

11 Village Crescent, Linbro Business Park, Sandton, South Africa | PO Box 72142, Parkview, 2122  
Tel: +27 (0)11 608 3633 | Email: [sales@smdtechnologies.co.za](mailto:sales@smdtechnologies.co.za) | Directors: Avi Mishan (Managing), Simca Diskin (Sales)  
Registration Number: 2005/004064/23 | VAT Number: 4580237602 [www.smdtechnologies.co.za](http://www.smdtechnologies.co.za)

Dear Applicant,

Thank you for your interest in becoming a reseller for SMD Technologies.

You will find attached to this letter, a dealer application form and our standard terms and conditions of sale. Please complete the application form and initial each page of the terms and conditions. Please include the following with your application:

1. Copy of company registration documentation;
2. Copy of cancelled cheque (or proof of banking details);
3. Copy of directors ID documents.

You can fax (086 664 3342), email ([sales@smdtechnologies.co.za](mailto:sales@smdtechnologies.co.za)) or post your completed form to us.

SMD Technologies looks forward to building a lasting relationship with your company and eagerly await receipt of your application at your earliest convenience.

Yours sincerely,



**Simca Diskin**

*Sales Director - SMD Technologies*

Tel: 011 608 3633

Fax: 086 664 3342 Email: [simca@smdtechnologies.co.za](mailto:simca@smdtechnologies.co.za)

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## Dealer Application Form

Registered name of business: \_\_\_\_\_

Trading name of business: \_\_\_\_\_

Date business commenced: \_\_\_\_\_

Type of business (e.g. CC/Pty): \_\_\_\_\_

Registration/CK number: \_\_\_\_\_

VAT Number (If applicable): \_\_\_\_\_

Business activities: \_\_\_\_\_

Physical address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Postal address: \_\_\_\_\_

\_\_\_\_\_

Contact telephone number: \_\_\_\_\_

Fax number: \_\_\_\_\_

### Details of Proprietors/Directors/Members/Partners

Full name: \_\_\_\_\_

ID number/Date of birth: \_\_\_\_\_

Residential address: \_\_\_\_\_

Full name: \_\_\_\_\_

ID number / Date of birth: \_\_\_\_\_

Residential address \_\_\_\_\_

Please Initial:

## Banking details

Bank name: \_\_\_\_\_  
Branch name and code: \_\_\_\_\_  
Account number: \_\_\_\_\_  
Account type: \_\_\_\_\_

## Authorised Purchaser

Name & Surname: \_\_\_\_\_  
Telephone number: \_\_\_\_\_  
Email address: \_\_\_\_\_

## Accounts contact

Name & Surname: \_\_\_\_\_  
Telephone number: \_\_\_\_\_  
Email address: \_\_\_\_\_

## Trade References

Company name: \_\_\_\_\_  
Credit terms and credit limit: \_\_\_\_\_  
Telephone number: \_\_\_\_\_  
Physical address: \_\_\_\_\_

Company name: \_\_\_\_\_  
Credit terms and credit limit: \_\_\_\_\_  
Telephone number: \_\_\_\_\_  
Physical address: \_\_\_\_\_

Please Initial:

Company name:

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Credit terms and credit limit:

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Telephone number:

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Physical address:

---

List all sureties, cession of debtors, notarial bonds, judgements:

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List liquidations against the business or any of its principals:

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Have moratoriums or offers of compromise ever been made to any creditors?

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Requested credit terms:

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Credit limit requested:

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I, \_\_\_\_\_, hereby certify that all the above information above is correct.  
Both as representative and as surety and co-principal debtor with the Customer, I hereby warrant that I have read, understood and accept that the terms and conditions below are binding on the Customer and on me as surety.

