



Motion Beyond (PTY) LTD

REG NO. 2016/484151/07

Vat: 4290293457

WWW.MOTIONBEYOND.CO.ZA

CONTACT DETAILS

Cape Town

T: +27 82 824 9933

E: info@motionbeyond.co.za

APPLICATION FOR CREDIT FACILITIES INCORPORATING MOTION BEYOND STANDARD TERMS AND CONDITIONS OF SALE AND INCLUDING THE SIGNATORY'S/IES' SURETYSHIP/S

I / We (insert full names of customer)

HEREIN REPRESENTED BY (insert full name/s of person/s signing on behalf of Customer)

Who by my/our signature warrant that I/we am/are duly authorised (hereinafter referred to as "the Purchaser") do hereby make application for credit facilities for the opening on an account with MOTION BEYOND (PTY) LTD. In support of this application, the following information is furnished which constitutes a representation upon which Savignac will rely and induce it to grant the credit facilities requested, once approved by it.

PLEASE NOTE: CREDIT TERMS ARE STRICTLY 30 DAYS AFTER MONTH OF INVOICING

ORGANISATION APPLYING FOR CREDIT

(a) Registered Name: _____

(b) Trading Name: _____

(c) Postal Address: _____

(d) Street Address: _____

(e) Telephone No: _____

(f) Fax No: _____

(f) E-mail Address: _____

LEGAL STATUS (Please tick the appropriate box)

Sole Proprietor Partnership Close Corporation Company Trust



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PARTICULARS OF PURCHASER

Asset Value: _____ Annual Turnover: _____

Address of Registered Office: _____

Company/CC/Trust Reg. Number: _____ VAT Number: _____

Name, Address, Tel. & Fax No. and email address of Auditors / Accounting Officers: _____

Name and Registration No. of Holding Company: _____

Delivery Address: _____

FULL NAMES OF OWNERS / PARTNERS / MEMBERS / DIRECTORS/TRUSTEES:

<u>NAME</u>	<u>RESIDENTIAL ADDRESS</u>	<u>ID NO.</u>
i. _____	_____	_____
ii. _____	_____	_____
iii. _____	_____	_____
iv. _____	_____	_____

PLEASE TICK CORRECT ANSWER

- I. Has company/cc issued/signed any guarantees in favour of other creditors? YES NO
- II. Have directors/members issued/signed any guarantees in favour of other creditors? YES NO
- III. Have the principals ever been Directors/members of a business that was liquidated or placed under Business Rescue? YES NO
- IV. Are your latest financial statements available for inspection? YES NO



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DETAILS OF FIXED PROPERTY OWNED BY PURCHASER:

Name in which property is registered	Address	Erf No. & Township	Estimated Value	Bond Holder	Bond Acc No.	Outstanding Bond Amount

Nature of Business: _____

How long in Business: _____ Premises Owned/Leased? _____

If leased, Name, Postal Address, Email address, Fax & Tel. No. of Landlord: _____

Name of Person/s who will be placing orders: _____ Is an Order Number required? Yes / No _____

Credit required Amount in Rand: R_____ Estimated Monthly Purchases: _____

Bankers: _____ Branch: _____ Account No: _____
 (A copy of a cancelled cheque is required)

Bankers: _____ Branch: _____ Account No: _____
 (If less than three years, previous bankers)

Name of contact person in event of queries: _____

TRADE REFERENCES:

SUPPLIER	CONTACT NAME	TELEPHONE No.
1) _____	_____	_____
2) _____	_____	_____
3) _____	_____	_____

I/We further confirm and acknowledge that I/we have read MOTION BEYOND Standard Terms and Conditions including the **Suretyship** contained therein and agree that such terms and conditions shall be binding upon me/us/the company/close corporation in respect of all transactions entered into between myself/ourselves and MOTION BEYOND (PTY) LIMITED. I/We agree that MOTION BEYOND (PTY) LIMITED may disclose information regarding the applicant's credit worthiness and conduct of the account to any registered credit bureau.



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SIGNED BY:

AUTHORISED SIGNATORY/S : _____

DATE: _____

FULL NAME/S: _____

PLACE: _____

CAPACITY/IES: _____

AS WITNESSES TO ALL SIGNATURES: (Insert full names and address)

WITNESS 1: _____

WITNESS 2: _____

(For office use)

CREDIT APPROVED BY: _____

MOTION BEYOND (PTY) LTD

DATE: _____

SIGNATURE: _____

PLACE: _____



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STANDARD TERMS AND CONDITIONS OF MOTION BEYOND (Pty) LTD

1. DEFINITIONS

In this application for Credit and the **Suretyship**, except where the context clearly indicates the contrary intention,

- (a) The singular includes the plural and vice versa;
- (b) The neuter gender includes both other genders and vice versa;
- (c) The word "person" includes a Company, Close Corporation and any other juristic person and a Partnership in any other body of persons (whether corporate or incorporate) the parties defined above shall maintain their meanings as so defined;
- (d) In these conditions, the "goods" shall be the goods sold at MOTION BEYOND usual prices and indicated on any Company forms, price lists, quotations, delivery notes, orders and invoices, current at the time of dispatch.

2. SALE OF GOODS

The sale of goods by MOTION BEYOND to its customers (hereinafter referred to as the "Purchaser") is subject to the following terms and conditions, and no other terms and conditions at variance with those contained herein shall be applicable or binding on MOTION BEYOND unless agreed to in writing and signed by MOTION BEYOND.

3. CREDIT LIMITS

MOTION BEYOND reserves the right to decrease credit limits based on account usage over a 6 month period.

4. THE ORDER

- 4.1 No order addressed by the Purchaser to MOTION BEYOND shall result in a contract between the Purchaser and MOTION BEYOND until accepted by MOTION BEYOND and subject to the terms and conditions contained herein. Acceptance by the Purchaser of goods supplied by MOTION BEYOND shall constitute acceptance of these standard terms and conditions of sale to the exclusion of all others.
- 4.2 Once accepted by MOTION BEYOND, the Purchaser shall not be entitled for any reason whatsoever to cancel or vary any order without MOTION BEYOND prior written consent.
- 4.3 The terms and conditions herein contained shall bind MOTION BEYOND and the Purchaser in all future contracts, agreements, tenders and quotations unless varied by both parties, in writing.

5. DELIVERY

- 5.1 Every endeavour shall be made to effect delivery with due promptitude or within the period indicated by MOTION BEYOND, but MOTION BEYOND does not accept any responsibility whatsoever for delays in delivery which are due to strikes, labour disputes, accidents, weather, breakdown of machinery or any other causes of whatsoever nature. Any delay in delivery shall not entitle the Purchaser to cancel any order or to refuse acceptance of delivery at any time without MOTION BEYOND's prior written consent.
- 5.2 Where MOTION BEYOND undertakes to deliver goods to the Purchaser's premises, delivery and passing of risk shall be deemed to have taken place upon unloading of the goods at the destination thereof and the Purchaser shall be responsible for taking delivery and unloading. The signature of any employee of the Purchaser on MOTION BEYOND'S Delivery Note or Invoice shall be prima facie proof of the proper delivery of the goods.
- 5.3 In the case of goods supplied F.O.R. MOTION BEYOND premises, all risk shall pass to the Purchaser in respect of such goods immediately upon delivery to the transport contractors who shall be deemed to be the agents of the Purchaser for the purpose of acceptance of delivery.
- 5.4 All loading racks, pallets or other materials used or supplied by MOTION BEYOND for the purpose of transportation of any goods shall remain the property of MOTION BEYOND and MOTION BEYOND reserves the right at any time to require the Purchaser to return such racks, pallets or other materials to MOTION BEYOND or any third party nominated by MOTION BEYOND.

6. RETURNS POLICY

- 6.1 The Purchaser shall not return goods for any reason without first securing agreement in writing from MOTION BEYOND.
- 6.2 Should MOTION BEYOND agree to accept the return of any goods for credit, the Purchaser shall be liable to pay MOTION BEYOND a handling charge of 20% on the invoiced price of the goods so returned if they were originally correctly supplied. Freight charges are to be borne by and paid for by the Purchaser, in the event of goods being returned.
- 6.3 The Purchaser shall be barred from lodging any claim in respect of discrepancies between goods charged and goods delivered, unless the Purchaser has specified on the Delivery Note, the nature of the discrepancy. Notification of such discrepancies shall be delivered/ furnished in writing to MOTION BEYOND, within 2 days of the date of delivery to avoid any repudiation of such claim.
- 6.4 All applications for returns for credit will only be considered if the goods are: (i) returned within seven (7) days of the date of invoice; (ii) are not



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defective in any way; (iii) are in their original saleable condition and packaging supplied by the Company; and (iv) accompanied by the invoice; and then it will be granted at the Company's current price of the goods or the original purchase price, whichever is the lesser.

Damages

- 7.1 Under no circumstances will the Company be liable for any consequential or indirect damages or loss of profit or for any delictual liability of any nature whatsoever.
- 7.2 Under no circumstances will the Company be liable for any damage arising from and misuse or abuse of the goods.
No claim under these terms and conditions will arise unless the Customer has, within 7 days of the alleged breach or defect occurring, given the Company 30 days written notice by prepaid registered post to rectify any defect or breach of contract.

