

HIRER PURCHASE: TERMS AND CONDITIONS OF AGREEMENT

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this agreement, unless the context indicates otherwise and in addition to the words and phrases defined in the other clauses of this agreement, the following words and phrases shall bear the meanings assigned to them below and cognate expressions shall bear corresponding meanings:
- 1.1.1 "ACT" means the National Credit Act, No. 34 of 2005 and, where appropriate, the Regulations promulgated thereunder.
- 1.1.2 "AGREEMENT" means the agreement concluded between the Credit Provider and the Consumer as set out in the Instalment Agreement and these Terms and Conditions attached thereto;
- 1.1.3 "CREDIT BUREAU" means the Credit Bureau referred to in clause 8.
- 1.1.4 "INTEREST RATE" means the fixed interest rate stipulated in the agreement at which interest shall be calculated on the deferred amount;
- 1.1.5 "PRINCIPAL DEBT" means the amount calculated in accordance with section 101(1)(a) of the Act.
- 1.1.6 "QUOTATION" means the written quotation given in respect of this agreement as contemplated in the Act;
- 1.2 In this agreement:
- 1.2.1 Clause headings are for convenience only and are not to be used in its interpretation;
- 1.2.2 Unless the context indicates a contrary intention, an expression which denotes:
- 1.2.2.1 any gender includes the other genders;
- 1.2.2.2 a natural person includes a juristic person and *vice versa*;
- 1.2.2.3 the singular includes the plural and vice versa.
- 1.3 Words and expressions not defined in this agreement shall, unless the context indicates otherwise, bear the meanings assigned to them in the Act.
- 1.4 When a particular number of business days is provided for between the happening of one event and another, the number of days shall be calculated by:
- 1.4.1 excluding the day on which the first such event occurs; and
- 1.4.2 including the day on or by which the second event is to occur; and
- 1.4.3 excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in clauses 1.4.1 and 1.4.2

2. ADMISSIONS AND RENUNCIATIONS BY THE CONSUMER

The Consumer admits and declares that:

- 2.1 Upon signature this agreement has been completed in all respects and that all information contained herein, including without limitation the Consumer's addresses and personal details, is true and correct;
- 2.2 The Consumer requested this agreement to be in English and that English is the official language that the Consumer reads and understands;
- 2.3 The Consumer understands without effort the content, significance and import of the agreement.

3. PAYMENT

- 3.1 The Consumer shall pay all amounts due under this agreement punctually on due date, free of exchange, bank costs or other charges, at the Credit Provider's place of business or at such other place or into such other account as the Credit Provider may from time to time direct in writing.

4. OWNERSHIP AND RISK

- 4.1 The ownership of the goods shall not pass to the Consumer until all amounts payable in terms of this agreement have been paid in full.
- 4.2 All risk of loss or damage, whether attributable to *vis major*, act of God, inevitable accident and any other cause shall pass to the Consumer forthwith upon signature of this agreement.

5. FURTHER OBLIGATIONS OF THE CONSUMER

Without detracting from any of his other obligations in terms of this agreement the Consumer shall:

- 5.1 Be liable for and pay any compensation and costs awarded by the court to the Credit Provider as contemplated in clause 132 of the Act; and
- 5.2 Until the termination of this agreement inform the Credit Provider, in the prescribed time, manner and form, of any change concerning:
- 5.2.1 The Consumer's residential or business address; and
- 5.2.2 The address of the premises in which the goods are ordinarily kept; and
- 5.2.3 The name and address of any person to whom possession of the goods has been transferred.