Signed:

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Designation:

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Date:

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Please Initial:

## General Terms and Conditions of Sale

### 1. DEFINITIONS

- 1.1. In this Agreement, unless clearly inconsistent with or otherwise indicated by the context:
  - 1.1.1. "the/this Agreement" means the agreement and reseller application set out in this document, together with all amendments signed by SMD Technologies, which shall include but is not limited to the Credit Approval letter which may be issued to the Customer at the sole discretion of SMD Technologies CC and any special conditions attached to the Customer's Quotation;
  - 1.1.2. "SMD Technologies" means SMD Technologies CC, a Closed Corporation incorporated under the company laws of the Republic of South Africa under registration number 2005/004064/23, and its subsidiaries or holding company from time to time (as such terms are defined in the Companies Act, 1973) and any entity under its Control;
  - 1.1.3. "Confidential Information" means any information or data which by its nature or content is identifiable as confidential, and/or proprietary to either Party, and/or any third party (including without limitation any end-user) and which is disclosed in confidence by the disclosing party to the receiving party for the purpose of this Agreement;
  - 1.1.4. "Customer" means the person and the legal entity whose name appears on the Dealer Application, and whom shall be authorized to sign on behalf of the legal entity;
  - 1.1.5. "Effective Date" shall mean the date on which SMD Technologies informs the Customer if the application is successful;
  - 1.1.6. "Credit Approval" means the granting of credit to the Customer at the sole discretion of SMD Technologies, and on the terms stated on the Credit Approval Letter, which shall be deemed to be subject to the terms of this Agreement;
  - 1.1.7. "Order" means the Quotation, which on acceptance will be deemed the Customer's Order;
  - 1.1.8. "Product" means the products available from SMD Technologies, for which SMD Technologies will provide the Customer with a Quotation for acceptance. On acceptance the delivery of the Products or Services will be subject to the terms of this Agreement;
  - 1.1.9. "Intellectual Property" means all copyright, rights in business names, trademarks, trade names, service marks, patents, designs and/or inventions as well as all rights to source codes, trade secrets, confidential information, know-how and all other rights of a similar character (regardless of whether such rights are registered and/or capable of registration) and all applications and rights to apply for protection of any of the same;
  - 1.1.10. "Prime Rate" means the interest rate (expressed as a percentage (%) per annum, compounded monthly) from time to time published by FNB Limited, as being its minimum overdraft rate at which it lends to its most valued customers in the corporate sector, as certified by any bank manager of such bank, whose appointment or authority it shall not be necessary to prove, and whose certificate shall, save manifest error of calculation, be prima facie proof of the contents thereof;
  - 1.1.11. "Quotation" means an offer by SMD Technologies to supply the Products or Services to the Reseller in accordance with the provisions of this Agreement;
  - 1.1.12. "Services" means the offer by SMD Technologies, which offer will be detailed in the Quotation to deliver the services to, or on behalf of the Customer;
  - 1.1.13. "CPA" means the Consumer Protection Act 68 of 2008 as amended;
  - 1.1.14. "VAT" means value added tax in terms of the Value Added Tax Act, 1991 or any similar tax on the supply or sale of Products or Services.

### 2. RECORDAL

- 2.1. The Customer has submitted an application to SMD Technologies for approval as a reseller of SMD Technologies Products and Services. SMD Technologies shall in its sole discretion evaluate the application, and if successful, the Customer will receive notification thereof. If the Customer is approved by SMD Technologies, the Customer shall be entitled to buy Products or Services from SMD Technologies, for resale to the end user.

### 3. QUOTATIONS

- 3.1. All Quotations will remain valid for a period of 1 (one) day from the date of Quotation or until the date of issue of a new SMD Technologies price list, whichever occurs first, unless specifically stated to the contrary on the

quotation. A quotation may be revoked by SMD Technologies at any time before it is accepted by the Customer.

- 3.2. All Quotations are subject to the availability of Products or Services and the prices quoted are subject to any increase in the cost price, including currency fluctuations, freight charges, insurance, railage, cost of labour and materials and other charges affecting SMD Technologies before dispatch of the Products or the commencement of Services.
- 3.3. If required by the Customer, such increase in the price will be certified by an independent auditor, appointed by SMD Technologies, and for the account of the Customer. Such certificate shall be final and binding on the Customer.

