

**PART A - APPLICANT**

**FULL NAME OF APPLICANT:** \_\_\_\_\_

**COMPANY REGISTRATION NO:** \_\_\_\_\_

**VAT REGISTRATION NUMBER:** \_\_\_\_\_

**FORM OF BUSINESS: (Mark with art X)**

COMPANY  PARTNERSHIP  SOLE TRADER  CLOSE CORPORATION

**FULL TRADING NAME:** \_\_\_\_\_

**FULL DELIVERY ADDRESS:** \_\_\_\_\_  
\_\_\_\_\_

**FULL POSTAL ADDRESS:** \_\_\_\_\_  
\_\_\_\_\_

**TELEPHONE NUMBERS:** \_\_\_\_\_

**FAX NUMERS:** \_\_\_\_\_

**E-MAIL ADDRESS (STATEMENTS):** \_\_\_\_\_

**PREMISES:** (Mark with an X) RENTED \_\_\_\_\_ OWNED \_\_\_\_\_

**BONDED:** (Mark with an X) YES \_\_\_\_\_ NO \_\_\_\_\_

**LANDLORDS NAME AND ADDRESS:** \_\_\_\_\_  
\_\_\_\_\_

**BANK:** \_\_\_\_\_

**ACCOUNT NUMBER:** \_\_\_\_\_

**BRANCH NAME:** \_\_\_\_\_

**BRANCH CODE:** \_\_\_\_\_



5 Wakefield Road, Founders View South, Edenvale (opposite Modderfontein Golf Course) | P.O.Box 303, Edenvale, 1610, South Africa  
Tel: 011 452 5221 | Fax: 011 452 2313 | sales@durapaints.co.za | www.durapaints.co.za | Member M Lloyd



CK 1986/021686/23

Initial here [ ] Applicant [ ] Witness [ ] Surety 1 [ ] Surety 2 [ ] Surety 3 [ ]

TOTAL ANNUAL TURNOVER OF APPLICANT  
OVER OR UNDER R1, 000,000.00 (MARK WITH AN X)      OVER [    ] UNDER [    ]

ARE YOUR DEBTORS FACTORED OR  
CEDED?      YES \_\_\_\_\_ / NO \_\_\_\_\_

IS YOUR STOCK CEDED OR  
ENCUMBERED?      YES \_\_\_\_\_ / NO \_\_\_\_\_

DATE BUSINESS  
EASTABLISHED: \_\_\_\_\_

NAME, ADDRESS AND TELEPHONE NUMBERS OF THREE  
TRADE REFERENCES:

1 \_\_\_\_\_

2 \_\_\_\_\_

3 \_\_\_\_\_

REQUESTED CREDIT LIMIT:    R \_\_\_\_\_      (for assessment purposes  
only and does not form part  
of this contract)

TERMS OF PAYMENT ARE STRICTLY 30 DAYS FROM DATE OF STATEMENT.

All transactions between the Applicant and Dura Paints cc, shall be subject to Terms and  
Conditions of Contract attached.

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

Warrant that I have the authority to sign this  
application and I am duly authorised by the  
Applicant.

SIGNED: \_\_\_\_\_ DATE: \_\_\_\_\_ at \_\_\_\_\_

For and on  
behalf of the  
Applicant

SIGNED: \_\_\_\_\_ DATE: \_\_\_\_\_ at \_\_\_\_\_

WITNESS

Initial here [    ] Applicant [    ] Witness [    ] Surety 1 [    ] Surety 2 [    ] Surety 3 [    ]

**PART B-SURETY**

By my/our signatures hereto we bind ourselves jointly and severally as co-principal debtor(s) in solidium with the Applicant for the due performance of the Applicant's obligations that arise terms of this contract;

Signed: \_\_\_\_\_ (Full name \_\_\_\_\_ ID No \_\_\_\_\_) at \_\_\_\_\_ on \_\_\_\_\_  
(SURETY 1)

Signed: \_\_\_\_\_ at \_\_\_\_\_ on \_\_\_\_\_  
(Witness)

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Signed: \_\_\_\_\_ (Full name \_\_\_\_\_ ID No \_\_\_\_\_) at \_\_\_\_\_ on \_\_\_\_\_  
(SURETY 2)

Signed: \_\_\_\_\_ at \_\_\_\_\_ on \_\_\_\_\_  
(Witness)

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Signed: \_\_\_\_\_ (Full name \_\_\_\_\_ ID No \_\_\_\_\_) at \_\_\_\_\_ on \_\_\_\_\_  
(SURETY 3)

Signed: \_\_\_\_\_ at \_\_\_\_\_ on \_\_\_\_\_  
(Witness)

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**TERMS AND CONDITIONS OF CONTRACT FOR CREDIT FACILITIES**

**INCLUDING DEED OF SURETY**

**DEFINITIONS**

1. In these terms and conditions of contract which shall be applicable to all transactions between the Company and the Applicant,

1.1 The Company means Dura Paints cc.

1.2 The Applicant means the person, firm, company or association purchasing from the Company or the aforesaid persons/entities duly authorised agent, whose details are set out in Part A of this contract and who irrevocably accept the terms and conditions of this contract and which person, firm, company or association is the signatory to these terms and conditions of contract.

1.3 Surety means the individual(s) whose details are set out in Part B of this contract who by his/her signatory thereto irrevocably accept these terms and condition of contract as they appear below.

**2. APPLICATION**

- a) These terms and conditions shall apply to any contract for the sale of goods by the Company to the Applicant.
- b) No alteration or variation of these terms and conditions shall apply, unless expressly agreed to in writing and signed by an authorised representative of the Company.

**3. PAYMENT**

- a) Unless otherwise agreed to in writing between the parties before delivery, the amount appearing on the Company's statement shall be paid by the Applicant without any deduction or set-off on or before 30 days from the date of such statement.
- b) The Applicant has 7 days from date of the statement to revert with any objections thereto, failing which the Applicant will be deemed satisfied with the content and amount thereof.
- c) If more than one delivery is to be made, then each delivery will be invoiced and paid for separately but otherwise in accordance with 3(a).
- d) Any amount not paid by the Applicant on due date shall bear interest at a rate equal to First National Bank's prevailing prime rate from time to time plus 2% compounded monthly in arrears, calculated from due date until date of final payment. Payment shall only be effective on the day received by the Company.
- e) Should the Applicant default in paying any amount due, then the Company shall be entitled, at its discretion, to immediately claim the whole amount then outstanding, notwithstanding the fact that a portion of the amount might not be owing in accordance with the terms of this contract.

**4. PRICE INCREASES**

The price of the goods will be the Company's official price ruling at the date on which the goods are delivered to the Applicant. The Applicant however acknowledges that the price of goods varies according to imports, levies, surcharges and other charges imposed by statute or regulation, or any other authority from time to time as well as in accordance with fluctuations in the exchange rate from time to time and fuel price increases. The Applicant will be liable for all such increases and effect payment of same.

**5. DISCOUNTS**

- a) The statement is not subject to any discounts unless otherwise agreed in writing and signed by an authorised representative of the Company.
- b) If any discount is agreed to in writing, it shall only be allowed if payment is received by the Company on or before the due date and shall only apply to the actual price of the goods themselves.

Initial here [     ] Applicant [     ] Witness [     ] Surety 1 [     ] Surety 2 [     ] Surety 3 [     ]

**6. DELIVERY AND RISK**

- a) The risk shall pass to the Applicant when the goods pass ship's rail in case of imports, or is handed to the carrier for delivery to the Applicant in all other cases on collection or delivered to the Applicant.
- b) Signature by the Applicant or by any representative of the Applicant of the Company's delivery note shall be regarded as acceptance by the Applicant that the goods reflected in such delivery note have been properly delivered and are in good order.
- c) Notwithstanding the above the Company shall be exempted from and shall not be liable under any circumstances for any claim for any alleged shortage in delivery or failure of the goods to comply with the order, or for any other reason therein unless written notice of the claim is received by the Company within 7 days alter receipt of the goods by the Applicant.
- d) The Applicant acknowledges and agrees that the Company shall not be responsible for any damages or losses in the event of the Company failing to deliver goods on a date stipulated by the Applicant.
- e) If more than one delivery is to be made then the provisions of this clause 6 shall apply to each delivery.

**7. OWNERSHIP**

Notwithstanding the delivery of any goods to the Applicant, ownership thereof shall not pass until the Company has received payment of the full price as set out on the statement. In the event of the goods having been sold by the Applicant in terms of a credit sale agreement to another buyer, the Applicant undertakes forthwith on being requested to do so, to deliver to the Company a list of such credit sales containing full details of each sale. The Applicant shall in addition notify its landlord or any interested third party of such reservation of ownership.

**8. WARRANTY**

The goods are sold "voetstoots" without any express, tacit or common law warranty concerning quality or fitness for any purpose.

**9. SUSPENSION OF COMPANY'S OBLIGATIONS**

If any amount owed by the Applicant is not paid on due date, then without prejudice to any other right it may have, the Company may immediately suspend the carrying out of any of its then uncompleted obligations until the payment is made.

**10. DEED OF SURETYSHIP**

I by my signature which appears in Part B of this contract, hereby bind myself, jointly and severally in my private and individual capacity as surety for and co-principal debtor in solidum with the Applicant in favour of the Company for the due performance of any obligations of the Applicant and for payment to the Company by the Applicant for any amounts which may at any time become owing to the Company by the Applicant from whatsoever cause arising and including, without limiting the generality of the foregoing, any claims for damages and actions against the Applicant. This suretyship shall be a continuing covering surety which may only be cancelled, in writing, by the Company and then only, provided that all sums then owing by the Applicant (whether due or not) to the Company have been paid in full. I hereby renounce the benefit of the legal exceptions of excussion, division, cession of action and being sued together with the force, meaning and effect of which I declare myself to be fully acquainted. I further bind myself to all the terms and conditions of this contract.

I furthermore record that if more than one person has appended his/her signature hereto, there shall come into existence a separate, distinct and independent contract of suretyship which is brought into existence by each separate signature thereto. If for any reason this suretyship is not binding (for whatever reason) on any one signature then the obligations of the remaining signatories shall nevertheless be and remain of full force and effect.

**11. CANCELLATION**

- (a) The Company may immediately cancel this contract and enforce the terms therein or any uncompleted part of it if the Applicant commits a breach of any of the terms and conditions of this contract, or, being an individual, dies or is provisionally or finally sequestrated, or surrenders or makes application to surrender his estate, or, being a company, is placed under a provisional or final order of liquidation or judicial management, or, has a judgement recorded against it which remains unsatisfied for 7 days, or, compromises or attempts to compromise generally with any of its creditors.

Initial here [    ] Applicant [    ] Witness [    ] Surety 1 [    ] Surety 2 [    ] Surety 3 [    ]

- (b) The Company's rights in terms of 11(a) shall not be exhaustive and shall be in addition to its common law rights.
- (c) Upon the cancellation of this contract for any reason whatever;
  - (i) All amounts then owed by the Applicant to the Company in terms of this contract shall become due and payable forthwith.
  - (ii) The Company may forthwith retake possession of any goods in respect of which ownership has not passed.
  - (iii) Proceed against the Sureties as set out in Part B of this contract.

**12. NO RELAXATION**

No relaxation which the Company may have permitted on any one occasion in regard to the carrying out of the Applicant's obligations shall prejudice or be regarded as a waiver of the Company's rights to enforce those obligations on any subsequent occasion or be considered a novation of any of the terms and conditions of this contract.

**13. EXCLUSIONS**

- a) All specifications, illustrations, drawings, diagrams, price lists, dimensions, performance figures, advertisements, brochures and other technical data furnished by the Company in respect of the goods, and whether in writing or not, are furnished only on the basis that they will not form part of this contract or be relied upon by the Applicant for any purpose, unless and to the extent that they are expressly warranted or guaranteed in writing by the Company and are, as such, expressly stated by the Company to form part of this contract.
- b) The Company shall in no circumstances whatsoever be liable for any loss of profit or any damages direct or indirect, consequential or otherwise, sustained by the Applicant as a result of handling or using the goods. Without derogating from the generality of the foregoing, the Company shall not be liable for its own negligence or for the negligence of its agents or employees.
- c) Subject to and without in any way limiting the provisions of 13(b) and what is set out in this contract, the Company's liability to the Applicant for any damages sustained by the Applicant from any cause whatever, including any damages arising out of the Company's negligence or that of its servants, agents or sub-contractor, shall in any event and under all circumstances be limited to the replacement of the defective goods.
- d) The Applicant shall not have any claim of any nature whatever against the Company for any failure by the Company to carry out any of its obligations under the contract as a result of vis major, including but without being limited to any strike, lockout, shortage of labour or materials, delays in transport, accidents of any kind, any default or delay by any sub-contractor or supplier of the Company, riot, political or civil disturbances, the elements, any act of any State or Government, any delay in securing any permit, consent or approval required by the Company for the supply of goods under the contract or any other authority or any other cause whatever beyond the Company's control.

**14. JURISDICTION**

The Company shall be entitled, but not obliged, to institute any proceedings against the Applicant, arising out of this contract, for the full balance outstanding including current purchases in any Magistrate's Court having jurisdiction over the Applicant notwithstanding that the claim or the value of the matter in dispute may exceed the jurisdiction of the Magistrate's Court. The Applicant agrees to be liable for all legal costs of such proceedings on the scale as between attorney and own client including, counsel on brief, collection charges and tracing costs.

**15. PROOF OF INDEBTEDNESS**

A certificate signed by a director of the Company whose appointment it shall not be necessary to prove, showing the amount due and owing by the Applicant to the Company at any given time shall be conclusive proof of the facts therein stated for the purpose of all legal proceedings against the Applicant for recovery of the said amount.

**16. DOMICILIUM AND NOTICES**

The Applicant and the sureties in Part B nominates the delivery address as reflected in Part A hereof as their domicilium citandi et executandi for service upon it of notices and process in connection with any claim for any sum due to the Company. All notices to the Company must be in writing and be sent by telefax or delivered by hand. The Applicant or the sureties may change their domicilian address on 7 days written notice to the Company.

Initial here [ ] Applicant [ ] Witness [ ] Surety 1 [ ] Surety 2 [ ] Surety 3 [ ]

**17. NEGOTIABLE INSTRUMENTS**

Any promissory note, bill of exchange or other negotiable instrument received by the Company from the Applicant shall not be a novation of the debt for which it is given and the Applicant waives presentment, notice of dishonor and protest where applicable.

**18. RETURN OF GOODS**

If in the exercise of its sole discretion the Company shall agree at the request of the Applicant to accept the return of any goods for credit, which goods were correctly supplied by the Company and not faulty or subject to any claim, then the Applicant shall automatically and without the necessity for any further agreement be liable to pay the Company a handling charge of 10% on the invoice price of the goods so returned. Any goods returned shall not be credited in the event that same is damaged or the packaging removed/damaged by the Applicant or any third party.

No goods will be accepted for return unless accompanied by a Goods Return Note issued by the company.

**19. ENTIRE CONTRACT**

This contract constitutes the entire contract between the parties and no representation by any person or variation or amendments to any of the terms or conditions hereof shall be valid and binding on the Company unless reduced to writing and signed by both parties and should any clause in these terms and conditions be found to be unenforceable or invalid, the offending clause shall be severed from this contract and shall not invalidate this entire contract.

**20. INTERPRETATION**

The headings in these conditions are for convenience only and are not to be taken into account for the purpose of interpreting the contract.

21. This contract is governed by the laws of the Republic of South Africa.