collection by the Customer at, and the collection by or on behalf of the Customer from, either the physical address of the Supplier or any collection points specified by the Supplier, with the date of Delivery being deemed for the purposes hereof to be the date that such Goods are so delivered to the Customer or collected by it (as the case may be); **provided that in the case of Goods being made available for collection by the Customer, in the event of such Goods not being collected within a period of 7 days of the Supplier making same available for collection at its said physical address or any of its said collection points, then the date of Delivery will be deemed for the purposes hereof to be such 7th day after the Supplier has so made such Goods available for collection.**

- 1.2.3 **"Delivery Note"**, in respect of Goods, means its plain English meaning and, without derogating from the generality of the aforegoing, includes invoices, waybills or any other document on which the Customer has signed, or is required and/or entitled to sign, for receipt of Goods delivered.

- 1.2.4 **"Goods"** means cables, fibre, equipment, parts, material, consumables and/or other goods to be supplied in terms of an Order placed.

- 1.2.5 **"Juristic Person"** means its plain English meaning and, without derogating from the generality of the aforegoing, includes a company, close corporation, body corporate, partnership, association, trust and any other corporate entity that is not a natural person, irrespective of whether or not the Juristic Person concerned was established within the Republic of Namibia.

- 1.2.6 **"Order"** means the placing of an order by the Customer with the Supplier [either in writing (by the Customer hand-delivering or transmitting via email or telefacsimile such order to the Supplier or orally (by the Customer telephoning, or otherwise orally making contact with, a duly authorised representative of the Supplier and quoting the Customer's official Order number that it has been given by the Supplier) or otherwise] in terms of which the Customer orders Goods from the Supplier for purchase by the Customer from the Supplier.

- 1.2.7 **"Parties"** means the parties to this Agreement and **"Party"** means a party to this Agreement.

- 1.2.8 **"Supplier"** means CFS Cable Feeder Systems Namibia (Pty) Ltd, a company having registration number 2019/0890, and **"Supplier"** includes the successors-in-title and assigns of C F S Cable Feeder Systems Namibia (Pty) Ltd.

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- 1.3 Any substantive provision conferring rights and/or imposing obligations on a Party and appearing in any of the definitions of this clause 1 or elsewhere in this Agreement, are to be given effect to as if it were a substantive provision in the body of this Agreement.
- 1.4 Words and/or expressions defined in any clause are to bear the meaning assigned to such word and/or expression throughout this Agreement unless the application of any such word and/or expression is specifically limited to that clause.
- 1.5 Subject to clauses 1.6, 1.13 and 1.15, defined terms appearing in this Agreement in title case are to be given their meaning as defined, while the same terms appearing in lower case are to be interpreted in accordance with their plain English meaning.
- 1.6 Reference to "days" is to be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day (other than a Saturday, Sunday or public holiday in the Republic of Namibia). Any reference to "business hours" is to be construed as being the hours between 08h00 and 17h00 on any business day. Any reference to time is to be based upon Central African Time.
- 1.7 Unless expressly otherwise provided, any number of days prescribed is to be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day.
- 1.8 If the due date for performance of any obligation in terms of this Agreement is a day which is not a business day then (unless otherwise stipulated) the due date for performance of the relevant obligation will be the immediately preceding business day.
- 1.9 Where figures are referred to in numerals and in words and there is any conflict between the two, the words will prevail, unless the context indicates a contrary intention.
- 1.10 No provision herein is to be construed against or interpreted to the disadvantage of a Party hereto by reason of such Party having or being deemed to have structured, drafted or introduced such provision.
- 1.11 The expiration or termination of this Agreement will not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 1.12 References to any statutory enactment are to be deemed to include a reference to that enactment as amended or substituted from time to time.
- 1.13 The words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples is not to be construed as limiting the meaning of the general wording preceding it.
- 1.14 Any reference in this Agreement to "this Agreement" or any other agreement or document is to be construed as a reference to this Agreement or, as the case may be, such other agreement or document, as amended, varied, novated or supplemented from time to time.
- 1.15 In this Agreement the word "clause" or "clauses" refer to clauses of this Agreement.
- 1.16 For the purposes of this Agreement and unless expressly provided for otherwise in this Agreement, email correspondence between the Parties is deemed not to be in writing and signed by the Parties and any reference herein to writing signed by a Party is to be read and construed as excluding any form of electronic signature.
- 1.17 Unless otherwise stipulated, no provision of this Agreement is to constitute a stipulation for the benefit of any person (*stipulatio alteri*) who is not a Party to this Agreement.

2. AGREEMENT

- 2.1 This Agreement will govern all future contractual relationships between the Parties in respect of the tender, sale and/or supply of Goods by the Supplier to the Customer.
- 2.2 Any conflicting conditions stipulated by the Customer are expressly excluded.
- 2.3 This Agreement supersedes all previous terms, conditions and/or agreements relating to the tender, sale and/or supply of Goods by the Supplier to the Customer and/or the Ordering of Goods by the Customer from the Supplier; provided that any securities and/or guarantees already held by the Supplier will remain of full force and effect unless otherwise terminated in writing by the Supplier.

