

APPLICATION FOR CREDIT FACILITIES (INCLUDING STANDARD TERMS AND CONDITIONS AND DEED OF SURETYSHIP)

Entered into Between

TOP CROP TRADERS CC

Registration Number: 2008/204413/23

Of

Premises 966
Lutzville
8165

(“the Closed Corporation”)

AND

Registration Number: _____

(“the Customer”)

INITIAL HERE

The Customer hereby makes application for credit facilities for the opening of an account with the Closed Corporation. The Customer acknowledges and confirms that it understands that if the credit facilities are

approved, the agreement shall fall outside the ambit of the National Credit Act (see paragraph 8 below).

In support of the application, the following information must be attached: (Tick Once Attached)

CM1 Certificate of Incorporation (Companies)

CK1 Founding Statement (Close Corporations)

Copy of Identity Document of Director/s or member/s

Copy of a Cancelled Cheque

The Customer is expected to answer all questions set out below in full. Should any question not be answered or if any answer is unsatisfactory in its detail, this application will not be considered.

SECTION A:

Please mark with (X) the relevant legal entity under which you will operate the account and with which you intend contracting with ourselves:

1. TYPE OF ENTITY

Registered Company	
Closed Corporation	
Sole Proprietor	
Partnership	
Trust	
Other	

2. CUSTOMER'S CONTACT DETAILS

Full legal name of Customer: _____

Trading name (if different from legal name): _____

VAT Registration Number: _____ Date Established: _____

Type of business: _____

Postal Address: _____ Code: _____

Physical Address: _____ Code: _____

Telephone Number: _____ Fax Number: _____

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Email Address: _____

3. CUSTOMER'S PREMISES

Are work premises rented or owned by the Customer? _____

Name, address and telephone number of landlord: _____

How long has the Customer been in its present premises? _____

Physical address where all notices and legal process can be served on the Customer (**domicilium** address):

4. CUSTOMER'S BANK DETAILS

Name of Bank: _____

Branch: _____

Branch Code: _____

Account Holder's Name: _____

Account Number: _____

Type of Account: _____

Year account was opened: _____

If the Customer's bank account has been open for less than 2 (two) years, please furnish previous banking details below:

5. DETAILS OF CREDIT REQUESTED

Amount of credit requested (allow for 2 months spend): _____

Terms (normal terms 14 days, if other terms requested please state): _____

Customer's Contact person in respect of orders: _____

Telephone number in respect of Orders: _____

Contact person in respect of accounts: _____

Telephone number in respect of accounts: _____

Email Address: _____

Can Invoices and Statements be emailed to above address: _____

Cut off date for Invoices and Proof of Delivery: _____

6. TRADE REFERENCES (REFERENCES MUST CORRESPOND WITH THE AMOUNT REQUESTED BY THE CUSTOMER):

NAME	ADDRESS	TERMS	CONTACT NUMBER	AVERAGE MONTHLY PURCHASE

7. AMBIT OF NATIONAL CREDIT ACT

The Customer warrants that the Customer is a juristic person as defined in the National Credit Act. The Customer warrants that its assets and/or annual turnover exceeds R 1 000 000.00 (One Million Rand), and that **this agreement therefore falls outside the ambit of the National Credit Act.** The Customer acknowledges and accepts that by virtue of the above, this agreement will come into being upon acceptance of this credit application by the Closed Corporation. The Customer acknowledges and accepts that this agreement shall not be subject to the provisions of the National Credit Act.

SECTION B:

8. CUSTOMER'S REGISTERED OFFICE ADDRESS

Registered office address: _____

Date of incorporation: _____

Name of holding company or subsidiary companies: _____

9. DETAILS OF CUSTOMER'S AUDITORS / ACCOUNTANTS

Name: _____

Physical Address: _____

Telephone Number: _____

Date of latest audited financial statements: _____

(You can speed up your application considerably by attaching a copy of your latest audited financial statements)

10. DETAILS OF DIRECTORS

FULL NAMES	IDENTITY NUMBER	RESIDENTIAL ADDRESS	TELEPHONE NUMBER

11. DECLARATION

I, _____ in my capacity as _____ of the Customer hereby warrant and confirm:

- i. That the information contained in this Application form is accurate, correct and complete in all respects;
- ii. That if any of the above information changes at any time, the Customer shall immediately notify the Closed Corporation of any such changes in writing within seven (7) days of the change occurring;
- iii. That if the Closed Corporation decides to grant credit facilities to the Customer, the Customer also acknowledges and accepts that this Application form together with the Closed Corporation's Standard Terms and Conditions of Sale and Deed of Suretyship will constitute the complete agreement in respect of the credit facilities granted by the Closed Corporation to the Customer.
- iv. The Customer is aware and has no problem in the Closed Corporation divulging the above information to any financial institution and/or any credit bureau for credit limit approval.