8. PAYMENT

- 8.1 Unless otherwise agreed, payment in full without deduction or set-off in respect of goods sold shall be due, owing and payable within 30 days of the date of MOTION BEYOND statement to the Purchaser. MOTION BEYOND endeavours to distribute statements within 5 days of the end of the month in which the goods were delivered and invoiced.
- 8.2 Should any amount not be paid by the Purchaser on due date, then the whole amount in respect of all purchases made by the Purchaser shall become due, owing and payable irrespective of the dates when the goods were purchased and the Purchaser shall be liable to pay interest in respect of all amounts unpaid, as at the due date, until the date of payment, both days inclusive, at the compound annual rate of 2.5% above the prime lending rate as charged by MOTION BEYOND bankers to it, from time to time. Should the said interest not be paid in full as aforesaid, the same shall be added to the principal sum and the total shall form part of the principal debt which shall then bear interest in the manner as set out above.
MOTION BEYOND reserves the right at any time to refuse delivery should MOTION BEYOND not be able to obtain satisfactory guarantees for the due and prompt payment
- 8.3 to it of all monies which may become due.
- 8.4 Upon failure to comply with conditions of payment, MOTION BEYOND reserves the right to suspend further deliveries or to require cash payment prior to delivery or to cancel the sale.
- 8.5 A certificate under the hand of any manager or duly authorised official of MOTION BEYOND as to the existence and the amount of the Purchaser's indebtedness to MOTION BEYOND at any time, as to the fact that such amount is due and payable, the amount of interest accrued thereon and as to any other fact, matter or thing relating to the Purchaser's indebtedness to MOTION BEYOND shall be prima facie proof of the contents and correctness thereof and of the amount of the Purchaser's indebtedness for the purpose of provisional sentence or summary judgment or any other proceedings against the Purchaser in any competent court, and shall be valid as a liquid document for such purposes. It shall not be necessary to prove the appointment of the person signing such certificate and such certificate shall be binding on the purchaser and shall be deemed to be of sufficient particularity for the purpose of pleading or trial in any action or other proceeding instituted by MOTION BEYOND against the Purchaser.
- 8.6 No relaxation or indulgence granted to the Purchaser by MOTION BEYOND at any time shall be deemed to be a waiver of any of MOTION BEYOND rights in terms hereof, and such relaxation or indulgence shall not be deemed a novation of any of the terms and conditions set out herein, or create any estoppel against MOTION BEYOND.
- 8.7 In the event of MOTION BEYOND instructing its attorneys in regard to any breach by the Purchaser of these conditions of sale or to collect from the Purchaser any amount owing to MOTION BEYOND, the Purchaser agrees to pay all MOTION BEYOND costs on a scale as between Attorney and Client including collection commission, at 2.5 times the scale of fees referred to in Rule 33 of the Magistrates' Courts Act No. 32 of 1944, as amended (as is contained in Annexure 2, Table A, Part III and Part IV) or 2.5 times the High Court Tariff referred to in Rule 70 of the Rules of Court to the Supreme Court Act No. 59 of 1959, as amended, whichever tariff is the greater.

9 OWNERSHIP

Risk in the goods shall pass on delivery but ownership of all goods sold remain vested in MOTION BEYOND until all monies owing to it shall have been paid in full. All such goods whether affixed to immovable property or to other goods shall be deemed to remain movable property and severable without injury to such immovable property or other goods. MOTION BEYOND reserves the right to inform the end-user or the owner of the premises in which any goods are installed of its claim to ownership.

10 THE PURCHASER

- 10.1 Agrees and acknowledges that in the event of it:
- 10.1.1 Breaching any condition contained in these conditions or;
- 10.1.2 Failing to pay any amount due and payable on due date; or
- 10.1.3 Suffering any civil judgment to be taken or entered against it; or
- 10.1.4 Causing a notice of surrender of its estate to be published in terms of the Insolvency Act 24 of 1936 as amended, or in the event that any creditor of the Purchaser serves upon it, a notice in terms of Section 129 of the National Credit Act of 2005, as amended, or committing any act of insolvency; or
- 10.1.5 Making application or initiating or being placed under Business Rescue; or
- 10.1.6 Being placed under liquidation or being sequestrated (whether provisionally, finally, compulsorily or voluntarily) or compromising or making any other arrangement with any of its creditors in reaching a compromise; or
- 10.1.7 Selling its business and/or the control of the business (in which event the Purchaser shall immediately inform its Purchaser of the existence of the Terms and Conditions of this Agreement and its Purchaser shall be required to enter into a substantially similar Agreement with Savignac as is contained herein. In addition, any sale of shares of membership interests of the Purchaser (where the Purchase is a Company, Close Corporation or other legal entity) shall be deemed to be the sale of the Purchaser's business for the purpose of this Clause). In the event of the sale of the business or of control of the business



