

DISCOUNTING AGREEMENT TERMS AND CONDITIONS

1 INTERPRETATION

In this Agreement, if applicable and unless the context indicates a contrary intention, the words and expressions recorded below shall bear the meanings assigned to them, cognate expressions bear corresponding meanings, and the provisions of clauses 1.19 to 1.24 shall apply in the interpretation of this Agreement:

- 1.1 "Admin fee" - means the monthly amount (together with VAT thereon) as indicated in the Payment Schedule(s), which forms part of the Discounting Fee and shall be debited on the first day of each month, with the initial Admin Fee being debited simultaneously with the first Assessment Fee, and shall carry interest at the rate quoted in the Payment Schedule;
- 1.2 "Agreement" - means these Terms and Conditions together with the Payment Schedule(s) as signed by the Client and the Discounter from time to time;
- 1.3 "Assessment fee" means a once-off amount (together with VAT thereon) as indicated in any of the Payment Schedule(s), which forms part of the Discounting Fee, and shall be debited on the date on which the relevant Payment indicated in the Payment Schedule is made, and shall carry interest at the rate quoted in the Payment Schedule. An Assessment Fee is charged by the Discounter to assess the risk, necessity or desirability of purchasing the Claim or of making an Interim payment;
- 1.4 "Attorney" - means the person, firm or entity appointed by the Client to attend to the collection and receipt of the Proceeds into his trust account, and all matters incidental thereto;
- 1.5 "Claim" - means the Client's legal rights to claim payment of the Proceeds as is set out in the Payment Schedule(s);
- 1.6 "Client" - means the party who is selling the Claim to The Discounter and who is referred to as such in the Payment Schedule(s);
- 1.7 "Defendant" - means the person, firm or entity liable to make payment to the Client in terms of the court order or written settlement agreement (see enclosed Annexure B);
- 1.8 "The Discounter" - means SWIFT FINANCIAL SOLUTIONS (PTY) LTD, Registration Number 2015/338241/07, of Dwars-in-die-Weg Building, 281 Main Road, Paarl, 7646;
- 1.9 "Discounting Fee" - means the fee payable by the Client to the Discounter as calculated and determined in accordance with and set out in the Payment Schedule(s);
- 1.10 "First Payment" - means the initial amount payable by the Discounter to the Client as set out in the first Payment Schedule;
- 1.11 "Interest Rate" - means the Maximum rate of interest permissible from time to time in terms of the National Credit Act 2005 and any regulations or notices promulgated in terms thereof;
- 1.12 "Interim Payment" - means the amount(s) payable by the Discounter to the Client as set out in an additional Payment Schedule(s) executed after the First Payment has been made but before the Settlement Date;
- 1.13 "Payment date" - means the actual date on which payment of the Proceeds is received by the Attorneys (alternatively by the Client);
- 1.14 "The Payment Schedule" - means every Payment Schedule for Discounting Agreement (see enclosed Annexure A) containing information relating to the sale of the Client's Claim to the Discounter, which has been signed by the Client and the Discounter, and which is subject to these Terms and Conditions'
- 1.15 "Proceeds" - means the full amount payable to the Client by the Defendant in terms of a court order or written settlement agreement (see enclosed Annexure B) which amount is already due and payable to the Client, and is subject to deductions as more fully set out in the Payment Schedule(s) (see enclosed Annexure A);
- 1.16 "Purchase Price" - means the consideration payable by the Discounter to the Client as determined in accordance with the terms of this Agreement for the Claim, as set out in the Payment Schedule(s);
- 1.17 "Settlement Date" - means the date on which the Discounting Fee is paid in full to the Discounter in terms of this Agreement;
- 1.18 "Signature Date" - means the latest date the first Payment Schedule is signed by the Client and the Discounter;
- 1.19 "Termination Date" - means the date on which the Discounter terminates this Agreement in terms of clause 6.
- 1.20 Clause headings are for convenience only and are not to be used in its interpretation.
- 1.21 An expression, which denotes any gender, includes the other genders, a natural person includes a juristic person and vice versa, and the singular includes the plural and vice versa.
- 1.22 Any substantive provision, conferring rights or imposing obligations on a party and appearing in any of the definitions in this clause 1 or elsewhere in this Agreement, will be given effect to as if it were a substantive provision in the body of the Agreement.
- 1.23 Word and expressions defined in any clauses will, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement.
- 1.24 This Agreement incorporates every Payment Schedule attached to it, which Payment Schedule(s) will have the same force and effect as if set out in the body of this Agreement, and all annexures thereto.
- 1.25 By submitting a signed Payment Schedule, the client consents to the Discounter performing credit enquiries and/or searches on the client and, in the event the client being a legal entity, the signatory confirms that he is authorised to confirm that the Discounter may perform such credit checks and/or enquiries on the client as well as the directors / trustees / members of the client.

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2 SALE AND CESSION AND THE PRICE

- 2.1 this The Client hereby sells the Claim to the Discounter and the Discounter hereby purchases the same upon and subject to the terms and conditions recorded in Agreement.
- 2.2 and By executing the first Payment Schedule, the Client hereby cedes, transfers and makes over to the Discounter, his right, title and interest in and to the Claim the Discounter, hereby accepts such cession upon the terms and conditions recorded herein.
- 2.3 The price payable for the claim is the value of the Proceeds, less the discounting fee, and is payable as set out in 2.4 below.
- 2.4 The price will be paid by the Discounter in two or more instalments as follows:
- 2.4.1 The First Payment being the agreed amount set out in the first Payment Schedule, payable on the date set out in 4.1 below.
- 2.4.2 below. Interim payment(s) (if any) being the agreed amount set out in subsequent Payment Schedules, signed by both parties, payable on the date as set out in 4.2 make Interim payment(s) (if any) will be made at the request of the Client, but only if the Discounter, in its sole discretion, considers it necessary or desirable to make payment.
- 2.4.3 The final payment being the total value of the Proceeds, less the First Payment and any InterimPayment(s), less the discounting fee. The final payment is due immediately after the Discounter receives the full Proceeds.
- 2.5 The Discounter and the Client hereby authorise the Attorney to pay to the Discounter the full Proceeds, and upon receipt thereof the Discounter will make the final payment to the Client.
- 2.6 The Client shall procure that the Attorney furnishes the Discounter with a written undertaking, in a form acceptable to the Discounter, in terms of which the Attorney irrevocably undertakes to pay to the Discounter the full proceeds on receipt thereof.

3 ASSUMPTION OF OBLIGATIONS AND OWNERSHIP AND RIGHT OF THE DISCOUNTER TO CANCEL THIS AGREEMENT

- 3.1 terms all of Notwithstanding anything to the contrary contained herein and for the avoidance of doubt, the Discounter does not assume any obligations of the Client in of the court order or written settlement agreement (see enclosed Annexure B), as the case may be, or otherwise in relation to the collection of the Proceeds, which remain with the Client.
- 3.2 the Ownership in and to the Claim shall pass to the Discounter upon payment by the Discounter of the First Payment as set out in the first Payment Schedule and cession and transfer shall thereupon be of full force and effect without any further act of delivery being required.
- 3.3 Notwithstanding anything to the contrary contained herein, the Discounter shall be entitled, upon written notice to the Client, to cancel this Agreement at any time after the Signature Date but prior to payment having been made by it to the Client in terms of clause 4.1, if the Discounter, in its sole discretion, for any reason considers it necessary or desirable that it should do so in order to protect its interests.

4 STATUS AND OVERPAYMENT

- 4.1 The Discounter shall pay the First Payment as set out in the first Payment Schedule to the Client within 2 (two) business days after receiving the written undertaking from the Attorney and such other security or documentation as the Discounter may reasonably require.
- 4.2 party The Discounter shall pay any Interim Payments as set out in Payment Schedules subsequently executed within 2 (two) business days after the date of the last signing same.
- 4.3 the If on the Payment Date the Proceeds is less than the payment(s) made by the Discounter at that time, thereby resulting in an overpayment of Purchase Price as recalculated, then the Client shall repay the Discounter the difference together with interest therein, at the maximum permissible interest rate from date of First Payment to the date of repayment.
- 4.4 Any payment received by the Attorney from the Discounter pursuant to this Agreement shall be held by the Attorney as agent for and on behalf of and for the benefit of the Discounter, and shall not be in discharge of the Discounters obligations to the Client until such time as the Attorney has disbursed such payment upon the specific instructions of the Discounter.
- Likewise, any payments received by the Attorney pursuant to this Agreement, and in particular clause 2.2, whether from the Client or the Defendant, shall be received and held by the Attorney on behalf of and for the benefit of the Discounter and shall not constitute a discharge of the Clients obligations to the Discounter in terms of this Agreement until the Attorney has effected payment to the Discounter of all sums due to it under this Agreement.

5 UNDERTAKINGS AND WARRANTIES

- The Client warrants, represents and undertakes to the Discounter as follows:
- 5.1 The court order or written settlement agreement (see enclosed Annexure B) is valid and enforceable in all respects and in particular:
- 5.1.1 the Client is the claimant and/or plaintiff referred to therein; and
- 5.1.2 the Client is entitled to receive payment of the amounts referred to therein; but
- 5.1.3 has to Signature Date not received any payment in terms thereof.
- 5.2 continue The Client has, as at the Signature date, fully and timeously discharged any obligations to the Attorney and/or Defendant in terms of Annexure B and shall hereafter to do so.
- 5.3 The Defendant has no right to refuse to make payment in terms of Annexure B, including no right to appeal.

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- 5.4 All documents relevant to the Claim have been delivered to the Discounter.
- 5.5 The Claim and or the Proceeds is not subject to any real right
- 5.6 The Client is not aware of any fact, matter or circumstances pertaining to the Client or the Claim, which might cause the Payment Date to be delayed by more than 270 (two hundred and seventy) days after the Signature Date and shall forthwith notify the Discounter in writing if any reason exists as to why the Payment Date will not occur within 270 (two hundred and seventy) day period referred to above.
- 5.7 The full amount of the Proceeds is payable to the Client.
- 5.8 The Discounter shall not be required to do anything (other than comply with this Agreement) or to pay any amount to procure payment of the Proceeds.
- 5.9 The Client shall not terminate or cancel the instructions to the Attorney to attend to collection of the Proceeds, without the Discounter's prior written consent.
- 5.10 Save as expressly provided for in the Payment Schedule(s), no other amount is or shall be due to any other person as a result of the receipt of the Proceeds.
- 5.11 The Claim or any part thereof is not subject to a prior cession, pledge or similar encumbrance.
- 5.12 The Client is not insolvent, nor to the best of its knowledge, have any steps been taken or threatened for the liquidation or sequestration of the Client's estate, whether provincial or final or for the placing of the Client under judicial management.
- 5.13 The Client has no overdue income tax or VAT owed to the South African Revenue Services.
- 5.14 The Client has accurately disclosed to the Discounter all facts and information relating to the Claim, the Client and the Defendant which may be relevant to a purchase of the Claim and the information set out in the Payment Schedule(s) is true and correct.
- The Client acknowledges that the Discounter has entered into this Agreement in reliance of the warranties set out in this clause, all of which are material and that if any of the warranties are or become, to any extent, inaccurate or breached, the Client will have committed a fraud against the Discounter.
- 5.15 That payment of the Proceeds will in fact be successfully received.
- 6 TERMINATION**
- termination any The Discounter may summarily terminate this Agreement without payment of compensation or other damages caused to the Client solely by such by giving notice in writing to the Client if anyone or more of the following events occurs or, which the Discounter reasonably anticipates is likely to occur for reason:
- 6.1 The Client commits any breach of any of its obligations under this Agreement: or
- 6.2 Any warranty, representation or undertaking giving herein is to any extent inaccurate or has been breached; or
- 6.3 The Defendant is not properly fulfilling his obligations in terms of Annexure B within the 270 (two hundred and seventy) day period referred to clause 5.7 above; or
- 6.4 The Defendant has repudiated liability in terms of Annexure B or
- 6.5 The Payment Date does not occur for any reason whatsoever within a period of 270 (two hundred and seventy) days after the Signature Date: or
- 6.6 The Proceeds are not or will not be paid to the Discounter within 2 (two) days of the Payment date for any reason; or
- 6.7 The Discounter's rights or ability to enforce its rights in terms of this Agreement will be prejudiced for any reason; or
- 6.8 The Client will or will not be able to pay any amount which might become payable by the Client to the Discounter in terms of this Agreement; or
- 6.9 This Agreement is, or becomes, either wholly or in part, unenforceable or is declared to be invalid, for any reason.
- 7 CONSEQUENCES OF TERMINATION**
- 7.1 If this Agreement is cancelled then: all rights acquired by the Discounter in terms of the cession referred to in clause 2 of this Agreement shall be deemed to have been ceded and transferred back to the Client upon and against compliance by the Client with clause 8.2 and all other outstanding obligations in terms of this Agreement;
- 7.2 On termination of this Agreement by the Discounter pursuant to clause 7, the Discounter shall be entitled (without prejudice to any other rights or remedies it may have) to recover from the Client the amount of all damages and loss suffered by the Discounter as a result of such termination, and further the client pay the Discounter as pre-liquidated and agreed damages (in the event of termination for any reason whatsoever), all amounts paid by the Discounter under this Agreement, together with interest thereon at the maximum permissible interest rate.
- 8 INDEMNITY AND PAYMENTS**
- 8.1 Without prejudice to any of the rights of the Discounter at law or in terms of any other provision of this Agreement, the Client indemnifies the Discounter against all actual or contingent losses, liabilities, damages, costs (including legal costs on the scale between attorney and own Client and any additional costs) and expenses of any nature whatsoever which the Discounter may suffer or incur (whether arising from contract, delict, a failure to comply with ant law or otherwise) as a result of or in connection with this Agreement or the termination thereof.
- 8.2 Any amount presently or in future payable by the Client to the Discounter shall be paid immediately upon demand thereof by the Discounter in cash and without set-off or deduction of any nature whatever and at such address as the Discounter may have stipulated for this purpose by notice.

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- 8.3 Any amount failing due for payment by the Client to the Discounter in connection with this Agreement and not being paid, shall bear interest at the Interest Rate, calculated from the due date for payment thereof or, in the case of amounts due by way of indemnity or damage (whether liquidated or not) from the date upon which the relevant indemnified loss or damage is sustained.
- 9 **RENUNCIATION OF BENEFITS**
The Client renounces the benefits of all legal exceptions whatsoever which could be taken to any action by the Discounter in terms of or arising out of this Agreement. Without detracting from the generality of the foregoing, the Client expressly renounces the benefit of the exceptions non numeratae pecuniae, excussion, division and de duobus vel pluribus reis debendi, insofar as each may be appropriate, and acknowledges to be fully acquainted with the contents of these exceptions and the effect of the renunciation thereof.
- 10 **PROOF OF AMOUNT OWING AND RATES**
10.1 A certificate issued under the hand of any director of the Discounter, whose status need not be proved, shall be prima facie proof of the facts stated therein in regard to any applicable Interest Rate and amount owing by the Client for the purpose of obtaining the grant of judgement, summary judgement and provisional sentence by any competent Court.
10.2 In the event of the Client disputing the content of the certificate, the onus shall be on the Client to disprove the content of the certificate.
- 11 **JURISDICTION**
11.1 The Client hereby consents to the jurisdiction of the Magistrates Court having jurisdiction over its person in respect of all legal proceedings related to this Agreement, notwithstanding that the value of the matter in dispute might exceed the jurisdiction of the Magistrates Court.
11.2 Notwithstanding the foregoing, the Discounter is entitled to institute action in the High Court having jurisdiction.
- 12 **DOMICILIUM**
12.1 The parties choose domicilium citandi et executandi ("domicilium") for all purposes relating to this Agreement, including the giving of any notice, the payment of any sum and the serving of any process, at the respective addresses and facsimile numbers set out in the Payment Schedule.
12.2 Each party shall be entitled from time to time, by giving notice to the other party, to vary its physical domicilium to any other physical address (not being a post office box or poste restante) within the Republic of South Africa, to vary its postal domicilium to any other postal address within the Republic of South Africa and to vary its facsimile domicilium to any other facsimile number.
12.3 Any notice given by either party to the other party which is -
12.3.1 delivered by hand between the hours of 09:00 and 17:00 hours on any business day to that party's physical domicilium for the time being shall be deemed to have been received by that party at the time of delivery;
12.3.2 posted by prepaid registered post to either party's postal domicilium for the time being shall be deemed to have been received by the receiving party on the 7th (seventh) day after the date of posting;
12.3.3 successfully transmitted by facsimile to either party's facsimile domicilium for the time being shall be deemed to have been received by the receiving party on the day immediately succeeding the date of the successful transmission thereof.
12.4 Nothing in this clause shall operate so as to invalidate the giving or receipt of any written notice, which is actually received by a party other than by a method referred to in this clause.
- 13 **GENERAL**
13.1 This Agreement constitutes the sole record of the agreement between the parties in relation to the subject matter thereof. The Discounter shall not be bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded herein. This Agreement supersedes and replaces all prior commitments, undertakings or representations, whether oral or written between the parties in respect of the subject matter thereof.
13.2 No addition to, variation, novation or agreed cancellation of any provision of this Agreement shall be binding upon the parties unless reduced to writing and signed by or on behalf of the parties.
13.3 No indulgence or extension of time which either party may grant to the other shall constitute a waiver of or, whether by estoppel or otherwise, limit any of the existing or future rights of the grantor in terms hereof, save in the event and to the extent that the grantor has signed a written document expressly waiving or limiting such right.
13.4 Without prejudice to any other provision of this Agreement, any successor in title, including any executor, heir, liquidator, judicial manager, curator or trustee of either party shall be bound by this Agreement.
13.5 Notwithstanding the fact that the Discounter may not have signed the first Payment Schedule, payment by the Discounter in terms of clause 4.1 shall signify its acceptance of the cession referred to in clause 2.2 and bind the parties to the terms and conditions recorded herein.
- 14 **SEVERABILITY**
All provisions of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision of this Agreement which is or becomes unenforceable whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall only to the extent that it is so unenforceable, be treated as pro non scripto and the remaining provisions of this agreement shall remain of full force and effect. The parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.

SIGNED at _____ on _____ 20____

The Discounter

The Client