

# The Red



The world of Packaging

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Private & Confidential

### SALE AGREEMENT WITH DEED OF SURETYSHIP INCORPORATING CESSION OF CLAIMS

SOLE OWNER	PARTNERSHIP	PTY LTD	CLOSE CORP	TRUST	OTHER
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Registered Name: ..... "The Buyer" Reg No.: .....

Trading Name: ..... Vat No.: .....

Registered Office/Physical Address: ..... 

OWNED	RENTED
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Postal Address: ..... Code: .....

Telephone No.: ..... Fax No.: ..... Email: .....

Type of Business ..... Duration in Business .....

Auditors/Accountants ..... Telephone No.: .....

Are the buyers latest financial statement available	YES	NO
Is the Annual Turnover and/or Asset Value in excess of	YES	NO

Full Names Of Owners/Directors/Partners/Member s/ Trustees	ID Numbers	Physical Address	Contact No.
1			
2			
3			
4			

Has the business issued/signed any guarantees in favor of other suppliers	YES	NO
Have the members issued/signed any guarantees in favor of other suppliers	YES	NO

If YES, please specify .....

Accounts Dept Contact ,Mr/Miss/Mrs ..... Email .....

Bankers ..... Branch Code ..... Acc No. ....

#### Trade References

Name	Telephone No.	Address
1		
2		
3		

Details of Property owned by Company/Cc/Partners/Proprietor or Director

Address	Stand No & Town	Estimated Value	Bond Holder	Amount Of Bond	Property reg Name

Anticipated Monthly purchases R.....

I, The undersigned ..... in my capacity as ..... of the buyer in my personal capacity hereby warrant that:-

1. I am duly authorised by the buyer to sign this agreement on its behalf and that the above information is true, correct and complete in all respects;
2. Agree that all transactions concluded with the supplier will be subject to the terms and conditions of the sale on the reverse thereof, which I acknowledge having read and understood.
3. Do hereby acknowledge and agree that by my signature hereto I bind myself, in accordance with clauses 32 to 38 as surety and co-principal buyer in solidum with the buyer infavour of the supplier for the due payment by the buyer of all amounts which may now or at any time hereafter become payable by the buyer to the supplier.

Dated at ..... On the ..... Day of ..... 20.....

Signature ..... Print Name .....

For the "Buyer" and in my personal capacity as surety and co-principal buyer

## TERMS AND CONDITIONS OF SALE

1. Any Order resulting herefrom shall be subject to the conditions herein unless varied by the supplier in writing, and these conditions will take precedence over any terms, conditions or stipulations contained in any of the buyer's documentation which may be in conflict herewith. Should the buyer in any way purport to attach any conditions which vary, amend or are in conflict with the conditions set forth herein, then, notwithstanding anything to the contrary stipulated by the buyer, the conditions set forth herein shall prevail and be of full force and effect unless specifically varied by the supplier in writing with specific reference to the buyer's contrary documentation.
2. Should the buyer have previously made application to the supplier for credit facilities, which said application would have embodied terms and conditions and should the buyer to the supplier on any previous occasion, the customer records and acknowledges that the signature by it on this document shall not be regarded as a novation of any such previous agreement or any prior security given by it to the supplier. The buyer furthermore records and acknowledges that, in so far as any provision contained herein may be inconsistent with any provisions contained in any document previously executed by it, the provisions of this document shall prevail.
3. Prices and discounts are those ruling at the date of dispatch of the goods and the supplier reserves the right to adjust or change any prices and/or discounts at any time on reasonable notice to the buyer.
4. The buyer acknowledges that payment is due within (30) thirty days from date of statement, which date will be the last day of each succeeding month during which a particular delivery was made. Should the buyer be entitled to any settlement, this is to be agreed in writing by the supplier. To qualify for any settlement discount the payment needs to be reflected in the bank account of the supplier on or before the last day of the month within the agreed terms.
- 4.1 In the event that the account becomes overdue, the supplier shall be entitled to charge interest on the overdue balance at the maximum rate permitted by law.
5. The supplier has the discretion at all times whether or not to sell to the buyer. The supplier may withdraw any limit or withdraw the account facility or may vary the extent, nature and duration of such facilities at any time without prior notice and without giving reason therefore.
6. The supplier's discretion to sell in terms hereof may be guided by inter alia the following:
  - 6.1 The availability of stock
  - 6.2 Timely receipt by the supplier of any drawings, designs and specifications that may be required by the supplier from the buyer provided that such drawings, designs and specifications shall be deemed to have been given to the supplier for the purpose of the description only and shall not form part of the contract.
7. Time shall not be of the essence of the contract and delivery dates shall be treated as approximate only. Under no circumstance shall the buyer be entitled to withdraw from or terminate the contract on account of any delay in delivery or have any claim of any nature whatsoever against the supplier arising from late delivery.
8. Ownership in the goods sold and delivered to the buyer on account shall pass to the buyer only when all amounts due by the buyer to the supplier have been paid, notwithstanding delivery of the goods to the buyer. Risk in and to the goods shall however pass to the buyer on delivery.
9. A signed delivery note shall constitute *prima facie* (at face value) proof that the goods have been delivered to and received by the buyer in good condition, whether signed by the buyer, an employee, an agent or a representative of the buyer.
10. Set off shall operate automatically as a matter of law at the moment reciprocal debts between supplier and the buyer come into existence and independently of the will of the parties and shall not be necessary for either the supplier or the buyer to specifically raise set off. Upon the operation of an automatic set off aforementioned, the debt shall be mutually extinguished to the extent of the lesser debt with retrospective effect.
11. The buyer agrees and acknowledges that in the event of-
  - 11.1 the buyer breaching any condition contained in the conditions;
  - 11.2 the buyer failing to pay any amount due and payable on due date;
  - 11.3 the buyer suffering a civil judgment to be taken or entered against it;
  - 11.4 the buyer causing a notice of surrender of its estate to be published in terms of Insolvency Act No. 24 of 1936 as amended;

