

# DEED OF SURETYSHIP

## CREDITOR DETAILS



1. \_\_\_\_\_ ID No. \_\_\_\_\_ "THE SURETY"  
Full Names \_\_\_\_\_  
Residential Address (*Domicilium citandi et executandi*) \_\_\_\_\_
2. \_\_\_\_\_ ID No. \_\_\_\_\_ "THE SURETY"  
Full Names \_\_\_\_\_  
Residential Address (*Domicilium citandi et executandi*) \_\_\_\_\_
3. \_\_\_\_\_ ID No. \_\_\_\_\_ "THE SURETY"  
Full Names \_\_\_\_\_  
Residential Address (*Domicilium citandi et executandi*) \_\_\_\_\_

In respect of the indebtedness obligations of

(Business name) \_\_\_\_\_

### \*THE PRINCIPAL DEBTOR\*

In favour of **\*THE CREDITOR\***

the subject of any agreement between the Creditor and the Debtor:

1. In this Deed of Suretyship, unless the context clearly indicates to the contrary, the singular shall include the plural and vice versa and the masculine shall include the feminine and the neuter genders, as the case may be.
2. The Surety/ies hereby binds himself/themselves, jointly and severally with the Principal Debtor; to the Creditor as Surety/ies and Co-principal Debtor with the Principal Debtor/s for:
  - 2.1 the due and punctual payment by the Principal Debtor of all monies of whatsoever nature which may become due and owing from time to time by the Principal Debtor to the Creditor arising from any cause of whatsoever nature;
  - 2.2 the due and proper performance by the Principal Debtor of all the Principal Debtor's obligations to the creditor of any nature whatsoever which the Principal Debtor may now or in the future be obliged to perform;
  - 2.3 the payments of all charges and expenses of whatever nature including, without derogating from the generality of the foregoing:
    - 2.3.1 any cost incurred by the creditor in obtaining a sworn valuation of any equipment being the subject of any agreement between the Creditor and the Principal Debtor;
    - 2.3.2 all attorney and own client costs which the Creditor may incur in enforcing it's rights against the Principal Debtor including, without derogating from the generality of the foregoing, all collection commission, tracing charges and disbursements made by the Creditor;
    - 2.3.3 interest on any amount which is due or may become due and owing from time to time by the Principal Debtor to the Creditor calculated at 5% (FIVE PERCENTUM) above prime rate from time to time from the date upon which such amount became due and owing to date of payment thereof.
3. This Deed of Suretyship is subject to the following terms and conditions:
  - 3.1 the same shall operate as a continuing covering security for any present or future indebtedness of the Principal Debtor to the Creditor and shall remain off full force and effect notwithstanding any fluctuation in, or even temporary extinction of, such indebtedness;
  - 3.2 the same shall operate as a continuing covering security for any present or future indebtedness of the Principal Debtor to the Creditor and shall remain off full force and effect notwithstanding any fluctuation in, or even temporary extinction of, such indebtedness;
  - 3.3 this Deed of Suretyship shall be valid in respect of the Creditor as well as any successor in title, order or assign of the Creditor;
  - 3.4 the Creditor shall be entitled, without reference or notification to the Surety/ies and without affecting the Surety/ies's obligations under this Deed of Suretyship or the Creditor's rights thereunder; and without releasing the Surety/ies, to take whatever steps it deems fit against the Principal Debtor and, without derogating from the generality of the foregoing, the Creditor shall be entitled:
    - 3.4.1 to release any other Surety/ies or to waive any of it's rights under any Security without prejudice to it's rights under any Security without prejudice to it's rights under this Deed of Suretyship;
    - 3.4.2 to grant the Principal Debtor extensions of time for payment or to compound or make any other arrangements with the Principal Debtor for the discharge of the Principal Debtor's indebtedness or the performance any obligation by the Principal Debtor.
  - 3.5 any written Acknowledgement of Debt signed by the Principal Debtor shall be binding on the Surety/ies and this Deed of Suretyship shall be deemed to cover any indebtedness recorded in such Acknowledgement of Debt;
  - 3.6 this Deed of Suretyship cannot be revoked, cancelled or altered without the written consent of the Creditor having been obtained;
  - 3.7 the Creditor shall have the right to appropriate any monies received from the Surety/ies to such indebtedness of the Principal Debtor to the Creditor may in it's sole discretion determine;
  - 3.8 should the Creditor cede it's claim against the Principal Debtor to any third party, then this Deed of Suretyship shall be deemed to have given in favour of such third party by the Surety/ies and the third party shall have all the Creditor's rights under this Deed of Suretyship against the Surety/ies;
  - 3.9 in the event of the Principal Debtor being placed under either provisional or final liquidation or judicial management or in the event of the Principal Debtor's estate being sequestrated either provisionally or finally;
    - 3.9.1 the Surety/ies undertakes not to prove a claim against the Principal Debtor's estate for any amount whatsoever until all amounts owing by the Principal Debtor to the Creditor have been paid in full and in the event of any excess existing thereafter;

3.9.2 the Creditor shall be entitled to accept any dividend Debtor's indebtedness without prejudice to it's rights against the Surety/ies under this Deed of Suretyship, which rights shall further not be prejudiced by the Creditor's acceptance of any other Securities, Guarantees or Suretyships arising out of such liquidation, judicial management or sequestration or by the acceptance by the Creditor of any offer of compromise made by or on behalf of the Principal Debtor; whether the Principal Debtor is then in liquidation or under judicial management or whether the Principal Debtor's estate has been sequestrated or otherwise.

4. This Deed of Suretyship shall be subject to the following further terms and conditions:

4.1 a certificate under the hand of any Director or manager of the Creditor as to the existence and amount of any obligation or indebtedness of the Principal Debtor to the Creditor and of the Surety/ies to the Creditor at any time, including any amount in respect of attorney and own client costs, collection, commission, tracing agent charges and interest, or any matter or thing relating to the indebtedness of the Principal Debtor and the Surety/ies to the Creditor; shall be prima facia proof of the existence of such obligation or indebtedness and shall be binding on the Surety/ies and such certificate, to the extent that same may be necessary, shall constitute a liquid document for the purposes of provisional sentence or judgment. The Surety/ies agrees that it shall not be necessary to prove the appointment of the person authorized by the Creditor to sign such certificate;

4.2 The Creditor may, without notice to the surety/ies cede, assign and/or transfer all or any of its rights, title and interest in and to this Deed of Suretyship to any person or entity and unless the context otherwise indicates, reference to creditor herein shall be deemed to include its cessionary or delegate.

4.3 the Surety/ies and the Creditor; the latter by it's signature to this Deed of Suretyship, hereby consent to the jurisdiction of any Magistrates Court having jurisdiction over their respective persons under Section 28 of the Magistrates Court Act Number 32 of 1944 (as amended). Such consent;

4.3.1 is furnished pursuant to Section 45 of the said Act and is furnished notwithstanding that any action or proceeding arising out of this Deed of Suretyship would otherwise be beyond the jurisdiction of such Court;

4.3.2 is subject to the express condition that the Creditor shall be entitled, in it's sole and absolute discretion, to proceed in any higher Court of comp

4.3.3 shall, to the extent that the Surety/ies is a company, bind personally the person signing this Deed of Suretyship on behalf of such company to the creditor; jointly and severally with the said company, for the company's obligations under this Deed of Suretyship, on the same terms and conditions as contained in this Deed of Suretyship and, furthermore, such person warrants by his signature of this Deed of Suretyship that he is duly authorized to represent such company and execute this Deed of Suretyship on behalf of such company.

5. The Surety/ies hereby renounces the benefits of the legal exceptions "non cause debiti", "errore calculi", "excussion", "division", "de duobus vel pluribus reis debendi", "no value received" and "revision of accounts". The Surety/ies acknowledges that he is fully acquainted with the meaning and effect of all the abovementioned legal exception and that renunciation of the benefits of these exceptions is based upon full knowledge and understanding of the meaning of such exceptions and the consequences of renunciation of the benefits thereof.

6. No extension of time, acceptance of late payment or any other indulgence granted by the Creditor to the Surety/ies shall be construed as a waiver of any of the Creditor's rights in terms of this Deed of Suretyship.

7. The Surety/ies selects the address set out herein as his domicilium citandi et executandi under this Deed of Suretyship.

8. Any notice or letter which is sent by the Surety/ies to the Creditor or vice versa pursuant to this Deed of Suretyship shall be deemed to have been received by the recipient on the day but one following upon the posting of such letter provided that the same is posted by pre-paid registered post.

9. The Surety/ies undertakes to inform the Creditor in writing of any change in his domicilium citandi et executandi.

10. The costs of this Deed of Suretyship shall be borne by the Creditor.

DATED AT \_\_\_\_\_

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_\_

SIGNATURE (SURETY/IES)

SURETY 1 Signature \_\_\_\_\_

Full Names \_\_\_\_\_

ID No. \_\_\_\_\_

SURETY 2 Signature \_\_\_\_\_

Full Names \_\_\_\_\_

ID No. \_\_\_\_\_

SURETY 3 Signature \_\_\_\_\_

Full Names \_\_\_\_\_

ID No. \_\_\_\_\_

AS WITNESSES

1. \_\_\_\_\_  
Signature

\_\_\_\_\_  
Full Names

2. \_\_\_\_\_  
Signature

\_\_\_\_\_  
Full Names