I, _____, with identity number, _____ the undersigned, herewith confirm that my position within the Customer is that of _____ and state that I am duly authorised to enter into this Agreement, which I herewith do, on this the ____ day of _____ by signing this Agreement, for and on behalf of the Customer.

Witness:

1. _____

(Signature of, or on behalf of Customer)

I, _____, with identity number, _____ the undersigned, herewith confirm that my position within Top Crop Traders CC is that of _____ and state that I am duly authorised to enter into this Agreement, which I herewith do, on this the ____ day of _____ by signing this Agreement, for and on behalf of Top Crop.

Witness:

1. _____

(Signature of, or on behalf of Top CropTraders CC)

STANDARD TERMS AND CONDITIONS

1. INTERPRETATION

The Closed Corporation and the Customer agree that:

- 1.1 This contract shall be interpreted according to and governed in all respects by the law of the Republic of South Africa;
- 1.2 The clause headings in these conditions are for convenience and shall not be used in their interpretation;
- 1.3 Unless the context clearly indicates a contrary intention, an expression which denotes:
 - 1.3.1 Any gender includes the other genders;
 - 1.3.2 A natural person includes an artificial person and vice versa;
 - 1.3.3 The singular includes the plural and vice versa.
- 1.4 "The Closed Corporation" shall mean Top Crop Traders CC;
- 1.5 "The Customer" shall mean the second party indicated on page 1 of the credit application form to which these terms and conditions are annexed;
- 1.6 "The goods" shall mean all goods of whatsoever nature or type and includes postal items;

2. APPLICATION OF TERMS AND CONDITIONS

- 2.1 These terms and conditions shall apply in perpetuity to every subsequent agreement entered into between the Closed Corporation and the Customer in relation to the carriage of goods.
- 2.2 These terms and conditions constitute the general terms of each agreement entered into between the Closed Corporation and the Customer. Each subsequent agreement may also contain special terms. Where there is any inconsistency between any of these general terms and any special term, the special term shall prevail.

3. PAYMENT

- 3.1 The Customer shall pay the amount on the tax invoice at the offices of the Closed Corporation. Payment is due immediately save for credit approved customers, in which event payment is due within 14 (fourteen) days of date of the tax invoice.
- 3.2 Where the Customer uses a postal service to effect payment to deliver or return goods such postal services shall be deemed to be the agent of the Customer. The Closed Corporation shall not bear any risk associated with the loss of cheques sent via post by the Customer.
- 3.3 Likewise, where the Customer uses Internet banking, the bank shall be deemed to be the agent of the Customer.
- 3.4 The Customer has no right to withhold payment or make set-offs or deductions from any payment due by it for any reason whatsoever.
- 3.5 No extension of time for payment will be granted unless reduced to writing and signed by the Customer and a duly authorised representative of the Closed Corporation.
- 3.6 The Closed Corporation shall have the right to suspend delivery and to exercise its rights in terms of clause 6 if any amount due by the Customer is unpaid.
- 3.9 If any amount owed is not settled in full on due date or alternatively on demand, the Closed Corporation is entitled to, without prejudice to any of its rights:
 - 5.9.1 Immediately institute legal action against the Customer; and/or
 - 5.9.2 Cancel the transaction and retain possession of the Customer's goods until all amounts owing are paid by the Customer.
- 3.10 In the event of the Customer failing to pay to the Closed Corporation any amount, on due date, then all other amounts owing by the Customer to the Closed Corporation shall forthwith become due and payable notwithstanding that the date for payment has not arrived.
- 3.11 Should any amount not be paid by the Customer on due date, the full outstanding amount in respect of all purchases by the Customer shall become due and payable, and the Customer shall be liable to pay interest at a rate of 2% (two percent) per month. Interest shall be payable on all overdue amounts from due date until date of payment, calculated and payable monthly in advance.