3. CREDIT FACILITIES

- 3.1 The Customer acknowledges that granting of credit facilities to it by the Supplier is at the sole discretion of the Supplier.
- 3.2 **The Supplier has the right at any time and for whatsoever reason to suspend, withdraw, reduce and/or change any credit facilities granted by it to the Customer, by giving written notice thereof to the Customer, which suspension, withdrawal, reduction and/or change (as the case may be) will take effect on the giving of such written notice to the Customer. Notwithstanding the provisions of clause 1.16, the Supplier will be entitled to give the written notice envisaged in this clause via email to the Customer's email address or addresses (as the case may be).**
- 3.3 The Supplier further has the right at any time, to require the Customer to furnish guarantees, suretyships and/or any other forms of security that may, from time to time, be required by the Supplier as security for the Customer's current and/or future obligations owed and/or to be owed by it to the Supplier from whatsoever cause arising.
- 3.4 The credit limit that is granted to the Customer from time to time will not be deemed to be a limit of the Customer's indebtedness to the Supplier and the Customer will remain indebted to the Supplier for the full amount of such indebtedness, notwithstanding that such amount may exceed the then applicable credit limit.

4. ORDERS, PRICES AND DISCOUNTS

- 4.1 All orders placed by the Customer with the Supplier in respect of Goods are subject in all respects to approval and acceptance thereof by the Supplier, in its sole discretion in this regard, and the Supplier is not obliged to accept any Order placed by the Customer with it nor will the Supplier be liable for any claim of any nature whatsoever which may arise by virtue of its failure, neglect and/or refusal to accept any such Order. An Order placed by the Customer with the Supplier will only become binding on, and irrevocable by, the Customer upon the Supplier accepting such Order, which acceptance need not be conveyed by the Supplier to the Customer. The Customer waives any necessity for the Supplier to notify it of the Supplier's acceptance of an Order, with the Supplier being entitled to accept an Order expressly, tacitly, impliedly and/or by its conduct. Once an Order has become binding and irrevocable as described above, cancellation of such Order by the Customer can only be effected with the written consent of the Supplier.

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- 4.2 The Customer bears the full risk of all errors and/or misunderstandings arising from Orders placed orally, and not in writing, by it with the Supplier.
- 4.3 Subject to clause 4.6, any quotation or estimate given by the Supplier is made in good faith and will not be binding upon the Supplier unless accepted by the Customer and subsequently confirmed in writing by the Supplier.
- 4.4 Any purchase prices of Goods specified and/or quoted for by the Supplier are in Namibian Dollar and are exclusive of VAT (if applicable) and delivery charges. The Supplier reserves the right to modify its prices from time to time.
- 4.5 The Customer acknowledges that it does not, and will not in any stage in the future, rely on any representations made by the Supplier in regard to the Goods and/or any of their qualities, unless such representations are expressly contained in this Agreement. Any recommendation, formula, advice, dimension, weight, specification, price list, performance figure, advertisement, brochure and/or other technical data furnished by the Supplier in respect of the Goods, is approximate and for information only and will not form part of this Agreement in any way, with it being the sole responsibility of the Customer to determine that the Goods ordered are suitable for the purpose of their intended use.
- 4.6 The Supplier reserves the right to vary any quoted purchase price prior to the Delivery of the Goods concerned by adding thereto increased costs which are beyond its control and that arise between the date of the quoted price and the Delivery of the Goods concerned, and the Customer will be notified in writing by the Supplier of any such increase.

5. DELIVERY

- 5.1 If the Supplier Delivers the Goods to the Customer's nominated delivery address, the Customer undertakes to grant to the Supplier or its subcontractors (as the case may be) unhindered access to the premises for purposes of Delivery and neither the Supplier nor its subcontractors will be liable for any losses and/or damages suffered by the Customer and/or any other person as a result of the entry and/or activities of the Supplier or its subcontractors (as the case may be) in effecting Delivery of the Goods.
- 5.2 Any third party who collects the Goods from the Supplier on behalf of the Customer will be deemed to be duly authorised thereto and the Customer's agent for that purpose.
- 5.3 If the Customer refuses to accept Delivery of the Goods and/or delays Delivery of the Goods, then: -
 - 5.3.1 the Supplier will be entitled to payment of the full purchase price and all other money due in respect of the Goods that form the subject matter of such Delivery;
 - 5.3.2 the Customer will be liable for any loss, damage and/or expense incurred and/or sustained by the Supplier as a result of the Customer's refusal and/or delay;
 - 5.3.3 the Supplier, in its sole discretion, will be entitled to charge the Customer a daily storage fee in respect of the Goods until such time as the Goods are Delivered to the Customer; and/or
 - 5.3.4 the Supplier may cancel the transaction in respect of the Goods and recover whatever damages it has suffered as a result of the Customer's refusal and/or delay.
- 5.4 Any Delivery date specified and/or undertaken by the Supplier is an estimation only and the Supplier will not be bound to make Delivery on such estimated date, with time not being of the essence in respect thereof. Any such Delivery date undertaken by the Supplier will not constitute a binding undertaking and/or guarantee in that regard made by the Supplier and no liability will attach to the Supplier in respect of any direct, indirect, special, general and/or consequential losses and/or damages arising directly and/or indirectly from any delay in the Delivery of any Goods, irrespective of the cause of such delay.

Furthermore, the Customer will not be entitled to cancel its Order with the Supplier in respect of such Goods, nor vary the terms thereof, in the event of the Supplier not Delivering the Goods by or on the date in question.