11.5 the buyer passing away;

11.6 the buyers estate being placed under any order of provisional or final sequestration, provisional or final winding up, or provisional or final judicial management or business rescue, as the case may be; the the supplier shall, without detracting from any other remedies which may be available to it, be entitled to cancel the sale of the goods to the buyer on reasonable notice to repossess those goods sold and delivered by the supplier to the buyer or to claim specific performance of all the buyers obligations would otherwise then have fallen due for performance, in either event without prejudice to the suppliers right to claim damages.

12. Should the buyer have any complaint whatsoever nature concerning any of the goods which are not manufactured by the supplier, it shall be entitled to the supplier to cede to it any right, which the supplier may have against the original supplier of those goods but shall have no other claim against the supplier in respect of the matter complained of. The buyer shall not be entitled to withhold payment from the supplier in respect of such goods for any reason whatsoever.
13. Should the supplier agree to accept the returns of any goods, the buyer shall be liable to pay the supplier a handling charge of not less than 10% on the invoiced price of the goods so returned. (subject to damages suffered, the purchase price will be repaid, where applicable by set off against other amounts due by the buyer)
14. The supplier shall be exempted from and shall not be liable under any circumstance whatsoever for any damages including indirect or consequential damages of any nature whatsoever or any loss of profit or special damage of any nature whatsoever and whether in the contemplation of the parties or not which the buyer may suffer as a result of any delay in delivery of the goods ordered.
15. It is a condition of each sale that the goods are sold voetstoots and without any warranties or representations whatsoever. In addition the Buyer shall be precluded from raising any complaints or disputing liability to the Supplier in any way unless it shall have notified the Supplier of its complaints or grounds for dispute in writing within 7 days of receipt of the goods in question. Notwithstanding the timeous raising of a complaint or dispute of liability by the Buyer, the Buyer shall, under no circumstances, be entitled to withhold payment in respect of the goods from the Supplier pending the resolution of such dispute or complaint. Subject to the foregoing, the Supplier shall, in its discretion, be entitled to either remedy any failure by adjusting, repairing, replacing the goods in question, or refunding the whole or part (as the cause may be) of the contract price paid to it by the Buyer in respect of such goods.
16. When the Supplier is required to manufacture or supply goods to the Buyer's specification and/or drawings, or carries out work according to the Buyer's instructions, or those of its nominees, the Supplier accepts no responsibility for the efficiency or workability of goods so manufactured or work so carried out.
17. Save as otherwise specifically provided for herein, the Supplier shall not be liable to the Buyer or to any other person for any damages including indirect or consequential damages of any nature whatsoever or any loss or profit, or special damages of any nature whatsoever and whether in the contemplation of the parties or not which the Buyer may suffer as a result of any breach by the Supplier of any of its obligations under these conditions or out of any other court whatsoever. The Buyer hereby indemnifies the Supplier against any claim which may be made against the Supplier by any other person in respect of any matter for which the liability of the Supplier is excluded in terms of the foregoing.
18. In the event of the Supplier or its agents instructing attorneys to collect from the Buyer an amount owing to the Supplier, the Buyer agrees to pay all costs on the scale as between attorney and own client, including collection commission and tracing charges.
19. In the event of the Supplier or its agent instructing a Debt Collector to collect from the Buyer an amount owing to the Supplier, the Buyer agrees to pay collection commission in accordance with the Debt Collectors Act (Act. 114 of 1998).
20. The Buyer consents to the jurisdiction of the Magistrates' Court in terms of Section 45 of the Magistrates' Court Act, No. 32 of 1994, as amended, having jurisdiction under Section 28 of the said Act, notwithstanding that the claim may exceed the normal jurisdiction of the Magistrate' Court.
21. The Buyer nominates as it's address for services for all notices or processes arising herefrom as the address reflected on the face hereof under the heading "Registered office/Physical address", and the surety nominates as his address for services for all notices or processes arising herefrom the address reflected on the face hereof alongside his name, for service upon the Buyer and the Surety respectively of all notices

- and processes in connection with any claim for any sum due to the Supplier or any ceded claim.
22. No relaxation or indulgence granted to the Buyer by the Supplier, at any time, shall be deemed to be a waiver of any of the Supplier's rights in terms hereof, and such relaxation or indulgence shall not be deemed as a novation of any of the terms and conditions set out herein, or create any estoppel against the Supplier.
  23. The Buyer and Surety agree that in the event of the account becoming overdue and remaining unpaid for 30 days past original due date, that the Supplier and/or its agents may adverse list the Buyer and/or Surety with any credit bureau and that this clause serves as Notice of this due action.
  24. The Buyer understands that the information given in relation to this agreement will assist the Supplier in determining whether or not to sell to the Buyer and will be used by the Supplier for the purposes of assessing its creditworthiness. The Buyer confirms that the information given by it is accurate and complete. The Buyer further agrees to update the information supplied, as and when necessary, to ensure the accuracy and completeness of the above information.
  - 24.1 The Buyer hereby authorizes the Supplier or its agents at all times to request information from any persons, credit bureaux or businesses, including those mentioned under trade references, and to obtain any information relevant to the Buyer's credit assessment. (to determine the Buyer's ability to pay for the goods)
  - 24.2 If the Buyer fails to meet its obligations under these terms and conditions of sale, it authorizes the Supplier or its agents to record its non-performance with any credit bureau, which information will be available to third parties. The Buyer further authorizes researching its records at any credit bureaux, use new information and data obtained from any credit bureaux in respect of details of how the Buyer has performed in terms of these terms and conditions of sale.
  - 24.3 The Buyer hereby authorizes the Supplier or its agents at all times to furnish information concerning the Buyer's dealings with the Supplier, including without being limited to, the Buyer's credit worthiness and defaulting payments to the Supplier.
  25. In these conditions, words importing one gender shall include the other gender, and words importing the singular, shall include the plural (and vice versa)

#### **CESSION OF CLAIMS**

26. The Buyer and Surety hereby jointly and severally, irrevocably and *in rem suam* (concerning (in) one's own affairs) cedes and assigns as a pledge unto and in favour of the Supplier, all the right title, interest in and to all claims of whatsoever nature and description and howsoever arising which the Buyer and/or Surety may now or at any time hereafter have against all and any persons, companies, corporations, firms, partnership, associations, syndicates and other legal personae whomsoever without exception as continuing covering security for the due payment of every sum of money which may now or at anytime hereafter be or become owing by the Buyer and/or Surety from whatsoever cause or causes arising, it being acknowledged that this cession is a cession in securitatum debiti (as security for the debt) and is not an out-an-out cession.
27. Should it transpire that the Buyer and/or Surety entered into prior deeds of cession or otherwise disposed of any of the right, title and interest in and to any of the claims which will from time to time be subject to this cession, then this cession shall operate as a cession of all the Buyer and/or Surety reversionary rights.
28. This Cession shall be and remain in full force and effect as a continuing security notwithstanding any fluctuation, or temporary extinction of the Buyer and/or Surety's indebtedness to the Supplier.
29. For the purpose of giving effect to the foregoing Cession both the Buyer and Surety hereby nominate, constitute and appoint the Supplier to be its Attorney and Agent, *in rem suam* (concerning (in) one's own affairs), with full authority for the Buyer and/or Surety and in the Buyer and/or Surety's name to demand, sue for, recover and receive all sums of money hereby ceded and assigned and with the authority to sign all documents on the Buyer and/or Surety's behalf and in the Buyer and/or Surety's name in connection with the recovery of the said sums and to give acquittances and receipts for the Buyer and/or Surety's.
30. The Buyer and Surety agree that, on request by the Supplier, they shall be obliged to hand over to the Supplier all books of account, contracts, invoices, documents and the like which it may require for the

purposes of ascertaining the amounts due to the Buyer and/or Surety for the purpose of recovery of payment.