### 4. ORDERS

- 4.1. The Customer waives the requirement to receive written notice of acceptance by SMD Technologies of any order placed by the Customer. A binding contract shall arise when the Customer informs SMD Technologies of acceptance of the Quotation. Acceptance shall be deemed to take place at the head office of SMD Technologies in Johannesburg and will be subject to the provisions of clause 4.2 below.
- 4.2. On acceptance of the Quotation, the Customer order on SMD Technologies shall be subject to this Agreement. It is specifically recorded that any terms and conditions accompanying the Customer's order, not agreed to in writing by an authorized representative of SMD Technologies, shall be null and void, and of no force and effect.
- 4.3. No variations to the orders will be binding on SMD Technologies until SMD Technologies has accepted the variation, and sent a revised Quotation to the Customer.
- 4.4. The Customer shall pay all additional costs incurred as a result of any act or omission on the part of the Customer, including suspension of work; modifications or requirements; failure or delay in giving particular requisites to enable work to proceed on schedule; or requirements that work be completed earlier than agreed in the Quotation.
- 4.5. Additional time spent by SMD Technologies as a result of the provisions of clause 4.4 above, shall be charged at SMD Technologies' standard charge rate. If the work is required to be completed on an urgent basis, SMD Technologies' urgent charge rate will apply.
- 4.6. If orders are placed over the telephone by the Customer, SMD Technologies may require such orders to be confirmed in writing by the Customer prior to acceptance by SMD Technologies. SMD Technologies will not be responsible for any errors or misunderstandings that may occur if orders are placed telephonically.
- 4.7. In the event of the agreement being subject to the provisions of the CPA, the dealer can cancel an order, but in such event, SMD Technologies will be entitled to charge a reasonable cancellation fee unless the order placed cannot be honoured because of the death or hospitalization of the person for whose benefit the order was made.
- 4.8. SMD Technologies does not accept any responsibility and shall not be held liable in any manner whatsoever if an unauthorized representative of the dealer collects the products from SMD Technologies.
- 4.9. Any orders not collected within three days of placing the order, may be cancelled at the sole discretion of SMD Technologies.

### 5. PURCHASE PRICE AND PAYMENT TERMS

- 5.1. The Customer shall pay the amount on the Order at the offices of SMD Technologies, prior to delivery by: (a) Bank Guaranteed cheque; or (b) Direct deposit of cash or internet banking into the SMD Technologies bank account. Bank account details are available on request from SMD Technologies. The original bank deposit slip or a screen print of the transaction clearly showing the beneficiary number must be presented on collection of the Order; or (c) if the Customer is a Credit Approved Customer, payment must be after SMD Technologies issues a tax invoice and in accordance with the provisions of the last dated Credit Approval Letter issued to the Customer by SMD Technologies.
- 5.2. All payments in terms of or arising out of this Agreement, will be made in accordance with the provisions of clause 5.1 above, in South African Rands, free of conditions, set-off, bank exchange, commission or any other deduction.
- 5.3. The Customer agrees that no extension of payment terms of any nature will be extended to the Customer. Extension of payment terms will only be enforceable if agreed to in writing by a duly authorized representative of SMD Technologies.
- 5.4. All discounts will be forfeited if payment is not made in full by the due date.
- 5.5. SMD Technologies shall be entitled to invoice separately each delivery or performance.

Please Initial:

- 5.6. The Customer agrees that interest shall be payable on any monies due to SMD Technologies at the maximum legal interest rate permitted in law (and if no maximum amount is permitted in law, at a rate of 10% (ten percent) above the Prime Rate), compounded and calculated from the date it falls due.
- 5.7. The purchase price does not include charges for off-loading of the products at the Customer's premises.
- 5.8. The Customer has no right to withhold payment for any reason whatsoever.
- 5.9. SMD Technologies at its sole discretion may decide to grant, increase, decrease, suspend or withdraw credit facilities to the Customer by giving the Customer notice in writing. The Customer authorizes and consents to SMD Technologies making enquires of whatsoever nature to reach a decision on whether or not to grant the Customer credit facilities and the nature of such credit facilities.
- 6. DELIVERY AND PERFORMANCE**
- 6.1. SMD Technologies shall be entitled in its sole discretion to split the delivery or performance of the Products and/or Services ordered in the quantities and on the dates it decides. Times given for the delivery of Products or performance of the Services are merely estimates and are not binding on SMD Technologies.
- 6.2. Delivery of the Products to the Customer shall take place at the place of business of SMD Technologies, on proof of payment by the Customer.
- 6.3. If SMD Technologies agrees to engage a third party to transport the Products, SMD Technologies shall do this on behalf of the Customer and is hereby authorized to engage a third party as the authorized agent of the Customer and for the Customer's account.
- 6.4. Risk in the Products shall pass to the Customer on delivery of the Products by SMD Technologies to the Customer, or its authorized agent. The Customer hereby irrevocably authorizes and ratifies any reasonable decisions made by SMD Technologies on its behalf with regard to such third party mode of transportation.
- 6.5. The Customer indemnifies SMD Technologies against any claims of whatsoever nature that may arise against SMD Technologies from the agreement referred to in 6.3 and 6.4 above.
- 6.6. Any delivery note (copy or original) signed by the Customer or its authorized agent shall be conclusive proof that delivery was made to the Customer.
- 6.7. The Customer confirms that its signature of the delivery note constitutes prima facie proof that the Products and Services delivered comply with the Order.
- 6.8. In the event that the Customer who acts as a supplier to another customer and as such becomes a supplier as defined in the CPA, and such Customer does not comply with the provisions as defined in the CPA in any manner whatsoever and the other customer proceeds with a claim against SMD Technologies, then the Customer indemnifies SMD Technologies to the fullest extent permitted in law against any claims made against SMD Technologies by the other customer.
- 7. WARRANTIES AND RETURNS**
- 7.1. The Customer warrants that:
- 7.1.1. The Products are procured for resale, and not for personal consumption;
- 7.1.2. He is authorized to sign this Agreement on behalf of the business;
- 7.1.3. The information provided in the Reseller Application and Personal Surety are true and correct to the best of his knowledge;
- 7.1.4. That no representations were made by SMD Technologies in regard to the suitability of the Products or Services or any of its qualities other than those contained herein;
- 7.1.5. Neither SMD Technologies nor any of its employees, agents or suppliers will be liable for negligent or innocent misrepresentations made to the Customer;
- 7.1.6. It is the sole responsibility of the Customer to determine that the Products and Services ordered are suitable for the purposes of intended use.
- 7.2. No warranties, guarantees or representations, express, implied or tacit, whether by law, contract or otherwise unless specifically recorded in this Agreement are binding on SMD Technologies, and the Customer waives any rights (common law or otherwise) that it may rely on.
- 7.3. New Products carry the warranty in accordance with the manufacturer's product specific warranty. Services carry no warranty.
- 7.4. SMD Technologies liability is limited to the cost of repair or replacement of faulty Products and Services, or granting of a credit to the value of such Products or Services at the sole discretion of SMD Technologies. SMD Technologies shall have no liability in respect of any injury, loss or damage (direct, indirect or consequential) arising out of the use of, or inability to use, the products and whether or not occasioned by SMD Technologies' negligence (gross or otherwise) or any act or omission on its part.
- 7.5. The Customer will have no claim under this Agreement unless SMD Technologies has received notification of the alleged defect by hand or prepaid registered post within 7 (seven) days of the alleged breach or default occurring. SMD Technologies will have 30 (thirty) days from receipt of the notice to respond thereto.
- 7.6. All claims must be supported by the original tax invoice issued by SMD Technologies.
- 7.7. The warranty will not be valid, unless the Customer returns any defective Product to SMD Technologies packed in the original packaging. All costs incurred in effecting the return will be for the Customer's account.
- 7.8. SMD Technologies reserves the right to levy a handling fee of 10% (ten percent) of the purchase price reflected on the tax invoice of those Products returned to SMD Technologies. Software that has been opened, used or activated will not be accepted for credit by SMD Technologies.
- 7.9. All warranties are immediately null and void should any equipment be tampered with or should the seals on Products be broken by anyone other than SMD Technologies, or in the event that the Products were used outside of the manufacturer's specifications.
- 7.10. Agreements subject to CPA:
- 7.10.1. Within 6 months after delivery of the products to the Customer, the Customer may return the products to SMD Technologies, without penalty, if the products do not satisfy the requirements and standards contemplated in Section 55 of the CPA in which event SMD Technologies may either (a) repair or replace the failed unsafe or defective products; or, (b) refund the Customer the price paid by the Customer for the products.
- 7.10.2. If SMD Technologies repairs any products and within 3 months of that repair, the failure, defect or unsafe features are not remedied or a further failure, defect or unsafe feature is discovered, SMD Technologies shall either (a) replace the products; or (b) refund the Customer the price paid by the Customer for the products.
- 7.10.3. The warranty mentioned in clause 7.10.1 and 7.10.2 is in addition to any other warranties stipulated by the manufacturer or importer as the case may be.
- 7.10.4. This warranty is subject to the products not being misused or abused and does not apply to any ordinary wear and tear having regard to the circumstances in which it was intended to be ordinarily used.
- 8. OWNERSHIP**
- 8.1. Ownership of the Products will pass to the Customer on payment of the purchase price. The provisions hereof shall apply notwithstanding that the Products may have been incorporated into or form part of the Customer's itinerary of products.
- 8.2. All Products, whether fixed to immovable property or not, shall be deemed to remain movable property and be deemed to be severable without injury to property.
- 8.3. The Customer is not entitled to sell or dispose of any unpaid Products without the prior written consent of SMD Technologies.
- 8.4. The Customer shall take all steps as is necessary to notify interested third parties that ownership of the relevant Products has not passed from SMD Technologies to the Customer. In particular, the Customer shall inform the owner or landlord of his premises that the Products are not subject to the landlord's hypothec.
- 8.5. The Customer hereby indemnifies SMD Technologies against any and all damage in relation to the removal of products from the premises of the Customer or any other premises where the products may be found.
- 9. FORCE MAJEURE AND LIMITATION OF LIABILITY**
- 9.1. The Customer shall not have a claim against SMD Technologies for any delay of failure of SMD Technologies to carry out any of its obligations under this Agreement arising from or attributable to acts of God, war, terrorism, government, labour action or unrest, failure of suppliers or contractors or any other cause whatsoever beyond the control of SMD Technologies. ("force majeure").
- 9.2. The performance of the obligations of SMD Technologies shall, subject to 9.3 below be suspended for the duration of the force majeure, which shall be deemed to commence only upon the date of written notice by SMD Technologies to the Customer. Upon cessation of the force majeure, this Agreement shall again become fully operative and SMD Technologies shall

Please Initial:

immediately resume performance.

- 9.3. If the suspension of performance continues for more than 60 (sixty) consecutive calendar days, then either party may summarily terminate this Agreement by written notice to the other party, prior to the cessation of the force majeure.
- 9.4. Any claim by the Customer against SMD Technologies, howsoever arising shall in the aggregate be limited to the amount reflected on the tax invoice in respect of which the claim relates. In any event, SMD Technologies will not be liable to the Customer for: (a) indirect or special damages and/or (b) loss of income or profit, howsoever arising whether or not caused by its employees, agents and/or contractors, and regardless of form or cause of action. The provisions of this clause are also stipulated for the benefit of the employees, agents and /or contractors of SMD Technologies.

#### 10. INTELLECTUAL PROPERTY

- 10.1. All rights, title and interest in and to all intellectual property relating to any Products or Services owned by either party to this Agreement, their vendors and/or suppliers and the software used to implement the Products or Services shall remain the sole property of such parties, their vendors or suppliers.
- 10.2. Neither party shall in any manner alter or effect the display of the respective rights in the intellectual property of the other party, vendor or suppliers without the prior written approval of the other party, vendor or supplier.
- 10.3. Where there is a purported breach by the Customer of the Intellectual Property provisions of this Agreement, SMD Technologies reserves it right to seek an appropriate order from any court of law for interim relief, in the form of an interdict, mandamus or any other order of Court, including an order for costs on an attorney and own client scale. For the purpose of this clause, the parties irrevocably submit to the jurisdiction of the High Court of the Republic of South Africa.

#### 11. BREACH AND TERMINATION

- 11.1. If either Party:
- 11.1.1. is in material breach of any term or condition of this Agreement and fails to cure the breach within 30 (thirty) days after written notice thereof; or
- 11.1.2. commits an act of insolvency within the ambit of Section 8 of the Insolvency Act, No 24 of 1936; is deemed unable to pay its debts within the ambit of Section 345 of the Companies Act, alternatively Section 69 of the Close Corporations Act, as the case may be, finds itself in circumstances capable of being wound up in terms of Section 344 of the Companies Act, alternatively Section 68 of the Close Corporations Act, as the case may be; is deregistered or applies for deregistration in terms of Section 73 of the Companies act, alternatively Section 26 of the Close Corporations Act, as the case may be; or is subject to application by a person other than a Party for the provisional winding up or judicial management of such Party, or a special resolution is passed for the winding up of such Party; or
- 11.1.3. has judgment taken against it and fails to satisfy or apply to have same set aside within seven (7) calendar days of becoming aware thereof; or
- 11.1.4. without the prior written consent of the other Party, undergoes a change in its shareholding or members' interest so that a new person owns the majority of its voting share capital or members' interest.
- 11.2. The aggrieved Party may, in addition to, and without prejudice to any other right it may have in law or in terms of this Agreement, to:
- 11.2.1. enforce specific performance of the terms of this Agreement;
- 11.2.2. subject to clause 11.3, cancel this Agreement;
- 11.2.3. subject to the provisions of clause 9 recover such damages as it may have sustained;
- 11.3. An aggrieved Party may only cancel this Agreement in terms of clause 11.1.1 if the breach is material and is not capable of being remedied by payment of money or, if it is capable of remedy by payment of money, if the other Party fails to make payment within fourteen (14) calendar days after final determination of the amount;
- 11.4. No claim may be instituted against SMD Technologies arising from the terms of this Agreement, unless dispute resolution proceedings are instituted in terms of this Agreement within one (1) year of the purported cause of action arising.

#### 12. DOMICILUM AND NOTICES

- 12.1. The Customer chooses its domicilium citandi et executandi as the address reflected as its physical address on the first page hereof.
- 12.2. SMD Technologies chooses its domicilium citandi et executandi as: SMD Technologies CC; In-Time Building; 44 Angus Crescent, Long Meadow Business Estate, Edenvale, Johannesburg. Attention: Legal

- 12.3. All notices, approvals, consents and other communications required or permitted under this Agreement will be in writing and delivered by confirmed facsimile transmission, by courier or delivery service with written verification of receipt, or by registered or certified mail, return receipt requested, postage prepaid, and in each instance will be deemed given upon receipt. All such notices, approvals, consents and other communications will be sent to the addresses set forth above or to such other address as specified in this Agreement by the Parties.

#### 13. ARBITRATION AND DISPUTE RESOLUTION

- 13.1. Save for any purported breach by the Customer of the Intellectual Property or Confidentiality provisions of this Agreement, any other dispute, disagreement or claim arising between the parties (hereinafter referred to as "the Dispute") concerning this Agreement or the interpretation of this Agreement or its termination, the parties shall attempt to resolve the Dispute by negotiation. In such event and as and when the Dispute arises, one Party may invite the other in writing to meet and to attempt to resolve the Dispute within 7 (seven) days from date of the written invitation.
- 13.2. Should the procedure as described in clause 13.1 above fail and the Dispute remains unresolved within 21 (twenty one) days of the date of either Party's written invitation to meet in terms of clause 13.1, then in such event the matter shall be referred to each party's respective managing directors (or other suitable senior executives) and a meeting shall take place between such persons with a view to resolving same. Such meeting must take place within 7 (seven) days after the expiry of the aforementioned 21 (twenty one) day period.
- 13.3. Should the procedure as described in clause 13.2 above fail and a Dispute remains unresolved, then in such event the matter shall be referred to each Party's respective chief executive officer and a meeting shall take place between such chief executive officers with a view to resolving same. Such meeting must take place within 7 (seven) days after the persons referred to in clause 13.2 have advised that they are unable to resolve the Dispute, unless otherwise agreed.
- 13.4. Should the procedure as described in clause 13.3 above fail and a Dispute remains unresolved, then in such event the Dispute shall be finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa ("AFSA") by an arbitrator or arbitrators appointed by AFSA.

#### 14. CESSION

- 14.1. The Customer hereby irrevocably cedes, assigns and transfers, makes over unto and in favour of SMD Technologies, all the Customer's right and title and interest in and to its claims against its debtors, both present and future and from whatsoever cause arising, as security for all or any of the amounts which the Customer may now or any time in the future owe to SMD Technologies.
- 14.2. The Customer irrevocably and in terms hereof authorizes SMD Technologies in its absolute discretion to claim from all or any of the Customer's debtors the whole or any portion of the indebtedness of any one or more of them to give a valid receipt or discharge for such indebtedness, to take any action in its name in any court of competent jurisdiction and to proceed in execution thereunder against all or any of the said debtors to cede, transfer, negotiate, pledge or otherwise deal with all or any of the said debtors, to exchange promissory notes, cheques, agreements, documents of title or any other security held by the Customer.
- 14.3. The security created by the cession shall be a continuous one, notwithstanding any fluctuation in the amount of indebtedness of the Customer to SMD Technologies.
- 14.4. The Customer hereby undertakes on demand, to furnish SMD Technologies with such information concerning its debtors as may be reasonably required, to enable SMD Technologies to give effect to the provision of this clause.

#### 15. SECURITY

- 15.1. SMD Technologies reserves the right, in its sole discretion to request reasonable security for the due performance of any of the Customer's obligations under this Agreement.
- 15.2. If SMD Technologies receives security, it will serve as a pledge in favour of SMD Technologies for present and past debts. SMD Technologies will be entitled to retain or realize such pledges, as it deems expedient. In the event that SMD Technologies requests reasonable security from the Customer, which security is not forthcoming within 7 (seven) days of the request, SMD Technologies shall be entitled to withdraw from the Agreement in whole or in part, without incurring any liability whatsoever.

Please Initial:

## 16. CUSTOMER INFORMATION

- 16.1. The Customer hereby consents to the storage and use by SMD Technologies of the information provided by the Customer to SMD Technologies, for the sole purpose of establishing its credit rating.
- 16.2. SMD Technologies shall be entitled to disclose such information to credit control companies, banks and other institutions involved in rating credit.
- 16.3. The Customer agrees that SMD Technologies will not be held liable for the disclosure of any of this information to such third parties and that no further specific consent is required thereto.

## 17. SURETYSHIP

- 17.1. The signatory, by his signature hereto, binds himself in favour of SMD Technologies, its successors-in-title and assigns as surety and co-principal debtor in solidum with the Customer for the due and proper performance by the Customer of its obligations to SMD Technologies under this Agreement. The suretyship obligation is an unlimited obligation with regard to any and all present and future indebtedness already incurred or to be incurred by the Customer, notwithstanding any agreed limit from time to time.
- 17.2. The signatory warrants that he is duly authorized to represent and bind the Customer, and that he has read and understood each term and condition of this Agreement.
- 17.3. The signatory in his personal capacity, and in his representative capacity as the authorized representative of the Customer, confirms that he accepts the terms and conditions of this Agreement, and considers it binding jointly and severally on himself and the Customer.
- 17.4. This suretyship shall remain of full force and effect notwithstanding: (a) any indulgence, concession, leniency or extension of time which may be shown or given by SMD Technologies to the Customer or (b) any amendment/s to this agreement and/or other agreement for the time being subsisting between the parties.
- 17.5. The surety hereby renounces the benefits of the legal exceptions "non causa debiti", "errore calculi", "excussio", "division", "no value received" and "revision of accounts", with the meaning and effect of all of which he declares himself to be full acquainted.
- 17.6. The surety shall be liable for all costs incurred by SMD Technologies in the

recovery of any amounts or the enforcement of any rights which it has hereunder, including collection charges and costs on an attorney and own client scale and costs of counsel as on brief whether incurred prior to or during the institution of legal proceedings or if judgment has been granted, in connection with satisfaction or enforcement of such judgment.

- 17.7. Any judgment, whether formal or informal, in SMD Technologies' favour against the Customer shall, notwithstanding that the surety has not been joined in the proceedings giving rise to the judgment, preclude the surety from being entitled to dispute the merits of the claim in respect of which the judgment has been granted, in proceedings against the surety.

## 18. GENERAL

- 18.1. This Agreement constitutes the entire Agreement between the parties with regard to the subject matter hereof.
- 18.2. No alteration or variation to, or consensual cancellation of this Agreement shall be of any force or effect, unless it is recorded in writing and signed by an authorized representative of SMD Technologies.
- 18.3. Nothing in this Agreement constitutes either party as the agent, principal, representative or partner of the other, and no party shall be entitled to hold out to any third party that the relationship between the parties is that of a partnership, joint venture or the like.
- 18.4. No failure or delay by a party to enforce any provision of this Agreement shall constitute a waiver or suspension of such provision or affect in any way a party's right to require performance of any such provision at any time in the future, nor shall the waiver of any right arising from any subsequent breach nullify the effectiveness of the provision itself.
- 18.5. In the event that any of the terms of this Agreement are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining provisions, which shall remain of full force and effect. If any invalid term is capable of amendment to render it valid the parties agree to negotiate in good faith an amendment to remove the invalidity.
- 18.6. The Customer expressly waives all rights to claim prescription under the relevant provisions of the Prescription Act, 1969 as amended.
- 18.7. This Agreement will be governed in accordance with the laws of the Republic of South Africa.

Please Initial: