

CREDIT APPLICATION INCORPORATING DEED OF SURETYSHIP & CESSION OF CLAIMS



GEOGRAPHIC AREA
REPRESENTATIVE

To: (the CREDITOR)

Libra Bathrooms
Reg no 1998/013711/07

Type of Applicant

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(Pty)Ltd or Ltd	Close Corp	Sole Owner	Co-op	Partnership	Other

Registered Name of Type of Applicant _____

Trading Name _____

Postal Address _____ Postal Code _____

Delivery Address _____

Co/CC Reg. No.

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 Vat No

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Type of Business _____ Date Business commenced _____

Registered Office / Business Address _____

Registered office	Tel	Code		No.		Fax	Code		No.	
Accounts	Tel	Code		No.		Fax	Code		No.	

E-mail address

Auditors/ Accounting Officer or Bookkeepers Name

Full names of Owners/Directors/Partners/Members	Identity No / D.O.B	Residential Address	Telephone no

Has The Company / CC / Partnership or Individual Issued/Signed any Guarantees or other forms of security in favour of other Creditors YES / NO

Have the Directors/Partners/Members or Individual Issued/Signed any Guarantees or other forms of security in favour of other Creditors YES / NO

If YES please specify _____

Trade References (Four trade references must be given & contact details

Name	Telephone No. - no cell numbers	Address

BANKING DETAIL

BANKERS

BRANCH

ACCOUNT NO

Compulsary field below - please complete

Stand no	Address	Value	Amount of Bond	In Whose Name is the Property Registered

CREDIT LIMIT APPLIED FOR (SHOULD COVER CURRENT AND 30 DAYS)

R

AND IN MY PERSONAL CAPACITY :

1. HEREBY WARRANT THAT I AM DULY AUTHORISED BY THE CUSTOMER TO MAKE THIS APPLICATION ON ITS BEHALF
2. WARRANT THAT THE ABOVE INFORMATION IS TRUE AND CORRECT
3. DO HEREBY ON BEHALF OF THE CUSTOMER ACCEPT AND AGREE TO THE TERMS AND CONDITIONS OF THE CONTRACT SET OUT ON PAGES 2 & 3 HEREOF
4. ONTO AND IN FAVOUR OF THE CREDITOR FOR THE DUE PAYMENT BY THE CUSTOMER OF ALL AMOUNTS WHICH MAY NOW OR AT ANY TIME HEREAFTER BECOME PAYABLE BY THE CUSTOMER TO THE CREDITOR IN TERMS OF THE CONDITIONS OVERLEAF.

SIGNED AT _____ ON THE _____ DAY OF _____ 20 _____

SIGNATURE _____ PRINT NAME _____
FOR THE CUSTOMER AND IN MY PERSONAL CAPACITY AS SURETY AN CO-PRINCIPAL DEBTORS (CUSTOMER)

DEED OF SURETYSHIP
Libra Bathrooms Reg no 1998/013711/07
 (hereinafter referred to as **The Creditor**")

1. I/We the undersigned

I.D.No.: _____
 I.D.No.: _____
 I.D.No.: _____
 I.D.No.: _____
 I.D.No.: _____

do hereby bind myself/ourselves, as surety/ies and co-principal debtor/s jointly and severally and in solidium with:

(hereinafter referred to as "**The Principal Debtor/s**")

unto and in favour of the Creditor or any of its associated, subsidiary, divisions and agent companies or its successors in title or assigns for the due and punctual payment of all amounts of whatsoever nature and/or for the performance of an obligation all of which may now or in the future become due, payable or owing by the Principal Debtor/s to the Creditor for any reason whatsoever.

2 The Creditor shall be at liberty, in its sole and absolute discretion, without my/our prior knowledge or consent, and without releasing me/us from my/our liability hereunder:

- i) to institute such proceedings or take such steps as it may deem fit against the Principal Debtor'; including the right to repossess any goods sold to the Debtors and to deal therewith or sell same in such manner, at such price and on such terms as the Creditor in its sole discretion may decide, in which event the selling price shall be deemed to be the true market value of the goods sold;
- ii) to compromise with or make other arrangements with the Principal Debtor/s and/or with other sureties;
- iii) to grant any leniency, indulgence or extension of time to the Principal Debtor/s or vary any agreement undertaking and/or arrangement with the Principal Debtor/s in any other manner whatsoever;
- iv) to enter into agreements of cancellation with the Principal Debtor/s in respect of any existing or future arrangement and/or to enter into new arrangements;
- v) to cede, assign and/or transfer any of its right, title and interest in and to any or all of its claims against the Principal Debtor/s which are now in existence or may come into existence in its own discretion and on such cession my/our liability shall continue in favour of the cessionary for both the existing liability at the date of the cession and also in respect of any future liability incurred by the Principal Debtor/s with the cessionary} arising from any cause whatsoever.