31. The Buyer and Surety shall be obliged to furnish the Supplier with a schedule of all debts due to the Buyer and/or Surety by its debtors monthly upon demand. Notwithstanding the foregoing, the Supplier or its nominee shall at all times be entitled to inspect all or any of the Buyer and Surety's records as the Supplier deems fit. Failure by either party to give effect to the foregoing shall not in any way prejudice the rights of the Supplier hereunder, and the Supplier shall at all times be deemed to have perfected its security in terms of hereof.

#### **DEED OF SURETYSHIP**

32. The signatory hereto binds himself as surety and co-principal Buyer in solidum with the Buyer in favour of all amounts which may at any time be payable by the Buyer to the Supplier from any cause use of action whatsoever and whether of the Supplier for the due payment acquired by the Supplier by way of *Cession or otherwise*. *The terms and conditions of this Sale Agreement shall apply mutatis mutandis* (in precisely the same manner) , to the Suretyship. The Surety/ies further waives the benefits of excussion and division (by renouncing these benefits, the Supplier becomes entitled to sue any one Surety for the full amount owing without first proceeding against or suing the Buyer or any other Surety) and of the legal exceptions non numeratae pecuniae (by renouncing this benefit as Surety is precluded from raising the defence that no money of equivalent thereof has passed between the Buyer and Supplier) and non-causa debiti (by renouncing this benefit a Surety is precluded from raising the defence that there was no cause of action or reason for the Buyers indebtedness to the Supplier) and acknowledges himself to be fully acquainted with the meanings of these terms.
33. The suretyship is a continuing suretyship and shall remain of full force and effect notwithstanding any fluctuation in, or temporary extinction of the Buyer's indebtedness to the Supplier. It may not be withdrawn, revoked or cancelled by the Buyer without the Supplier's prior written consent. Any consensual cancellation or withdrawal of this suretyship by the Buyer and the Supplier shall only be valid and effective if reduced to writing and signed by both parties thereto.
34. Any admission of liability by the Buyer shall be binding upon the surety.
35. A certificate under the hand of any director or manager of the Supplier (whose appointment need not to be proved) as to the existence and the amount of the Buyer's indebtedness and the surety's indebtedness to the Supplier at any time, as to the fact that such amount is due and payable, the amount of mora interest accrued thereon and as to any other fact, matter or thing relating to the Buyer's indebtedness to the Supplier and the surety's indebtedness to the Supplier, shall be sufficient and satisfactory proof of the contents and correctness thereof for the purpose of provisional sentence, summary judgement or any other proceedings of whatsoever nature against the Buyer and/or the surety in any competent court and shall be valid as a liquid document for such purpose.
36. I/We hereby guarantee in favour of the Supplier, the payment of all and / or any debts which are the subject matter of this deed of suretyship.
37. I/We furnish the guarantee to the Supplier as a principal obligation and assume liability for such principal obligation (as distinct from the corollary obligation referred to elsewhere in this deed of Suretyship).
38. I/We guarantee payment to the Supplier of any amount which may still be owing to the Supplier subsequent to The Supplier having received any amount from the Buyer by way of reduction of the Supplier's claim against the Buyer, whether having received the amount by way of compromise, settlement or pursuant to any business rescue plan as provided for in the Companies Act No.71 of 2008, irrespective of whether the plan provides for the release of the Buyer, or under any circumstance of whatsoever nature.

#### **CESSION BY SUPPLIER**

39. Should the Supplier cede its claim against the Buyer and surety to any third party ("the Cessionary"), then the above Cession of Claims and Deed of Suretyship shall be deemed to have been given by the buyer and surety to such Cessionary as continuing covering security for the due payment of every sum

of money which may at the time of such Cession or at any time thereafter be or become owing by the Supplier and Surety to the Cessionary (whether acquired the Cessionary by way of Cession or otherwise), and such Cessionary shall be entitled to exercise all rights in terms of the Cession of Claims and Deed of Suretyship as if such Cessionary were the supplier hereunder.

40. The Buyer agrees that if one clause is found to be invalid, this invalid clause does not affect the validity of the remainder of the agreement.

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**DOCUMENTS TO BE SUBMITTED TOGETHER WITH THE SALE AGREEMENT**

- \*CK/CM Documents
- \*Copy of VAT Certificate
- \*Cancelled Cheque/bank letter
- \*Certified copy of ID and Resolution if the person signing the Agreement of Sale & Terms and Conditions is not the Owner/Director/Partner/Member
- \*Audited Annual Financial Statements and/or set of accounts if the requirement on the above is R250 000 or more
- \*Copy of a cancelled letter head
- \*Kindly initial each page