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of the Purchaser, the Purchaser acknowledges that any amount outstanding whether due or not shall be deemed to be forthwith payable by the Purchaser to MOTION BEYOND; then, MOTION BEYOND shall, without detracting from any remedies which may be available to it, be entitled to summarily cancel the sale of any goods to the Purchaser, without notice to the Purchaser and to rely on the provisions of Clause 8, hereof and to repossess those goods sold and delivered by MOTION BEYOND to the Purchaser, or to enforce its rights against any Surety where the Purchaser is placed under Business Rescue, or to claim specific performance of all of the Purchaser's obligations whether or not such obligations would otherwise then have fallen due for performance, in either event without prejudice to MOTION BEYOND right to claim damages.

11. **CREDITOR 'S LIABILITY**

- 11.1 MOTION BEYOND undertakes that goods supplied will conform to specifications and/or requirements specifically agreed to by it in writing. In the event of the goods not being in accordance with specifications, MOTION BEYOND'S liability shall be limited to the replacement of such goods only.
- 11.2 MOTION BEYOND shall not be liable for any damages or consequential loss howsoever arising. Should any cause whatsoever beyond the control of MOTION BEYOND prevent the performance of any of its obligations, MOTION BEYOND at its option shall be entitled to cancel or suspend performance of its obligations hereunder without being liable for any loss or damage, consequential or otherwise, resulting from such cancellation or suspension.
- 11.3 In the event of the Purchaser incorrectly or inadvertently fitting, repairing or tampering in any manner whatever with MOTION BEYOND products, the replacement warranty in Clause 10.2 shall be void ab initio with the Purchaser waiving any and all rights that it may have otherwise been entitled to. The onus shall be on the Purchaser to obtain from MOTION BEYOND fitting instruction manuals or literature should the Purchaser be in any doubt with regard thereto.

12. **JURISDICTION**

The Purchaser consents to the jurisdiction of the Magistrate's Courts in terms of Section 45 of the Magistrate's Courts Act No 32 of 1944 (as amended) having jurisdiction under Section 28 of the Said Act, notwithstanding that the claim by MOTION BEYOND exceeds the normal jurisdiction of the Magistrates' Court as to amount. MOTION BEYOND shall however, in its discretion, be entitled to proceed against the Purchaser in any other court of competent jurisdiction, notwithstanding the foregoing.

13. **DOMICILIUM**

The Purchaser hereby chooses and nominates as its domicilium citandi et executandi for all purposes hereunder at the address set out on the first page of the Credit Application under paragraph numbered A.(d). The Purchaser shall be entitled to change its domicilium address by written notice to MOTION BEYOND provided however:-

- (a) such new address shall be within the Republic of South Africa; and
- (b) shall be given by the Purchaser to MOTION BEYOND within (7) seven days of any change of such address and an acknowledgement obtained from MOTION BEYOND, in writing, that it has received such notification.

14. **NOTICES**

Any notice to be served on one party shall be deemed to be validly received by the addressee:

- 14.1 FIVE (5) days after the date of posting thereof, if addressed to it and dispatched by prepaid registered post to MOTION BEYOND at Centurion PO BOX 12342, 0046 and to the Purchaser at the address referred to in paragraph A.(c) on the First page of the Credit Application; or
- 14.2 On the date of delivery, if delivered by hand, and a receipt therefore duly obtained; or
- 14.3 On the day of transmission by e-mail to the number or email address referred to paragraphs A.(e) & (f) of the First page of the Credit Application.

15. **GENERAL**

- 15.1 The conditions of sale and any contract arising out of it are governed by the laws of the Republic of South Africa.
- 15.2 MOTION BEYOND shall not be held responsible for goods ordered telephonically or otherwise and not confirmed by an official order.
- 15.3 The Purchaser understands that credit facilities may be revised or withdrawn by Savignac without notice and in MOTION BEYOND absolute discretion.
- 15.4 All illustrations, descriptive matter, drawings, catalogues, advertisements, pamphlets and the like accompanying any quotations or in the Purchaser's hands before or after the Purchaser places an order, are supplied in good faith for general information only and do not form part of the contract.
- 15.5 Save as is herein expressly otherwise provided, neither this Agreement nor any part, share or interest therein nor any rights or obligations hereunder, may be ceded, assigned or otherwise transferred by the Purchaser without the prior written consent of MOTION BEYOND. MOTION BEYOND shall however be entitled to cede, assign or transfer any of its rights or obligations hereunder to a third party of its choice, without obtaining the prior written consent thereto from the Purchaser.
- 15.6 No variation, modification or waiver of any provision of this Agreement or annexure, or consent to any departure therefrom by any party, shall be of any force or effect unless it is confirmed in writing and signed by or on behalf of both parties.
- 15.7 This Agreement constitutes the sole and exclusive record of the Agreement between the parties relating to the subject matter hereof and no warranty, representation, undertaking, guarantee or any other term or condition of whatever nature not contained or recorded herein shall be binding on any



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- party.
- 15.8 The Purchaser acknowledges that neither this Agreement nor any annexure and/or Schedule shall have any force or effect, if it is not signed by a duly authorised Director, Manager or any other duly authorised official of MOTION BEYOND.
- 15.9 To the extent that any provision or sub-provision of this Agreement maybe in conflict with any Law, the parties hereby agree to the severance of such provision from this Agreement.
- 15.10 Under no circumstances whatever shall MOTION BEYOND rights be affected to proceed against any Surety for the debt of the Purchaser (in Business Rescue), after the adoption of a Business Rescue Plan, which provides for the discharge of the debt by agreement between the Purchaser and MOTION BEYOND or release of such Purchaser's obligations, where the Business Rescue Plan is silent on MOTION BEYOND rights against any surety.



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DEED OF SURETYSHIP

1. I/We by my/our signature hereto (which appears at the end of this document) do hereby bind myself/ourselves as Surety and co-principal debtor, jointly and severally, the one paying the others to be absolved, in solidum with the Purchaser, in favour of Savignac for the due performance of any obligation of the Purchaser and for the payment to Savignac by the Purchaser of any amounts which may now or at any time be or become owing to Savignac by the Purchaser from whatsoever cause arising and including, but without limiting the generality of the foregoing, any claims for damages and actions against the Purchaser acquired by way of cession.
2. This suretyship shall be a continuing covering guarantee / surety which may only be cancelled in writing by MOTION BEYOND and then only, in the event that all amounts owing by the Purchaser (whether due or not) to MOTION BEYOND have been paid in full.
3. I/ we unconditionally agree that under no circumstances whatever, shall MOTION BEYOND rights be affected to proceed against any Surety for the debt of the Purchaser in Business Rescue, after the adoption of a Business Rescue Plan, which provides for the discharge of the debt by agreement between the Purchaser and MOTION BEYOND or release of such Purchaser’s obligations, where the Business Rescue Plan is silent on MOTION BEYOND rights against such surety. In that regard, nothing shall prevent MOTION BEYOND in enforcing this Suretyship, should it elect to do so at any stage whatever.
4. I/we agree and consent to the address set out in the First page of the Credit Application, under paragraph numbered A.(d) as my /our chosen domicilium citandi et executandi for all purposes hereunder. In addition, I/we agree and consent to any notice to be served on me /us shall be deemed to be validly served and received on the day of transmission by telefax or e-mail to the number or email address referred to paragraphs A.(e) & (f) of the First page of the Credit Application.
5. I/We hereby renounce the benefits of the legal exceptions: -
 - (i) “non Causa Debiti” which means that there was no underlying cause for the debt/obligation and the effect is that it places the onus on the debtor to prove that a debt does not exist; and
 - (ii) “beneficium ordinis seu excussionis et divisionis” which means that MOTION BEYOND must first proceed against the principal debtor and only once it has exhausted its remedies against the principal debtor can it look to the surety for payment; by renouncing these benefits, it enables MOTION BEYOND to go directly to the surety without proceeding against the principal debtor and also the surety cannot insist that he be liable for more than his pro rata share of the debt; and
 - (iii) Cession of Action with the force, meaning and effect of which I/we declare myself/ourselves to be fully acquainted.

I/we furthermore bind myself/ourselves irrevocably to all of the terms and conditions as set out in the Application For Credit Facilities.

SIGNED BY THE SURETY/IES AT _____ ON THIS _____ DAY OF _____ 20_____.

_____ (SURETY) _____ (SURETY)

FULL NAMES: _____ FULL NAMES: _____

ADDRESS: _____ ADDRESS: _____

I.D. NUMBER: _____ I.D. NUMBER _____

AS WITNESSES TO ALL SIGNATURES:

1. _____ 2. _____

FULL NAMES: _____ FULL NAMES: _____

ADDRESS: _____ ADDRESS: _____

I.D. NUMBER: _____ I.D. NUMBER _____