3 In any and all the events described above, my/our liability shall be co-extensive with that of the Principal Debtor/s.

4 I/We hereby waive and renounce the exceptions and/or benefits of "excussio", "division", "cessio in action" "error calculi", "non numeratae pecuniae", "revisio of accounts", and "de doubus vel pluribusreis debendi" with the full force and effect of the meanings and renunciation whereof, I/we acknowledge ourselves to be acquainted.

5 It is agreed and declared that all admissions or acknowledgements of indebtedness by the Principal Debtor/s shall be binding on me/us.

6 This Deed of Surety/ship shall not be cancelled save with the written consent of the Creditor.

7 No addition to variation or consensual cancellation of this Deed of Suretyship shall be of any force or effect unless in writing and signed by or on behalf of the parties.

8 In the event of insolvency, liquidation, assignment or compromise by the Principal Debtor/s, the Creditor shall be entitled to prove against the Estate for the full amount of the indebtedness and/or to accept any offer of compromise, whether at common law or in terms of any statutory provision, without prejudice to its rights to recover from me/us to the full extent hereof any sum which may be owing by the Principal Debtor/s.

9 In the event of insolvency, liquidation, assignment or compromise by the Principal Debtor/s, the Creditor shall be entitled to prove against the Estate for the full amount of the indebtedness and/or to accept any offer of compromise, whether at common law or in terms of any statutory provision, without prejudice to its rights to recover from me/us to the full extent hereof any sum which may be owing by the Principal Debtor/s.

10 We acknowledge and agree that a certificate signed by the Financial Director/Credit Manager of the Creditor for the time being setting out the amount of my/or indebtedness hereunder shall be sufficient and satisfactory evidence and shall constitute prima facie proof per se of the amount of my/our indebtedness to the Creditor.

11 The Creditor shall be at liberty, without discharging me/us from liability hereunder, to grant time or other indulgences to the Principal Debtor/s and shall likewise be at liberty to give such terms to and make such conditions with the Principal Debtor/s and the Creditor shall think fit, and at all or any times, to alter, vary and revise the same or any part thereof, as the Creditor may consider advisable in its own interests, without reference to me/us, and the Creditor shall also be at liberty to take any security/ies which it may think fit from the Principal Debtor/s or any other surety/ies and in its discretion to realise and discharge or otherwise deal with any such security/ies or any part thereof.

12 We do hereby choose my/our domicilium citandi et executandi for all purposes arising here out at the address set out underneath my/our signatures.

13 The Seller shall charge the Purchaser interest at the rate of 2% (two per centum) per month, subject to the maximum legal lending rate on all accounts outstanding in the excess of 30 (thirty) days from due date, provided however, that nothing herein contained shall be interpreted as obliging the Seller to afford the Purchaser any such indulgence to effect payment after due date.

DATED AT _____	THIS _____	DAY OF _____	20
AS WITNESSES	AS SURETY/SURETIES	FULL ADDRESSES OF SURETY / SURETIES:	
1. _____	1. _____	1. _____	
2. _____	2. _____	2. _____	
3. _____	3. _____	3. _____	
4. _____	4. _____	4. _____	

of
LIBRA BATHROOMS

Reg No 1998/013711/07

The sale of goods by ("The Seller") to its customers (hereafter referred to as "the Purchaser") is subject to the following terms and conditions, and no other terms and conditions at variance with those contained herein shall be applicable or binding on the Seller unless agreed to in writing by the Seller.

1 THE ORDER

- 1.1 No order addressed by the Purchaser to the Seller shall result in a contract between the Seller and the Purchaser until accepted by the Seller subject to the terms and conditions herein. Acceptance by the Purchaser of goods supplied by the Seller shall constitute acceptance of these standard terms and conditions of sale to the exclusion of all others.
- 1.2 Once accepted by the Seller, the Purchaser shall not be entitled for any reason whatsoever to cancel or vary any order without the Seller's prior written consent.
- 1.3 The terms and conditions herein contained shall bind the Seller and the Purchaser in all future contracts, agreements, tenders and quotations unless varied by both parties in writing.

