

APPLICATION FOR CREDIT AND TERMS AND CONDITIONS OF SALE

Avidan (PTY) LTD, hereinafter referred to as the SUPPLIER
Registration Number: 2015/069099/07

Details of the Applicant/Company, hereinafter referred to as the BUYER

1. Business Name:

2. Trading Name:

Business Trust	Private Company	Close Corporation	Listed Company	Partnership	Sole Proprietorship	Joint Venture	Section 21 Company
----------------	-----------------	-------------------	----------------	-------------	---------------------	---------------	--------------------

4. Physical Address:

Code:

5. Postal Address:

Code:

6. Delivery/Physical Address:

7. Telephone:

8. Fax:

9. Email address:

10. Nature of Business:

10. Contact Person:

11. Names, addresses and ID numbers of Directors/Partners/Members/Owner

Full Name:	Residential Address and Telephone Number	ID Number

12. Other Business Details:

Registration Number:

VAT Registration Number:

Business Established Since:

Holding Company:

Associated Companies:

Names of Subsidiaries:

13. Main Bankers:

Branch:

Account Number:

Telephone:

14. Auditors:

Telephone:

Name:

15. Trade References:

INITIAL HERE

Name and Address:	
	Telephone:
Name and Address:	
	Telephone:
Name and Address:	
	Telephone:
Name and Address:	
	Telephone:
Name and Address:	
	Telephone:
16. Credit Details	
Amount of credit required: R	Terms: Thirty(30)days
17. Confirmation by BUYER: The BUYER confirms that it is not trading in precarious or insolvent circumstances and that its financial situation is such that there is no danger of it not being able to timeously settle its account in terms of the credit facility requested.	
18. Warrant by BUYER: The BUYER warrants that from the date of signature hereof, the BUYER will not incur liabilities other than in the ordinary course of business, nor will it dispose of the major part of its assets without prior notice to the SUPPLIER, for as long as these facilities are made available to it, irrespective of whether or not any amounts are outstanding at the time. The BUYER also undertakes to inform the SUPPLIER in writing should, after date of signature hereof, its financial situation change adversely to any material degree.	
19. Acknowledgement: The BUYER acknowledges that it is aware that the information provided above will be relied upon by the SUPPLIER in determining whether to extend credit facilities to the BUYER.	
20. Statement by BUYER: The BUYER understands that every item of information provided above is material to the aforesaid purpose and warrants that all information given is true and correct.	
21. Additional acknowledgement: The BUYER also acknowledges that credit facilities, if granted, shall be at the sole discretion of SUPPLIER as to their nature, duration and extent.	
22. Trading Terms: The BUYER understands and accepts that credit facilities will at all times be subject to the SUPPLIER'S Terms and Conditions.	
23.Details of the person signing this document	
Full Name:	ID Number:
24. Statement by individual signing this application: I hereby warrant my authority to complete, sign and execute this document. By my signature, I warrant the correctness of the information provided herein. I further declare that I have read, understand and by my signature to this application agrees to the terms and conditions of this application	
Signed at	this, the day of 20
Signature:	
25. Witnesses to the person signing this document	
Full Name:	Signature:
Full Name:	Signature:

