



DEED OF SURETYSHIP INCORPORATING CESSION OF CLAIMS

I/We, the undersigned,

ID:

hereby bind myself/ourselves jointly and severally to :-

FCS HOLDINGS (PTY) LTD

Reg No:2015/032787/07

and their successors-in-title, as surety/ies for and co-principal buyer/s in solidum with –

.....
(Company name)

.....
(Registration number)

1. for the due and punctual payment and performance by the buyer of all debts and obligations of whatsoever nature and howsoever arising which the buyer may now or in the future owe to the supplier from any cause of indebtedness howsoever arising, including, without limiting the generality thereof any claims which the supplier may have acquired or may in future acquire against the buyer from any company, person, partnership, association or other legal persona whomsoever or whatsoever by way of cession or otherwise, legal costs on the attorney and own client scale, collection commission, interest and any other charges of whatever nature (“the obligations”)
2. I/we hereby expressly renounce the defence of prescription and the benefits of the legal exceptions of “order”, “excussion”, “cession of action”, “no value received”, “non causa debiti” and all or any exceptions which could or might be pleaded to any claim by the supplier against me/us or any one of us, with the meaning, force and effect of all of which exception I/we declare myself/ourselves to be fully acquainted.
3. The rights of the supplier under this suretyship shall not be affected or diminished if the supplier at any time obtains additional suretyships, guarantees, securities or indemnities in connection with the obligations. Notwithstanding that this suretyship may for any reason whatsoever be held to be or become not binding in whole or in part upon any one or more of us and notwithstanding that it may not be signed by all of us, it shall be and remain of full force and effect and binding upon the others of us.
4. I/We shall be bound by all admissions or acknowledgments of indebtedness made or given by the buyer to the supplier from time to time.
5. Should the buyer fail to discharge any of the obligations on due date, the supplier shall be entitled notwithstanding any contrary arrangement with the buyer, to demand from me/us immediate performance of all he obligations then owing by the buyer to the supplier, whether the due date for the performance of the obligations shall have arrived or not.
6. This suretyship is a continuing suretyship and shall remain of full force and effect notwithstanding any fluctuation in, or temporary extinction of the buyer’s indebtedness to the supplier. It may not be withdrawn, revoked or cancelled by me/us without the supplier’s prior written consent. Any consensual cancellation or withdrawal of this suretyship by me/us and the supplier shall only be valid and effective if reduced to writing and signed by both parties thereto.
7. The supplier shall be entitled, whether before or after the due date for payment or performance of the obligations, without reference or notification to me/us, without affecting its rights hereunder and without releasing any surety hereunder, to release other sureties and securities; to grant the buyer extensions of time for payment and other indulgences; to compound or to make any other arrangements with the buyer for the discharge of the buyer’s indebtedness; to accept any dividend in a liquidation or judicial arrangement on account and in reduction of the buyer’s indebtedness; to alter or vary any present or future agreement between the buyer and the supplier.
8. 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 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 and the surety's indebtedness to the supplier, shall be sufficient and satisfactory 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.

9. In terms of Section 45 of the Magistrate's Court Act, as amended, I/we hereby consent to the jurisdiction of the Magistrate's Court having jurisdiction in terms of Section 28 of the said Act, in respect of any action to be instituted on this suretyship. This consent is without prejudice to the supplier's rights to proceed in any other court having jurisdiction.
10. I/We hereby choose domicilium citandi et executandi at the address/es set out below at which address/es all notices and communications may be addressed to me/us and all notices addressed to me/us at the said address/es and despatched by prepaid registered post shall be deemed to have reached me/us four days after the date of posting -
.....
11. As security for the fulfillment of all obligations hereby undertaken I/we do hereby pledge, cede, assign, transfer and make over unto and in favour of the supplier all right, title and interest in and to any amounts and claims from whatever source arising and which are now, or which may hereafter become, owing to me/us from any source and from any cause of indebtedness howsoever arising. In the event of any prior ranking cession existing at the date hereof, the foregoing cession in favour of the supplier shall operate as a cession to the supplier of any right of action which I/we may now or at any future time have against the prior cessionary.
12. I/We hereby indemnify and hold the supplier harmless against any damage or loss of whatever nature which the supplier may sustain arising out of or in connection with the enforcement, cancellation or invalidity for any reason whatsoever, of any agreement between the supplier and the buyer. I/we warrant and undertake that the buyer will perform all of its obligations of whatever nature which are at any time owed by it to the supplier.
13. In the event of the supplier instituting legal action for any purpose arising out of this document, I/we shall be liable for all legal costs on the scale as between attorney and own client including any tracing fees and collection commission.
14. Should the supplier cede its claim against the buyer to any third party, then this suretyship shall be deemed to have been given by me/us to such cessionaries, who shall be entitled to exercise all rights in terms of this suretyship, as if such cessionaries were the supplier hereunder.
15. Any reference herein to the supplier shall include a reference to all companies included in the definition of supplier and to each of them separately and individually, jointly and severally, as if a separate suretyship had been entered into by me/us in favour of each of those companies for the obligations. Consequently, any company referred to in the definition of supplier in 1 above, may enforce this suretyship, and payment in full or in part to any one of them will extinguish to the extent of such payment that indebtedness, to the others of them, as the case may be.

Signed at _____ on this the _____ day of _____

AS WITNESSES:

1. _____ (Signature and print name in full)

ID NUMBER
2. _____ (Signature and print name in full)

ID NUMBER

FOR AND ON BEHALF OF THE BUYER AND / OR IN MY PERSONAL CAPACITY

(NAME IN FULL)

IDENTITY NUMBER