

**TERMS AND CONDITIONS OF THE REFINERY ACCOUNT CARD AND  
CREDIT FACILITY  
WITH  
TENACITY FINANCIAL SERVICES (PTY) LTD**

**You must read these terms and conditions carefully and pay special attention to all the terms printed in bold**

**1 CREDIT FACILITY**

- 1.1 We confirm that we will grant you a credit facility in the amount set out in the Quotation, subject to the terms and conditions of this Agreement.
- 1.2 The details of this Agreement are reflected in the Quotation which forms part of this Agreement

**2 HOW TO INTERPRET THIS AGREEMENT**

In this Agreement, the following words and phrases will, unless the contrary intention appears, have the following meanings:

- 2.1 "**Agreement**" means this agreement, including the Quotation and all written notices we send to you in accordance with the NCA;
- 2.2 "**Business Day**" means Monday to Friday and any day that is not a South African public holiday;
- 2.3 "**Card**" means the plastic card issued to you by us, pursuant to this Agreement, that is linked to your Card Account;
- 2.4 "**Card Account**" means the account opened in your name and that is associated with the Card;
- 2.5 "**Credit Facility**" means the facility approved by us and which may be used by you at any of our Participating Branches for the purchase of goods by means of the Card;
- 2.6 "**Credit Limit**" means the credit facility amount specified in the Quotation or any increased or decreased facility amount granted in accordance with the NCA;
- 2.7 "**NCA**" means the National Credit Act 34 of 2005 and its regulations, as amended or replaced from time to time;
- 2.8 "**Participating Branches**" means branches of Refinery, John Craig, Ackermans, Shoe City and Dunns Stores in the Republic of South Africa, as may be amended or updated from time to time;
- 2.9 "**Pepkor Group**" means the group of companies which are either directly or indirectly held by Pepkor Holdings (Pty) Ltd;
- 2.10 "**Personal Information**" or "**PI**", means any information or set of information regarding a person that can be linked to an individual or used to directly or indirectly identify an individual;
- 2.11 "**Principal Debt**" means the deferred amount to which interest, fees and charges are added;

- 2.12 "Process" and "Processing" means any operation or activity or any set of operations, whether or not by automatic means, concerning personal information, including (a) the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use; (b) dissemination by means of transmission, distribution or making available in any other form; or (c) merging, linking, as well as restriction, degradation, erasure or destruction of information;
- 2.13 "Quotation" means the pre-agreement statement and quotation which is attached to this Agreement;
- 2.14 "We", "Us" and "Our" unless it is specifically mentioned otherwise, means Tenacity Financial Services (Proprietary) Limited registration number 2007/003071/07, a private company duly incorporated in accordance with the laws of the Republic of South Africa with registered address 31 Industrie Street, Kuils River, Cape Town and registered credit provider NCRCP1638, and includes any holding, affiliated or subsidiary company of any of them and their successors in title;
- 2.15 "You" or, "Your" means the account holder who we agree to give credit to and identified by name in the Quotation;
- 2.16 Reference to –
- 2.16.1 one gender includes all the genders;
- 2.16.2 the singular form of a word includes the plural;
- 2.16.3 the plural form of a word includes the singular;
- 2.16.4 a law or regulation means that law or regulation on the date you sign this Agreement.
- 2.17 If there is a conflict between the terms of the Quotation we gave to you and these terms and conditions, the terms of the Quotation will apply.

### 3 PRINCIPAL DEBT

- 3.1 Every purchase of goods or services obtained with the Card shall form part of the Principal Debt
- 3.2 All amounts debited to the Card Account in terms of this Agreement together with interest thereon are repayable by you to us in the manner set out in this Agreement.

### 4 VALIDITY OF THE CARD AND ADDITIONAL CARDHOLDERS

- 4.1 You must, as soon as you receive the Card, sign it with a ballpoint pen in the space provided on the reverse side of the Card.
- 4.2 You may have additional cards linked to the Card Account if application for these additional cards has been approved by us.
- 4.3 It is your duty to ensure that all additional cardholders understand their obligations in terms of this Agreement. **You will be responsible and liable for all transactions made with the additional cards, the actions of the additional cardholders and for ensuring that any additional card is used only in accordance with this Agreement.**
- 4.4 The issue of additional cards will not increase the Credit Limit.
- 4.5 We will charge you a nominal fee for the replacement of the main Card and additional Card. You will not be charged for the first issue of any such Card.