TERMS AND CONDITIONS OF SALE INCORPORATING CESSION AND DEED OF SURETYSHIP

1. Any order resulting here from shall be subject to the conditions stated herein unless specifically varied by the Supplier in writing, and these conditions shall at all times take precedence over any terms, conditions and stipulations contained in any of the Buyer's documentation as may be in conflict therewith. 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. 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.
3. Unless specifically agreed to the contrary, the Buyer acknowledges that the purchase price is payable within thirty (30) days from date of statement, which date shall be deemed to be the last banking day of every month. Interest will be charged on any amount not paid 20 business days from due date at 2% per month in terms of the National Credit Act. This interest shall be added to the principal sum and the whole amount shall form the principal debt.
4. Notwithstanding delivery of any goods sold by the Supplier to the Buyer, ownership in those goods sold and delivered shall only pass to the Buyer when the purchase price in respect of those goods has been paid in full. Risk in and to the goods shall, however, pass to the Buyer upon delivery.
5. A signed Delivery Note shall constitute *prima facie* 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 representative of the Buyer.
6. The Buyer agrees that the Supplier shall be entitled but not obliged to set off, from any amounts owed by the Supplier to it, any amount which is due and payable by the Buyer to the Supplier at any time.
7. 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.
8. The Buyer:
 - a) specifically authorizes and consents to the Supplier carrying out credit checks and obtaining information regarding, inter alia, its creditworthiness and dealings with other suppliers from any Credit Bureau which is registered as such in terms of S43(1) of the National Credit Act. No 34 of 2005 (hereinafter referred to as the "NCA");
 - b) acknowledges and accepts that the Credit Bureau will keep a record of such search;
 - c) acknowledges and consents to the Supplier divulging information about the manner in which the Buyer has conducted its account to other suppliers and to any registered Credit Bureau.
 - d) acknowledges that in the event of the Buyer defaulting with any of its obligations in terms of this agreement, the Supplier shall be entitled to report such default to any registered Credit Bureau and that such information may be used by other lenders in assessing any applications for credit made by the Buyer and / members of the Buyer's household.
9. The Supplier has the discretion at all times whether or not to sell to the Buyer.
10. Should the Supplier agree to accept the return of any goods for credit, 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. The buyer shall be precluded from returning any goods specially and specifically manufactured or bought out by the Supplier.
11. 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 of dispute in writing within six months 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, on the return of the goods to the Supplier by the Buyer, the Supplier shall, at the discretion of the Supplier, either remedy any failure by adjusting, repairing, replacing the goods in question, or refunding the whole or part (as the case may be) of the contract price paid to it by the Buyer in respect of such goods.
12. **NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY, THE OBLIGATION TO DELIVER GOODS SHALL IN ALL CASES BE SUBJECT TO THE FOLLOWING CONDITIONS PRECEDENT:**
 - a) **THE AVAILABILITY TO THE SUPPLIER OF THE GOODS ORDERED.**
 - b) **TIME SHALL NOT BE OF THE ESSENCE OF THE CONTRACT AND DELIVERY DATES SHALL BE TREATED AS APPROXIMATE ONLY BASED ON THE LATEST INFORMATION AVAILABLE TO THE SUPPLIER. THE BUYER WILL ONLY BE ENTITLED TO TERMINATE THE CONTRACT FOR LATE DELIVERY IF THE BUYER HAS FIRST GIVEN THE SUPPLIER WRITTEN NOTICE WHEREIN THE BUYER AFFORDS THE SUPPLIER A REASONABLE PERIOD OF TIME OF AT LEAST 7 WORKING DAYS TO DELIVER THE GOODS AND THAT ONLY IF THE SUPPLIER STILL FAILS TO DELIVER, THE BUYER WILL THEN BE ABLE TO TERMINATE THE CONTRACT BUT IN SUCH EVENT WILL NOT HAVE ANY RIGHT OF RECOURSE AGAINST THE SUPPLIER FOR DAMAGES IT MAY HAVE SUFFERED ARISING OUT OF SUCH TERMINATION, UNLESS THE DAMAGE IS ATTRIBUTABLE TO THE GROSS NEGLIGENCE OR AN INTENTIONAL WRONGFUL ACT ON THE PART OF THE SUPPLIER, OR ARISES AS A RESULT OF THE SUPPLY OF AN UNSAFE GOODS OR A PRODUCT FAILURE OR DEFECT.**
 - c) **SECTION 12 b) WILL NOT BE APPLICABLE TO GOODS BOUGHT OUT OR SPECIALLY MANUFACTURED BY THE SUPPLIER FOR THE BUYER**
 - d) **THE SUPPLIER SHALL BE EXEMPTED FROM AND SHALL NOT BE LIABLE FOR ANY INDIRECT OR CONSEQUENTIAL DAMAGES OR ANY LOSS OF PROFIT OR SPECIAL DAMAGES 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, UNLESS SUCH DAMAGE IS ATTRIBUTABLE TO THE GROSS NEGLIGENCE OR AN INTENTIONAL WRONGFUL ACT ON THE PART OF THE SUPPLIER..**
13. Buyer agrees and acknowledges that in the event of:
 - a) the Buyer breaching any of the terms and conditions contained herein;
 - b) the Buyer failing to pay any amount due and payable on due date;
 - c) the Buyer suffering any civil judgment to be taken or entered against it;
 - d) the Buyer causing a notice of surrender of its estate to be published in terms of the Insolvency Act No. 24 of 1936, as amended;
 - e) the Buyer dying;
 - f) the Buyers estate being placed under any order of provisional or final sequestration, provisional or final winding up or provisional or final judicial management, as the case may be;then and in the event the Supplier shall, without detracting from any other remedies which may be available to it, be entitled to summarily cancel the sale of any goods to the Buyer without notice to the Buyer, and to rely on the provisions of Clause 4, and to re-possess those goods sold and delivered by the Supplier to the Buyer, or to claim specific performance of all the Buyers obligations whether or not such obligations would otherwise then have fallen due for performance, in either event without prejudice to the Supplier's right to claim damages.
14. 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 have furnished any security to the Supplier for the due obligations of the Buyer to the Supplier on any previous occasion, the Buyer 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.
15. **IN THE EVENT OF THE SUPPLIER INSTITUTING LEGAL ACTION AGAINST THE BUYER FOR ANY PURPOSE ARISING OUT OF THIS AGREEMENT, THE BUYER SHALL BE LIABLE FOR LEGAL COSTS ON THE SCALE AS BETWEEN ATTORNEY AND OWN CLIENT INCLUDING ANY TRACING FEES AND COLLECTION COMMISSION.**

