



INCA CONCRETE PRODUCTS (PTY) LTD
 REGISTRATION NO.: 2007/000037/07
 RYNEVELD STREET | EERSTE RIVER | CAPE TOWN
 PO BOX BOX 150 | EERSTE RIVIER | 7103
 TEL 021-9041620 | FAX 021-9046115
 EMAIL INFO@INCACONCRETE.CO.ZA

APPLICATION TO OPEN A CREDIT ACCOUNT

ACCOUNT NO:

FULL NAME OF APPLICANTS:		☎(h)
TRADING AS:		☎(w)
POSTAL ADDRESS:		Fax
STREET ADDRESS:		Code
EMAIL ADDRESS:		
ACCOUNTANT:		Est. Credit Required
AUDITOR:	TEL.:	
BANKERS	BRANCH	Acc #
TRADE REFERENCES:	BRANCH:	TELEPHONE:
1.		
2.		
3.		
Directors, Members, Partners, Sole Trade (Name & Residential Addresses)		ID NUMBER
1.		
2.		
3.		
Date Business Started:	VAT No:	Company / CC Registration No:
Address of Registered Office:		
Have you previously been in business		Yes No
If Yes, (1) Previous Trading Title		
(2)Address		
(3)Trading Period		
Undertaking: I _____ in my capacity as _____ and duly authorized by resolution dated _____ certify that the above information is true and correct and hereby agree to:		
(1) Payment will be made within 30 days from date of statement.		
(2) Interest being charged on overdue accounts at maximum prevailing rates.		
(3) In the event of non-payment of this account, any legal proceedings may be handled in the Magistrate's Court irrespective of the amount.		
Date:	Signed:	
Signature	Signature	Witness
Name (in Block letters)	Name (in Block letters)	
Address:	Address:	

DEED OF SURETYSHIP

We, the undersigned

("the Surety/Sureties")

hereby unconditionally guarantee proper performance of all obligations and bind ourselves jointly and severally as sureties and co-principle debtors of

("the Debtor")

to

INCA CONCRETE PRODUCTS (PTY) LTD

("the Creditor")

for the due and punctual performance by the Debtor and of the Sureties of all their obligations to the Creditor, arising directly or indirectly from the Credit Agreement entered into between the Debtor and Creditor, due to the Debtor and whether now due, owing and payable or becoming due, owing and payable in the future.

1. It is further agreed that:
 - 1.1. All admissions or acknowledgements by the Debtor to the Creditor are binding on the Surety, including tacit and implied acknowledgements.
 - 1.2. The Creditor is at liberty, without affecting its rights to release, abandon, realise or sell securities and to give time or compound or make any other arrangements with the Debtor; the Surety or any of them; or any other sureties, guarantors or Indemnitors for the Debtor; whether before or after any obligation has fallen due for performance.
 - 1.3. Any leniency, subordination of a claim or claims against, extension of time or waiver which may be granted to the Debtor; or the Surety or any of them; or any other sureties, guarantors or indemnitors for the Debtor; or any third party; whether before or after the obligation has fallen due for performance is not a waiver of any of the rights or claims of the Creditor against the Surety. The Surety Irrevocably waives any right to rely on any defence of or based on, waiver, estoppel or prejudice to the Surety



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- 1.4. Notwithstanding any part performance of any obligation by the Surety or on its behalf, the Surety has no right to any cession of action in respect of such part performance; take any action against the Debtor or any other surety for the Debtor; in respect of the part performance until the obligations of the Debtor to the Creditor have been discharged in full.
 - 1.5. The Surety shall not be released from its liability if the Creditor:
 - 1.5.1. makes any payment to the Debtor which ought not to have been made; or
 - 1.5.2. withholds performance of any obligation to the Debtor which ought to have been performed; or
 - 1.5.3. allows the Debtor to breach its obligations to the Creditor, or default in any manner; or
 - 1.5.4. fails to take or prosecute to its conclusion any action against the Debtor; or in any other manner prejudices the rights of the Surety or the Debtor.
 - 1.6. The Surety shall, if so required by the Creditor, render the performance due by the Debtor even if such performance is the performance of an act. A failure to perform shall be a breach of its obligations by the Surety.
 - 1.7. The nature, extent, amount and terms of any agreement between the Debtor and the Creditor is at all times within the discretion of the Creditor and the Surety shall not be released from any liability by reason of the Creditor entering into any such agreement or any failure on the part of the Creditor to perform in whole or in part under any such agreement
 - 1.8. If any obligation is novated the Surety shall be liable for the original obligation or the novated obligation at the election of the Creditor and whether or not the Surety was aware of the novation.
2. If an obligation of the Debtor or any part of it is due for performance and the Creditor compromises with the Debtor, gives the Debtor any indulgence or extended time or extended terms for performance, then the Creditor shall still be entitled to require the Surety to perform the obligation owing by the Debtor as If such compromise, Indulgence, extended time or extended terms had not been entered into or granted.
 3. The Creditor is irrevocably authorized to apply any monies received by the Creditor from the Debtor or any surety whether in terms of this suretyship or not against the indebtedness of the Debtor to the Creditor in such manner as the Creditor in its entire discretion may think fit including the appropriation by the Creditor of monies received to any obligation of the Debtor whether due for performance or not for which the Surety is for any reason not liable.
 4. No variation, relaxation, waiver of, addition to, deletion from or cancellation, whether consensual or not, of this suretyship or any of its terms (including this clause) shall be of any force or effect unless reduced to writing, signed by the Surety and confirmed by the Creditor in writing. It is agreed that:
 - 4.1. this suretyship constitutes !the whole agreement between the Surety and the Creditor;
 - 4.2. there are no conditions or terms which have to be complied with whether by the Creditor, the Debtors the Surety or any third party before the Surety becomes liable nor are there any conditions or terms which if complied with by the Creditor, the Debtor, the Surety or any third party shall release the Surety from any obligation, save as expressly set out in this suretyship;
 - 4.3. no warranties, promises, representations, terms or inducements of whatsoever nature have been made, given or agreed to by the Creditor or any other person, including the Debtor, to the Surety to enter into this suretyship or to bind the Surety to its terms.



5. The Creditor may at any time without the consent of or notice to the Surety, cede, assign or transfer and make over all or some of its rights in or arising out of this suretyship or any part of it; or any actual, prospective or contingent obligation of the Debtor.
6. This suretyship is a continuing covering Suretyship for the past, present and future obligations, including actual and contingent obligations of the Debtor to the Creditor.
7. This suretyship remains in force notwithstanding any interim or final performance of its obligations by the Debtor and the subsequent incurring of any new obligation by the Debtor; or the death or other legal disability of the Surety or the Debtor.
8. Any obligation of the Debtor and/or the amount of the indebtedness of the Debtor for which the Surety is liable to the Creditor at any time (including interest, the rate of interest and the method of calculation of the interest if agreed) shall be established by a certificate under the signature of any one director/member of the Creditor and the Surety shall bear the onus of proving any error in such certificate.
9. The rights of the Creditor under this suretyship shall not be affected or diminished if the Creditor at any time obtains any additional or other Suretyships, guarantees, securities or indemnities from the Surety or any other third party whatsoever in connection with the obligations of the Debtor and/or the Surety.
10. If the Debtor:
 - 10.1. Is placed under winding-up or judicial management or is sequestrated (whether provisionally or finally, compulsorily or voluntarily); or
 - 10.2. suffers any other legal disability; or
 - 10.3. becomes subject to:
 - 10.3.1. the provision of any law for the assistance or benefit of debtors; or
 - 10.3.2. a compromise, composition or other arrangement with any Creditor of the Debtor;

the Creditor shall be entitled to prove a claim against the Debtor or the estate of the Debtor for the full amount of any indebtedness due to it, whether actual or contingent, and to accept any dividend on account and in reduction of the indebtedness without prejudice to the rights of the Creditor against the Surety.
11. The Surety agrees that in any of such events and for as long as any of the obligations of the Debtor remain undischarged, the Surety shall not be entitled to prove any claim against the Debtor or its estate without the prior written authority of the Creditor; the Creditor holds as security for the debt in terms of the cession herein contained all and any claims that the Surety might have or might in the future acquire against the Debtor.
12. Should the Debtor be placed under judicial management, whether provisional or final, then in such event the obligations of the Surety under this suretyship shall cover all debts incurred by the Debtor to the Creditor while under judicial management.
13. The Surety undertakes not to prove, make or take action in respect of any claim against any other Surety or the estate of any other Surety or take any action against any Debtor whether such claim arises from or in connection with the performance of any obligation by the Surety or any other Surety to the Creditor in terms hereof or by reason of any other cause of action until all obligations of the Debtor and any other Surety to the Creditor have been performed in full.



- 13.1. The obligations of the Surety in terms of this clause in addition to any other obligation preclude the Surety from proving a claim against any other Surety, or the estate of any other Surety where such other Surety has been sequestrated; or has been placed under winding-up, whether provisional or final; or has assigned its estate; or has been placed under judicial management, whether provisional or final or under administration; or has died; or has died and his estate is being administered as insolvent in terms of the Administration of Estates Act; or has entered into a compromise, composition or other arrangement with any creditor of the Surety;
- 13.2. The Surety having waived all rights of recourse and cession of actions against other Sureties until all the claims of the Creditor against all the Debtors have been met in full.
14. If the Debtor fails to discharge any of its obligations to the Creditor or any of its other creditors, the Creditor shall be entitled notwithstanding any contrary arrangement with the Debtor, to demand from the Surety immediate performance of all the obligations then owing by the Debtor to the Creditor whether or not the due date for the performance of the obligations has arrived.
15. In terms of section 45 of the Magistrates' Courts Act 32 of 1944, the Surety consents to the jurisdiction of the Magistrate's Court otherwise having jurisdiction in respect of any action to be instituted against the Surety by the Creditor in terms hereof. It shall nevertheless be entirely within the discretion of the Creditor as to whether to proceed against the Surety in such Magistrate's Court or any other Court having jurisdiction.
16. If any dispute arises between the Debtor and the Creditor and the Debtor contends that any obligation is not due and owing or that the Debtor has a counterclaim against the Creditor whether liquidated or not, brought in the same or other proceedings, including proceedings in another jurisdiction then the Surety:
 - 16.1. will accept the written contention of the Creditor that such obligation is due and owing; and
 - 16.2. waives any defence or contention which the Debtor may raise; and
 - 16.3. shall pay the amount or perform the obligation claimed forthwith.
 - 16.4. The Creditor shall repay to the Surety any amounts paid to the extent that a Court of competent jurisdiction (including any Appeal Court) finally determines that the contentions of the Debtor are correct. The amount paid shall be repaid free of interest up to the date of final judgment.
17. The Surety shall be responsible for all charges and expenses of whatsoever nature incurred by the Creditor in securing the performance of the obligations of the Debtor or the Surety, or enforcing the rights of the Creditor, including, without limitation, all legal costs, including attorney and own client costs, collection commissions and fees of tracing agents.
18. The Surety waives and renounces:
 - 18.1. any right to claim an accounting from the Creditor before making payment;
 - 18.2. any benefits which the Surety as surety is entitled to in law, without detracting from the generality of the a foregoing, including the benefits of excussion; division; cession of action; and or being sued together.
 - 18.3. the Surety acknowledges that it knows and understands the meaning and full force and effect of such benefits.
19. If there are two or more Sureties the Creditor shall be entitled to sue any Surety it elects and no other Surety may join in such action without the consent in writing of the Creditor. It is however specifically



noted that this Deed of Suretyship is limited on a pro rata basis to the shareholders of Arista Dairies, from time to time.

20. It is agreed that each suretyship given, each paragraph, each clause and subclause, each obligation of the Surety, each waiver and acknowledgement and each right of the Creditor in this suretyship is severable, the one from the other. If any suretyship, paragraph, clause, subclause, obligation, waiver or acknowledgement or right is found to be defective or unenforceable for any reason by any competent Court, the remaining suretyships, paragraphs, clauses, subclauses, obligations, waivers and acknowledgements and rights shall continue to be of full force and effect.

21. The Surety acknowledges that:

21.1. this suretyship was completed in all respects when the Surety signed it;

21.2. the rights and obligations of the various Creditors, Debtors and Sureties have been incorporated into one document for convenience only and the failure of any Surety or Debtor:

21.2.1. to execute this suretyship notwithstanding that such Surety or Debtor is reflected herein as a party;

21.2.2. to be bound by this suretyship for any reason after execution;

shall not vitiate, diminish or affect the obligations of any other Surety or the rights of the Creditor, it being agreed that the liability of the Surety is not dependent, wholly or in part, on the liability of any other Surety or intended Surety.

22. For the purposes of this suretyship, including the giving of any notice required or permitted hereunder and any proceedings which may be instituted by virtue hereof, the Surety chooses as *domicillium citandi et executandi* its address for the service of notices, processes and execution the physical address mentioned under his/her signature.

THIS DONE AND SIGNED AT _____ ON _____

Witnesses:

1. _____

Address: _____

2. _____

THIS DONE AND SIGNED AT _____ ON _____

Witnesses:

1. _____

Address: _____

2. _____



Terms of Trade of Inca Concrete Products (Pty) Ltd "THE COMPANY"

WARRANTY: The Company warrants that

- only the quantity, invoice value and description of the product stated on the delivery note is correct.

LIABILITY: The Company

- will not be liable for any costs immediate or contingent arising out of the use of defective or incorrect specified products.

- will not be liable for contingent costs arising out any disputed transaction of failure to deliver on time, incorrect product, etc.

- is not responsible or liable for damage caused by the transport operator. Deliveries are expedited by independent transport contractors that are independent entities.

- reserve the right to cancel a contract should the Company be unable to fulfill its obligations by reason of force majeure, Act of God, Government edict, strikes, riot, civil commotion, and other reasons outside of its immediate control.

CLAIMS

Any claim for defective products or disputes on quantity or other disagreements must be raised within 48 hours of delivery and submitted in writing. The maximum claim will not exceed the invoiced value of the products.

DISPUTE

Where a dispute cannot be resolved by negotiation then the Company reserves the right to appoint an arbitrator to adjudicate. Legal action will not be taken until all alternate solutions have been exhausted.

OWNERSHIP

The ownership of the delivered product only passes on to the receiver once payment has been received.

PAYMENT

Unless otherwise agreed, all sales and discounts are based on payment being received within 30 days of statement date.

Cheques to be made out to INCA CONCRETE PRODUCTS (Pty) Ltd as reflected on the statement.

CREDIT FACILITIES

A credit facility will only be provided on submission of a proper application and the selling company is able to obtain suitable surety of information confirming the client's creditworthiness. Notwithstanding the aforementioned credit facility may be withdrawn immediately should the credit department deem the client to have become a financial risk, or the client exceeds the stipulated credit terms.

