



INDIVIDUAL DEED OF SURETYSHIP

CUSTOMER:

SURETY:

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INDIVIDUAL DEED OF SURETYSHIP:

SCHEDULE

CLAUSE REF.	DESCRIPTION	CONTENT
1.1	Customer's Full Names	
1.1	Customer's Registration Number, Trust Number and Court or Identity Numbers of each partner if a partnership	
1.1	Customer's Physical Address	
1.1	Surety's Full Names	
1.1	Surety's Identity Number	
1.1	Surety's Marital Status	
1.1	Surety's Marital Regime	In community of property / out of community of property/ Not Applicable (<i>delete inapplicable</i>)
5.1	Surety's Limit of Liability (if any)	Unlimited
7.1	Surety's Physical Address	
7.1	Surety's Telefax Number	
7.1	Surety's Email Address	

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INDIVIDUAL DEED OF SURETYSHIP

1. SURETYSHIP

- 1.1 The undersigned ("the Surety") whose full details are set out in the above Schedule hereby binds the Surety jointly and severally to:

FRANKE SOUTH AFRICA (PROPRIETARY) LIMITED
Registration Number 2004/032793/07
("Franke")

and Franke's successors-in-title as surety for, and co-principal debtor with, the customer specified in the above Schedule ("the Customer") for the due and punctual payment and performance by the Customer of all debts and obligations (collectively "the Customer's Obligations") of whatsoever nature and howsoever arising which the Customer may now or in the future owe to Franke (which includes all of Franke's divisions irrespective whether this surety is as a matter of process procured by, through or for a particular division), including, without limitation:

- 1.1.1 any claims which Franke may have acquired, or may in future acquire, against the Customer from any person by way of cession or otherwise;
- 1.1.2 amounts owing for goods sold or delivered and/or for services rendered;
- 1.1.3 damages from breach of contract or arising in delict; and/or
- 1.1.4 legal costs on the attorney and own Customer scale, collection commission, interest and any other charges.

- 1.2 The Surety agrees that the Surety is not entitled to claim any of the following benefits:

- 1.2.1 benefit of excussion, meaning that Franke may proceed directly against the Surety without first attempting to recover payment from, or compliance by, the Customer;
- 1.2.2 benefit of division, meaning that if there are 2 or more sureties (including the Surety) Franke is entitled to proceed against the Surety for the full amount of the Customer's indebtedness or other Customer's Obligations; and
- 1.2.3 benefit of cession of actions, meaning that the Surety is not entitled to withhold payment or performance of the Customer's Obligations until Franke has ceded to the Surety any of Franke's rights against the Customer and/or any co-surety.

2. WARRANTIES AND ACKNOWLEDGEMENTS

- 2.1 The Surety warrants that:
- 2.1.1 the above Schedule accurately records the Surety's personal details and marital status, and the details of the Customer; and
- 2.1.2 the Surety has the capacity and power to conclude this suretyship and is not subject to any legal disability.
- 2.2 The Surety is bound by all admissions or acknowledgements of indebtedness or the Customer's Obligations made or given by the Customer to Franke from time to time.
- 2.3 The Surety acknowledges that it shall always be in the sole discretion of Franke to determine the extent, nature and duration of the credit or other terms and facilities to be allowed to the Customer.
- 2.4 The Surety acknowledges that the Surety will obtain a direct or indirect material benefit from the Customer's business with Franke and that it is in the Surety's own interests to bind the Surety in terms of this suretyship in order to obtain that business for the Customer.

3. TERMS

- 3.1 The rights of Franke under this suretyship are not affected or diminished if Franke has, or at any time obtains, additional suretyships, guarantees, securities or indemnities from any person in connection with any of the Customer's Obligations.
- 3.2 Should the Customer fail to discharge any of the Customer's Obligations on due date, Franke is entitled (notwithstanding any contrary arrangement with the Customer), to demand from the Surety immediate performance of all the Customer's Obligations then owing by the Customer to Franke, whether the due date for the performance of the Customer's Obligations has arrived or not.
- 3.3 Franke is entitled, whether before or after the due date for payment or performance of any of the Customer's Obligations, without reference or notification to the Surety, without affecting Franke's rights hereunder and without releasing the Surety:
- 3.3.1 to release other sureties and securities;
- 3.3.2 to grant the Customer extensions of time for payment and other indulgences;
- 3.3.3 to compound or to make any other arrangements with the Customer for the discharge of any Customer's Obligations;
- 3.3.4 to accept any dividend in a liquidation or business rescue or otherwise on account and in reduction of the Customer's indebtedness pursuant to any Customer's Obligations; and
- 3.3.5 to conclude, novate, alter or vary any present or future agreement between the Customer and Franke.
- 3.4 The Surety undertakes not to prove a claim against the Customer for any amount the Surety may be called upon to pay under this suretyship until all the Customer's Obligations (including all amounts, interest and costs) due by the Customer to Franke have been paid in full.
- 3.5 Any dividend received by Franke in respect of its claim against the Customer may be appropriated by Franke in the first instance to the payment of that part of the Customer's indebtedness to Franke which may not be covered by this suretyship.

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- 3.6 In the event that as a result of, or during the course of, business rescue or winding up proceedings or similar proceedings in respect of the Customer, Franke receives payment of any dividend or amount from or on behalf of the Customer that is less than the total amount owing by the Customer to Franke pursuant to the Customer's Obligations immediately prior to such payment being made then any such shortfall is deemed not to have been extinguished whether by operation of law, contract or otherwise and the Surety remains fully liable to make payment of such shortfall to Franke.
- 3.7 Franke is entitled, without prejudicing its rights against the Surety:
- 3.7.1 to prove a claim against the Customer or the Customer's estate for the full amount of the Customer's Obligations to Franke; and
- 3.7.2 to claim from the Customer, the full amount of the Surety's liability hereunder.
- 3.8 The Surety undertakes not to prove a claim against the Customer for any amount the Surety may be called upon to pay under this suretyship until all of the Customer's Obligations to Franke have been paid or discharged in full.