## 5 USING YOUR CARD

- 5.1 You may only use the Card to purchase goods at Participating Branches and you may be required to sign a receipt after each such purchase.
- 5.2 **We have the right to pay the Participating Branch the amount of the purchase(s) made at that Participating Branch, even if a receipt has not been signed by you.**
- 5.3 **We will not be liable to you –**
- 5.3.1 **if any Participating Branch refuses to accept the Card for payment;**
- 5.3.2 **for any goods purchased with the card and you will not have the right to claim any amount from us or to institute any counter-claim or to apply set-off against us on this basis.**
- 5.4 **No dispute between you and the Participating Branch will give you the right to**
- 5.4.1 **be exempted from your obligation to us for any payment made to the Participating Branch;**
- 5.4.2 **instruct us to refuse to pay the Participating Branch;**
- 5.4.3 **instruct us to do a charge back of any payment already made to the Participating Branch for goods purchased with the Card.**
- 5.5 Should you wish to return your purchase to any Participating Branch; such return(s) will be subject to the Participating Branch's standard returns policy. Your account will be credited with the amount of the purchase returned, provided such return is in accordance with the standard returns policy of and accepted by the Participating Branch.
- 5.6 You acknowledge and agree that your use of the Card may be suspended and/or terminated at any time for any reason whatsoever and that we shall have no liability of whatsoever nature and howsoever arising in consequence of any such suspension and/or termination.

## 6 SAFE KEEPING AND UNAUTHORISED USE OF YOUR CARD

- 6.1 You are responsible to look after your Card, to keep it safe and the proper use of it.
- 6.2 **You must not allow anyone else to use your card. When you notice that your card is lost, stolen or has been used by another person, you must report it immediately to our Service Centre on 0860 900 400. We will stop further transactions on the card after being advised that the card is lost or stolen.**
- 6.3 **You will not be liable for use of the Card after you have notified us and we have stopped future transactions on the Card, unless –**
- 6.3.1 **your signature appears on the voucher, sales slip, or similar record evidencing that particular use of the Card; or**
- 6.3.2 **we have other evidence sufficient to establish that you authorised or were responsible for the use of the Card.**

## 7 MALFUNCTION OF ELECTRONIC FACILITIES

We are not responsible for any loss arising from any failure, malfunction or delay in any electronic point of sale device, or our supporting or shared networks, where applicable, resulting from circumstances beyond our reasonable control.

## 8 INTEREST AND OTHER CHARGES

- 8.1 The interest rate is a variable interest rate which means that the amount of the total interest as well as the amount of the instalments as specified in the Quotation may change if the reference rate changes.
- 8.2 Within 30 (thirty) Business Days from the day that a change in the interest rate takes place we will give you written notice of your new interest rate.
- 8.3 Interest will be calculated daily and we are entitled to add any unpaid interest to the outstanding balance of the Principal Debt which at that stage is still payable in terms of this Agreement.
- 8.4 If you do not make the required payment by the stipulated due date, your Card Account will be in arrears and you will therefore be in default of this Agreement. The interest charged on overdue amounts will be the same as the interest rate specified in 8.1 above.
- 8.5 We charge you a monthly service fee at the end of each month, which is reflected on the quotation. We add this fee to your outstanding balance and show it on your statement. Should we decide to increase the monthly service fee, we will inform you. The monthly service fee will not be more than the maximum amount allowed by the NCA.
- 8.6 We may charge an initiation fee as specified in the Quotation.
- 8.7 We may also change any fees and charges set out in the Quotation. We will give you 5 (five) Business Days' notice if we do so. The fees and charges may not be greater than the maximum amount allowed under the NCA.

## 9 CANCELLATION OF THE CARD, SUSPENSION AND/OR CANCELLATION OF THE CREDIT FACILITY

- 9.1 The Card will always remain our property and without us losing any right to any claim which we may have against you, we have, subject to **clause 17**, the right to –
- 9.1.1 suspend the Card at any time if you are in default of this Agreement; or
- 9.1.2 demand the return of the Card, cancel or repeal the Card in the event that the Credit Facility is closed.
- 9.2 We may, subject to **clause 17**, –
- 9.2.1 suspend the Credit Facility at any time if you are in default of this Agreement;
- 9.2.2 close the Credit Facility by giving you prior written notice of at least 10 Business Days
- 9.3 If the Credit Facility has been suspended or cancelled or if you die –
- 9.3.1 the Card may no longer be used for any purchases;

- 9.3.2 we may notify any Participating Branch or any person we think should know of the suspension or cancellation without incurring any liability.
- 9.4 Notwithstanding the provisions of **clause 9.2**, this Agreement will remain in effect until you have repaid all amounts charged to the Card Account.

## 10 WE ARE ALLOWED TO GIVE INFORMATION TO CREDIT BUREAUS

- 10.1 You understand that we are allowed to give to one or more credit bureaus:
- 10.1.1 information about this agreement;
- 10.1.2 information about your account with us;
- 10.1.3 details of your default if you do not adhere to any of the terms of this Agreement.
- 10.2 You have the right to contact the credit bureaus and look at your record with them.
- 10.3 You can correct any information that is wrong.

