

TERMS AND CONDITIONS BETWEEN EVEREST CORRUGATED (PTY) LTD AND THE CLIENT IN RESPECT OF THE CREDIT FACILITY

*Confidential*

<b>CREDIT FACILITY LIMITED BETWEEN EVEREST CORRUGATED (PTY) LTD, AND THE CLIENT</b>		
<b>DATED: [•]</b>		
<b>BANK DETAILS OF EVEREST CORRUGATED (PTY) LTD:</b> Account Number: [•] Account Type: [•] Branch: [•] Branch Code: [•]		
<b>If Client is a Natural Person:</b> <b>[EVEREST TO NOTE THAT YOU MAY NOT ENTER INTO THIS CREDIT AGREEMENT FACILITY WITH A NATURAL PERSON UNLESS YOU HAVE REGISTERED AS A CREDIT PROVIDER IN ACCORDANCE WITH THE NATIONAL CREDIT ACT 34 OF 2005.]</b>		
	<b>Name of Client</b>	[•]
	<b>Identity Number of Client</b>	[•]
	<b>Address of Client</b>	[•]
	<b>Contact Number of Client</b>	[•]
	<b>Email Address of Client</b>	[•]
	<b>Client is a Natural Person married In Community of Property (Yes/No)</b>	[•]
	<b>Financial Affordability Test (Yes/No)</b>	[•]
	<b>Pre-agreement Statements and quotation (Yes/No)</b>	[•]
<b>If Client is a Juristic Person:</b>		
	<b>Name of Client</b>	[•]
	<b>Registration Number of Client</b>	[•]
	<b>Address of Client</b>	[•]
	<b>Contact Number of Client</b>	[•]
	<b>Email Address of Client</b>	[•]
<b>Credit Limit:</b> [•]		
<b>Payment Terms Requested:</b> [•]		

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	Name of Guarantor	[•]
	Identity Number or Registration Number of Guarantor	[•]
	Address of Guarantor	[•]
	Contact Number of Guarantor	[•]
	Email Address of Guarantor	[•]
	Guarantor is Natural Person married In Community of Property (Yes/No)	[•]
<b>Value of Guarantee:</b> [•]		
<p><b>[Where no guarantee is in place as security for this Credit Facility, the Client will be obliged to take out Credit Insurance and all risk insurance with a third party insurer and note Everest's insured interest on such policy.]</b></p>		
	Name of Insurer	[•]
	Registration Number of Insurer	[•]
	Policy Number (All risk Insurance)	[•]
	Policy Number (Credit Insurance)	[•]
	Address of Insurer	[•]
	Contact Number of Insurer	[•]
	Email Address of Insurer	[•]
<b>Value of All Risk Insurance:</b> [•] <b>Value of Credit Insurance:</b> [•]		
<p><b>Terms and Conditions Apply.</b></p> <p><b>The Client has read, understood and accepted the terms and conditions accessible on Everest's website (<a href="http://www.everestcorrugated.co.za">www.everestcorrugated.co.za</a>) as binding between the Client and Everest. The Client has delivered executed copies of the Guarantee or the Credit Insurance Policy to Everest.</b></p>		

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*You confirm that you have had an adequate opportunity to read and understand the terms and conditions contained in this Agreement, that you are aware of all of the terms printed in bold, and that you have obtained the necessary authority and consents required for you validly enter into this Agreement.*

<b>Type</b>	Revolving Credit Facility
<b>Everest</b>	Everest Corrugated (Pty) Ltd
<b>Client</b>	As set out on the cover page attached hereto.
<b>Currency</b>	Rand
<b>Initiation Fee</b>	The fee (inclusive of VAT) in respect of the cost of initiating this Agreement payable by you upon entering into this Agreement.
<b>Principal Debt</b>	<p>Every Transaction concluded with the Client up to the Credit Facility Limit will form part of the Principal Debt on which interest will be levied.</p> <p>All amounts debited to the Client in terms of the Credit Facility granted to the Client, together with interest thereon, are repayable by the Client in the manner set out in this Agreement.</p>
<b>Guarantee and Credit Insurance</b>	<p>The Client shall provide the Everest with a guarantee attached as Annexure A to the full length Terms and Conditions (the "<b>Guarantee Agreement</b>") or Credit Insurance.</p> <p>Where a Client has not provided a Guarantee, the Client undertakes to obtain Credit Insurance with a third party insurer in order to indemnify any losses which may occur to Everest resulting from the failure of the Client to make a Payment on the Principal Debt or where the Client has committed an Event of Default. Everest shall be a payee with an insured interest under this Credit Insurance.</p>
<b>Date of Signature</b>	The date of signature of this Agreement by the Party signing last in time.
<b>Statements</b>	<p>Everest will provide the Client with monthly Statements on the Credit Facility.</p> <p>The Client should contact Everest if a Statement is not received on or before the 5th day of every month or if any additional Statements are required. Failure to receive a Statement will not entitle the Client to refuse or fail to pay any amount that is due to Everest.</p>
<b>Payments to Everest</b>	<p>On each date on which the Client is required to make a payment under the Agreement and for the duration of the Agreement, the Client shall make the same available to Everest for value, without deduction or demand on or before the Payment Due Date at the time and in such funds specified by Everest as being customary at the time for settlement of transactions.</p> <p>Each Payment will be credited to the Client on date of receipt, firstly to satisfy any due or unpaid interest, secondly to satisfy any due or unpaid costs, fees and charges, and thirdly to reduce the amount of the Principal Debt.</p> <p>The Client must pay Everest at least the Minimum Payment amount as indicated on the Client's Statement.</p> <p>If the Client has indicated that the Client will:</p> <ul style="list-style-type: none"><li>• pay the Initiation Fee in cash and fails to pay such fee or any part thereof on the date on which the Client signs this Agreement, the Client agrees that Everest may debit the unpaid Initiation Fee to the Client as part of the Principal Debt; or</li><li>• not pay the Initiation Fee separately, this fee will be charged on the first Statement and debited to the Client on acceptance of this Agreement by the Client.</li></ul> <p>If applicable, the monthly or annual Service Fee, will be debited to the Client.</p> <p>Everest will notify the Client in the event of an increase in any legally permissible fee, charge or interest rate, in accordance with this Agreement.</p>

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Everest will not be entitled to deduct any amount which the Client may owe to Everest, from any amount owing or which may become owing, by the Client to Everest arising from the Credit Facility in terms of this Agreement. Where applicable, Everest reserves the right, in its sole discretion to accept other than by way of Payment Authorisation.

The Client must pay down the Credit Facility under an amount of 70% (seventy percent) of the Credit Limit before the Client will be obliged to sign up for more credit with Everest.

Payment shall be made to such account in Johannesburg with such bank as Everest specifies.

All payments to be made by the Client under the Agreement shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

**Interest**

The variable interest rate applicable to the Agreement is the Prime Interest Rate compounded monthly in arrears. The interest rate applicable to the Agreement will change when the Prime Interest Rate fluctuates.

The Principal Debt shall be repaid, together with all accrued but unpaid interest thereon calculated in terms of the clause above, on the Payment Due Date.

All payments to be made by the Client to Everest in terms of this Agreement shall be made directly into Everest's bank account as stipulated on the cover page of this document or such other bank account of which, or in such other manner as Everest may notify the Borrower in writing from time to time. All payments to be made to Everest in terms of this Agreement shall be made free of exchange, any other costs, charges or expenses and without any deduction, set-off or counterclaim whatsoever.

**Default interest**

If the Client fails to pay any amount payable by it under a loan agreement on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to the sub-clause below, is 2% (two per cent) higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a loan in the currency of the overdue amount for successive interest periods, each of a duration selected by Everest (acting reasonably). Any interest accruing under this clause shall be immediately payable by the Client on demand by Everest.

If any overdue amount consists of all or part of a loan which became due on a day which was not the last day of an interest period relating to that loan:

- the first interest period for that overdue amount shall have a duration equal to the unexpired portion of the current interest period relating to that loan; and
- the rate of interest applying to the overdue amount during that first interest period shall be 2% (two per cent) higher than the rate which would have applied if the overdue amount had not become due.

Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each interest period applicable to that overdue amount but will remain immediately due and payable.

**Prime Interest Rate**

The publicly quoted basic rate of interest (percent, per annum (yearly)), published by us from time to time as being our prime rate, a certified by any of our managers whose authority, appointment and designation need to be proved.

**Early Repayment**

**The Client has the right at any time to pay in advance any amounts owed to Everest without notice or penalty, irrespective of whether or not the amounts are due. When making this payment, all advance payments will first be allocated to the Client's liability to Everest under the Revolving Credit Facility.**

**VAT**

Should the Client comment an Event of default (as specified in the Event of default ) which exceeds 90 days, VAT shall be payable by the Client to the South African Revenue Service, and shall be claimed at the end of the calendar year by Everest. This clause shall not be applicable to a Client who has been quoted a term longer than 90 days with Everest.

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**Termination of this Agreement by the Client** The Client may terminate this Agreement at any time with or without advance notice to Everest, by settling the total outstanding amount due to Everest. The amount required to settle this Agreement will be the Settlement Value in terms of this Agreement up to and including the Settlement Date. If the Client would like a Statement of the Settlement Value in respect of the Client's Credit Facility, Everest will provide such Statement in writing, within 5 (five) Business Days of the Client's request to do so.

The Statement reflected in the clause above will only be binding for the date stated and will not include any Transactions effected or processed on or after this date, for which the Client will also be liable. Any Transactions effected or processed on or after settlement will still be the Client's responsibility.

**Material Adverse Change** Any event or circumstance occurs which Everest reasonably believes has or is reasonably likely to have a Material Adverse Effect.

**Material Adverse Effect** The occurrence of any event or circumstance or the change in any circumstances which has or will be likely to have a material adverse effect on:

- the business, operations, assets, property, condition (financial or otherwise) or prospects of the Client; or
- the ability of the Client to timeously and properly comply with and/or perform its obligations (including payment obligations) under this Agreement to which it is a party; or
- the validity or enforceability of all or any part of any of this Agreement or the rights and remedies of any Party under this Agreement.

**Force Majeure** Notwithstanding anything to the contrary contained herein, neither Everest nor the Client shall be liable for, nor shall Everest or the Client be considered in breach of this Agreement due to, any delays or failure to perform its obligations under this Agreement, as a result of a cause beyond its control, including any Force Majeure Event which could not have been prevented by such party with reasonable care.

Within 5 days of the occurrence of a Force Majeure Event, the affected Party shall notify the other Party by sending:

- a notice of its failure to perform its obligations under this Agreement; and
- a written explanation concerning the circumstances which caused the Force Majeure Event,

to the other party in accordance with the Notices Clause in the long-form Terms and Conditions (*Notices*).

The aforementioned time periods required of the affected party shall be extended by the period of such delay provided that the party is exercising diligent efforts to overcome the cause of such delay.

In the event of equipment breakdown or failure beyond its control, Everest shall, at no additional expense to the Client, take reasonable steps to minimize service interruptions and mitigate their effects, but shall have no liability with respect thereto.

**Events of Default** Each of the events or circumstances as set out in this clause is an Event of Default (save for the Acceleration clause):

**Non-payment**

The Client does not pay on the Payment Due Date any amount payable pursuant to the Agreement.

**Misrepresentation**

Any representation or statement made or deemed to be made by the Client in the Agreement or any other document delivered by or on behalf of the Client under or in connection with any agreement is

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or proves to have been incorrect or misleading in any material respect when made or deemed to be made.

#### **Cross-default**

Any financial indebtedness of the Client or any member of the Group is not paid when due nor within any originally applicable grace period.

Any financial indebtedness of the Client or any member of the Group is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).

Any commitment for any financial indebtedness of the Client or any member of the Group is cancelled or suspended by a creditor the Client or any member of the Group as a result of an event of default (however described).

Any creditor of the Client or any member of the Group becomes entitled to declare any financial indebtedness of the Client or any member of the Group due and payable prior to its specified maturity as a result of an event of default (however described).

No Event of Default will occur under this clause (*Cross Default*) if the aggregate amount of financial indebtedness or commitment for financial indebtedness falling within the Cross Default sub- clauses above is less than R[•] (or its equivalent in another currency or currencies).

#### **Insolvency**

The Client or a member of the Group is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.

The value of the assets of the Client or any member of the Group is less than its liabilities (taking into account contingent and prospective liabilities).

A moratorium is declared in respect of any indebtedness of the Client or any member of the Group.

The Client or a member of the Group is Financially Distressed (as defined in the Companies Act).

#### **Insolvency and Business Rescue Proceedings**

Any corporate action, legal proceedings or other procedure or step is taken in relation to:

- the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration, business rescue or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Client or any member of the Group other than a solvent liquidation or reorganisation of any member of the Group other than the Client;
- a composition, compromise, assignment or arrangement with any creditor of the Client or any member of the Group;
- the appointment of a sequestrator or a liquidator (other than in respect of a solvent liquidation of a member of the Group other than the Client), receiver, administrative receiver, administrator, compulsory manager, business rescue practitioner or other similar officer in respect of any member of the Group or any of its assets; or
- enforcement of any Security over any assets of any member of the Group,

or any analogous procedure or step is taken in any jurisdiction.

A meeting is proposed or convened by the Client or the directors of any member of the Group, a resolution is proposed or passed, application is made or an order is applied for or granted, to authorise the entry into or implementation of any business rescue proceedings (or any similar proceedings) in respect of the Client or any member of the Group or any analogous procedure or step is taken in any jurisdiction.

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This clause (*Insolvency and Business Rescue Proceedings*) shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within [14] days of commencement.

#### **Creditors' Process**

Any expropriation, attachment, sequestration, implementation of any business rescue plan, distress or execution affects any asset or assets of the Client or a member of the Group [and is not discharged within [14] days].

The Client or any guarantor:

- being a Natural Person - publishes a notice of the voluntary surrender of its estate or dies; is placed under administration or debt review or commits an act of insolvency as defined in the Insolvency Act 24 of 1936; or an application or other proceedings have been brought against it or in respect of it, in terms of which it is sought to be sequestrated or placed under curatorship, in any such event whether provisionally or finally, whether voluntarily or compulsory; or
- not being a Natural Person - is dissolved, deregistered, wound up or liquidated, in any event whether provisionally or finally and whether voluntarily or compulsorily, or passes a resolution providing for any such event; or is deemed to be unable to pay its debts; or resolves that it voluntarily begins business rescue proceedings or has any business rescue proceedings commenced against it.

#### **Unlawfulness**

It is or becomes unlawful for the Client to perform any of its obligations under the Agreement.

#### **Repudiation**

The Client repudiates the Agreement or evidences an intention to repudiate the Agreement.

#### **Material Adverse Change**

Any event or circumstance occurs which Everest reasonably believes might have a Material Adverse Effect; or

any Guarantor commits any breach of its obligations to Everest in terms of the guarantee agreement; or fails to satisfy its Guarantee commitment when requested to do so; or delivers to Everest written notice of termination of its liability under their Guarantee.

#### **Acceleration**

On and at any time after the occurrence of an Event of Default Everest may, by notice to the Client:

- cancel the Credit Facility whereupon the Credit Facility shall immediately be cancelled;
- declare that all or part of the Credit Facility, together with accrued interest, and all other amounts accrued or outstanding under the Agreement be immediately due and payable, whereupon they shall become immediately due and payable; and/or
- declare that all or part of the Credit Facility be payable on demand, whereupon they shall immediately become payable on demand by Everest.

#### **Commencement of legal proceedings by Everest**

Everest may commence legal proceedings if it has given the Client notice as referred to in the above clause (*Acceleration*); and the Client has been in default under this Agreement for at least 20 (twenty) Business Days and at least 10 (ten) Business Days have elapsed since Everest delivered the notice contemplated in the Acceleration clause and the Client has not responded to that notice or has responded to the notice by rejecting Everest's proposal.

- Everest may, at its election and without affecting any other rights that it may have in terms of this Agreement or otherwise, recover from the Client payment of all amounts owing under

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this Agreement by adhering to the default procedure described above and may also recover the legal costs and charges, as set out in the Legal Costs and Charges clause below, from the Client.

- If the Client is subject to the NCA and in default of its payment obligations, the Client may, at any time before withdrawal and cancellation of the Credit Facility by Everest, pay to Everest all amounts that are overdue, together with Default Administration Charges, Collection Costs and/or reasonable legal costs incurred up to the date of payment in terms of this clause, and Everest may continue making the Credit Facility available to the Client.
- The above default clauses and default procedure will not apply if the Client generally does or omits to do anything which may cause Everest to suffer any loss or damage, or Everest in any way knows or suspects that the Client's Revolving Credit Facility is being used fraudulently, negligently, for illegal or terrorist activities, or for any purpose that does not comply with the law; or the Client is involved in any illegal or terrorist activities. In these circumstances Everest may immediately restrict activity or suspend all or part of the Credit Facility or withdraw the Credit Facility without notice to the Client, and call for immediate Payment of all amounts owing by the Client to Everest.

#### **Legal Costs and Charges**

If the Client defaults in any obligation under this Agreement, Everest will charge the Client Default Administration Charges in respect of each letter sent to the Client. Default Administration Charges will be equal to the amount payable in respect of a registered letter or demand in undefended actions in terms of the Magistrate's Court Act 32 of 1944, in addition to any reasonable and necessary expenses incurred in delivering the letter.

If the Client is in default under this Agreement, Everest may draw such default to the Client's attention in writing and suggest that the Client refer this Agreement to a - debt counsellor (if you are a Natural Person); or a dispute resolution agent; or the consumer court; or ombud with jurisdiction. If the Client has approached a debt counsellor Everest may, in respect of this Agreement, give notice to terminate the debt review, at any time, at least 60 (sixty) Business Days after the date on which you applied for the debt review.

#### **Risk and Limited Liability**

Everest shall not be held liable to the Client for any direct, indirect or consequential loss/es, including but not limited to loss of goodwill, loss of business, loss of anticipated profits or savings and all other pure economic loss arising out of or in connection with this Agreement.

The Client assumes all risk of goods bought by it - in connection with this Agreement upon such goods leaving Everest's place of business and being sent by Everest to the Client by way of whichever means of transportation are implored by Everest and the Client, to this effect.

**Governing Law** South African law

**Jurisdiction** The Parties hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg (or any successor to that division) in regard to all matters arising from the Agreement (including a dispute relating to the existence, validity or termination of the Agreement or any non-contractual obligation arising out of or in connection with the Credit Facility (a "Dispute")).

The Parties agree that the courts of South Africa are the most appropriate and convenient courts to settle disputes. The Parties agree not to argue to the contrary and waive objection to this court on the grounds of inconvenient forum or otherwise in relation to proceedings in connection with the Agreement.

This clause (Jurisdiction) is for the benefit of Everest only. As a result, Everest shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, Everest may take concurrent proceedings in any number of jurisdictions.



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**Annexure A      DEFINITIONS**

1. In this Agreement, unless the context indicates otherwise, the words and expressions set forth below shall bear the following meanings and cognate expressions shall bear corresponding meanings:
- 1.1. **"Affiliate"** means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company;
  - 1.2. **"Agreement"** means this credit facility agreement between the Client and Everest;
  - 1.3. **"Business Day"** means any day other than a Saturday, Sunday or statutory public holiday in South Africa;
  - 1.4. **"Client"** means the customer signing this Agreement as the client, as stipulated on the first page of this Agreement;
  - 1.5. **"Credit Insurance"** means Insurance that the Client has taken out with a third party insurer as a means of Security by whereby Everest has an insured interest;
  - 1.6. **"Credit Facility"** means the credit which is made available to you in terms of this Agreement by way of the Revolving Credit Facility, and **Credit Facility Limit** refers to the limit of the Credit Facility as stipulated on the first page of this Agreement;
  - 1.7. **"Credit Record"** means your payment profile (your credit history) including adverse information on a credit profile held by a credit bureau;
  - 1.8. **"Date of Signature"** means the date of signature of this Agreement by the Party signing last in time;
  - 1.9. **"Default"** means an Event of Default or any event or circumstances specified in Clause 18 of the long-form Terms and Conditions;
  - 1.10. **"Default Administrative Charges"** means charges which you must pay if you default in any payment obligation under this Agreement;
  - 1.11. **"Event of Default"** means any event or circumstance specified as such in Clause 18 of the long-form Terms and Conditions;
  - 1.12. **"Everest"** means Everest Corrugated (Pty) Ltd;
  - 1.13. **"Force Majeure Event"** means an event resulting from of a cause beyond a Party's control which includes:
    - 1.13.1. any act of God or a public enemy or terrorist;
    - 1.13.2. any act of any military, civil or regulatory authority;
    - 1.13.3. any pandemic;
    - 1.13.4. any change in any law or regulation;
    - 1.13.5. any fires, flood, earthquake, storm or other like event,;
    - 1.13.6. any disruption or outage of communications, power or other utility, labour problem, unavailability of supplies;
    - 1.13.7. or any other cause, whether similar or dissimilar to any of the foregoing,which could not have been prevented by such Party with reasonable care;
  - 1.14. **"Group"** means the subsidiaries and their subsidiaries relating to a Party;
  - 1.15. **"Guarantee"** means the guarantee as described in Clause 5 of the long-form Terms and Conditions and attached as Annexure B to this Agreement (the **"Guarantee Agreement"**);

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- 1.16. “**Guarantor**” means the natural person or the juristic person signing the Guarantee as guarantor as described in Annexure B to the Agreement (the “**Guarantee Agreement**”);
- 1.17. “**Initiation Fee**” means the fee (inclusive of VAT) in respect of the cost of initiating this Agreement payable by you upon entering into this Agreement;
- 1.18. “**Material**” means material in Everest’s reasonable Opinion;
- 1.19. “**Materially Adverse Change**” means any event or circumstance occurs which Everest reasonably believes has or is reasonably likely to have a Material Adverse Effect;
- 1.20. “**Material Adverse Effect**” means the occurrence of any event or circumstance or the change in any circumstances which has or will be likely to have a material adverse effect on:
- 1.20.1. the business, operations, assets, property, condition (financial or otherwise) or prospects of the Client; or
  - 1.20.2. the ability of the Client to timeously and properly comply with and/or perform its obligations (including payment obligations) under this Agreement to which it is a party; or
  - 1.20.3. the validity or enforceability of all or any part of any of this Agreement or the rights and remedies of any Party under this Agreement;
- 1.21. “**Margin**” means the interest charged by us above or below the Prime Interest Rate;
- 1.22. “**Minimum Payment**” means the minimum amount to be paid by you, as advised by Everest and as reflected on your latest monthly Statement;
- 1.23. “**NCA**” means, if applicable, the National Credit Act 34 of 2005 as amended from time to time together with any regulations or notices promulgated in terms thereof.
- The National Credit Act was enacted inter alia to promote a fair and non-discriminatory marketplace for access to consumer credit and for that purpose to provide for the general regulation of consumer credit and improved standards of consumer information. If the National Credit Act is specified as applicable to the Client in this Agreement, this Agreement has been drafted subject to the applicable provisions contained in the National Credit Act;
- 1.24. “**Party**” means the Client or Everest, and **Parties** means both the Client and Everest;
- 1.25. “**Personal Information**” means information about an identifiable, natural person and where applicable, a juristic person, including, but not limited to information about: race; gender; sex; pregnancy; marital status; nationality; ethnic or social origin; colour; sexual orientation; age; physical or mental health; well-being; disability; religion; conscience; belief; culture; language; birth; education; medical, financial, criminal or employment history; any identifying number, symbol, e-mail, postal or physical address, telephone number; location; any online identifier; any other particular assignment of the person; biometric information; personal opinions, views or preferences of the person or the views or opinions of another individual about the person; correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence; and the name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person;
- 1.26. “**Prime Interest Rate**” means the publicly quoted basic rate of interest (percent, per annum (yearly)), published by us from time to time as being our prime rate, a certified by any of our managers whose authority, appointment and designation need to be proved;
- 1.27. “**Principal Debt**” means the total amount owing to us at any time in terms of this Agreement, being the amount deferred in terms of this Agreement;
- 1.28. “**Processing**” means Process means any operation or activity, automated or not, concerning Personal Information, including: alteration, blocking, collation, collection, consultation, degradation, destruction, dissemination by means of transmission, distribution or making available in any other form, erasure, linking, merging, organisation, receipt, recording, retrieval, storage, updating, modification, or the use of information; Processing and Processed will have a similar meaning;

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- 1.29. **"Payment(s)"** means payment/s made, or to be made by Client to Everest;
- 1.30. **"Payment Due Date"** means the due date for payment of amounts due and payable as advised by us;
- 1.31. **"Payment Authorisation(s)"** means the method by which you make the Payments that are reflected on your monthly Statement and includes a debit order;
- 1.32. **"Revolving Credit Facility"** means that portion of the Credit Facility used by you as a revolving credit facility;
- 1.33. **"Security"** means any security or undertaking provided to us to secure the Payment of your Credit Facility in terms of this Agreement, particularly the Guarantee or Credit Insurance;
- 1.34. **"Service Fee"** means the fee (inclusive of VAT) levied by us in connection with the routine administration costs of maintaining this Credit Facility which forms part of the Principal Debt;
- 1.35. **"Settlement Date"** means the date on which all amounts due and payable to us are paid;
- 1.36. **"Settlement Value"** means the full amount owing to us under this Agreement together with any unpaid interest and all other legally permissible costs, fees and charges as at the Settlement Date;
- 1.37. **"Statement"** means a document reflecting the Transactions made by the Client up to the Statement Date, the full amount owing to us (including any interest, costs, fees and charges that may be levied) and the Payment Due Date;
- 1.38. **"Statement Date"** means the date on which your Statement is created and printed;
- 1.39. **"South Africa"** means the Republic of South Africa;
- 1.40. **"Transaction"** includes any transaction debited against the Client for transactions concluded to pay for any goods or services;
- 1.41. **"Transaction Fee(s)"** means the fees which Everest may charge for providing financial services to the Client;
- 1.42. **"Tribunal"** means the National Consumer Tribunal established by section 26 of the NCA; and
- 1.43. **"VAT"** means value added tax charged in terms of the Value-Added Tax Act No. 89 of 1991.

**TERMS AND CONDITIONS BETWEEN EVEREST CORRUGATED (PTY) LTD AND THE CLIENT IN RESPECT OF THE CREDIT FACILITY**

*Confidential*

**Annexure B      Guarantee Agreement**

<b>GUARANTEE AGREEMENT BETWEEN EVEREST CORRUGATED (PTY) LTD, THE GUARANTOR</b>	
<b>DATED:</b> [•]	
<b>Name of Guarantor</b>	[•]
<b>Address of Guarantor</b>	[•]
<b>Contact Number of Guarantor</b>	[•]
<b>Email Address of Guarantor</b>	[•]
<b>Guarantor is a Natural Person married In Community of Property (Yes/No)</b>	[•]
<b>Value of Guarantee:</b> [•]	

**TERMS AND CONDITIONS BETWEEN EVEREST CORRUGATED (PTY) LTD AND THE CLIENT IN RESPECT OF  
THE CREDIT FACILITY**

*Confidential*

**GUARANTEE**

by

[•]

(as "Guarantor")

in favour of

**EVEREST CORRUGATED (PTY) LTD**

(as "Everest")

**DATED [•]**

**TERMS AND CONDITIONS BETWEEN EVEREST CORRUGATED (PTY) LTD AND THE CLIENT IN RESPECT OF  
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***Confidential***

THE GUARANTEE SET OUT IN THIS AGREEMENT is given on [•] by:

1. [•] (the “**Guarantor**”);

in favour of

2. **EVEREST CORRUGATED (PTY) LTD** (“**Everest**”); and

3. [•] (the “**Client**”).

**The Guarantor confirms that it had an adequate opportunity to read and understand the terms and conditions contained in this Guarantee Agreement, that it is aware of all of the terms of the Guarantee Agreement, and that it has obtained the necessary authority and consents required in order to validly enter into this Guarantee Agreement.**

**BACKGROUND:**

- (A) The Guarantor has agreed to guarantee to Everest the due, complete and punctual performance by the Client, on the terms and conditions of this Agreement.
- (B) Everest and the Client have agreed to enter into the Credit Facility Agreement in favour of the Client and, in support thereof, to grant certain security in the form of a Guarantee to Everest.

**IT IS AGREED** as follows:

**1. DEFINITIONS**

In this Agreement:

- 1.1. “**Client**” means the person who entered into the Credit Facility Agreement as client;
- 1.2. “**Credit Facility Agreement**” means the written agreement entitled “Credit Facility Agreement” dated on or about the Signature Date between Everest and the Client;
- 1.3. “**Everest**” means Everest Corrugated (PTY) Ltd;
- 1.4. “**Guarantee**” means the guarantee given by the Guarantor in favour of the Client under, and as set out in, Clause 3 (*Guarantee*) of the Agreement;
- 1.5. “**Guaranteed Obligations**” means all present and future obligations and indebtedness of whatsoever nature (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever, including any liability to pay damages or pursuant to enrichment) which the Client may now or at any time hereafter owe or have towards Everest under or in connection with the Credit Facility Agreement to which it is a party;
- 1.6. “**Party**” means Everest or the Guarantor, and **Parties** means both the Guarantor and Everest; and
- 1.7. “**Signature Date**” means the date stated at the beginning of this Agreement;

**2. INTERPRETATION**

- 2.1. Unless expressly defined in this Agreement, terms and expressions defined in the Credit Facility Agreement have the same meaning in this Agreement.
- 2.2. The provisions of Clause 2 (*Interpretation*) of the Credit Facility Agreement applies to this Agreement as though they were set out in full in this Agreement, except that references to the Agreement are to be construed as references to this Agreement.
- 2.3. This Agreement and the rights and obligations of the Parties under this Agreement shall in all respects be subject to the terms and conditions of the Credit Facility Agreement and in the event of any conflict between the provisions of this Agreement and the provisions of the Credit Facility Agreement, the provisions of this Agreement shall prevail.

## TERMS AND CONDITIONS BETWEEN EVEREST CORRUGATED (PTY) LTD AND THE CLIENT IN RESPECT OF THE CREDIT FACILITY

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- 2.4. Any undertaking of the Guarantor under this Agreement remains in force until the Payment Due Date.
- 2.5. If any amount paid to Everest under the Credit Facility Agreement is capable of being avoided or otherwise set aside on the liquidation or administration of the payer or otherwise, then that amount will not be considered to have been irrevocably discharged for the purposes of this Agreement.

### 3. **GUARANTEE**

#### 3.1. **Guarantee and indemnity**

The Guarantor hereby, as a principal obligor and not merely as a surety, irrevocably and unconditionally and on the basis of several and discrete obligations enforceable against it, whether or not any or all the Guaranteed Obligations are enforceable against the Client in respect thereof:

- 3.1.1. guarantees to Everest the full, complete and punctual performance by the Client of all the Guaranteed Obligations as and when they become due;
- 3.1.2. undertakes to Everest that, whenever the Client fails to pay any amount of the Guaranteed Obligations when due strictly in accordance with the Credit Facility Agreement, the Guarantor shall immediately on first written demand by Everest pay that amount as if it were the principal obligor in respect of that amount (together with interest and default interest in respect thereof, as provided under the Credit Facility Agreement); and
- 3.1.3. indemnifies Everest immediately on demand against any cost, loss or liability suffered by Everest if any Guaranteed Obligation is or becomes unenforceable, invalid or illegal. The amount of the cost, loss or liability to which this indemnity applies will be equal to the amount Everest would otherwise have been entitled to recover under the Credit Facility Agreement.

#### 3.2. **Continuing guarantee**

The Guarantee is a continuing guarantee which shall remain in force and extend to the ultimate balance of all the Guaranteed Obligations, regardless of any intermediate payment or discharge in whole or in part before the Payment Due Date.

#### 3.3. **Restatement**

If any payment by the Client, or any discharge (whether in respect of the obligations of the Client or any security for those obligations or otherwise) or arrangement made in whole or in part on the faith of any payment, security or other disposition, is avoided or reduced or must be repaid, restored or reinstated on insolvency, liquidation, administration or business rescue proceedings or any similar event:

- 3.3.1. the liability of the Guarantor under the Guarantee will continue or be reinstated; and
- 3.3.2. Everest will be entitled to recover the value or amount of that payment, discharge or arrangement from the Guarantor,
- 3.3.3. as if that payment, discharge or arrangement had not occurred.

#### 3.4. **Waiver of defences**

The obligations of the Guarantor under this Agreement shall not be prejudiced, affected or diminished by an act, omission, circumstance, matter or thing which, but for this provision, might otherwise operate to reduce, release or prejudice any of the Guarantor's obligations under this Agreement (whether or not known to it or Everest).

#### 3.5. **Immediate recourse**

The Guarantor waives any right it may have, of first requiring Everest (or any trustee or agent on its behalf) to proceed against or enforce any other right or security or claim payment from the Client or any person, before claiming from the Guarantor under this Agreement. This waiver applies irrespective of any law or any provision of the Credit Facility Agreement to the contrary.

**TERMS AND CONDITIONS BETWEEN EVEREST CORRUGATED (PTY) LTD AND THE CLIENT IN RESPECT OF  
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**3.6. Renunciation of benefits**

The Guarantor renounces, to the extent permitted under applicable law, the benefits of each of the legal exceptions of excussion, division, revision of accounts, no value received, *errore calculi*, *non causa debiti*, *non numeratae pecuniae* and cession of action, and declares that it understands the meaning of each such legal exception and the effect of such renunciation.

**4. COUNTERPARTS**

The Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Agreement.

**5. SOLE AGREEMENT**

The Agreement constitutes the sole record of the agreement between the Parties in regard to the subject matter hereof.

**6. NO IMPLIED TERMS**

No Party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded in the Agreement in regard to the subject matter thereof.

**7. GOVERNING LAW**

This Agreement and any non-contractual obligations arising out of or in connection with are governed by South African law.

**8. ENFORCEMENT**

**8.1. Jurisdiction**

8.1.1. The Parties hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg (or any successor to that division) in regard to all matters arising from the Agreement (including a dispute relating to the existence, validity or termination of the Agreement or any non-contractual obligation arising out of or in connection with the Credit Facility (a "**Dispute**")).

8.1.2. The Parties agree that the courts of South Africa are the most appropriate and convenient courts to settle disputes. The Parties agree not to argue to the contrary and waive objection to this court on the grounds of inconvenient forum or otherwise in relation to proceedings in connection with the Agreement.

8.1.3. This Clause 35.1 of the Credit Facility Agreement is for the benefit of Everest only. As a result, Everest shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, Everest may take concurrent proceedings in any number of jurisdictions.

**8.2. Waiver of Immunity**

The Guarantor waives generally all immunity or its assets or revenues may otherwise have in any jurisdiction, including immunity in respect of:

8.2.1. the giving of any relief by way of injunction or order for specific performance or for the recovery of assets or revenues; and

8.2.2. the issue of any process against its assets or revenues for the enforcement of a judgment or, in an action in rem, for the arrest, detention or sale of any of its assets and revenues.

**8.3. Incorporation of provisions**



**TERMS AND CONDITIONS BETWEEN EVEREST CORRUGATED (PTY) LTD AND THE CLIENT IN RESPECT OF THE CREDIT FACILITY**

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The provisions of clauses 15 (*Legal Costs and Charges*), clause 22(*General*), clause 29 (*Remedies and Waivers*), *clause 30 (Amendments)* and clause 28 (*Partial Invalidity*) of the Credit Facility Agreement apply to this Agreement as though they were set out in full in this Agreement (except that references to the Credit Facility Agreement are to be construed as references to this Agreement).

.....[Signature Page to Follow].....

**TERMS AND CONDITIONS BETWEEN EVEREST CORRUGATED (PTY) LTD AND THE CLIENT IN RESPECT OF THE CREDIT FACILITY**

*Confidential*

For **Everest Corrugated (PTY) Ltd**

Signature: \_\_\_\_\_

who warrants that he / she is duly authorised thereto

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Place: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

For **[•] (The Guarantor)**

Signature: \_\_\_\_\_

who warrants that he / she is duly authorised thereto

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Place: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

For **[•] (The Client)**

Signature: \_\_\_\_\_

who warrants that he / she is duly authorised thereto

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Place: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_