

PRE-AGREEMENT STATEMENT FOR A INSTALMENT SALE AGREEMENT OUTSIDE THE NCA

WARNING: If you are not certain of your rights, financial risk and obligations after reading this Agreement, which is made up of the Quotation, the Information Statement, the Pre-Agreement Statement, and these terms and conditions, (which are identical to the Pre-Agreement Statement), we recommend that you obtain further advice. By signing these terms and conditions and the Quotation, you acknowledge and agree that you understand this Agreement, and all of your rights, the financial risk and obligations arising out of this Agreement.

TERMS AND CONDITIONS FOR THIS INSTALMENT SALE AGREEMENT

1. Definition

1.1 **"The / this Agreement"** means this Instalment Sale Agreement, which is comprised of these terms and conditions and the Schedule attached.

1.2 **"CPA"** means the Consumer Protection Act, 68 of 2008.

1.3 **"Companies Act"** means the Companies Act 71 of 2008.

1.4 **"Due date"** shall mean the date on which an instalment is due, as set out in the Quotation/Cost of Credit or Debit Order Authorisation, except where such day falls on a Sunday or public holiday, in which event, the Due Date shall be the first business day immediately BEFORE that date.

1.5 **"Insolvency Act"** means the Insolvency Act 34 of 1936.

1.6 **"Insolvency Event"** means a meeting of directors, shareholders or trustees, as the case may be, to decide the passing of a resolution, or a resolution is passed for the administration, custodianship, bankruptcy, liquidation, sequestration, winding up, judicial management, dissolution or for the commencement of business rescue proceedings as set out in the Companies Act, or an act of insolvency in terms of the Insolvency Act.

1.7 **"Interest"** charges are levied on the principal debt, expressed as a percentage and specified in the Schedule, and which shall be one of the following:

A fixed nominal rate compounded monthly ("**NACM**"); or

A variable NACM equivalent to the Prime Rate (as defined hereunder) plus / minus so many percentage points as specified and calculated monthly.

1.8 **"Goods"** means the Goods as more fully described in the Schedule and which Goods form the subject matter of this Agreement.

1.9 **"Material Adverse Effect"** means a substantial change in your shareholding and/or interest and/or a change in your circumstances which, in the reasonable opinion of Wesbank, has or will have a material adverse effect on:

- * your financial condition, business or operations and/or of your surety; and/or
- * your ability and/or the ability of your surety to perform the financial or other material obligations under this Agreement.

1.10 **"Prime Rate"** means the interest rate (percent, compounded monthly) from time to time published by FirstRand Bank Limited, an authorised Financial Services Provider, as being its minimum overdraft rate, as certified by any manager of the Bank whose appointment and designation need not be proved.

1.11 **"WesBank, a division of FirstRand Bank Limited"** means WesBank, a division of FirstRand Bank Limited an authorised financial services and credit provider.

1.12 **"VAT"** means value added tax in terms of the Value-Added Tax Act 89 of 1991, at the rate as set out in that Act or as it may be from time to time;

2. Acknowledgement relating to ownership of the Goods

2.1 If the Seller is not WesBank, a division of FirstRand Bank Limited, you acknowledge that the Seller may cede all its rights in and to the Agreement and the Goods, to WesBank, a division of FirstRand Bank Limited. If the Seller does so, you agree to recognise WesBank, a division of FirstRand Bank Limited as the Seller and the new owner of the Goods and to hold the Goods on behalf of WesBank, a division of FirstRand Bank Limited. You further agree that the Seller has made no representations, warranties or promises to you regarding the Goods.

2.2 Whenever WesBank, a division of FirstRand Bank Limited is the Seller then you acknowledge that when you take delivery of the Goods you will do so on behalf of WesBank, a division of FirstRand Bank Limited, and that you have selected and approved the Goods, and that the Goods are fit for the purpose for which you intend using them.

2.3 The Seller sells the Goods to you on the terms and conditions of this Agreement. You acknowledge that you have inspected the Goods and are satisfied that they are in good condition and meet with all your requirements, and that the Seller shall not be liable to you for any latent defects in and to the Goods.

2.4 If you have signed this Agreement together with any other person/s as Buyer, each of you will be liable to the Seller in full.

2.5 The risk in and to the Goods will pass to you on signing the Agreement or on taking delivery of the Goods whichever the earlier.

3. Early Settlement of the Agreement

3.1 You may only settle this Agreement early if the Seller agrees to this and any reduction of finance charges will be at the sole discretion of the Seller.

4. Ownership and responsibility for the Goods

4.1 Should the Goods be a motor vehicle, they will be registered in the Seller's name as "title holder" and in your name as "owner", and you must keep the Goods in good and roadworthy condition, all at your own cost.

4.2 The Seller will remain the legal owner and titleholder of the Goods until you have paid all the amounts due under this Agreement.

4.3 Ownership in and to the Goods will pass to you when you have paid the Seller all the amounts due under this Agreement in full.

4.4 In the case of the Goods being a motor vehicle, you will need to complete a change of ownership form and give this to the Licensing authorities. The Seller will send a signed change of ownership form to you, once you have paid the Seller all amounts due.

5. Your licensing and insurance requirements

5.1 You must at all times keep the Goods comprehensively insured with a registered insurer of your choice to at least the market value of the Goods, and against all insurable risks, loss and damage. Please note the following:

5.1.1 You must ensure that the Seller's interest is noted on the policy by the Insurance company;

5.1.2 You must give the Seller proof of insurance within 7 days of the Seller requesting it;

5.1.3 If you do not give the Seller proof that you have insured the Goods, the Seller may insure the Goods on your behalf (but it is not obliged to do so) and to recover the premium from you in cash or add the premium to the balance outstanding under this Agreement and to recover such premium in instalments over the remaining period of the Agreement;

5.1.4 If the premium of the insurance is added to the balance outstanding under the Agreement, it will bear interest at the same rate as specified in the Schedule; and

5.1.5 You will transfer your rights, if required, to any such comprehensive or life insurance policy to the Seller;

5.2 You will be responsible for the licensing and registration of the goods as well as the costs thereof,

6. Your payments and related matters

6.1 When signing this Agreement you must make the payment of the first instalment or pay the required deposit set out in the Schedule. All installments you make thereafter should be made to the Seller at the address and on the Due Dates as set out in the Schedule.

6.2 All instalments you make thereafter should be made to the Seller at the address and on the dates set out in the Schedule. You must ensure that the Seller receives the full amount of each instalment stipulated on the Schedule and you may not deduct any amounts from this.

6.3 In the event should you elect to change your payment due day the future instalment amounts may vary.

6.4 If you have elected a variable interest rate, the interest rate reflected on the Schedule will rise and fall in accordance with any changes in the prime rate. Any such changes will take place immediately and the Seller will notify you of any such changes as soon as it is reasonably practical to do so.

6.5 Should you fail to make payment of any amount on the due date you will pay interest on the amount you should have paid at the maximum permissible rate prescribed under the Usury Act no 73 of 1968, or the National Credit Act no 34 of 2005, whichever is applicable.

6.6 You agree that the Seller may provide a certificate from one of its managers, whose position it will not be necessary to prove, showing the amount due to the Seller and how it is calculated. Unless you disagree with such amount and are able to satisfy the court that the amount in the certificate is incorrect, you agree that the Seller may take any judgment or order it is entitled to in law based on the facts contained in the certificate, or such amount as the court may find to be due.

6.7 You agree that the conduct of your account can be reported to credit bureaux (or any other company within the FirstRand Limited Group without further consultation).

6.8 You agree to pay a monthly service fee which will be charged on the due date, for the routine monthly administration of your account. If you do not pay this fee on time, it will be added to the outstanding balance and interest will be charged thereon.

6.9 If any fees and/or charges and/or interest rate changes occurring, you agree that we are authorised to effect the relevant change to your repayments in terms of your debit order authority.

7. Use of the Goods

7.1 You must keep the Goods in your possession or under your control at all times and you must maintain the Goods in good working condition at your expense. If the Goods are not kept at your stated address then you must inform the Seller of the address where they are kept.

7.2 You may not give the Goods to any other person or sell, let, loan, pledge or transfer the Goods to another without the Seller's written approval and you must not allow the Goods to become subject to any attachment or any legal claim by any third party.

7.3 Should the Goods be a motor vehicle, you and any other person who uses the motor vehicle with the Seller's approval, must only operate the motor vehicle within the law and must be fully qualified and licensed to drive the motor vehicle.

7.4 You may not modify the Goods in any way without the Seller's approval and any accessory or part you add to the Goods will become the property of the Seller, for which the Seller will not have to pay or carry any liability.

7.5 You will allow the Seller or a representative of the Seller to inspect the Goods at any reasonable time and arrange for access to the Goods if necessary.

7.6 If the subject of this Agreement is not a motor vehicle but some other movable property you must ensure that the Goods never become part of or accede to any other property where the Goods are kept.

7.7 You must comply with all local environmental legislation, standards and practices in respect of your use of the Goods.

8. Notification to Landlord, owner and mortgagee

8.1 If the Goods are to be kept on the premises that do not belong to you, you must inform the landlord, owner or mortgagee of the property in writing that the Goods belong to the Seller. This must be done on the date of signature of this Agreement.

8.2 Upon signing this Agreement you must give the Seller the name and

address of the landlord, owner or mortgagee and you must notify the Seller should the landlord, owner or mortgagee change. Specified maturity by reason of default, or if not paid when due.

8.3 The Seller may inform the landlord, owner or mortgagee of its ownership of the Goods if you fail to do so, or request you to obtain a written acknowledgement from the landlord, owner or mortgagee acknowledging the Seller's ownership in and to the Goods.

9. Restriction on movement of Goods

9.1 You may not take the Goods out of the Republic of South Africa without the prior written consent of the Seller.

10. Event of Default

10.1 An event of default will occur if any agreements or facilities you, your surety or your associated companies, have with FirstRand Bank, or any division of the FirstRand Bank, or any division of the FirstRand Bank, become due and payable prior to its specified maturity by reason of default, or if not paid when due.

10.2 You acknowledge that:

10.2.1 Wesbank is providing finance under the Agreement based on the law applicable to you and your financial position and circumstances, and of your surety, at the time of entering into the Agreement, as well as the industry and environment within which it/they operate at the time; and

10.2.2 a change in the law and/or your (and your surety's) financial position, circumstances and/or the industry or environment within which you operate may have the effect of altering the basis upon which the Agreement was or is given and secured.

10.3 If an event or circumstances or series of events or circumstances occurs (including without limitation a change in law or financial position) which has or may have a Material Adverse Effect, Wesbank may at its election, by giving you written notice, change the terms of this Agreement and/or regard such Material Adverse Effect as being an event of default of this Agreement.

10.4 If Wesbank elects to change the terms of the Agreement and you do not accept the new terms proposed, within the period advised in the written notice in clause 10.3, then the provisions of clause 11 below will apply.

11. Breach

11.1 If you fail to comply with any of the terms and conditions of this Agreement (all of which you agree are material), or fail to pay any amounts due to the Seller, or commit an Insolvency Event or an Event of Default, or you have made misleading statements to the Seller at any time, or you allow any judgement, that has been taken against you to remain unpaid for more than seven days, or if you use the Goods in contravention of the law, or if you, being a juristic person undergo a restructure, then the Seller will have the right (without affecting any of its other rights) To:

11.1.1 Claim from you the amount which the Seller would have been paid had you fulfilled all your obligations under this Agreement. To this end, the Seller will be entitled to cancel the Agreement, to take the Goods back, sell the Goods, keep all instalments you have made and claim any balance (if any) from you as damages; or

11.1.2 Claim immediate payment of the full amount that the Seller could claim in terms of the Agreement, as if it was then due by you

11.2 Determine the value of the Goods, if necessary you will bear the cost of the appraiser and you will accept the valuation as final and binding

11.3 The Seller will choose the appraiser

12. Termination on Total Loss of the Goods

If the Goods are disposed of by you, lost or stolen and not recovered within 21 days or are destroyed or damaged beyond economic repair, then this Agreement shall come to an end immediately and the provisions of clause 10 shall apply.

13. Indulgence

Should the Seller not have insisted that you strictly follow any of the terms and conditions of this Agreement at any previous stage you may not assume that the terms and conditions have been altered. These terms and conditions will still apply.

14. Entire Agreement

This is the whole Agreement and no changes may be made to it unless these changes are in writing and signed by both you and the Seller or are

voice logged by you and the Seller.

15. Cession and Assignment

15.1 You may not transfer this Agreement or any of your rights to any other party unless the Seller agrees to this.

15.2 The Seller may, with or without further notification to you, transfer its rights and obligations in and to this Agreement and ownership in and to the Goods to any other person and you agree that you will recognize the transfer and will continue to hold the Goods for the new Seller, and fulfil your obligations to the new Seller.

16. Costs

16.1 You agree to be liable for the costs related to preparing this Agreement. The Initiation fee may be financed and therefore included in the Principal Debt, or paid in cash up front.

16.2 You agree to pay all legal costs on the scale as between an attorney and own client as well as any collection costs (including without any limitation any costs and disbursements incurred under the Debt Collectors Act, any disbursements, administrative and collection charges levied by us,) as well as collection commission on any payments made if the matter is referred to a debt collector or an attorney, that may arise in connection with your failure to comply with any of the terms and conditions of this Agreement.

17. South African law to apply

You agree that the laws of the Republic of South Africa shall apply to this Agreement and that the Magistrates Court shall have jurisdiction over any proceedings that may arise from this Agreement unless the Seller chooses the High Court.

18. Addresses

18.1 You agree that the addresses given on the Schedule to this Agreement shall be the place to which all post, notices or other communication are to be sent to you and you agree that such communications shall be binding on you.

18.2 You must notify the Seller immediately in writing of any change to your address and any new address you give must be a physical address in South Africa. If you fail to give notice of a change of address the Seller may use the address it has for you, for all purposes, even if you are no longer there

18.3 You accept that you will be deemed to have received a notice or letter 5 days after posting to the address you have given.

19 Take-a-Break

19.1 If you have elected the "Take-a-Break" repayment plan, then you acknowledge that:

19.2 You may only enjoy this benefit 12 (twelve) months after the commencement date of this Agreement; and

19.3 You must elect the month in which you want to "Take-a-Break" on signature of this Agreement and the month you elect will remain constant for the duration of the Agreement.

20. Tracking Devices

20.1. If the Goods is a vehicle and if we have fitted a tracking device to the vehicle, you are advised that:

20.1.1. this tracking device generates data which is intercepted and monitored by the tracking company and/or its third party business partners; and

20.1.2. you are not liable for any fees associated with the tracking device; and

20.1.3. the tracking device may be activated if you breach this Agreement; and

20.1.4. the tracking device will be removed by us or our agent on termination of this Agreement. If you do not allow us to remove the tracking device, you will be liable for the replacement cost thereof.

20.2. If you have fitted the vehicle with a tracking device, you agree that we may contact the tracking company in order to obtain information to locate the vehicle.

20.3. You indemnify and hold us and/or the tracking company and/or any third party harmless against claims, costs, damages or loss of whatsoever nature and howsoever arising relating:

20.3.1. to the activation, installation or the removal of the tracking device; and/or

20.3.2. any information obtained from the tracking company.

21 CPA

21.1. Should the CPA be applicable to this Agreement, you agree that the following provisions will apply:

21.1.1 You warrant that you have entered into this Agreement for the purposes wholly or mainly related to your business or profession.

21.1.2 The last sentence of clause 2.1 will be deleted.

21.1.3 The following sentence in clause 2.3 will be deleted:

"You acknowledge that you have inspected the Goods and are satisfied that they are in good condition and meet with all your requirements, and that the Lessor shall not be liable to you for any latent defects in and to the Goods." And replaced with:

"You acknowledge that you have inspected the Goods and are satisfied that they are in good condition and meet with all your requirements"

21.1.4 You acknowledge that the provisions of clauses 2.1, 2.2, 2.3, 2.4, 2.5, 4.1, 5.1, 5.2, 6.1, 6.2, 6.4, 6.5, 6.7, 6.8, 7.1, 16.1, 16.2, 19, 20 and the Acknowledgement recorded below have been brought to your attention and that you have had adequate opportunity to receive and comprehend the clauses.

22 Acknowledgement

22.1 You agree that all the information that you have provided to the Seller before entering the Agreement, is true and correct and that, based on this information, you are not subject to the National Credit Act No. 34 of 2005. 22.2 You will notify us in writing of any changes to your legal or statutory standing, including any changes to your VAT registration status or any change in the use of the goods which results in a VAT input tax deduction being claimable in terms of section 18(4) of the VAT Act.