6. FEES COSTS INTERESTS AND OTHER CHARGES

- 6.1 If the Consumer fails to pay any amount owing to the Credit Provider on due date, the Consumer will be liable for penalty interest at a rate equal to the maximum rate of interest prescribed by the Act, on the full amount due but unpaid, including interest.
- 6.2 In addition, should the Consumer fail to pay any amount to the Credit Provider on due date, the Consumer shall pay:
- 6.2.1 Default administration charges imposed by the Credit Provider to cover administration costs incurred as a result of the Consumer defaulting on an obligation under this agreement. The following default administration charges will be levied:
- | | |
|---------------------------|---------|
| Unpaid debit order cheque | R 20.00 |
|---------------------------|---------|
- 6.2.2 Collection costs that may be charged by the Credit Provider in respect of the enforcement of the Consumer's monetary obligations under this agreement (other than a default administration charge referred to in clause 6.2.2)
- 6.3 Without prejudice to or detracting from any of the Credit Provider's rights or pursuant to an act of default by the Consumer, interest will be charged at the interest rate in respect of any fee, cost or charge not paid on or before the due date for payment thereof.
- 6.4 The Consumer will be liable to pay all legal costs incurred by the Credit Provider in exercising any of its rights in terms of this agreement, including without limitation all legal charges as between attorney-and-own-client, counsel's fees, tracing fees and collection charges.
- 6.5 To the extent that the Consumer is required to pay or reimburse any costs, fees, expenses or disbursements pursuant to this agreement, the Consumer agrees that such obligation includes the payment or reimbursement of Value-added Tax in terms of the Value-added Tax Act, No. 89 of 1991 where applicable.

7. STATEMENT, PAYMENT, [DEPOSIT] AND SETTLEMENT

- 7.1 The Credit Provider will send a statement to the Consumer each month to the postal address selected by the Consumer.
- 7.2 If the Consumer pays the Credit Provider by sending a cheque or postal order by mail, all risk involved, including without limitation risks in respect of fraud, theft or loss of the cheque or postal order, will be borne by the Consumer, irrespective of whether or not it is caused by the Credit Provider's negligence or that of the Credit Provider's employees.
- 7.3 All payments in terms of this agreement will be made in South African currency without set off or deduction of any kind and free of exchange, bank costs and other charges, at the branch of the Credit Provider at [specify address] or wherever else the Credit Provider may at any time in writing direct. If arrangements are made to pay the monthly installment by way of debit order or automatic payment order, this will not detract in any manner from the Consumers' obligations to effect payment of each installment on or before the due date for payment thereof.
- 7.4 The Consumer may at any time repay any amount owed to the Credit Provider in terms of this agreement or settle the full amount owed in terms of this agreement
- 7.5 The total amount required to be paid to the Credit Provider in order to settle this agreement is the total of the following amounts:
- 7.5.1 The principal debt or the balance thereof outstanding at the time of settlement; and
- 7.5.2 Any unpaid interest and all other fees and charges owing to or claimable by the Credit Provider in terms of this agreement up to the settlement date; and
- 7.5.3 Should the agreement qualify as a large agreement, in addition to the amounts referred to in clauses 7.5.1 and 7.5.2, an early termination charge not exceeding the prescribed charge or, if no charge has been prescribed, a charge equal to the interest that would have been payable under the agreement for a period equal to the difference between:
- 7.5.3.1 3 months; and
- 7.5.3.2 the period of notice of settlement, if any, given by the Consumer.

8. CREDIT BUREAU INFORMATION

- 8.1 The Credit Provider hereby informs the Consumer that the Credit Provider supplies consumer credit information to a Credit Bureau and in this regard:
- 8.1.1 The Consumer confirms that the Credit Provider may transmit to the Credit Bureau data about the application, conclusion of this agreement and the termination of this agreement;
- 8.1.2 The Consumer acknowledges that information on non-compliance with the terms and conditions of this agreement is transferred to the Credit Bureau;
- 8.1.3 The Consumer acknowledges that the Credit Bureau will provide credit profiles and possibly credit scores on the Consumer's credit worthiness, subject to the Consumer's credit record.
- 8.2 The Consumer has the right to contact the Credit Bureau to have his credit records disclosed and to insist that inaccurate information be corrected.
- 8.3 The Credit Bureau that will be informed is TransUnion ITC who can be contacted at:
- 8.3.1 Wanderers Office Park, 52 Corlett Drive, Illovo, 2196
- 8.3.2 Call Centre number: 0861482482.
- 8.4 The Consumer permits the Credit provider to obtain a credit profile and a credit score of the Consumers credit worthiness from the Credit Bureau.

9. ALTERNATIVE DISPUTE RESOLUTION, NATIONAL CREDIT REGULATOR AND TRIBUNAL

- 9.1 The Consumer has the right to:
- 9.1.1 Resolve a complaint by way of alternative dispute resolution;
- 9.1.2 File a complaint with the National Credit Regulator; or
- 9.1.3 Make an application to the Tribunal provided that any such right is exercised in accordance with the provisions of the Act
- 9.2 The National Credit Regulator can be contacted at:
- 9.2.1 Telephone number: (011) 554 2600 or 0860 627 627
- 9.2.2 Telefax number: (011) 805 4905
- 9.2.3 E-Mail: complaints@ncr.org.za
- 9.2.4 Physical address: 127 15th Road, Randjespark, Midrand
- 9.2.5 Postal address: P.O. Box 209, Halfway House, 1685
- 9.2.6 Website: www.ncr.org.za
- 9.3 The National Consumer Tribunal can be contacted at:
- 9.3.1 Telephone number: (012) 683 8140 / (012) 742 990
- 9.3.2 Telefax number: (012) 663 5693
- 9.3.3 E-Mail: Registry@thenct.org.za
- 9.3.4 Physical address: Ground floor, Block B, Lakefield Office Park, 272 West Avenue, C/o West and Lenchen North, Centurion
- 9.3.5 Postal address: Private Bag X110, Centurion, 0046
- 9.3.6 Website: www.thenct.org.za
- 9.4 The Credit Provider shall advise the Consumer in terms of this Act before any prescribed adverse information concerning the Consumer is reported to a credit bureau and shall provide the Consumer with a copy of such information upon written request.

10. APPLICATION FOR DEBT REVIEW

- 10.1 Without detracting from or in any manner limiting the Credit Provider's right in terms of default, the Consumer's attention is directed to section 86 of the Act which entitles the Consumer, in certain circumstances, to apply to a debt counsellor in the prescribed manner and form to have the Consumer declared over-indebted.
- 10.2 An application in terms of section 86 of the Act may not be made in respect of and does not apply to, this agreement if at the time such application is made the Credit Provider has, under this agreement, proceeded to take steps contemplated in clause 11 to enforce this agreement.
- 10.3 A debt counsellor who has accepted an application in terms of section 86 must determine in the prescribed manner and within the prescribed time whether the Consumer appears to be over-indebted, and if the Consumer seeks a declaration of reckless credit, whether any of the Consumer's credit agreements appear to be reckless.

10.4 Depending on the findings of the debt counsellor, the application may be rejected, or it may be recommended that the Consumer and the respective credit providers voluntarily consider and agree on a plan of debt re-arrangement or, if the debt counsellor concludes that the Consumer is over-indebted, a proposal may be issued recommending that the Magistrate's Court makes an order with regard to the question of reckless credit and any plan of debt re-arrangement, as contemplated in section 86(7) of the Act.

10.5 If a recommendation by a debt counsellor is accepted by the Consumer and each credit provider, such order must be recorded in the form of an order and, if it is consented to by the Consumer and each credit provider concerned, filed as a consent order by the debt counsellor in terms of section 138 of the Act.

10.6 If a debt counsellor rejects an application contemplated in section 86(7)(a) of the Act, the Consumer, with the leave of the Magistrate's Court, may apply directly to the Magistrate's Court, in the prescribed manner and form, for an order contemplated in section 86(7)(c) of the Act.

10.7 If the Consumer is in default under this agreement and this agreement is being reviewed in terms of section 86 of the Act, the Credit Provider may give notice to terminate the review in the prescribed manner to the Consumer, the debt counsellor and the National Credit Regulator contemplated in the Act. Such notice may be given at any time at least 60 business days after the date on which the Consumer have applied for the debt review.

No credit provider may terminate an application for debt review lodged in terms of this Act, if such application for review has already been filed in a court or in the Tribunal.

10.8 If the Credit Provider gives notice to terminate a review as contemplated in clause 10.7, and proceeds to enforce this agreement in terms of clause 11, the Magistrate's Court hearing the matter may order that the debt review resume on any conditions the Court considers to be just in the circumstances.

11. REQUIRED NOTICE BEFORE DEBT ENFORCEMENT

11.1 If the Consumer is in default under this agreement, the Credit Provider may:

11.1.1 Draw the default to the notice of the Consumer in writing and propose that the Consumer refers this agreement to a debt counsellor, alternative dispute resolution agent, consumer court **[or ombud with jurisdiction]**, with the intent that the parties resolve the dispute under this agreement or develop and agree on a plan to bring the payment under this agreement up to date, and the Credit Provider may not commence any legal proceedings to enforce this agreement before such notice has been given; or

11.1.2 In circumstances where this agreement is being reviewed in terms of section 86 of the Act, the Credit Provider may give notice to terminate the review in the prescribed manner to the Consumer, the debt counsellor and the National Credit Regulator at any time at least 60 days after the date on which the Consumer applied for the debt review

Provided that the requirements set out in this clause 11.1 will not apply in circumstances where this agreement is subject to a debt restructuring order, or to proceedings in a court that could result in such an order.

11.2 The Credit Provider may approach the court for an order enforcing this agreement only if, at that time, the Consumer is in default and has been in default under this agreement for at least 20 business days and:

11.2.1 at least 10 business days have elapsed since the Credit Provider delivered a notice to the Consumer as contemplated in clause 11.1;

11.2.2 in the case of a notice contemplated in clause 11.1.1 the Consumer has:

11.2.2.1 not responded to that notice; or

11.2.2.2 responded to the notice by rejecting the Credit Provider's proposal.

11.3 Notwithstanding any provision of law or contract to the contrary, in any proceedings commenced in a court in respect of this agreement, the court may determine the matter only if the court is satisfied that:

11.3.1 The proceedings contemplated in sections 127, 129 and 131 in so far as they may apply have been complied with;

11.3.2 There is no matter arising under this agreement, and pending before the National Consumer Tribunal established by section 26 of the Act, that could result in an order affecting the issues to be determined by the Court; and

11.3.3 If the Credit Provider has not approached the court:

11.3.3.1 during the time that the matter was before a debt counsellor, alternative dispute resolution agent, consumer court **[or the ombud with jurisdiction]**; or

11.3.3.2 notwithstanding the Consumer having:

11.3.3.2.1 agreed to a proposal made in terms of section 129(1)(a) of the Act and acted in good faith in fulfillment of that agreement;

11.3.3.2.2 complied with an agreed plan as contemplated in section 129(1)(a) of the Act; or

11.3.3.2.3 brought the payments under this agreement up to date, as contemplated in section 129(1)(a) of the Act.

11.4 In any proceedings contemplated in section 130 of the Act, if the court determines that:

11.4.1 This agreement was reckless as described in section 80 of the Act, the court must make an order contemplated in section 83 of the Act;

11.4.2 The Credit Provider has not complied with the relevant provisions of the Act, as contemplated in section 130(3)(a) of the Act, or has approached the court in circumstances contemplated in section 130(3)(c) of the Act, the court must:

11.4.2.1 adjourn the matter before it; and

11.4.2.2 make an appropriate order setting out the steps the Credit Provider must complete before the matter can be resumed;

11.4.3 This agreement is subject to a pending debt review in terms of Part D of Chapter IV of the Act, the court may:

11.4.3.1 adjourn the matter, pending a final determination of the debt review proceedings;

11.4.3.2 order the debt counsellor to report directly to the court, and thereafter make an order contemplated in section 85(b) of the Act; or

11.4.3.3 if this agreement is the only credit agreement to which the Consumer is a party, order the debt counsellor to discontinue the debt review proceedings, and make an order contemplated in section 85(b) of the Act;

11.4.4 There is a matter pending before the Tribunal referred to in clause 11.3.2, as contemplated in section 130(3)(b) of the Act, the court may:

11.4.4.1 adjourn the matter before it, pending a determination of the proceedings before the said Tribunal; or

11.4.4.2 order the said Tribunal to adjourn the proceedings before it, and refer the matter to the court for determination; or

11.4.5 This agreement is either suspended or subject to a debt re-arrangement order or agreement, and the Consumer has complied with that order or agreement, a court must dismiss the matter.

12. FURTHER REMEDIES IN THE EVENT OF BREACH

In the event that the Consumer fails to pay on demand any sum or sums of money owing to or claimable by the Credit Provider, subject to compliance by the Credit Provider with the provisions of clause 11 in so far as applicable, and further subject thereto that, should clause 11 apply, at least 10 business days have expired since the Credit Provider delivered a notice to the Consumer as contemplated in clause 11.1.1, and further subject thereto that it is permitted by the Act:

12.1 All amounts owing to or claimable by the Credit Provider from the Consumer in terms of this agreement will, at the Credit Provider's option, become immediately due and payable without notice; and/or

12.2 The Credit Provider shall be entitled to cancel this agreement and to claim damages, subject to the Consumer's right at any time before the Credit Provider has cancelled the agreement to reinstate the agreement by paying to the Credit Provider all amounts that are overdue, together with the Credit Provider's permitted default charges and reasonable costs of enforcing the agreement up to the time of reinstatement.

13. FURTHER ACKNOWLEDGEMENTS BY THE CONSUMER

The Consumer declares that his attention has been directed to the following and that he is conversant with the provisions thereof:

13.1 The Consumer's right in terms of section 121 of the Act to terminate a credit agreement entered into at any location other than the registered business premises of the Credit Provider; and

13.2 The Consumer's right to terminate this agreement by:

13.2.1 Surrendering to the Credit Provider the goods that are the subject of the agreement in accordance with the provisions of section 127 of the Act; and

13.2.2 Paying to the Credit Provider any remaining amount demanded in accordance with section 127(7) of the Act; and

13.3 The Consumer's right in terms of section 125 of the Act to settle the agreement at any time, with or without advance notice to the Credit Provider, as more fully referred to in clauses 7.4 and 7.5; and

13.4 The Credit Provider's right to terminate the agreement in terms of the provisions of clause 123; and

13.5 The Consumer's right in terms of section 126 to prepay at any time any amount owed to the Credit Provider under the agreement; and

13.6 The Consumer's right to have him declared over-indebted in terms of the provisions of section 86 as more fully set out in clause 10.

14. WARRANTY AND CONFIRMATION

The Consumer:

14.1 Warrants that he has fully and truthfully answered all and any requests for information made by the Credit Provider relating to this agreement; and

14.2 Confirms that he understands and appreciates the risks and costs embedded in this agreement, and his rights and obligations under this agreement

15. JURISDICTION

15.1 In terms of section 45 of the Magistrate's Court Act, No. 32 of 1944 and at the election of the Credit Provider, any claim arising hereunder may be recovered in any Magistrate's Court having jurisdiction, and the Consumer hereby consents to the jurisdiction of the Magistrate's Court.

15.2 The Credit Provider, however, has the right to approach a higher court if it wishes to do so, provided that the Magistrate's court does not have concurrent jurisdiction.

16. GENEAL:

16.1 The Consumer is not entitled to cede any right as such or any part thereof.

16.2 The Credit Provider has the right at any time and from time to time, without the Consumer's consent, to cede, assign and transfer all or any of its rights, title and interest in and to this agreement.

16.3 This agreement constitutes the whole of the agreement between the parties relating to the subject matter thereof, and no amendment, alteration, addition, variation or consensual cancellation will be of any force or effect unless reduced to writing and signed by the parties.

16.4 No waiver of any of the terms and conditions of this agreement will be binding or effectual for any purposes unless expressed in writing and signed by the party hereto giving the same, and any such waiver will be effective only in the specific instance and for the purpose given.

16.5 No failure or delay on the part of either party hereto in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.