4. CREDIT INFORMATION OF SURETY

- 4.1 The Surety authorises Franke to at any time:
- 4.1.1 verify information provided by the Surety to Franke by any means including the carrying out of credit bureau and third party checks; and
- 4.1.2 receive from any credit bureau or third party any information relating to the Surety or to any entity (including any trust) in which the Surety has an interest or of which the Surety is a member, shareholder, trustee, manager, director or officer (collectively "Surety Credit Information") to establish compliance with this suretyship, creditworthiness or state of indebtedness.
- 4.2 The Surety acknowledges and agrees that:
- 4.2.1 Franke may transmit to its credit bureau and to any regulatory authority data about this suretyship;
- 4.2.2 information on non-compliance by the Surety with the terms and conditions of this suretyship may be transferred by Franke to its credit bureau;
- 4.2.3 Franke's credit bureau provides a credit profile and possibly a credit score on the Surety's creditworthiness;
- 4.2.4 Franke may disclose any information relating to the Surety, including credit information, to its holding companies or any subsidiary of its holding companies; and
- 4.2.5 Franke may disclose credit information of the Surety to any third party with whom the Surety has or intends to have credit relations.

5. LIMIT OF LIABILITY AND TERMINATION OF SURETYSHIP

- 5.1 The Surety's liability under this suretyship is limited to the amount, if any, specified in the above Schedule.
- 5.2 This suretyship remains in force as a continuing covering security notwithstanding any fluctuation in, or extinction of, any indebtedness of the Customer to Franke until duly terminated as set out below.
- 5.3 The Surety may only be released from this suretyship:
- 5.3.1 by way of an express written release or cancellation signed in hard copy by Franke; or
- 5.3.2 in the event that the Schedule specifies a limit of liability, such limit has been reached and has been duly and fully paid by the Surety to Franke together with any interest thereon and legal costs.
- 5.4 Notwithstanding anything to the contrary elsewhere if for any reason any payment by any person or by the Surety on account of the Customer whilst this suretyship is in force is for any reason and at any time set aside in whole or in part the Surety's liability under this suretyship is revived to that extent.

6. GENERAL

- 6.1 A certificate signed by any director or manager of Franke (whose appointment, powers and authority need not be proved) as to the existence and the amount of the Customer's Obligations and the Surety's indebtedness or obligations to Franke at any time, as to the fact that such amount or Obligation is due and payable, the amount of interest accrued thereon and as to any other fact, matter or thing relating to the Franke Customer's Obligations or the Surety's indebtedness to Franke, is prima facie proof as a liquid document of the contents and the correctness thereof for the purpose of provisional sentence, summary judgement or any other proceedings of any nature against the Customer and/or any Surety in any competent court .
- 6.2 In terms of section 45 of the Magistrate's Court Act, the Surety hereby consents to the jurisdiction of the Magistrate's Court having jurisdiction over the Surety. The Surety further submits to the non-exclusive jurisdiction of the High Court of South Africa, KZN Local Division, Durban, and the High Court of South Africa, KZN Division, Pietermaritzburg (in which event Franke is not restricted to costs on the Magistrate's Court scale), in respect of any action to be instituted on this suretyship. This consent is without prejudice to Franke's rights to proceed in any other court having jurisdiction.
- 6.3 Should Franke instruct an attorney to enforce Franke's rights in terms of this suretyship, the Surety must pay Franke's legal costs, including any collection commission and VAT, on an attorney and own client scale, whether legal proceedings have been instituted, or not.
- 6.4 No variation, novation, abandonment or waiver of rights in terms of this suretyship (including this clause) or consensual cancellation thereof is of any force and effect unless reduced to writing and signed by Franke and the Surety.
- 6.5 No relaxation by Franke of any of its rights in terms of this suretyship at any time prejudices or constitutes a waiver of Franke's rights and Franke is entitled to exercise its rights thereafter as if such relaxation had not taken place.
- 6.6 This document constitutes the entire agreement between Franke and the Surety on the subject matter hereof and no representations, statements, warranties or conditions not recorded herein are of any force or effect whatsoever.

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7. NOTICES

- 7.1 The address, telefax and email address at which all notices may validly be served on the Surety are set out in the Schedule above, which physical address the Surety selects as the Surety's *domicilium citandi et executandi*.
- 7.2 If the surety actually receives a notice then such notice is validly given even if it has not been sent in the manner or to the address, telefax or email address specified in this suretyship.
- 7.3 The Surety is entitled at any time to change its address, telefax and email address or to change the Surety's *domicilium citandi et executandi* to any other physical address within South Africa: Provided that any such changes only take effect upon delivery of notice thereof to Franke.
- 7.4 Any notice sent to the Surety:
 - 7.4.1 by email or fax, is deemed to have been received on the first business day (i.e. any day that is not a Saturday, Sunday or South African public holiday) ("Business Day") after transmission;
 - 7.4.2 by post, is deemed to have been received 5 Business Days after posting; and
 - 7.4.3 by hand delivery or courier to the selected physical address, on the date of delivery.

SIGNED at _____ this _____ day of _____ 20_____

SURETY SIGNATURE

Signatory's Full Name

Title: _____ Identity Number: _____

As Witnesses:

1. _____
Name:

2. _____
Name:

Address:

Address:

Signature of spouse if married in community of property:

SPOUSE SIGNATURE

Signatory's Full Name

Title: _____ Identity Number: _____

As Witnesses:

1. _____
Name:
Address:

2. _____
Name:
Address:

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