

SUPPLY APPLICATION FORM of SOUTHERNCROSS SEAFOOD DELI CC ("THE SUPPLIER")

SALE AGREEMENT WITH A DEED OF SURETYSHIP INCORPORATING CESSION OF CLAIMS

Purveyors of fresh and frozen seafood
Reg No. CK2007/194055/23 – Vat No. 4660241565
Unit C2 Enterprise Village, Capricorn Drive, Capricorn Park, Muizenberg
Tel: (021) 788 5993 Fax: (086) 560 9773
Email: accounts@scsdeli.co.za or info@scsdeli.co.za

Please complete this supply application form in BLOCK LETTERS and fax or email back to us

SOLE OWNER	PARTNERSHIP	(PTY) LTD	CLOSED CORP	TRUST	OTHER
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REGISTERED NAME: _____ TRADING NAME: _____

REGISTRATION NO: _____ VAT NO: _____

DATE BUSINESS ESTABLISHED: _____ REGISTERED OFFICE OF BUSINESS: _____

_____ NATURE OF BUSINESS: _____

ARE THE BUYER'S LATEST FINANCIAL STATEMENTS AVAILABLE FOR INSPECTION – YES / NO

PHYSICAL ADDRESS _____

P O BOX NO: _____

TELEPHONE NO: _____ FAX NO: _____ EMAIL ADDRESS OF BUSINESS: _____

ACCOUNTS CONTACT PERSON: _____ EMAIL ADDRESS: _____

ACCOUNTS TELEPHONE NO: _____ FAX NO: _____

NAME & ADDRESS OF AUDITORS: _____

_____ TELEPHONE NO: _____

BANK: _____ BRANCH NAME: _____ ACCOUNT NO: _____

TRADE REFERENCE

Name	Telephone No.	Address

DETAILS OF BUSINESS

Full name of directors / member / sole proprietor / partner	Identity number	Address & telephone number
		Address: Telephone No:
		Address: Telephone No:

ANTICIPATED MONTHLY PURCHASERS R_____

I, THE UNDERSIGNED _____ IN MY CAPACITY AS _____ OF THE BUYER AND IN MY PERSONAL CAPACITY HEREBY WARRANT THAT:

1. I AM DULY AUTHORISED BY THE BUYER TO SIGN THIS AGREEMENT ON ITS BEHALF AND THAT THE ABOVE INFORMATION IS TRUE, CORRECT AND COMPLETE IN ALL RESPECTS.
2. AGREE THAT ALL TRANSACTIONS CONCLUDED WITH THE SUPPLIER WILL BE SUBJECT TO THE TERMS AND CONDITIONS OF SALE INCORPORATED IN THIS AGREEMENT AND WHICH I ACKNOWLEDGE HAVING READ AND UNDERSTOOD.
3. **DO HEREBY ACKNOWLEDGE AND AGREE THAT BY MY SIGNATURE HERETO I BIND MYSELF, IN ACCORDANCE WITH CLAUSES 28 TO 32 AS SURETY AND CO-PRINCIPAL DEBTOR IN SOLIDUM WITH THE BUYER IN FAVOUR OF THE SUPPLIER FOR THE DUE PAYMENT BY THE BUYER OF ALL AMOUNTS WHICH MAY NOW OR AT ANY TIME HEREAFTER BECOME PAYABLE BY THE BUYER TO THE SUPPLIER.**

DATED AT _____ ON THIS _____ DAY OF _____ 20_____

SIGNATURE: _____ PRINT NAME: _____
FOR THE "BUYER" AND IN MY PERSONAL CAPACITY AS SURETY AND CO-PRINCIPAL BUYER

TERMS AND CONDITIONS OF SALE

1. Any order resulting herefrom shall be subject to the conditions herein unless varied by the Supplier in writing, and these conditions will take precedence over any terms, conditions or stipulations contained in any of the Buyer's documentation which may conflict herewith.
2. Prices and discounts are those ruling at the date of dispatch of the goods and the Supplier reserves the right to adjust or change any prices and/or discounts at any time and without notice.
3. The Buyer acknowledges that the balance due reflected on the statement be settled within 2 (two) working days of receipt of the statement. A statement will be issued for all purchases made from the 1st to the 15th of every month which must be settled by the 17th of that month, a second statement will be sent reflecting all purchases made from the 16th to the end of the month which must be settled by the 2nd day of the new month.
4. The Supplier has the discretion at all times whether or not to sell to the Buyer.
- 4.1 The Supplier's discretion to sell in terms hereof may be guided by *inter alia* the availability of stock.
5. Time shall not be of the essence of the contract and delivery dates shall be treated as approximate only. Under no circumstances shall the Buyer be entitled to withdraw from or terminate the contract on account of any delay in delivery or have any claim of any nature whatsoever against the Supplier arising from late delivery.
6. The Supplier shall be exempted from and shall not be liable under any circumstances whatsoever for any damages including indirect or consequential damages of any nature whatsoever or any loss of profit or special damages of any nature whatsoever and whether in the contemplation of the parties or not which the Buyer may suffer as a result of any delay in delivery of the goods ordered.
7. Ownership in the goods sold and delivered to the Buyer on account shall pass to the Buyer only when all amounts due by the Buyer to the Supplier have been paid, notwithstanding delivery of the goods to the Buyer. Risk in and to the goods shall however pass to the Buyer on delivery.
8. A signed Delivery Note shall constitute *prima facie* proof that the goods have been delivered to and received by the Buyer in good condition, whether signed by the Buyer, an employee, an agent or an representative of the Buyer.
9. Set off shall operate automatically as a matter of law at the moment reciprocal debts between the Supplier and the Buyer come into existence and independently of the will of the parties and it shall not be necessary for either the Supplier or the Buyer to specifically raise set off. Upon the operation of an automatic set off aforementioned, the debt shall be mutually extinguished to the extent of the lesser debt with retrospective effect.
10. The Buyer agrees and acknowledges that in the event of:
 - 10.1 the Buyer breaching any condition contained in these conditions;
 - 10.2 the Buyer failing to pay any amount due and payable on due date;
 - 10.3 the Buyer suffering any civil judgment to be taken or entered against it;
 - 10.4 the Buyer causing a notice of surrender of its estate to be published in terms of the Insolvency Act no. 24 of 1936, as amended;
 - 10.5 the Buyer passing away;
 - 10.6 the Buyer's estate being placed under any order of provisional or final sequestration, provisional or final winding up, or provisional or final judicial management, as the case may be,
- 10.6.1 then the Supplier shall, without detracting from any other remedies which may be available to it, be entitled to claim specific performance of all the Buyer's obligations whether or not such obligation would otherwise then have fallen due for performance, in either event without prejudice to the Creditor's right to claim damages.
11. In the event of the Supplier or its agents instruct attorneys to collect from the Buyer an amount owing to the Supplier, the Buyer agrees to pay all costs on the scale as between attorney and own client, including 10% collection commission and tracing charges. All overdue sums / amounts shall bear interest at the maximum permissible rate of interest determined by the Usury Act (formerly known as the Limitation and Disclosure of Finance Charges Act) No. 73 of 1968 (as amended) (or any other relevant law) from time to time, such interest to be reckoned month in advance from due date of actual payment.
12. In the event of the Supplier or its agent instructing a debt collector to collect from the Buyer an amount owing to the Supplier, the Buyer agrees to pay up to 10% collection commission.
13. It is a condition of each sale that the goods are sold *voetstoots* and without any warranties or representations whatsoever.
14. When the Supplier is required to supply seafood products to the Buyer or renders a service as to the Buyer's instructions, or those of its nominees, the Supplier accepts no responsibility for the efficiency or workability of goods so carried out.
15. Save as otherwise specifically provided for herein, the Supplier shall not be liable to the Buyer or to any other person for any damages including indirect or consequential damages of any nature whatsoever or any loss of profit or special damages of any nature whatsoever and whether in the contemplation of the parties or not which the Buyer may suffer as a result of any breach by the Supplier of any of its obligations under these conditions or out of any other court whatsoever. The Buyer hereby indemnifies the Supplier against any claim which may be made against the Supplier by any other person in respect of any matter for which the liability of the Supplier is excluded in terms of the foregoing.

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16. The Buyer consents to the jurisdiction of the Magistrate's Court in terms of Section 45 of the Magistrate's Court Act, No. 32 of 1944, as amended, having jurisdiction under Section 28 of the said Act, notwithstanding that the claim exceeds the normal jurisdiction of the Magistrate's Court.
17. The Buyer nominates as its *domicilium citandi et executandi* the address reflected on the face hereof under the heading registered office / business address, and the surety nominates as his *domicilium citandi et executandi* the address reflected on the face hereof alongside his name, for service upon them of all notices and processes in connection with this agreement and its implementation.
18. No relaxation or indulgence granted to the Buyer by the Supplier, at any time, shall be deemed to be a waiver of any of the Supplier's rights in terms hereof, and such relaxation or indulgence shall not be deemed as a novation of any of the terms and conditions set out herein, or create any estoppel against the Supplier.
19. Any agreement purporting to vary or novate the terms of this agreement, or any consensual cancellation, shall not be valid unless reduced to writing and signed by the Buyer and the Supplier.
- 19.1 The Buyer understands that the information given in relation to this agreement will assist the Supplier in determining whether or not to sell to the Buyer and will be used by the Supplier for the purposes of assessing its creditworthiness. The Buyer confirms that the information given by it is true, accurate and complete. The Buyer further agrees to update the information supplied, as and when necessary, to ensure the accuracy and completeness of the above information.
- 19.2 The Buyer hereby authorises the Supplier or its agent at all times to contact the request information from any persons, credit bureaus or businesses including those mentioned under trade references, and to obtain any information relevant to the Buyer's credit assessment (to determine the Buyer's ability to pay for the goods).
- 19.3 If the Buyer fails to meet its obligations under these terms and conditions of sale, it authorises the Supplier or its agents to record its non-performance with any credit bureau, which information will be available to third parties. The Buyer further authorises researching its records at a credit bureau, use new information and data obtained from the credit bureau in respect of details of how the Buyer has performed in terms of these terms and conditions of sale.
- 19.4 The Buyer hereby authorises the Supplier or its agent at all times to furnish information concerning the Buyer's dealings with the Supplier, including without being limited to, the Buyer's credit worthiness and defaulting payments to the Supplier.
20. In these conditions, words importing one gender shall include the other gender, and words importing the singular, shall include the plural (and vice versa).

CESSION OF CLAIMS

21. The Buyer and Surety hereby jointly and severally, irrevocably and in *rem suam* cede and assign as a pledge unto and in favour of the Supplier, all the right, title, interest in and to all claims of whatsoever nature and description and howsoever arising which the Buyer and/or Surety may now or any time hereafter have against all and any persons, companies, corporations, firms, partnerships, associations, syndicates and other legal personae whomsoever without exception as continuing covering security for the due payment of every sum of money which may now or at any time hereafter be or become owing by the Buyer and/or Surety from whatsoever cause or causes arising, it being acknowledged that this cession is a cession in *securitatum debiti* and is not an out-and-out cession.
22. Should it transpire that the Buyer and/or Surety entered into prior deeds of cession or otherwise disposed of any of the right title and interest in and to any of the claims which will from time to time be subject to this cession, then this cession shall operate as a cession of all the Buyer and/or Surety's reversionary rights.
23. This cession shall be and remain in full force and effect as a continuing security notwithstanding any fluctuation, or temporary extinction of the Buyer and/or Surety's indebtedness to the Supplier.
24. For the purposes of giving effect to the foregoing cession both the Buyer and Surety hereby nominate, constitute and appoint the Supplier to be its Attorney and Agent, in *rem suam*, with full authority for the Buyer and/or Surety and in the Buyer and/or Surety's name to demand, sue for, recover and receive all sums of money hereby ceded and assigned and with the authority to sign all documents on the Buyer and/or Surety's behalf and in the Buyer and/or Surety's name in connection with the recovery of the said sums and to give acquittances and receipts for the Buyer and/or Surety.
25. The Buyer and Surety agree that, on request by the Supplier, they shall be obliged to hand over to the Supplier all books of account, contracts, invoices, documents and the like which it may require for the purposes of ascertaining the amounts due to the Buyer and/or Surety for the purpose of recovery of payment.
26. The Buyer and Surety shall be obliged to furnish the Supplier with a schedule of all debts due to the Buyer and/or Surety by its debtors monthly and upon demand. Notwithstanding the foregoing, the Supplier or its nominees shall at all times be entitled to inspect all or any of the Buyer and Surety's records as the Supplier deems fit. Failure by either party to give effect to the foregoing shall not in any way prejudice the rights of the Supplier hereunder, and the Supplier shall at all times be deemed to have perfected its security in terms hereof.

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DEED OF SURETYSHIP

- 27. The signatory hereby binds himself/herself as surety and co-principal debtor in solidum with the Buyer in favour of the Supplier for the due payment of all amounts which may at any time be payable by the Buyer to the Supplier from any cause use of action whatsoever and whether acquired by the Supplier by way of cession or otherwise. He/she further waives the benefits of excussion and division and of the legal exceptions *non numeratae pecuniae* and *non causa debiti* and acknowledge himself/herself to be fully acquainted with the meanings of these terms.
- 28. 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 the Buyer without the Supplier's prior written consent. Any consensual cancellation or withdrawal of this suretyship by the Buyer and the Supplier shall only be valid and effective if reduced to writing and signed by both parties thereto. Furthermore hereby bind myself/herself irrevocably to all the terms and conditions of clauses 11, 12, 16 & 17 hereof as well as all the terms and conditions which are set out in clauses 27 to 31 as well as all the other clauses in this agreement.
- 29. Any admission of liability by the Buyer shall be binding upon the surety.
- 30. 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, owing and payable, the amount of morae interest accrued thereon and as any other fact, matter of 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 correctness thereof for the purposes 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.
- 31. In the event of the Buyer being a proprietorship, partnership, a company or a close corporation and converting from a proprietorship, partnership, or company to a close corporation or from a proprietorship, partnership or a closed corporation to a company at any time hereafter, as the case may be, any Surety / signatory in terms of the application for credit shall nevertheless still remain bound as a Surety.

CESSION BY SUPPLIER

- 32. Should the Supplier cede its claim against the Buyer and Surety to any third party ("the Cessionary"), then the above Cession of Claims and Deed of Suretyship shall be deemed to have been given to the Buyer and Surety to such Cessionary as continuing covering security for the due payment of every sum of money which may at the time of such Cession or at any time thereafter be or become owing by the Supplier and Surety to the Cessionary (whether acquired the Cessionary by way of Cession or otherwise), and such Cessionary shall be entitled to exercise all rights in terms of the Cession of Claims and Deed of Suretyship as if such Cessionary were the Supplier hereunder.
- 33. The Buyer agrees that if one clause is found to be invalid, this invalid clause does not affect the validity of the remainder of the agreement.

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