2 DELIVERY

- 2.1 Every endeavour will be made to effect delivery with due promptitude or within the period indicated by the Seller but the Seller does not accept any responsibility whatsoever for delays in delivery which are due to strikes, labour disputes, accidents, weather, breakdown of machinery or any other causes of whatsoever nature. Any delay in delivery shall not entitle the Purchaser to cancel any order or to refuse acceptance of delivery at any time without the Seller's prior written consent.
- 2.2 Where the Seller undertakes to deliver goods to the Purchaser's premises, delivery and passing of risk shall be deemed to have taken place upon unloading of the goods at the destination thereof and the Purchaser is responsible for taking delivery and unloading
- 2.3 In case of goods supplied F.O.R. to the Seller's premises, all risk will be on the Purchaser in respect of such goods immediately upon delivery to the South African Transport Services or other transport contractors who shall be deemed to be the agents of the Purchaser for the purpose of acceptance of delivery
- 2.4 All loading racks, pallets or other materials used or supplied by the Seller for the purpose of transportation of any goods shall remain the property of the Seller and the Seller reserves the right at any time to require The Purchaser to return such racks, pallets or other materials to the Seller or any third party nominated by The Seller,
- 2.5 The Purchaser shall not return goods for any reason without securing prior agreement in writing.
- 2.6 Should the Seller agree to accept the return of any goods for credit, the Purchaser shall be liable to pay the Seller a handling charge of 15% on the invoiced price of the goods so returned.
- 2.7 No claim in respect of short deliveries will be entertained by the Seller unless the Seller is notified in writing of such short delivery on the document (Proof of Delivery) presented to the Purchaser with the goods for signature and return to the Seller.

3 PAYMENT

- 3.1 Unless otherwise agreed, payment in full without deduction or set-off in respect of goods sold shall be due and payable within 30 (thirty) days of the date of statement.
- 3.2 The Seller shall charge the Purchaser interest at the rate of 2% (two per centum) per month subject to the maximum legal lending rate on all accounts outstanding in excess of 30 (thirty) days from due date, provided however, that nothing herein contained shall be interpreted as obliging the Seller to afford the Purchaser any such indulgence to effect payment after due date.
- 3.3 The Seller reserves the right at any time to refuse delivery should the Seller not be able to obtain satisfactory guarantees for the due and prompt payment to it of all monies which may become due.
- 3.4 Upon failure to comply with the conditions of payment, the Seller reserves the right to suspend further deliveries or to require cash payment prior to delivery or to cancel the sale.
- 3.5 A certificate under the hand of any manager of the Seller as to the existence and the amount of the debtor's indebtedness to the Seller at any time as to the fact that such amount is due and payable, the amount of interest accrued thereon and as to any other act, matter or thing relating to the debtor's indebtedness to the Seller, shall be prima facie evidence of the contents and correctness thereof and of the amount of the Purchaser's indebtedness for the purpose of provisional sentence or summary judgement or any other proceedings against The Purchaser in any competent court, and shall be valid as a liquid document for such purposes. It shall not be necessary to prove the appointment of the person signing such certificate and such certificate shall be binding on the Purchaser and shall be deemed to be sufficient particularly for the purpose of any action or other proceeding Instituted by the Seller against the Purchaser.
- 3.6 No relaxation or indulgence granted to the Purchaser by the Seller at any time shall be deemed to be a waiver of any of the Seller's rights in terms hereof, and such relaxation or indulgence shall not be deemed a novation of any of the terms and conditions set out herein, or create any estoppel against the Seller.
- 3.7 In the event of the Seller instructing attorneys in regard to any breach by the Purchaser of these conditions of sale or to collect from the Purchaser any amount owing to the Seller, the Purchaser agrees to pay all costs on the scale as between attorney and own client, including collection commission

4 OWNERSHIP

- 4.1 Risk in the goods shall pass on delivery but ownership of all goods sold remains vested in the Seller until all monies owing to it shall have been paid in full. All such goods whether affixed to immovable property or to other goods shall be deemed to remain moveable property and severable without injury to such immovable property or other goods. The Seller reserves the right to inform the end user or the owner of the premises in which any goods are installed of its claim to ownership.

