

ITR SOUTH AFRICA EARTHMOVING (PTY) LTD

Trading as ITR SOUTH AFRICA
Company Reg No: 2015/327911/07

APPLICATION FOR CREDIT FACILITIES INCLUDING SEPARATE DEED OF SURETYSHIP

Please also include the following documentation with the completed credit application:

- ✓ Statutory documentation (registration documentation):
Close corporation: founding statement (CK1) and notice of registered office and postal address (CK2);
Company: Certificate of incorporation (CM1) and Certificate to commence business (CM44);
Trust – certified copy of Trust deed and all acceptances of Trust;
Company not for gain – certified copy of Memorandum.
 Copy of ID document of all members, directors, proprietors or trustees and sureties
- ✓ Proof of current residence (sole proprietors) or copy of Company letterhead showing physical address
- ✓ Copy of VAT registration certificate
- ✓ Cancelled cheque or letter from the bank

FOR OFFICE USE ONLY				
Credit Limit Approved	Date Approved	Insured (Y/N)	Signature: Credit Control	Signature: Director



**APPLICATION FOR CREDIT FACILITIES INCLUDING SEPARATE DEED OF SURETYSHIP
ITR AFRICA EARTHMOVING (PTY) LTD
(REGISTRATION NUMBER 2004/021223/07)
TRADING AS ITR AFRICA ("ITR")**

CLIENT DETAILS									
Registered Name									
Trading Name				Date Established					
Registration No				VAT Registration No					
Type of Entity	Company		Close Corporation		Sole Proprietor		Partnership		Trust
Nature of Business	Mining		Construction		Agriculture		Plant Hire		
Registered Address									
Postal address									
Delivery Address									
Premises	Owned		Rented		Landlord Name & Tel				
Telephone No					Cell No				
Email Address					Fax No				
Contact: Buying					Contact: Accounts				
Auditor Name & Tel									
Bank					Branch				
Account number					Type of Account				
Name of Account									

DETAILS OF EACH DIRECTOR/MEMBER/PROPRIETOR/PARTNER/TRUSTEE OF THE CLIENT					
Full Name	Reg/ID No	Citizenship	Capacity	Residential Address	Contact number

TRADE REFERENCES OF THE CLIENT		
Trading Name	Monthly Amount Spent	Contact Person & Tel

CREDIT TERMS REQUIRED BY THE CLIENT						
Number of days after statement date				Proposed monthly purchases		Total credit facility required
	30		60		90 days	

TRADE REFERENCES OF THE CLIENT			
Has the Client or any of its Proprietors/Partners/Directors/ Members/Trustees been declared insolvent or placed under liquidation within the last 5 years?	Yes	No	If yes, provide details:
Does the Client or any of its Proprietors/Partners/Directors/ Members/Trustees have any civil or criminal judgments against them or any suits pending	Yes	No	If yes, provide details:
Have any moratoriums or offers of compromise ever been made by the Client to any creditors?	Yes	No	If yes, provide details:

THE CLIENT AND ITS SIGNATORIES WARRANT THAT ALL DETAILS SUPPLIED ABOVE ARE TRUE AND CORRECT

Please also include the following documentation with the completed credit application:

- ✓ If a Close Corporation, Founding statement (CK1) & Notice of registered office & postal address (CK2);
- ✓ If a Company, Certificate of incorporation (CM1) and Certificate to commence business (CM44);
- ✓ If a Trust, a certified copy of Trust deed and all acceptances of Trust;
- ✓ Copy of ID document of all members, directors, proprietors, trustees and sureties
- ✓ Proof of current residence (sole proprietors and partnerships)
- ✓ Copy of Company letterhead showing physical address (companies, CCs and trusts)
- ✓ Copy of VAT registration certificate (if a registered vendor)
- ✓ Cancelled cheque or letter from the bank confirming account name and number

Initials _____



TERMS AND CONDITIONS

The Client hereby applies for credit facilities for the sale and delivery of goods by ITR AFRICA EARTHMOVING (PTY) LTD (Registration Number: 2004/021223/07) trading as ITR AFRICA ("ITR") which facility, if granted, will be subject to the provisions hereunder.

1. CREDIT FACILITY TERMS

- 1.1 Accounts shall be paid, free of set-off or deduction, within 30 (THIRTY) days from date of issue of invoice.
- 1.2 Overdue accounts shall:
 - 1.2.1 bear interest at the maximum rate permissible by law;
 - 1.2.2 entitle ITR, without prejudice and additionally to any other rights, to suspend supply of services or goods until the account is brought up to date, and to reverse any trade or early settlement discount which may have been allowed in respect of the transactions for which payment is overdue;
 - 1.2.3 automatically suspend any rights which the CLIENT may have been given in respect of goods sold.
- 1.3 Indebtedness to ITR shall be determined and proved by a certificate signed by ITR. It shall not be necessary to prove the appointment or authority of the person signing such certificate which shall be binding on the CLIENT and shall be prima facie proof of the fact of such indebtedness, that same is due and payable, that delivery occurred, the prices applicable to such delivery, the applicable rate of interest and the veracity of any other fact set out therein, at the date of signature of such certificate, which certificate shall constitute a liquid document for the purposes of provisional sentence or summary judgment.
- 1.4 Notwithstanding the acceptance of this application, the nature, extent, duration and very existence of any credit facilities which may be granted to the CLIENT from time to time shall always remain in the sole discretion of ITR.
- 1.5 In the event of the CLIENT at any time:
 - 1.5.1 exceeding the credit limit; or
 - 1.5.2 not paying any amount on due date; then ITR has the right, without detracting from any other rights ITR has at law, to refuse to render any further services and/or supply any further goods to the CLIENT without incurring any liability in respect of such refusal.
- 1.6 Should the CLIENT be of the opinion that incorrect debits were raised on a monthly statement of account, then the CLIENT shall:
 - 1.6.1 query such debits by means of a written reconciliation statement; and
 - 1.6.2 lodge such query on or before the 25th day of the month following the month in respect of which the debit relates; Notwithstanding anything to the contrary herein, all debits appearing on the statement of account shall be deemed to be correct and lawfully raised against the account. The CLIENT shall, despite any query, continue to make payment in accordance with the monthly statement pending resolution of the query.
- 1.7 ITR shall be entitled to allocate and/or reallocate any payments received from, or credits granted to THE CLIENT, towards any obligation owed by THE CLIENT and, until so allocated, all such payments or credits shall be deemed to have been allocated to such debt/s as would most favour ITR in such allocation.
- 1.8 THE CLIENT shall not be entitled to set off any amount which it may allege is claimable by it from ITR against any amount which may be payable by

it to ITR.

2. SECURITY

- 2.1 The CLIENT shall, if called upon to do so by ITR, furnish ITR with such form of security which ITR, in its sole discretion considers to be adequate and the CLIENT shall complete all such documentation as may be required in respect of such security.
 - 2.2 Ownership in all goods sold shall, notwithstanding delivery, remain vested in ITR until fully paid and ITR shall be entitled, without prejudice and additionally to the other rights of ITR in law, to the repossession of such goods at the risk and expense of the CLIENT. Goods supplied shall not accede to any principal object until fully paid for.
- ### 3. TRADING TERMS
- 3.1 An invoice issued by ITR shall be prima facie proof of the description and quantity of the goods sold and delivered by ITR to the CLIENT and the price of such goods.
 - 3.2 Risk in goods shall pass to the CLIENT upon tender thereof by ITR and ITR shall not be responsible for any goods purchased by the CLIENT which are held or stored on the premises of ITR for whatever reason, and all risk in such goods shall remain with the CLIENT.
 - 3.3 Under no circumstances shall ITR be responsible for loss of profit to the CLIENT or for any consequential or indirect or any other damage or loss of any nature whatsoever and from whatever cause arising.
 - 3.4 Unless expressly stated in writing, time shall not be of the essence in any contract between the CLIENT and ITR.
 - 3.5 Save for the written guarantee given by ITR to the CLIENT, it is understood that the goods are sold to the CLIENT voetstoots and that ITR gives no guarantees or warranties express or implied, nor makes any representation of any nature whatsoever in regard to the fitness of the goods for the purpose for which they are purchased, whether such purpose be known to ITR or not. Where the goods supplied have not been manufactured by ITR, no guarantees or warranties of any nature whatsoever given at by the manufacturer shall be binding on ITR. The goods supplied are subject to the Warranty / Guarantee offered by the manufacturer of the goods, ITR being a dealer for the manufacturer.
 - 3.6 ITR shall not be liable in any way for losses, damages or delays caused by or arising from this agreement, vis major, casus fortuitus, riots, strikes, lockouts, transport or other delays, accidents, insurrection, war, national or international political unrest, the imposition of any trade boycotts or sanctions or trade restrictions, or any other cause or contingency whatsoever.
 - 3.7 If the execution of any order placed by the CLIENT is delayed by the CLIENT or ITR agreed to its cancellation, ITR, shall, without prejudice and in addition to any of its other rights in law, be entitled to any expenses and/or loss suffered.
 - 3.8 Should ITR in its sole discretion agree to accept the return of any goods for the credit of the CLIENT, the CLIENT shall be liable to pay a handling charge of 15% on the gross invoiced price of the goods returned.

4. GENERAL

- 4.1 The CLIENT hereby consents, in terms of Section 45 of the Magistrate's Court Act No. 32 of 1944 (as amended) to the jurisdiction of the Magistrate's Court in respect of any action which may be instituted by ITR, notwithstanding the amount at issue. ITR may, at its sole and absolute discretion, refer any dispute arising from or in connection with this document, to be finally resolved in accordance with the Rules of the Arbitration Foundation of Southern Africa by an arbitrator appointed by the said Foundation. Any such arbitration proceedings shall be conducted in Sandton, South Africa.
- 4.2 The CLIENT selects its physical address as appears on the first page of this application as its domicilium citandi et executandi for all purposes hereafter relative to ITR.
- 4.3 Should ITR instruct its attorneys to collect any overdue debts, or to take any action against the CLIENT in the implementation or protection of its rights, ITR shall be entitled to the recovery of all legal costs arising therefrom including but not limited to tracing agents fees, collection commission, settlement negotiations, on the scale as between attorney and client.
- 4.4 Any change in the CLIENT, including change of status, shall not prejudice ITR in respect of trading with the CLIENT and/or its successors thereafter and all persons liable to ITR in terms of this application shall continue to be liable with the CLIENT and/or its successors jointly and severally thereafter as co-principal CLIENTS, no less than subsisted prior to the change.
- 4.5 The CLIENT shall not be entitled to cede or assign any of its rights, title or interest in and to the credit facility without the prior written consent of ITR.
- 4.6 These Standard Credit and Trading Terms supersede and novate all prior agreements and undertakings between ITR and the CLIENT if in conflict herewith. All contracts, transactions and dealings without exception between ITR and the CLIENT shall be strictly subject to these Standard Credit and Trading Terms. The CLIENT hereby agrees that any apparent or purported or attempted exclusion, substitution or variation of any of these terms and conditions by the CLIENT in its orders or in any other way, shall not be effective notwithstanding the fact that ITR may accept such orders from the CLIENT and these Standard Credit and Trading Terms and Conditions shall stand unaffected thereby as if such apparent or purported or attempted exclusion, substitution or variation, was pro non scripto.
- 4.7 The rights of ITR arising herefrom shall not be capable of being varied or waived save by written document signed by ITR who shall not be prejudiced or estopped from exercising any of its rights by reason of any relaxation or indulgence which it may afford the CLIENT.
- 4.8 Should the CLIENT be domiciled outside the Republic of South Africa, in the event of any dispute or claim whatever arising between ITR and the CLIENT such dispute or claim shall be determined and enforced exclusively under and in accordance with South African Law and by a South African Court or Tribunal, and the parties submit to any such order of a South African Court or Arbitration Tribunal upon its mere presentation.

TRADE REFERENCES OF THE CLIENT

Full Name		Signature of Client (who warrants that he/she is duly authorised to do so)
Capacity		
Date		
Witness Full Name		Signature of Witness
Residential Address		
Date		

ACCEPTANCE BY ITR OF TERMS AND CONDITIONS

Full Name		Signature of ITR (who warrants that he/she is duly authorised to do so)
Capacity		
Date		

DEED OF SURETYSHIP AND CO-PRINCIPAL DEBTORSHIP
ITR AFRICA EARTHMOVING (PTY) LTD (REGISTRATION NUMBER 2004/021223/07)
TRADING AS ITR AFRICA ("ITR")

I, the undersigned,

Full name of individual or legal entity providing the surety

ID Number of individual / Registration No of legal entity providing surety

Of

Full address – residential in the case of an individual and business address in the case of a legal entity

do hereby bind myself jointly and severally to **ITR AFRICA EARTHMOVING (PTY) LTD trading as ITR AFRICA ("ITR")** as surety for and co-principal debtor/s in solidum with

Full Name of Client

ID Number / Registration number (as applicable)

Of

Full address – residential in the case of an individual and business address in the case of a legal entity

(the "Client")

for the due and timeous discharge of all the CLIENT'S obligations to ITR arising from any agreement entered into between ITR and the CLIENT as well as in respect of any indebtedness by the CLIENT to the ITR of whatsoever nature.

I further agree that:

1. The granting of extensions of time, the release of any security, any variation of the principal debt, acceptance of a compromise or composition, or the granting of any form of indulgence whatsoever by ITR shall not in any way prejudice ITR'S rights to recover from me in terms of this Deed of Suretyship and Co-principal Debtorship.
2. All ITR'S rights, without exception, applicable against the CLIENT shall mutatis mutandis be equally applicable against me, I being deemed to be the CLIENT thereunder, as if ab initio and at all times I had been liable as primary co-principal debtor with such CLIENT in favour of the ITR.
3. In the event that any legal proceedings are instituted against me by ITR, I hereby consent to the jurisdiction of the courts in the Republic of South Africa and agree that any such legal proceedings shall take place in the Republic of South Africa and that South African law shall apply to any disputes or legal proceedings arising herefrom.
4. I consent, in terms of Section 45(1) of the Magistrate's Court Act No. 32 of 1944 as amended, to the jurisdiction of the Magistrate's Court in the Republic of South Africa in respect of any legal proceedings which may be instituted against me arising here from, notwithstanding that the amount of the claim in dispute may, but for this consent, exceed the jurisdiction of such Court. The provisions of this consent constitute a right to, not an obligation on, ITR who shall not be precluded by reason thereof from instituting any proceedings against me in a Superior Court situated in the Republic of South Africa should ITR in ITR'S sole and absolute discretion so desire.
5. As an alternative to the legal proceedings referred to above, ITR shall be entitled at its sole discretion to refer any matter or dispute to arbitration. In such event, ITR shall refer the matter or dispute to the Arbitration Foundation of Southern Africa, based in Sandton, Johannesburg ('AFSA') and shall request the chairman of AFSA's management committee, failing him a similarly empowered person, to appoint an arbitrator. The arbitration shall follow AFSA's expedited rules and the arbitrator's decision shall be final and binding on the parties. The arbitration shall take place in Sandton at AFSA's offices. The arbitrator shall determine the matter or dispute in terms of South African law and I consent to South African jurisdiction to determine the matter or dispute.
6. A Certificate by ITR shall prima facie determine and prove my indebtedness arising here from at any time and the fact of such indebtedness. It shall not be necessary to prove the appointment or authority of the person signing such Certificate on behalf of ITR. The Certificate shall be binding on me and shall be prima facie proof of the fact of my indebtedness, of the amount thereof and that same is due and payable at the date of signature of such Certificate, the production of which shall discharge any onus of proof which may rest on ITR to prove any fact certified therein. Such Certificate shall serve as a liquid document in any competent court for the purpose of obtaining provisional sentence or summary judgment against me thereon.
7. The stamp duty (if any) attracted by, and the costs (as between attorney and own client) incurred by and incidental to the preparation and execution of this document, shall be payable by me to ITR on demand.
8. The address appearing under my name above shall be my domicilium citandi et executandi for all purposes in respect of this Deed of Suretyship and Co-principal Debtorship including the service of all documents, notices and legal process.
9. In the event of ITR instructing an attorney to take action (or any steps whatever) arising from this Deed of Suretyship and Co-principal Debtorship, the costs and collection charges of such attorney shall be paid by me on the scale as between attorney and own client.
 - a. As collateral security, I hereby cede to ITR any claims of whatever nature which I now or hereafter have against the CLIENT.
 - b. The surety, or each surety if there should be more than one surety, shall be individually and separately bound regardless of the failure of any otherperson to sign this Deed of Suretyship and Co-principal Debtorship as a surety, as contemplated, intended or agreed.
 - c. No surety shall be released from this Deed of Suretyship and Co-principal Debtorship or released from any obligations hereunder because any other surety is for any reason not bound by this suretyship.
 - d. Should there be more than one surety, then each of them separately shall be jointly and severally bound by this Deed of Suretyship and Co-principal Debtorship as surety and co-principal debtor in solidum.
 - e. Neither the termination of the Deed of Suretyship and Co-principal Debtorship by any surety, nor the release of any surety from this Deed of Suretyship and Co-principal Debtorship, shall release any other surety from this Deed of Suretyship and Co-principal Debtorship, and each other surety shall remain fully bound as surety and co-principal debtor.
10. Should there be more than one surety then all references in this Deed of Suretyship and Co-principal Debtorship to the surety shall, unless the context otherwise requires or indicates, be construed as references to all of the sureties, jointly and severally.
11. It is agreed and declared that all admissions and acknowledgements of indebtedness by the CLIENT shall be binding on me; that ITR shall be at liberty, without affecting the rights of ITR hereunder, to release securities and to give time to compound or make any other arrangements with the CLIENT or other person or persons, company or companies aforesaid, without reference to me or my approval and that in the event of sequestration, liquidation, judicial management or compromise, no such sequestration, liquidation, judicial management or compromise and no dividend/s or payment/s which ITR may receive from the CLIENT or any person/s company or companies, or from me shall prejudice the rights of ITR to recover from me to the full extent of the Deed of Suretyship and Co-principal Debtorship any sum which, after the receipt of such dividend/s or payment/s may remain owing by the CLIENT.

Initials _____

12. In the event of any sequestration, liquidation, judicial management, or any compromise by the CLIENT, whether in terms of the Company Laws or Common Law, I undertake not to file any claim against the CLIENT in competition with ITR.
13. I hereby renounce the benefits of the legal exceptions being excussion (a defence used by the surety that the ITR shall recover from the principal debtor before proceeding against the surety) "non causa debiti" (a defence used by the surety that there is no reason for the obligation to pay the Principal Debt) and "revision of accounts" (a defence which can be taken by the surety relating to an amendment of the account), the full force and effect of which said benefits I acknowledge myself to be fully acquainted, and I agree and declare that this Deed of Suretyship and Co-principal Debtorship is to be in addition and without prejudice to any other suretyship/s and security/ies now or hereafter to be held by ITR and that it shall remain in force as a continuing security notwithstanding any intermediate settlement of account and notwithstanding my legal disability.
14. This Deed of Suretyship and Co-principal Debtorship shall remain of full force and effect for so long as the CLIENT is indebted to or under any obligation or commitment to ITR and I shall not be entitled to withdraw or cancel the Deed of Suretyship and Co-principal Debtorship.
15. I hereby waive presentment, notice of dishonour and protest of any promissory note, bill of exchange, cheque or other negotiable instrument made, drawn, accepted, endorsed or discounted by the CLIENT, or to be so made, drawn, accepted, endorsed or discounted, hereby agreeing and admitting that my liability hereunder in respect of any such instrument shall not be in any way be affected by any failure to present or to give notice of dishonour or to protest as aforesaid.
16. Reference herein to the singular shall include the plural and vice versa.
17. I agree that no variation, alteration, consensual cancellation or amendment, to any of the terms and conditions stated in this Deed of Suretyship and Co-principal Debtorship shall be of any force or effect, unless such variation, alteration, consensual cancellation or amendment is reduced to writing and is signed by the parties' representatives, both of whom shall be directors.

ACCEPTANCE BY CLIENT OF SURETYSHIP AND CO-PRINCIPAL DEBTORSHIP		
Full Name		Signature of Surety and Co-Principal Debtor (who warrants that he/she is duly authorised to do so)
Capacity		
Date		
Full Name		Signature of Surety and Co-Principal Debtor (who warrants that he/she is duly authorised to do so)
Capacity		
Date		
Full Name		Signature of Surety and Co-Principal Debtor (who warrants that he/she is duly authorised to do so)
Capacity		
Date		
Full Name		Signature of Surety and Co-Principal Debtor (who warrants that he/she is duly authorised to do so)
Capacity		
Date		
Full Name		Signature of Witness
Capacity		
Date		