- 5.5 The Customer warrants that the signatory to any Delivery Note or any other documentation of the Supplier made out in the name of the Customer is duly authorised to bind the Customer in relation to the transaction, with such signature constituting *prima facie* proof (i.e., sufficient proof until proven otherwise) of the Delivery of the Goods to the Customer.
- 5.6 It is the duty of the Customer to inspect the Goods on receipt, and by signing the Delivery Note the Customer will be deemed to have confirmed receipt of the Goods in good order, except to the extent of any damage thereto which is endorsed on the Delivery Note or to the extent of the Customer invoking the provisions of clause 7.
- 5.7 The Supplier will be entitled in its sole discretion to split the Delivery of the Goods Ordered in the quantities and on the dates it decides and the Supplier will be entitled to separately invoice each such Delivery actually made.

6. PAYMENT

- 6.1 In the event of the Customer having an approved credit facility with the Supplier, the granting of which is entirely within the sole discretion of the Supplier, payment of all amounts due by the Customer to the Supplier is to be made by the Customer to the Supplier so that it is received by the Supplier within 30 (THIRTY) days of the date of the Supplier's first statement reflecting the amounts concerned, with such payment to be made in Namibia Dollar or South African Rand currency and free of any exchange, deduction, set-off, bank charges and/or commission.
- 6.2 A Customer with approved credit facilities is to ensure that any credit limit approved by the Supplier in the respect of such Customer is never exceeded, with the Customer to promptly make whatever payments are necessary to ensure that any such credit limit is never exceeded. The Supplier will not be obliged to execute any Orders of the Customer while any such credit limit is exceeded and/or any payment is overdue by the Customer.
- 6.3 In addition to the remedies provided for in clause 14, should any amount owing by the Customer to the Supplier not be received by the Supplier on or before the due date for payment thereof, all amounts (arising from whatsoever cause) owing by the Customer to the Supplier, regardless of whether or not they are yet due for payment, will immediately (with upon notice to the Customer) become due, owing and payable by the Customer to the Supplier. In addition to the above, the Supplier will be entitled to suspend all further Delivery of Goods until such time as all outstanding amounts have been settled in full by the Customer.
- 6.4 The Customer will not be entitled to withhold payment for any Goods Ordered, or any portion thereof, for any reason whatsoever, including due to any dispute that may be pending between the Customer and the Supplier, nor will the Customer be entitled to make any deduction from or set-off any alleged claim against any amount/s, or any portion thereof, due by the Customer to the Supplier.
- 6.5 All payments to be made by the Customer to the Supplier are to be made without deduction, demand or set-off, in Namibian Dollar, unless agreed otherwise in writing between the Parties.
- 6.6 The Supplier may appropriate payments from the Customer to any outstanding amounts owing by the Customer to it, as it deems fit.
- 6.7 The Supplier will charge interest on any overdue amount/s owing and payable by the Customer to the Supplier at a rate, being the lesser of 2% (TWO PERCENT) per month or the maximum permissible rate in terms of the Usury Act 73 of 1968 (if the statute is applicable), compounded monthly. Such interest will be calculated and payable daily on the balance outstanding from time to time by the Customer to the Supplier.

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6.8 If payment is sent via post or courier by the Customer to the Supplier, neither the South African / Namibian Post Office nor any courier company will be the agent of the Supplier and the Customer will be fully responsible therefor, with all risk in respect of any such payments to vest in the Customer. In the event of any such payment not being received by the Supplier, the outstanding amount in respect of such payment will remain due, owing and payable by the Customer to the Supplier, regardless of what occurred to such payment.

7. RETURN OF GOODS

7.1 Save as envisaged in this clause 7, the Customer will not be entitled to return any Goods to the Supplier without the Supplier's prior written consent thereto.

7.2 No claim in respect of shortages, damages and/or defects in and to the Goods will be entertained by the Supplier unless made in writing by the Customer and received by the Supplier within 2 (TWO) business days from date of Delivery of the Goods. Failing such written notification, the Customer will have no claim whatsoever in respect thereof against the Supplier. In the event of shortages, damage and/or defects in and to the Goods being proved to the Supplier's satisfaction and upon being properly notified as described above, the Supplier will at its option (but subject to clause 7.4):

7.2.1 either exchange the Goods for the same or similar Goods; or

7.2.2 take back the Goods and refund the purchase price therefor (if the purchase price has already been paid) or pass a credit therefor (if the purchase price has not been paid). No further claims of whatsoever nature will be entertained by the Supplier in respect of such Goods, with the Customer hereby waiving any such further claims.

7.3 In the event of the Customer incorrectly Ordering Goods from the Supplier and wishing to return them to the Supplier, the Supplier will not be obliged to agree to the return of such Goods. In the event of the Supplier agreeing to accept the return of such Goods (in the exercise of its sole discretion in this regard) for credit, such return will be subject to the provisions of clause 7.4 and a handling fee equivalent to 20% (TWENTY PERCENT) of the entire purchase price in respect of such Goods, which handling fee will immediately be due, owing and payable by the Customer to the Supplier. Prior to the Goods being returned, the Supplier's standard Application for Return of Products Form is to be completed by the Customer and authorised by the Supplier, with the Supplier having no obligation whatsoever to authorise and accept return of such Goods. In the event of the Supplier not authorising the return of the Goods, the Customer will have no right whatsoever to return the Goods to the Supplier and a binding sale will be deemed to have been concluded in respect thereof.

7.4 The Supplier reserves the right, in its sole discretion, not to accept any Goods returned and/or exchanged if they are not in their original condition as Delivered, complete with all manuals, accessories, cables and packaging. Furthermore and in the case of software, once the package has been opened and/or the seal has been broken, such Goods are not returnable under any circumstances.

8. OWNERSHIP AND RISK

8.1 Risk in and to any Goods supplied by the Supplier to the Customer will pass on Delivery, however, ownership and *dominium* in such Goods will remain vested in the Supplier until the entire purchase price in respect thereof as well as any overdue interest and/or associated costs and/or charges payable thereon and/or in respect thereof have been paid by the Customer to the Supplier in full.

8.2 The following will apply from the time of Delivery of Goods Ordered up until full payment by the Customer of the purchase price in respect thereof as well as any overdue interest and/or costs and/or charges payable thereon and/or in respect thereof:

8.2.1 the Customer will keep the Goods concerned free of any lien, hypothec and/or any other security interest and/or attachment;

8.2.2 the Customer will give appropriate written notice of the Supplier's reservation of ownership in the Goods to the landlord whereat the Goods are situated and to any other third parties who, through the operation of law or otherwise, may obtain a lien, hypothec and/or other security interest and/or attachment in and/or over the Goods concerned; and

8.2.3 the Customer will be obliged to comprehensively insure the Goods concerned for the benefit of the Supplier against any and all risks.

8.3 In addition, the Supplier will have the right itself to inform any third party of its reservation of ownership in the Goods concerned and to determine the adequacy of any insurance taken out by the Customer in respect thereof. Further and in the event of the Supplier deeming it necessary, in its sole discretion in this regard, the Supplier will be entitled to take up such additional insurance (at the Customer's cost) as the Supplier may reasonably determine as necessary to protect its interest in respect of the Goods concerned.

8.4 The Customer hereby authorises, and consents to, the Supplier entering the Customer's premises in the event of the Customer breaching any terms of this Agreement, for the purposes of repossessing Goods for which no payment has been received in respect of which ownership vests in the Supplier in terms hereof.

9. FORCE MAJEURE

If the Supplier's ability to perform in terms of this Agreement is limited, delayed and/or prevented in whole or in part by any cause not reasonably within its control (including fire; flood; war; hostilities; riots; civil disputes; lockouts; strikes; accident to plant and/or machinery; shortage of any material, labour, electricity and/or other supply; any law, rule and/or other action of any public authority; transportation delays and/or the refusal and/or delay in granting any necessary export and/or import licence) the Supplier will be excused, discharged and released without penalty and/or liability from performance of any such obligations to the extent that such performance is so limited, delayed and/or prevented. In such event and if some of the Goods (or any part thereof) have been Delivered, the Customer will pay to the Supplier a proportion of the stated purchase price in respect of the Goods (or any part thereof) which have been Delivered. If no such Goods (or any part thereof) have been Delivered and the Order becomes impossible to perform as described above for reasons not reasonably within the Supplier's control, the Supplier's liability will be limited to repayment to the Customer of any purchase price paid by it to the Supplier in advance for any Goods not yet Delivered.

10. SEVERABILITY

If any of these provisions of this Agreement are invalid and/or unenforceable, or become so, such invalid and/or unenforceable provisions will be severable from the remainder of the provisions of this Agreement, which remaining provisions of this Agreement will nevertheless remain valid and binding and each of the provisions of this Agreement will be capable of being enforced, notwithstanding that any one or more of the other provisions thereof may not be so capable of being enforced for any reason whatsoever.

11. CESSION

11.1 The Customer is not entitled to cede its rights and/or assign its obligations under this Agreement without the prior written consent thereto of the Supplier.

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11.2 The Supplier is entitled to cede its rights and/or assign its obligations under this Agreement without having to obtain the Customer's consent thereto, and any such assignee will be entitled to enforce its rights hereunder against the Customer in all respects as if it were the Supplier.

12. WARRANTIES & REPRESENTATIONS

- 12.1 The only warranty in respect of the Goods is limited to the written warranty, if any, given by the manufacturer of the Goods, and the manufacturer, in its absolute discretion, will elect how to give effect to any such warranty.
- 12.2 Save for the manufacturer's warranty, the Goods are sold without any other warranties whatsoever in respect of the Goods, whether express, tacit or implied and whether relating to their marketability, quality and/or fitness for any particular use and/or purpose.
- 12.3 The Customer acknowledges that it does not, and will not at any stage in the future, rely on any representations made by the Supplier in respect of the Goods and/or any of their qualities, other than the written warranty, if any, given by the manufacturer of the Goods. Any other recommendation, formula, advice, dimension, weight, specification, price list, performance figure, advertisement, brochure and/or other technical data and/or other information furnished by the Supplier in respect of the Goods, is approximate and for information only and will not form part of this Agreement in any way, with it being the responsibility of the Customer to determine that the Goods ordered are suitable for the purposes of their intended use.

13. LIMITATION OF LIABILITY AND INDEMNITY

- 13.1 Subject to the provisions of clause 13.2, the Supplier will not under any circumstances be liable for any loss and/or damages, including any special, general, direct, indirect and/or consequential damages, arising directly and/or indirectly out of the sale of Goods by it to the Customer and/or from any other cause whatsoever, with the Customer hereby waiving any such claim it would otherwise have had against the Supplier in respect thereof.
- 13.2 The Supplier does not seek to exclude or restrict its liability for damages in respect of which, by law, it is not permitted to exclude or restrict its liability; provided that the Supplier's liability for any loss and/or damages will in no case exceed the price of the specific Goods that gave rise to the claim.
- 13.3 The Customer hereby indemnifies the Supplier from and holds it harmless against any claim of whatever nature made against the Supplier arising from and/or associated with the Goods supplied by the Supplier to the Customer, the Customer's use, installation, operation and/or storage of the Goods, the Customer's representations given by to third parties in respect of the Goods and/or any third party's use of the Goods.

14. BREACH

- 14.1 If the Customer breaches any provision of this Agreement or ceases to carry on its business or a substantial part thereof or if execution is levied on any of the Customer's property or if the Customer makes or offers to make any arrangements or composition with its creditors or commits any act of insolvency or if the Customer is sequestered, liquidated or placed under judicial management (whether provisional or final, and/or whether voluntary or compulsory), then the Supplier will, without prejudice to any other rights that it has in terms of this Agreement or in law, be entitled forthwith to:-
- 14.1.1 suspend or cease performance of its obligations in terms of this Agreement until the Customer's breach has been remedied; and/or
- 14.1.2 summarily cancel the sale of any Goods to the Customer; and/or
- 14.1.3 repossess any Goods which have not been paid for; and/or

14.1.4 claim payment of all amounts that are owed by the Customer to it, whether or not the due date for payment of such amounts has arrived; and/or

14.1.5 summarily cancel this Agreement or claim specific performance of all of the Customer's obligations in terms of this Agreement, whether or not such obligations have fallen due for performance; and

14.1.6 claim from the Customer all damages suffered by it as a direct and/or indirect result of the breach.

15. CERTIFICATE OF INDEBTEDNESS

A certificate signed by any director or manager of the Supplier (whose authority, appointment and designation it will not be necessary to prove) as to the existence and amount of any indebtedness of the Customer to the Supplier at any time, will be *prima facie* proof (i.e., sufficient proof until proven otherwise) of the amount of such indebtedness to the Supplier and the fact that such amount is due, owing and payable by the Customer to the Supplier, and will be sufficient to enable the Supplier to obtain Default Judgment, Provisional Sentence and/or Summary Judgment against the Customer in any competent Court, and will be valid as a liquid document for such purposes.

16. COSTS

In the event of the Supplier having to instruct its attorneys to enforce against the Customer any of its rights in terms of this Agreement and/or to recover any amount owing by the Customer to the Supplier in terms hereof, the Customer will be liable for, and will effect immediate payment of, the Supplier's legal costs on the scale as between attorney and own client incurred in respect thereof, including, where applicable, collection commission and tracing agent charges, and regardless of whether or not any action or proceedings have been instituted by the Supplier against the Customer.

17. JURISDICTION

The Customer hereby consents, in terms of Section 45 of the Magistrates' Court Act, No. 32 of 1944, as amended, to the jurisdiction of the Magistrate's Court having territorial jurisdiction over the Customer, notwithstanding that any action or proceeding arising herefrom would otherwise be beyond the jurisdiction of such Court; provided that the Supplier will always have the right (at its election) to institute any action or proceedings in any other competent Court having jurisdiction and, in the event of the Supplier exercising such election so as to institute any such action or proceedings in any division of the High Court of Namibia, the Customer agrees that this will have no adverse effect on the Supplier's right to claim costs on the High Court scale as between attorney and own client, as envisaged in clause 16.

18. CESSION OF BOOK DEBTS

18.1 The Customer hereby pledges, cedes, assigns and transfers unto and in favour of the Supplier all the Customer's right, title and interest in and to all book debts and other debts and claims of whatsoever nature and from whatever cause, present and future, due and to become due to the Customer and to all rights of action arising thereunder, as a continuing covering security in securitatum debiti (i.e., as security for a debt) for all sums of money which the Customer may now or at any time hereafter owe or be indebted to the Supplier. For the purposes of this Agreement, reference to "book debts" means any and all money owing from time to time by third parties to the Customer arising from any cause whatsoever.

18.2 This cession will continue to be of full force and effect regardless of any temporary extinction of any indebtedness of the Customer to the Supplier.

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- 18.3 This cession is not capable of being cancelled orally, by conduct and/or by waiver and/or in another way and will only be capable of being cancelled if such cancellation is reduced to writing and signed by the Supplier.
- 18.4 The Customer undertakes to do all that is necessary to assist the Supplier in the enforcement of the Supplier's right in terms hereof. In particular the Customer hereby undertakes, whenever called upon to do so by the Supplier, to furnish the Supplier with a statement certified by the Customer's bookkeepers or auditors, setting out in detail the total amount of all debts owed to it together with the names and addresses of the debtors and the amount due by each debtor. The Supplier will further have the right at all reasonable times to inspect all the Customer's relevant records relating to its debtors.
- 18.5 The security afforded by this cession is not in substitution for but is in addition and without prejudice to any other security which the Supplier may now or in the future hold in respect of the Customer.
- 18.6 As from the date hereof the Supplier will at all times have the right by itself or through its nominees or agents to collect all sums of money due or to become due to the Customer in respect of the said book debts, and the Supplier's right to give notice of this cession to any of the debtors and to draw bills of exchange on or obtain promissory notes from any of the debtors, is hereby recognised, and it is agreed that the exercise of any such rights will not be constructed as relieving the Customer from any liability to the Supplier and will not prejudice the Supplier's claim against the Customer.
- 18.7 Until written notice to the contrary is given to the Customer by the Supplier, the Customer will act as the Supplier's agent in the collection of all money due or to become due to the Customer and all such money will, if so required by the Supplier, be deposited in a special banking account in the name of the Supplier, over which the Supplier will have sole control.
- 19.5 The Customer confirms that, save as recorded herein, no representations and/or warranties of any nature have been made by the Supplier to it, and the Customer acknowledges that in entering into this Agreement it has not relied on any representation, warranty, agreement, statement and/or other assurance (except those expressly set out in this Agreement) made by or on behalf of the Supplier and that (in the absence of fraud) it will not have and it hereby explicitly waives any right and/or remedy arising out of any representation, warranty, agreement, statement and/or other assurance not set out in this Agreement.
- 19.6 This Agreement may be executed in one or more counterparts, each of which will be deemed an original, and all of which together will constitute one and the same agreement as at the date of signature of the Party last signing one of the counterparts.
- 19.7 The expiration, termination or cancellation of this Agreement will not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration, termination or cancellation or which of necessity must continue to have effect after such expiration, termination or cancellation notwithstanding that the clauses themselves do not expressly provide for this.
- 19.8 In the event of any breach by the Customer of any provision of this Agreement, the Customer hereby consents and authorises the Supplier to furnish the name, credit record and/or repayment history of the Customer to any credit bureau as a delinquent debtor.
- 19.9 The Customer selects as its chosen *domicilium citandi et executandi* (address for service and/or delivery of pleadings, notices and/or documents) for all purposes arising out of this Agreement its physical address specified in paragraph e. on page 2 of the Credit Application Form overleaf. The Customer may change its *domicilium* by furnishing the Supplier with 7 (SEVEN) days' prior written notice of its new physical address.
- 19.10 The signatory to this Agreement on behalf of the Customer warrants that he/she is a duly authorised representative of the Customer and that he/she is duly authorised and has full capacity to enter into this Agreement with Supplier on behalf of the Customer, with such signatory further hereby warranting that he/she has read and understands the provisions contained herein and by his/her signature hereto binds the Customer to the provisions of this Agreement.

19. GENERAL

- 19.1 This Agreement comprises the entire agreement between the Parties in respect of the subject matter hereof. No amendment, variation and/ or waiver of any of the terms and conditions herein contained will be valid and binding unless reduced to writing and signed by or on behalf of the Parties.
- 19.2 No indulgence granted by a Party nor the partial exercise by a Party of any power, right and/or privilege will constitute a waiver and/or abandonment of any of that Party's powers, rights and/or privileges under this Agreement, and that Party will not be precluded, as a consequence of having granted that indulgence and/or partially exercised any power, right and/or privilege, from the exercise of that and/or any other power, right and/or privilege which may have arisen in the past and/or which may arise in the future.
- 19.3 If any provision of this Agreement is found by a Court of law (or arbitrator in the case of an arbitration between the Parties) to be invalid, the validity of any other provisions hereof will not be affected and the invalid provision will be deemed to be deleted; provided however that the Parties will use their best endeavors to achieve the purpose of the invalid or unenforceable provision by a new legally valid provision.
- 19.4 This Agreement will in all respects be governed by and construed in accordance with the laws of the Republic of Namibia; provided that in the event of the Customer's principal place of business being outside of the Republic of Namibia, then this Agreement will be governed by and interpreted in accordance with only the substantive laws of the Republic of Namibia and not the procedural laws thereof, which substantive laws will be deemed to include the laws of the Republic of Namibia governing the prescription of debts, claims and/or causes of action.

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Thus done and signed by the Customer at _____ on _____ day of _____ 20_____.

FOR AND ON BEHALF OF THE CUSTOMER

Full names and surname

Designation

(who hereby warrants that he/she has read and understands the provisions of this Agreement and hereby binds the Customer thereto, he/she being duly authorised hereto)

Signature (Strictly, no electronic signatures allowed)

AS WITNESS

Full names and surname

Signature (Strictly, no electronic signatures allowed)

Thus done and signed by the Supplier at _____ on _____ day of _____ 20_____.

FOR AND ON BEHALF OF THE SUPPLIER

Full names and surname

Designation

Signature (Strictly, no electronic signatures allowed)

INITIAL

SIGNATORY

DEED OF SURETYSHIP/S

I. TERMS AND CONDITIONS OF DEED OF SURETYSHIP/S:

1. The Surety/ies hereby bind/s himself, herself, itself or themselves (as the case may be) to the Creditor as surety/ies for and co-principal debtor/s in solidum with the Customer specified on the first page of the Agreement prefixed hereto ("the Principal Debtor") for the due and punctual payment and performance by the Principal Debtor of all debts and obligations of whatever nature which the Principal Debtor may now or in the future owe to the Creditor, including any debts and obligations of the Principal Debtor arising in terms of the said Agreement prefixed hereto (all of which debts and obligations are hereinafter referred to as "the Obligations").
2. As part of the Surety's/ies' liability in terms hereof, he, she, it or they (as the case may be) bind/s himself, herself, itself or themselves (as the case may be) as aforesaid to pay the amount of all costs, charges and expenses of whatever nature (including all legal costs as between attorney and own client, collection commission and/or tracing agent charges) incurred by the Creditor in securing and/or endeavoring to secure fulfilment of the Obligations.
3. The rights of the Creditor under this Deed Suretyship/s will in no way be effected and/or diminished if the Creditor at any time obtains additional suretyships, guarantees, securities and/or indemnities in connection with the Obligations of the Principal Debtor.
4. This Deed Suretyship/s will remain in full force and effect notwithstanding any fluctuation in, and/or temporary extinguishment of, the Obligations and until such time as the Obligations have been permanently discharged in full.
5. The Surety/ies will be bound by all admissions and/or acknowledgements of indebtedness made and/or given at any time by the Principal Debtor to the Creditor now and/or in the future in regard to any of the Obligations.
6. No alteration and/or variation of any present and/or future agreement between the Principal Debtor and the Creditor will in any way release the Surety/ies from his, her, its or their (as the case may be) liability hereunder.
7. Any leniency and/or extension of time which may be granted by the Creditor to the Principal Debtor in respect of any payment and/or other Obligations, and/or any cancellation, variation and/or modification of any indebtedness and/or other Obligations of the Principal Debtor to the Creditor, will not prejudice and/or affect, novate and/or terminate this Deed of Suretyship/s and/or release the Surety/ies, whether such leniency, extension, variation and/or modification be granted to take place prior and/or subsequent to the due date for any payment and/or performance of any of the other Obligations.
8. If a compromise is reached between the Creditor and the Principal Debtor in terms of which either a compromise payment (or payments) is (or are) made (and/or to be made) by the Principal Debtor to the Creditor to release the Principal Debtor from its indebtedness to the Creditor or the Principal Debtor is released entirely from its indebtedness to the Creditor, the Surety/ies will remain liable to the Creditor in terms of this Deed of Suretyship/s for the original indebtedness still outstanding and not recovered by the Creditor in terms of such compromise or release.
9. The Creditor will be entitled, whether before and/or after the due date/s for payment and/or the performance of the Obligations, and without reference and/or notification to the Surety/ies, and without affecting the Creditor's rights hereunder and without releasing the Surety/ies from the provisions hereof, to:
 - 9.1 release the Principal Debtor and/or any other sureties and/or securities;
 - 9.2 grant the Principal Debtor extensions of time for payment and/or performance; and/or
 - 9.3 compound and/or make any other arrangements with the Principal Debtor for the discharge of the Principal Debtor's indebtedness
10. No provision of clauses 8 and/or 9, nor any action taken by the Creditor as envisaged therein, will affect and/or diminish the Surety/ies' liability in terms hereof, save to the extent of actual payment to the Creditor applied in reduction of the Obligations.
11. Should the sum owing by the Principal Debtor to the Creditor and/or any interest accrued thereon become due and payable by the Principal Debtor to the Creditor in any circumstances whatsoever, then the Creditor will be entitled, notwithstanding any contrary arrangement with the Principal Debtor, to demand from the Surety/ies immediate payment of such sum and interest thereon as well as immediate performance of all of the other Obligations then due and owing by the Principal Debtor to the Creditor.
12. Each Surety attaches hereto a declaration of his, her or its (as the case may be) assets and warrants that the information contained therein is true and correct, each Surety further undertakes to notify the Creditor in writing of any additions, reductions and/or changes to his, her or its (as the case may be) assets which are recorded in the attached declaration, within 7 (SEVEN) days from such addition, reduction and/or change occurring.
13. The Surety/ies hereby renounce/s the benefits of the legal exceptions of non causa debiti (no cause for the debt), errore calculi (error in calculation), excussion, division, de duobus vel pluribus reis debendi (the benefit of simultaneous citation and division of the debt), no value received, cession of action and revision of accounts, with the Surety/ies hereby declaring that he, she, it or they (as the case may be) is/are fully acquainted with and understand/s the meaning and effect of all these benefits and the waiver thereof.
14. The Surety/ies hereby consent/s, in terms of section 45 of the Magistrates' Court Act, No. 32 of 1944, to the jurisdiction of any Magistrates' Court having jurisdiction over him, her, it or them (as the case may be) under section 28 of that Act, notwithstanding that any action or proceeding arising herefrom would otherwise be beyond the jurisdiction of such Court; provided that the Creditor will always have the right (at its election) to institute action in any other competent Court having jurisdiction.
15. Each Surety hereby chooses his, her or its (as the case may be) respective domicilium citandi et executandi address (i.e., address for service and/or delivery of letters, notices, documents and/or Court pleadings, notices and/ or documents) the address set out at the end of this Deed of Suretyship/s alongside that Surety's signature, at which address all notices and communications may be addressed to that Surety and all notices addressed to him, her or it (as the case may be) at the said address and dispatched by prepaid registered post will be deemed to have reached that Surety 7 (SEVEN) days after the date of posting thereof.
16. A certificate signed by any Director or Manager of the Creditor (whose designation and appointment need not be proved) as to any amount owing by the Surety/ies to the Creditor in terms of this Deed of Suretyship/s and/or the fact that such amount is due, owing and payable, the rate of interest payable thereon and/or the date from which such interest is reckoned, will be binding on the Surety/ies and prima facie proof (i.e., sufficient proof until proven otherwise) of the facts stated therein and will be sufficient to enable the Creditor to obtain judgment against the Surety/ies in any Court having jurisdiction in terms hereof.
17. Each sentence, paragraph, provision and/or clause in this Deed of Suretyship/s is severable the one from the other and if any sentence, paragraph, provision and/or clause of this Deed of Suretyship/s is found by a Court of law or arbitrator (in the case of an arbitration between the Creditor and the Surety/ies) to be invalid and/or unenforceable, the validity of any other provisions of this Deed of Suretyship/s will not be affected thereby and the invalid and/or unenforceable sentence, paragraph, provision and/or clause will be deemed to be deleted; provided however that the parties hereto are to use their best endeavours to achieve the purpose of the invalid and/or unenforceable sentence, paragraph, provision and/or clause by a new legally valid sentence, paragraph, provision and/or clause (as the case may be).

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1ST SURETY 2ND SURETY WITNESS

CREDIT APPLICATION

NAMIBIA

18. This Deed of Suretyship/s comprises the entire agreement between the Creditor and the Surety/ies in respect of the subject matter hereof. No amendment, variation and/or waiver of any of the terms and conditions herein contained will be valid and binding unless reduced to writing and signed by or on behalf of the parties hereto.
19. In the event of the Creditor having to instruct its attorneys to enforce against the Surety/ies any of its rights and/or to recover any amount owing by the Surety/ies to the Creditor in terms of this Deed of Suretyship/s, the Surety/ies agree/s that he, she, it or they (as the case may be) will be liable for, and will effect immediate payment of, the Creditor's legal costs on the scale as between attorney and own client incurred in respect thereof, including, where applicable, collection commission and tracing agent charges, regardless of whether or not any legal action or proceedings have been instituted by the Creditor against the Surety/ies.
20. **No indulgence granted by the Creditor nor the partial exercise by the Creditor of any power, right and/or privilege will constitute a waiver or abandonment of any of the Creditor's powers, rights and/or privileges under this Deed of Suretyship/s, and the Creditor will not be precluded, as a consequence of having granted that indulgence and/or partially exercised any power, right and/or privilege, from the exercise of that and/ or any other power, right and/or privilege which may have arisen in the past and/or which may arise in the future.**
21. The reference in this Deed of Suretyship/s to writing signed by a party or the parties hereto will, notwithstanding anything to the contrary in this Deed of Suretyship/s, be read and construed as excluding any email correspondence between them and any form of electronic signature.
22. This Deed of Suretyship/s may be executed in one or more counterparts, each of which will be deemed an original, and all of which together will constitute one and the same Deed of Suretyship/s as at the date of signature of the party hereto last signing one of the counterparts.
23. Unless the context indicates a contrary intention, in this Deed of Suretyship/s:
- 23.1 the words "include" and "including" mean "include without limitation" and "including without limitation", and the use of the words "include" and "including" followed by a specific example or examples are not to be construed as limiting the meaning of the general wording preceding it;
 - 23.2 each reference to the singular includes a reference to the plural and vice versa and each reference to any one gender includes a reference to the other genders;
 - 23.3 each reference to a natural person includes a reference to a juristic person (incorporated or unincorporated) and vice versa;
 - 23.4 reference to the word "clause" or "clauses" will mean a reference to a clause or clauses (as the case may be) of this Deed of Suretyship/s;
 - 23.5 the heading to this Deed of Suretyship/s as well as any headings to clauses are for convenience only and will not be taken into account in the interpretation hereof; and
 - 23.6 **no provision in this Deed of Suretyship/s is to be construed against or interpreted to the disadvantage of the Creditor by reason of the Creditor having or being deemed to have constructed, drafted and/or introduced such provision.**
 - 23.7 any reference in this Deed of Suretyship/s to "days" is to be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the Government of the Republic of Namibia from time to time;
 - 23.8 words and/or expressions defined in any clause of this Deed of Suretyship/s are to bear the respective meanings assigned to such words and/or expressions throughout this Deed of Suretyship/s, unless the application of any such word and/or expression is expressly indicated to be limited to that clause words and/or expressions defined in any clause of this Deed of Suretyship/s are to bear the respective meanings assigned to such words and/or expressions throughout this Deed of Suretyship/s, unless the application of any such word and/or expression is expressly indicated to be limited to that clause
 - 23.9 unless otherwise provided and subject to the provisions of clauses 23.1, 23.4 and 23.7, defined terms appearing in this Deed of Suretyship/s in title case are to be given their meaning as defined, while the same terms appearing in lower case are to be interpreted in accordance with their plain English meanings;
 - 23.10 unless specifically otherwise provided, any number of days prescribed is to be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day;
 - 23.11 if the due date for performance of any obligation in terms of this Deed of Suretyship/s is a day which is not a business day, then (unless otherwise stipulated) the due date for performance of the relevant obligation will be the immediately preceding business day; and
 - 23.12 where figures are referred to in numerals and in words, and there is any conflict between the two, the words will prevail, unless the context indicates a contrary intention.

INITIAL

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1ST SURETY 2ND SURETY WITNESS

CREDIT APPLICATION

NAMIBIA

FIRST SURETY

Thus done and signed at _____ on _____ day of _____ 20__.

Full names and surname Signature

ID No

Physical Address

AS WITNESS

Full names and surname Signature

SECOND SURETY

Thus done and signed at _____ on _____ day of _____ 20__.

Full names and surname Signature

ID No

Physical Address

AS WITNESS

Full names and surname Signature

CFS CABLE FEEDER SYSTEMS NAMIBIA (CREDITOR)

Thus done and signed at _____ on _____ day of _____ 20__.

FOR AND ON BEHALF OF THE CREDITOR

Full names and surname Signature

Designation

AS WITNESS

Full names and surname Signature

INITIAL

1ST SURETY

2ND SURETY

WITNESS