5 THE PURCHASER

- 5.1 Agrees and acknowledges that in the event of:-
 - 5.1.1 the Purchaser breaching any conditions contained in these conditions
 - 5.1.2 the Purchaser failing to pay any amount due and payable on due date
 - 5.1.3 the Purchaser suffering any civil judgement to be taken or enter against it.
 - 5.1.4 the Purchaser causing a notice of surrender of its estate to be published in terms of the Insolvency Act 24 of 1936 as amended;
 - 5.1.5 the Purchaser dying;
 - 5.1.6 the Purchaser being placed under an order of provisional or final winding up, or provisional or final judicial management, as the case may be
- 5.2 The Purchaser hereby expressly waives 'all right to claim prescription under the relevant provisions of the prescription Act 68,1969 as amended from time to time.
- 5.3 The Purchaser acknowledge that indulgences by the Company shall apply only to specific contracts and shall not be construed as having set a precedent. No indulgences granted by the Company shall constitute a waiver of any of its rights in terms of these conditions. Accordingly, the company shall constitute a waiver of any of its right in terms of these conditions. Accordingly, the Company shall not be precluded, as a consequence of having granted such indulgence, from exercising any rights against the Purchaser which may have arisen in the past or which may arise in the future. Indulgence shall only be made in writing and by the Company's Directors.

6 SELLER'S LIABILITY

- 6.1 The Seller undertakes that goods supplied will conform to specification and requirements specifically agreed to by it in writing
- 6.2 In the event of the goods not being in accordance with specifications and/or requirements specifically agreed to by it in writing.
- 6.3 Should any cause whatsoever beyond the control of the Seller prevent the performance of any of its obligations the Seller at its option shall be entitled to cancel or suspend performance of its obligations hereunder without being liable for any loss or damage, consequential or otherwise, resulting from such cancellation or suspension.
- 6.4 In the event of the Purchaser incorrectly or inadvertently fixing the Seller's products the replacement warranty in clause 6.2 shall fall away. The onus shall be on the Purchaser to obtain from the Seller fixing or fitting instruction manuals or literature should the Purchaser be in any doubt with regard thereto.

7 JURISDICTION

- 7.1 The Purchaser consents to the jurisdiction of the Magistrate's Court in terms Section 45 of the Magistrate's Court Act No. 32 of 1944 (as amended) have jurisdiction under section 28 of the said act, notwithstanding that the claim in the Seller exceeds the normal jurisdiction of the Magistrate's Court as amount. The Seller shall in its discretion be entitled to proceed against the Purchaser in any other court of competent jurisdiction, notwithstanding the foregoing.
- 7.2 The Purchaser agrees that in the event of any dispute arising between the parties the Seller shall have the right to refer such dispute to a mediator for immediate resolution of such dispute.

The mediator shall have the widest possible powers to mediate between the parties, to dispense with any or all rules of Court for the purpose of such proceedings and to make such award against any or both parties as he in his sole discretion may deem fit and the mediator's award shall be final and binding on the parties and not be subject to appeal or review save in the event of dishonesty or gross negligence on the part of the mediator. Such medial procedure shall immediately suspend and replace any proceedings in COL arising from essentially the same cause of action. The mediator shall be appointed by the Chairman or President as appointed from time to time of ADHASA or Its successors in title.

8 DOMICILIUM

The Purchaser hereby chooses as its domicilium citandi et executandi for all purposes in connection with or arising out of its contract with the Seller, at II address as stated on the attached form marked "Credit Application Form"

9 GENERAL

- 9.1 The conditions of sale and any contract arising out of it is governed by the law of the Republic of South Africa.
- 9.2 The Seller cannot be held responsible for goods ordered telephonically or otherwise and not confirmed by an official order
- 9.3 The Purchaser understands that credit facilities may be revised or withdrawn by the Seller without notice and in the Seller's absolute discretion.
- 9.4 All Illustrations, descriptive matter, drawings, catalogues, advertisement, pamphlets and the like accompanying any quotations or in the Purchaser's hands before or after the Purchaser places an order, are supplied in good faith for general information only and do not form part of the contract.

I, the undersigned _____ in my capacity as _____

of the applicant:

a. Hereby warrant that I am duly authorised by the applicant to make this application on its behalf and that the information tendered is true and correct

b. Do hereby on behalf of the applicant confirm that I have read and understood and agree to bind the applicant to the terms and conditions of this application.

Date: Signature:.....

on behalf of the applicant.

Witness: Print name: