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BLOWN FIBRE (PTY) LTD REG NO 1999/01260/07

Credit Application Form

1. COMPANY DETAILS ("the Customer")				
Registered Name:				
Trading Name:				
Registration Number:		Year of Incorporation:		
Incorporated form of Business:		Sole Owner	Closed Corp. (CC)	(Pty) Ltd
VAT Registration Number:		Please attach copy of VAT Reg. Cert.		
Nature of Core Business:				
Names of Subsidiaries and/or Associated Companies (if applicable):				
2. ADDRESSES & CONTACT DETAILS				
Registered Address:				
Postal Address:				
Physical Address:				Code:
Telephone Number:		Fax Number:		
E-mail Address:		Web Address:		
3. CONTACT PEOPLE DETAILS				
Full Names of Directors / Owners / Partners		ID Number		Cell / Tel Number
Accounts Contact:		Telephone Number:		
E-mail Address:				
4. FINANCIAL DETAILS				
Name of Bank:		Branch:		
Account Number:		Branch Code:		
Name of Auditors:				
Telephone No of Auditors:				
E-mail of Auditors:				
Can the latest financial statements be made available ?		(Yes) / (No)		Period:
5. CREDIT REFERENCES				
Company	Contact Person	Account No	Telephone Number	
Monthly Credit Required:				
6. GENERAL INFORMATION:				
Have any judgment been granted against the Customer?			YES	NO
Has an application been made to place the Customer under debt review / in business rescue?			YES	NO
Has the Customer been placed under judicial management / administration?			YES	NO
Does the Customer agree to a credit check being done by BLOWN FIBRE (PTY) LTD?			YES	NO
Are the directors/members/owners/partners/trustees prepared to sign surety?			YES	NO
Is the premises Owned or Leased?			YES	NO

If **LEASED**, please provide name, contact number and e-mail address of Landlord:

CONSENT AND CREDIT CHECK CONDITIONS:

I/We hereby authorize **BLOWN FIBRE (PTY) LTD** its associates and subsidiaries and/or duly appointed agents to make use of the information contained herein and to contact any person named herein to determine whether or not to grant me/the Customer credit facilities.

I/We hereby consent that **BLOWN FIBRE (PTY) LTD** or any of its duly appointed agents may:

1. perform a credit search on the Customer's record with one or more of the registered Credit Bureaus when assessing the Customer's application for credit facilities;
2. monitor the Customer's payment behavior by researching it/his/her credit record at one or more of the Credit Bureaus;
3. use new information and data obtained from the Credit Bureau in respect of the Customer's future credit facilities;
4. record the existence of the Customer's account with any Credit Bureau and record details of how the Customer is conducting its account under this agreement and that any defaults in payment to **BLOWN FIBRE (PTY) LTD** may be disclosed to any Credit Bureau.

Initial

TURNOVER DISCLOSURE:

Does the Customer's **annual turnover** at date of this application exceed **R 1 million**?

YES NO

Does the Customer's **asset value** at date of this application exceed **R 1 million**?

YES NO

Does the Customer's **annual turnover** at date of this application exceed **R 2 million**?

YES NO

Does the Customer's **asset value** at date of this application exceed **R 2 million**?

YES NO

Initial

NATIONAL CREDIT ACT 34 OF 2005:

This application contemplates an agreement where goods or services are supplied to the Customer and payment for such goods or services is received at a specified later date. No charge, fee or interest as contemplated in the National Credit Act will become payable by the Customer as a result of this agreement. Accordingly the proposed agreement does not constitute a Credit Agreement for purposes of the National Credit Act 34 of 2005 (*"the NCA"*). If, however, the Customer fails to pay any amount due in terms of the proposed agreement on or before the stipulated due date, the Creditor will be entitled, **but not be obliged**, to charge interest at a rate of 2% per month or such other maximum rate of interest as may be prescribed in respect of incidental credit agreements pursuant to the NCA and any regulation published thereunder.

Initial

CONSUMER PROTECTION ACT 68 OF 2008

NOTICE TO CONSUMER WITH REGARD TO LIMITATION OF LIABILITY OF SUPPLIER, ASSUMPTION OF LIABILITY BY CONSUMER, INDEMNIFICATION BY THE CONSUMER AND ACKNOWLEDGEMENT OF THE FACT BY THE CONSUMER:

To the extent that the Customer is a natural person, or a juristic person as defined in the Consumer Protection Act 68 of 2008 (*"CPA"*) who asset value and annual turnover is, **at the time of the conclusion of this agreement**, both less than threshold determined by the Minister in Section 6 of the CPA (currently R 2 million) then the Customer's attention is drawn to the following specific conditions of **BLOWN FIBRE (PTY) LTD** (*"the Company's"*) Terms and Conditions of Sale as required by Section 49 of the CPA. **CLAUSES: 3.4, 4.2, 5.1, 5.4, 5.6, 6.4, 7.2, 7.3, 7.6, 7.7 & 12.1**

Warranty:

The signatory hereto warrants that he/she is duly authorised to sign this credit application on behalf of the Customer and further warrants that the information supplied herein are true and correct.

Signed		Date	
Signatory Name Print		Designation	
BLOWN FIBRE RESPONSE			
Accepted		Date	
Amount		Approval Period	

DEED OF SURETYSHIP

I/We, the undersigned

1. NAMES IN FULL: (PLEASE PRINT)
ID NUMBER:

2. NAMES IN FULL: (PLEASE PRINT)
ID NUMBER:

Do hereby bind myself/ourselves jointly and severally to **BLOWN FIBRE (PTY) LTD** with registration number 1999/01260/07 (hereinafter referred as *"the Creditor"*) as surety(ies) in solidum and co-principal debtor/debtors for due performance by

Registration Number: _____

(hereinafter referred as *"the Principal Debtor"*)

for the due payment of every sum of money which may now or at any time hereafter be or become owing by the Principal Debtor to the Creditor arising from goods supplied and/or service rendered by the Creditor to the Principal Debtor and/or arising from any claims which the Creditor may have against the Principal Debtor in pursuance of transactions concluded between the Creditor and Principal Debtor and for the due performance of every other obligation, howsoever arising, which the Principal Debtor may now or at any time hereafter be or become bound to perform in favour of the Creditor.

I/We hereby agree:

- That this deed of suretyship shall constitute a continuing covering liability on my part for whatever amount/s and whatever other obligation/s will be owing by the Principal Debtor to the Creditor for the time being, notwithstanding any intermediate discharge or settlement of or fluctuations in the account and notwithstanding death, insolvency or legal disability of the Debtor or of any other surety/ies for and/or co-principal debtor/s with the Principal Debtor, until the Creditor will have agreed in writing to cancel the deed of suretyship. Nothing in this clause will place any obligation on the Creditor to agree to such cancellation.
- That all admission and acknowledgements of liability by the Principal Debtor will be binding on the Surety/ies. (The effect of this clause is that if the Principal Debtor makes any acknowledgement or admission, it will apply as if the Surety had made the acknowledgement or admission).
- That in the event of the Principal Debtor being liquidated or subject to business rescue, or a compromise being effected with its creditors, no dividends or payments received by the Creditor will prejudice the Creditor's right to recover from the Surety the amount owing, by the Principal Debtor at date of liquidation, business rescue or compromise of the Principal Debtor and such liquidation, business rescue or compromise will not discharge the Surety from its obligations hereunder.
- A certificate under the hand of the Managing Director or Financial Officer or Accountant, of the Creditor as to the existence and the amount of the Principal Debtor's and/or my indebtedness to the Creditor, as well as the

amount of interest accrued thereon, and as to any other fact, matter or thing relating to the Principal Debtor's and/or my indebtedness to the Creditor shall be accepted as *prima facie* proof of the content and correctness thereof and of the amount of the Principal Debtor's and/or my indebtedness for the purpose of provisional sentence or summary judgment or any other proceedings against the Principal Debtor and/or me in any competent court.

- 5. That the Surety(ies) renounces the benefits of
- 5.1 Excussion – that the Creditor have to proceed against the Principal Debtor first before proceeding against the surety first;
- 5.2 Division – that the Debt has to be divided between the Principal Debtor and the Surety and/or between the surety(ies)
- 5.3 De doubus vel pluribus reis debendi – that the Surety should be sued jointly with other principal debtors
- 6. In terms of Section 45 of the Magistrate's Court Act 1944, I/We hereby consent to the jurisdiction of the Magistrate's Court having jurisdiction under Section 28 of the said Act in respect of any action instituted against me/us or any or more of us by the Creditor. It shall nevertheless be entirely within the discretion of the Creditor as to whether to proceed against me/us in such Magistrate's Court or any other Court having jurisdiction, including any High Court.
- 7. That this Suretyship is in addition and without prejudice to any securities held now or in the future by the Creditor.
- 8. That any indulgence or extension of time for payment granted by the Creditor to the Principal Debtor is without prejudice to any of the rights of the Creditor, and that no indulgence or extension will in any way affect the Surety's liability. (The effect of this clause is that even if the Creditor grants an indulgence to the Principal Debtor or an extension of the payment, it does not have to grant the same indulgence or extension to the Surety and can claim from the Surety as if the indulgence or extension had not been granted to the Principal Debtor.)
- 9. I/We hereby choose *domicilium citandi et executandi* for all purposes arising out of this deed of suretyship at:

(Each surety to provide his/her own *domicilium* address):

SURETY 1: _____

SURETY 2: _____

(PHYSICAL ADDRESS)

- 10. Every notice to be given in terms of or incidental to this Suretyship shall be in writing and shall be either left at the *domicilium citandi et executandi* in which case it shall be deemed to have been received when so left **OR** prepaid registered mail to the Surety at the *domicilium citandi et executandi* in which case it shall be deemed to have been received on the seventh business day after posting.
- 11. As part of its liability in terms hereof the surety(ies) binds to pay the amount of all charges and expenses of whatsoever nature, including, but without derogating from the generality of the foregoing, attorney and client costs, collection commission and tracing fees incurred by the Creditor in securing or endeavouring to secure fulfilment of the obligations.
- 12. That no variation or cancellation of this Deed of Suretyship will be of any force or effect unless reduced to writing and signed by both the Surety and the Creditor.

I/We, the undersigned, by appending my/our signature(s) hereto, confirms that when the foregoing Suretyship was signed in favour of the Creditor there were no blank spaces herein which still required to be complete and no deletions which are still required to be made, that the names of the Principal Debtor and Surety(ies) have been duly inserted and was in all respects complete and that the Suretyship is not subject to any conditions precedent to its coming into force.

SIGNATURE OF SURETY 1	DATE	SIGNATURE OF WITNESS	DATE
FULL NAME:		FULL NAME:	
ID NO:		ID NO:	

SIGNATURE OF SURETY 2	DATE	SIGNATURE OF WITNESS	DATE
FULL NAME:		FULL NAME:	
ID NO:		ID NO:	

GENERAL CONDITIONS OF SALE INCLUDING CONDITIONS APPLICABLE TO CREDIT FACILITIES

1. **RECORDAL:**

The Customer or its duly authorised agent does hereby apply for credit facilities with the Company and inconsideration thereof the Customer does hereby accept the following terms and conditions.

2. **GENERAL:**

- 2.1 These terms and conditions between the Company, or its successor in title, will apply to all contracts and/or transactions between the Company and the Customer.
- 2.2 This Agreement will be governed by the laws of the Republic of South Africa.
- 2.3 This agreement constitutes the whole agreement between the parties and no variation, amendment, deletion or addition will be of any force or effect unless reduced to writing and signed by both parties.
- 2.4 No indulgence, latitude, extension of time or delay or the like granted by the Company to the Customer shall in anyway whatsoever be construed as a novation or waiver of any rights which the Company may have against the Customer.
- 2.5 Should any of the provisions of this agreement be held by a court to be invalid, void or unenforceable, such invalid, void or unenforceable provisions will be struck from these terms and conditions but the remainder of these terms and conditions will be valid and binding.

3. **CREDIT FACILITIES:**

- 3.1 The information set out in the Application Form shall form the basis of the Company's decision to grant Credit Facilities to the Customer.
- 3.2 The Company shall, on the basis of the representations contained in the Application Form at its sole discretion determine the credit facility to be granted to the Customer and shall notify the Customer in writing of the terms of such credit facility.
- 3.3 Should the Customer wish to increase its credit facility the Customer will have to apply, in writing, for such increase and the granting of any increased facility shall be in the sole discretion of the Company.
- 3.4 **Should the Customer fail to make payment of any amount on due date (as specified on any invoice or statement) the Company shall be entitled to, on 10 days written notice to the Customer, suspend such credit facilities until such time as the payments under the Credit Facility has been brought up to date.**
- 3.5 The Customer warrants that it has disclosed all facts which may influence the granting of the credit facilities to the Customer.

4. **CONTRACT PRICE AND PAYMENTS:**

Unless specifically otherwise agreed in writing in each particular instance:

- 4.1 All prices quoted are strictly nett and exclusive of Value Added Tax ("VAT"), which VAT the Customer shall pay or reimburse to the Company simultaneously with the contract price.
- 4.2 **Any quotation provided is based on rates of exchange, freight charges, insurance, railage, costs of labour, material, import duty, taxes and other charges ruling at the date of quotation.**
- 4.3 The Contract Price shall be paid within 30 days from date of statement ("*due date*") free from any deduction.
- 4.4 Should the Customer fail to make payment of any amount on due date the Company shall be entitled, **but not obliged**, to charge interest at a rate of 2% per month or such other maximum rate of interest as may be prescribed in respect of incidental credit agreements pursuant to the NCA and any regulation published thereunder.
- 4.5 The Customer shall not be entitled to any discount, unless otherwise agreed in writing and any discount agreed to shall be forfeited should the Customer fail to make payment of any amount due on the due date.

5. **DELIVERY:**

- 5.1 **The Company will use all reasonable endeavours to keep any stated date or time for performance of its obligations but accepts not liability whatsoever for any loss or damage resulting from the delay, however, caused, save to the extent that such delays are directly caused by the Company's negligence.**

- 5.2 In the event of an anticipated delay the Company shall inform the Customer in writing thereof.
- 5.3 When goods are delivered in instalments the contract shall be construed as a separate contract for each instalment to these terms and conditions.
- 5.4 **In all cases where delivery is by carrier, the carrier shall be deemed to be the Customer's agent and delivery to such carrier shall be deemed delivery to the Customer unless delivery takes place at the Company's expense. Shortages or damages to the goods must be reported to the Company within 7 days from date of receipt of the goods.**
- 5.5 Signature by the Customer or any representative of the Customer of any delivery note, invoice or waybill will constitute *prima facie* proof of proper delivery and acceptance by the Customer.
- 5.6 **In the event of any discrepancy between the goods on the invoice and the goods delivered to the Customer, the Customer must report such discrepancy within 7 days from date of receipt of the goods.**
6. **OWNERSHIP AND RISK:**
- 6.1 Risk in the goods will pass to the Customer on delivery of the goods to the Customer.
- 6.2 Notwithstanding the provisions of Clause 6.1 ownership in the goods will remain vested in the Company until the Contract Price has been paid in full.
- 6.3 Delivery to any carrier or agent of the Customer shall be deemed to be delivery to the Customer and risk in the goods shall pass to the Customer on delivery to such carrier or agent.
- 6.4 **If the Customer fails to take delivery of the goods or delay delivery of the goods, the risk in the goods shall pass to the Customer on the date when delivery of the goods were tendered to the Customer, UNLESS such delay or failure is as a result of circumstances beyond the control of the Customer.**
7. **WARRANTIES, LIABILITIES AND INDEMNIFICATION:**
- 7.1 No warranties, guarantees or representations, express or implied, whether by law, contract or otherwise, which are not set forth in this Contract, shall be binding on the Company.
- 7.2 **The Company shall not be liable under any circumstances for any loss or damages sustained by the Customer as a result of any error or discrepancy in the specification or any error or defect of any nature in the designs if that loss is caused by the failure of the Customer to provide sufficient information to enable the Company to prepare the order acceptance, final product / material specifications or designs. The Company shall not be liable for any error in any measurements or qualities, after such measurements or qualities have been approved by the Customer.**
- 7.3 **Notwithstanding the provisions provided for in the CPA, and only insofar as the CPA applies, the Company shall be exempted from and shall not be liable under any circumstances whatsoever for:**
- 7.3.1 **any indirect or consequential damage of any nature or any loss of profit; or**
- 7.3.2 **special damage of any nature and whether in the contemplation of the parties or not**
- 7.4 The Company is provided a reasonable time and opportunity to comply with the terms of any guarantee given.
- 7.5 The Company warrants that the goods are suitable for the purpose for which they are **generally intended**.
- 7.6 **Notwithstanding the provisions of Clause 7.5 it remains to the sole responsibility of the Customer to ensure that the goods are suitable for any intended or specific purpose or use.**
- 7.7 **Notwithstanding the provisions provided for in the CPA the Company shall repair or replace any defective goods and/or defective part of the goods provided that:**
- 7.7.1 **The Company has received written notice of the alleged defect within 20 business days from the date of delivery of the goods to the Customer or its agent, such notice must be given by registered post at P.O. BOX 59118, KENGRAY, 2100 and/or e-mailed to admin@blownfibre.co.za**
- 7.7.2 **If the goods are found to be defective, after the Company has had a reasonable opportunity to inspect the goods, the Customer may return such defect goods to the Company within 20 days after the alleged defect has been confirmed to exist at the risk and expense of the Company.**
8. **FORCE MAJEURE:**
- 8.1 Neither party shall be liable to the other party for inability to perform or delayed performance in terms of the Contract, should such inability or delay arise from any cause beyond the reasonable control of such party, the existence or happening of which cause has been drawn to the attention of the other party within a reasonable time of the occurrence of such cause ("*Force Majeure event*").
- 8.2 For purpose of this clause a Force Majeure event shall, without limitation to the foregoing, be deemed to include strikes, lockouts, labour disputes, accidents, plant and machinery breakdowns, fire, explosions, theft, war (whether declared or not), invasion, acts of foreign enemies, hostilities, riot, civil insurrection, flood, earthquake, lightning, act of local or national government, martial law, failure or delay on the part of the Company's supplier(s) of services, of bought materials, to meet delivery dates, or any failure or delay on the part of the Customer or the Customer's agent or other contractors to provide the Company with free issue

materials, specifications, or defects or changes in such specifications, or any other cause beyond the reasonable control of the party affected.

9. **BREACH:**

9.1 Should either party be in breach of any material obligations in terms of the Contract, and fail to remedy such breach or take positive steps towards remedying such breach within 14 days of written notice to do so from the other party, then the non-defaulting party shall be entitled to cancel the contract without prejudice to such other rights as the non-defaulting party may have in terms of this agreement.

9.2 In the event that the Company cancels the agreement, as provided for in Clause 9.1, then and in that in event, the full outstanding balance due to the Company by the Customer, whether due or not, will immediately become due and payable to the Company.

9.3 If the Customer:

9.3.1 being an individual dies or is provisionally or finally sequestrated or surrender his or her estate; or

9.3.2 being a partnership, is dissolved; or

9.3.3 being a company or close corporation is placed under provisional or final liquidation or judicial management;

9.3.4 commits an act of insolvency as defined in any statute or in terms of the common law in force in the Republic of South Africa from time to time; or

9.3.5 compromises or attempts to compromise with its creditors

then, and in such event the Company may, on 10 business days written notice to the Customer, summarily cancel the agreement without prejudice to any other rights which the Company may have, in which event the full outstanding balance, whether due or not, will immediately become due and payable by the Customer to the Company.

10. **JURISDICTION, LEGAL PROCEEDINGS & COSTS:**

10.1 The Customer shall be liable to the Company for all legal expenses on an attorney and own client scale incurred by the Company in the event of default or breach of this agreement by the Customer or any litigation in regard to the validity or enforceability of this agreement.

10.2 The Customer shall be liable for any tracing, collection or valuation fees incurred by the Company should the Customer default on its obligation under this agreement.

10.3 A certificate issued by any Director or Manager of the Company in respect of any indebtedness of the Customer shall be *prima facie* evidence of the Customer's indebtedness to the Company.

10.4 The Parties agree that any legal proceedings may be instituted in any Magistrate's Court having jurisdiction regarding any legal action arising out of this agreement, despite the fact that such action may not fall within the monetary jurisdiction of the Magistrate's Court. Notwithstanding this consent either party will have the right to instate action against each other in any competent Court having jurisdiction. Including any High Court.

11. **PERSONAL INFORMATION:**

11.1 The Customer understands that the personal information given to the Company is to be used for the purposes of assessing credit worthiness and in order to perform in terms of these Terms and Conditions. The Customer confirms that the information given to the Company is accurate and complete. The Customer further agrees to update the information supplied as and when necessary in order to ensure the accuracy of the above information failing which the Company will not be liable for inaccuracies.

11.2 The Company will not use the Customer's personal information for any purpose (other than as stated above) without the Customer's express consent. The Company will not use or disclose the Customer's personal information to third parties without the Customer's consent, unless the use or disclosure is –

11.2.1 required to carry out the performance of these Terms and Conditions or any other agreement between the parties;

11.2.2 required in order to comply with applicable law, order of court or legal process; and/or

11.2.3 disclosure is necessary to protect and defend the legitimate interests of the Company.

11.3 The Company has the Customer consent at all times to contact and request information from any persons, credit bureau or businesses to obtain any information relevant to the Customer's credit assessment, including but not limited to information regarding the amounts purchased from suppliers per month, length of time Customer's has dealt with each supplier, type of goods purchased and manner and time of payment.

11.4 The Customer agrees and understands that information given in confidence to the Company by a third party on the Customer will not be disclosed to the Customer.

11.5 The Customer hereby consents to and authorises the Company at all times to furnish credit information concerning the Customer's dealing with the Company to a credit bureau and to any third party seeking a trade reference regarding the Customer in his dealings with the Company. The Customer understands that the personal information given to the Company is to be used for the purposes of assessing credit worthiness and in order to perform in terms of these Terms and Conditions.

12. **DOMICILIUM CITANDI ET EXECUTANDI:**

- 12.1 The Customer chooses as its *domicilium citandi et executandi* the physical address as provided for in the Credit Application, where it will accept service of letters, notices, accounts and/or other legal documents relating to this agreement.
- 12.2 The Company chooses as its *domicilium citandi et executandi* **3 NAVVI STREET, ALBERTON NORTH, GAUTENG, SOUTH AFRICA** where it will accept service of all letters, notices, accounts and/or other legal documents relating to this agreement. Initial
- 12.3 Either party may change its *domicilium citandi et executandi* upon 10 business days written notice to the other party to any other address in the Republic of South Africa which is not a post office box or *poste restante*.

Warranty:

The signatory hereto warrants that he/she is duly authorised to sign these terms and conditions on behalf of the Customer and further warrants that the information supplied herein are true and correct.

Signed		Date	
Signatory Name Print		Designation	