INITIAL HERE

16. The parties hereby agree and consent, in terms of Section 45 and Section 28 (as amended) of the Magistrate's Court Act, to the jurisdiction of the Magistrate's Court, notwithstanding the fact that the amount in dispute may exceed the normal jurisdiction of the Magistrate's Court. The Supplier shall have the election but not be obliged to institute action in the Magistrate's Court.
17. The Buyer nominates as its address for services of all notices or processes arising here from as the address reflected on the face of this credit application form under the heading "Registered Office/Business" and the Surety nominates as his address for service 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 arising out of credit granted by the Supplier to the Buyer or any ceded claim.
18. **SAVE AS OTHERWISE SPECIFICALLY PROVIDED FOR HEREIN, THE SUPPLIER SHALL NOT BE LIABLE TO THE BUYER OR TO ANY OTHER PERSON FOR ANY INDIRECT OR CONSEQUENTIAL DAMAGES OR ANY LOSS OF PROFIT OR SPECIAL DAMAGES WHICH THE BUYER MAY SUFFER AS A RESULT OF ANY BREACH BY THE SUPPLIER OF ANY OF ITS OBLIGATIONS IN TERMS OF THIS AGREEMENT OR OUT OF ANY OTHER CAUSE WHATSOEVER, UNLESS SUCH DAMAGE IS ATTRIBUTABLE TO THE GROSS NEGLIGENCE OR AN INTENTIONAL WRONGFUL ACT ON THE PART OF THE SUPPLIER, OR ARISES AS A RESULT OF THE SUPPLY OF AN UNSAFE GOOD OR PRODUCT FAILURE OR DEFECT. THE BUYER HEREBY INDEMNIFIES THE SUPPLIER AGAINST ANY CLAIM, WHICH MAY BE MADE AGAINST THE SUPPLIER BY THE BUYER OR ANY OTHER PERSON IN RESPECT OF ANY MATTER FOR WHICH THE LIABILITY OF THE SUPPLIER IS EXCLUDED IN TERMS OF THE AFOREGOING.**
19. No relaxation or indulgence, which the Supplier may grant to the Buyer, shall constitute a waiver of the rights of the Supplier and shall not preclude the Supplier from exercising any rights which may have arisen in the past or which may arise in the future.
20. This agreement constitutes the sole record of the agreement between the parties. No party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.
21. No addition to or variation of these terms shall be of any force or effect unless in writing and signed by or on behalf of the Supplier.
22. The invalidity of any part of this Agreement shall not affect the validity of any other part.

CESSION OF CLAIMS

23. The Buyer and Surety hereby jointly and severally (i.e. the Supplier may pursue an obligation against the buyer or the surety and if, the Supplier does so successfully and receives payment, the party that was sued must then pursue the other party for a contribution to their share of the liability), irrevocably and in *rem suam* (in their own interests) cede and assign as a pledge unto and in favour of the Supplier, all right, title and 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, partnerships, associations, syndicates and other legal entities as continuing security for the due payment of every sum of money which may now or at any time hereafter be or become owing by the Buyer and/or Surety to the Supplier regardless of how that claim arises, it being acknowledged that this cession is a cession in securitatum debiti (i.e. a cession for purposes of securing the Buyer and/or Surety's debt to the Supplier and not an out-an-out cession).
24. 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's reversionary rights.
25. 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.
26. For the purpose of giving effect to the foregoing Cession, both the Buyer and Surety hereby nominate, constitute and appoint the Supplier to be their agent, in *rem suam*, with full authority on their behalf and in the name of the Buyer and / or the Surety to demand, sue for, recover and receive all sums of money which may be due to the Buyer and / or to the Surety. The Buyer and Surety specifically authorize the Supplier to sign documents and to give acquaintances and receipts on their behalf.
27. The Buyer and Surety agree that, on the 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 purpose of ascertaining the amounts due to the Buyer and/or Surety for the purpose of recovery of payment.
28. The Buyer and Surety agree that they shall forthwith upon the request of the Supplier, give to the Supplier a schedule of all debts due to them by their monthly debtors. Notwithstanding the foregoing, the Supplier or its nominee shall at all times be entitled to inspect all or any of the records of the Buyer and Surety as the Supplier deems fit.

DEED OF SURETYSHIP

29. The signatory to this application binds himself as Surety and co-principal debtor in solidum with the Buyer in favour of the Supplier for due payment of all amounts which may at any time be payable by the Buyer to the Supplier from any cause whatsoever and whether acquired by the Supplier by way of Cession or otherwise. The terms and conditions of this Application shall apply, *mutatis mutandis*, to the suretyship.
30. Any admission made by the Buyer as to the fact that it is indebted to the Supplier or as to the amount of any such indebtedness to the Supplier shall be binding upon the Surety.
31. This Suretyship is a continuing suretyship and shall remain of full force and effect notwithstanding any fluctuation in or temporary extinction of the indebtedness of the Buyer to the Supplier. It may not be withdrawn, revoked or cancelled by the Buyer and / or the Surety without the prior written consent of the Supplier.
32. A certificate under the hand of any director or manager of the Supplier (whose appointment need not be proved) as to the existence and the amount of the Buyer's indebtedness and/or the Surety's indebtedness to the Supplier 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 fact, matter or thing relating to the Buyer's indebtedness to the Supplier or the Surety's indebtedness to the Supplier, shall be *prima facie* proof of the contents and the correctness thereof for the purpose of provisional sentence, summary judgment 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.

CESSION BY SUPPLIER

33. 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.

INITIAL HERE