4. WITHDRAWAL OF CREDIT FACILITIES

- 4.1 The Closed Corporation's decision to grant credit facilities to the Customer and the nature and extent thereof is at the sole discretion of the Closed Corporation.
- 4.2 The Closed Corporation reserves the right to withdraw, increase or decrease any credit facilities at any time without prior notice to the Customer.

5. BREACH OF CONTRACT

- 5.1 Should the Customer breach this agreement and fail to remedy such breach within 48 (forty eight) hours after receipt of a notice to that effect from the Closed Corporation, or should the Customer repeatedly breach this agreement in such manner that the Customer's conduct is inconsistent with the intention or ability of the Customer to carry out the terms of the agreement, or if the Customer is sequestered or placed under liquidation or enters into judicial management or commits any act of insolvency or enters into a compromise with its creditors or fails to satisfy a judgment granted against it within 7 (seven) days of the date of judgment, the Closed Corporation shall be entitled to forthwith terminate this agreement without prejudice to its rights in law or in terms of this agreement.
- 5.2 No claim, from the Customer, under these terms and conditions will arise unless the Customer has, within 7 (seven) days of the alleged breach or defect occurring, given the Closed Corporation 7 (seven) days written notice by pre-paid registered post to rectify any defect or breach of contract.
- 5.3 It is specifically recorded that in the event that the Customer affixes his signature to the quotation and subsequently breaches the agreement by cancelling the contract prior to performance by the Closed Corporation, the Customer shall be liable for payment of the full contract price to the Closed Corporation, notwithstanding the fact that no services may have been rendered by the Closed Corporation.
- 5.4 In the event of the Customer breaching any of its obligations and/or failing to timeously make payment of any amount due to the Closed Corporation, the Customer agrees to pay, and shall be liable to pay, all debt collection costs and/or all legal costs incurred by the Closed Corporation in enforcing its rights in terms of these terms and conditions on an attorney/own client scale including collection commission and tracing agent's fees.

6. LEGAL PROCEEDINGS

- 6.1 The Closed Corporation shall, at its option and notwithstanding that the amount of its claim or the nature of the relief sought exceeds the jurisdiction of the Magistrate's Court be entitled to institute action out of such court.
- 6.2 A certificate issued and signed by any director or manager of the Closed Corporation whose authority need not be proved, in respect of any indebtedness of the Customer to the Closed Corporation or in respect of any other fact, including but without limiting the generality of the foregoing, the fact that the Closed Corporation complied with its obligations under this agreement, shall be *prima facie* proof of the Customer's indebtedness to the Closed Corporation and may be used for the purposes of obtaining judgment, including summary judgment against the Customer.
- 6.3 Any printout of computer evidence tendered by the Closed Corporation shall be admissible evidence and the Customer shall not be entitled to object to the admissibility of such evidence purely on the grounds that such evidence is computer evidence.
- 6.4 The Customer's address in paragraph 3 of Section A, of the credit application form shall be recognised as the Customer's *domicilium* for all purposes in terms of this contract whether in respect of the serving of any court process, giving notice that payment of any amount is due or communications of whatever nature.
- 6.5 Notwithstanding that the terms and conditions of carriage of the Customer's goods are governed by the standard trading terms of the Haulier, the Customer shall pay to the Closed Corporation all amounts due to the Haulier for the carriage of the goods in question and the Customer agrees that the Closed Corporation shall have *locus standi* to sue for and recover payment thereof in terms of this agreement.
- 6.6 Any document will be deemed duly received by the Customer within:
- 6.6.1 4 (four) working days of a letter sent by pre-paid registered mail to the Customer's *domicilium* address; or
 - 6.6.2 24 (twenty four) hours of being faxed to any of the Customer's fax numbers included in the Customer's credit application form; or
 - 6.6.3 10 (ten minutes) of being delivered by hand to the Customer or any director or member of the Customer; or
 - 6.6.4 48 (forty eight) hours if sent by overnight courier.

7. ARBITRATION

- 7.1 The Closed Corporation shall at its sole discretion be entitled to refer any dispute arising from or in connection with this contract to arbitration which arbitration award shall be final and binding on the Customer and the Closed Corporation.
- 7.2 The arbitrator will be a person agreed upon by the parties or failing agreement, appointed by the Arbitration Foundation of Southern Africa, who shall then finally resolve the dispute or issue in accordance with the Rules of the Arbitration Foundation of South Africa.
- 7.3 The arbitration must be held at the place and in accordance with whatever procedures the arbitrator considers appropriate.

8. NEGOTIABLE INSTRUMENTS

- 8.1 Acceptance of a negotiable instrument from the Customer shall not be deemed to be a waiver of the Closed Corporation's rights under this contract. In relation to cheques furnished by the Customer to the Closed Corporation, the Customer waives its right to insist on notice of dishonour or protest being given to it in the event that the cheque is dishonoured.

9. GENERAL

- 9.1 The Closed Corporation reserves the right in its sole discretion to vary or amend these terms and conditions from time to time and any such amended or varied terms and conditions shall be binding on the Customer from the time that the Customer is notified thereof.
- 9.2 No amendment and/or alteration and/or variation and/or deletion and/or addition and/or cancellation of these terms and conditions, whether consensual or unilateral or bilateral shall be of any force and effect unless reduced to writing and signed by a member of the Closed Corporation.
- 9.3 No relaxation or indulgence with the Closed Corporation may grant the Customer shall prejudice or be deemed to be a waiver of any of the Closed Corporation's rights in terms of these terms and conditions.
- 9.4 The Customer shall not cede its rights nor assign its obligations under these terms and conditions.
- 9.5 The Closed Corporation shall at any time in its sole discretion be entitled to cede all or any of its rights in terms of these terms and conditions to any third party without prior notice to the customer.
- 9.6 The Customer undertakes to notify the Closed Corporation within 7 (seven) days of any change of its information as set out in this contract.
- 9.7 Each of the terms herein shall be a separate and divisible terms and if any such term becomes unenforceable for any reason whatsoever, then that term shall be severable and shall not affect the validity of the other terms.
- 9.8 The Customer agrees that neither the Closed Corporation nor any of its employees, agents and/or assigns will be liable for any negligent or innocent misrepresentations made to the Customer, nor shall the Customer be entitled to resile from these terms and conditions on those grounds.

14. DISCLOSURE OF PERSONAL INFORMATION

- 10.1 The Customer understands that the personal information given in this credit application form is to be used by the Closed Corporation for the purposes of assessing creditworthiness. The Customer confirms that the information given in this credit application form is accurate and complete. The Customer further agrees to update the information supplied as and when necessary in order to ensure the accuracy of the above information failing which the Closed Corporation will not be liable for inaccuracies.
- 10.2 The Closed Corporation has the Customer's consent at all times to contact and request information from any persons, credit bureau or businesses including those mentioned in the credit application form and to obtain any information relevant to the Customer's credit assessment, including but not limited to information regarding the amounts purchased from suppliers per month, length of time Customer has dealt with each supplier, type of goods purchased and manner and time of payment.
- 10.3 The Customer agrees and understands that information given in confidence to the Closed Corporation by a third party on the Customer will not be disclosed to the Customer.
- 10.4 The Customer hereby consents to and authorises the Closed Corporation to furnish credit information concerning the Customer's dealing with the Closed Corporation to a credit bureau and to any third party seeking a trade reference regarding the Customer in his dealings with the Closed Corporation.

I, the undersigned do hereby warrant that all the information recorded in this application is true and correct and I agree that all transactions concluded with the Closed Corporation shall be subject to the standard terms and conditions specified herein and agree to be bound by all such terms and conditions, and without limiting the generality thereof.

I acknowledge that I have read and understood each term of this contract and accept the terms as binding and acknowledges that the content reflects the true intention of both parties and that this agreement has been entered into for the benefit of both the Customer and Closed Corporation.

THUS DONE AND SIGNED BY THE CUSTOMER AT _____ ON THIS THE _____ DAY OF _____ 20

AS WITNESS:

NAME: _____

SIGNATURE: _____

(CUSTOMER'S SIGNATURE)

NAME: _____

POSITION: _____

THUS DONE AND SIGNED BY TOP CROP AT _____ ON THIS THE _____ DAY OF _____ 20

AS WITNESS:

NAME: _____

SIGNATURE: _____

(TOP CROP TRADERS CC SIGNATURE)

NAME: _____

POSITION: _____

INITIAL HERE

CONTRACT OF SURETYSHIP

I / We, the undersigned being

1.....

(Identity Number: _____)

(Marital Status: _____)

And

2.....

(Identity Number: _____)

(Marital Status: _____)

("The Sureties")

do hereby bind myself/ourselves as Surety/Sureties and Co-Principal Debtor/Debtors, jointly and severally *in solidum* to and in favour of:

TOP CROP TRADERS CC

Registration Number: 2008/204413/23

Of

Premises 966
Lutzville
8165

("The Creditor")

for the due and proper fulfilment of all the obligations of

.....

(Registration no: _____)

("The Debtor")

to the Creditor, its Successors-in-Title or Assigns, whether such obligations currently exist or are still to arise howsoever such obligations have/do arise.

IN IMPLEMENTATION OF THE SURETYSHIP WE DO HEREBY AGREE AS FOLLOWS:

1. No act of indulgence, relaxation or grace granted by the Creditor to the Debtor shall prejudice or affect the Creditor's rights in terms hereof.
2. All acknowledgements of indebtedness and admissions by the Debtor shall be binding upon the Sureties. In the event of the insolvency, liquidation or placing under judicial management of the Debtor or in the event of a compromise between the Debtor and the Debtor's creditors the Sureties undertake not to prove a claim against the Debtor's Estate for any amount until all amounts due by the Debtor to the Creditor have been paid in full.
3. The amount of the Sureties' indebtedness hereunder and that of the Debtor to the Creditor at any time, shall be determined and proved by a certificate signed by a Director of the Creditor whose appointment, qualification and/or authority need not be proved. Such Certificate shall be binding on the Sureties as *prima facie* proof of the amount of the Sureties' indebtedness hereunder.
4. Should the Creditor cede its claim against the Debtor to any third party then this Suretyship shall be deemed to have been given by the Sureties to such Cessionary.
5. The Sureties renounce the benefits of excussion, division, *de duobus val pluribus debende*, revision of accounts, *non causa debiti* and cession of action and declare that they fully understand the meaning and effect thereof.
6. In the event that this Suretyship has for convenience been prepared to include the obligations to the Creditor of more than one Surety, each signatory hereto acknowledges that his obligation to the Creditor as Surety and Co-Principal Debtor is several as well as joint and is not conditional upon the acceptance by the other Sureties of any obligation hereunder or otherwise; so that he will be and acknowledges that he is bound to the Creditor in terms hereof immediately upon his affixing his signature hereto irrespective of whether or not this document or other Suretyship is thereafter completed by the other persons named herein as Sureties.
7. The Sureties consent to the jurisdiction of any Magistrate's Court having jurisdiction over their person notwithstanding the fact that the matter might otherwise be beyond the jurisdiction of such Court.

8. The Sureties concede that should the Creditor incur any legal expenditure in enforcing its rights against them, the Sureties will be liable for such costs on the scale of Attorney and own client and the Sureties shall further be liable for collection commission and the costs of tracing agents (if any).

9. The Sureties nominate as their *domicilium citandi et executandi* to be the following physical addresses:

Surety 1:

Surety 2:

10. The Sureties acknowledge that this document contains the entire agreement between themselves and the Creditor and no agreement to vary, add to or cancel this Agreement shall be of any force and effect, unless reduced to writing and signed by or on behalf of the parties to this agreement.

11. Should any phrase or part of this agreement be unlawful, invalid or unenforceable for any reason whatsoever, the parties agree that such unlawfulness, invalidity or unenforceability will not affect the balance of this agreement, which will remain effective and binding between the parties.

SIGNED at _____ on this _____ day of _____ 20

1. **SURETY:**
- SPOUSE** (if married in community of property):

INITIAL HERE

AS WITNESS:

1.

SIGNED at _____ on this _____ day of _____ 20

2. **SURETY:**

SPOUSE (if married in community of property):

AS WITNESS:

2.