## 11 YOUR CREDIT FACILITY AND LIMIT

- 11.1 We may refuse to authorise purchases through using your Credit Facility for any reason whatsoever; including if you have exceeded your limit.
- 11.2 You may not make any purchases with the Card which will cause the Credit Limit to be exceeded.
- 11.3 **If we accept to process a transaction that results in you exceeding the Credit Limit, it does not mean that we have increased the Credit Limit on a permanent basis, but rather that we have allowed a temporary increase at your request. You will be liable for payment of the full amount by which the Credit Limit is exceeded.**

## 12 REDUCTION OR INCREASE IN THE FACILITY LIMIT

- 12.1 You may at any time, by prior written notice to us, request that the Credit Limit be reduced and stipulate a maximum Credit Limit that you are prepared to accept.
- 12.2 We may, by written notice to you, reduce the Credit Limit. The reduction of the Credit Limit will be effective upon delivery of the written notice.
- 12.3 We may only increase the Credit Limit under this Agreement in accordance with the NCA.
- 12.4 You may by written notice authorise us to apply automatic annual increases to your Credit Limit, or withdraw that authorisation. Any increase of your Credit Limit will be in our sole discretion and in accordance with the NCA.

## 13 MARKETING AND PROCESSING OF PERSONAL INFORMATION

- 13.1 You agree that we have given you options to be excluded from any telemarketing campaign which may be conducted by or on behalf of us, any marketing or customer list which may be sold or distributed by us, other than as required by the NCA, any mass distribution of e-mail or sms messages.

- 13.2 Unless you have indicated otherwise during the application process, you agree and expressly consent to -
- 13.2.1 the processing and further processing of your PI (including your name, surname, ID number, telephone number, transactional information and any other information which may be required in terms of the NCA or any other law) by us and other companies in the Pepkor Group, any of their operators, commercial partners (e.g. Capfin, insurance companies, the supporting bank in the case of a bank product and any other financial services providers, such as money remitters), agents and sub-contractors (who may be outside South Africa and in countries that do not have similar data protection laws to South Africa), agents and sub-contractors (who may be outside South Africa and in countries that do not have similar data protection laws to South Africa) on the condition that they will keep your PI confidential and will only use your PI for the purposes of providing information about products and services to you and to comply with legal and regulatory obligations;
- 13.2.2 the indefinite retention of your PI, unless you object, in which case we will retain such information only for as long as legally permitted;
- 13.2.3 the collection of your PI from any other legitimate source to supplement the information which the Pepkor group has about you (e.g. telecommunication networks, Capfin, insurance companies, the supporting bank in the case of a bank product and any other financial services providers, such as money remitters);
- 13.2.4 the use of your PI to send you information about products, services and special offers offered by the Pepkor group and its commercial partners that may be of interest to you;
- 13.2.5 the use of your PI for purposes required in terms of law;
- 13.2.6 a credit enquiry being conducted about you with any credit bureau or credit provider and providing your PI, including the manner in which you conduct your account, to credit risk management services and/or crime prevention agencies.
- 13.2.7 The provision of your PI in terms of this agreement is voluntary.
- 13.2.8 Subject to applicable law, you may access the PI we have about you by contacting our Service Centre on 0860 900 400 and request that applicable corrections be made.
- 13.2.9 If you are unhappy about the way we process your PI, you should contact our call centre on 0860 900 400. Alternatively, you may lodge a complaint to the Information Regulator.
- 13.2.10 If you choose to be excluded from direct marketing campaigns in the future, you must advise us by contacting us on 0860 900 400 or you can advise us in writing or register a block on any registry which we are bound by law to recognise. We will not charge you a fee to update this request on our systems and we will give effect to changes as soon as reasonably possible.

## 14 STATEMENTS AND PAYMENT

- 14.1 We will send you a statement periodically to your postal address or electronically if this delivery method has been selected by you. The statement will show all transactions debited to the Card Account up to the date of the statement.

- 14.2 The statement will show both the full and minimum amounts payable to us, on or before the due date shown on the statement.
- 14.3 **Non-receipt of the statement does not entitle you to refuse or fail to pay any amount that is due to us.**
- 14.4 **It is your responsibility to check your statements. You must let us know in writing within 30 (thirty) days of the date of the statement if there is something you do not agree with. If you do not let us know within this time, we are entitled to treat the statement as correct. You will then have to prove that the statement is not correct.**
- 14.5 You may pay at any Participating Branch or via any other payment method that we may communicate to you from time to time.
- 14.6 The method of payment that you choose will be at your own risk and we will only recognise the payment when we received and process it and once it has been cleared.
- 14.6.1 Should you choose to pay your monthly instalments by debit order, the instalment is taken from your bank account automatically each month, on the date that you have chosen. If the date that you have chosen falls on a weekend or public holiday, the debit may be processed on the next business day after the Sunday or public holiday.
- 14.6.2 Should you choose to pay your monthly instalments by debit order, we reserve the right to track the nominated bank account and present the instruction for payment as soon as sufficient funds are available in the nominated bank account to ensure successful payment.
- 14.6.3 You agree to pay any bank charges and fees relating to the debit order instruction.
- 14.6.4 The debit audit instruction cannot be assigned to any third party, unless your Agreement is ceded or assigned to a third party, in which event the debit order authority may then be ceded or assigned to that third party.
- 14.7 If your address or details where you received your statements change, you must let us know so that the change can be made. You understand that if you do not do so, your statements will be returned and we will not send statements until you provide us with updated details.

## 15 YOU CAN PAY MORE THAN THE MINIMUM PAYMENT

- 15.1 You can pay more than the minimum payment shown on your statement each month. You are required to pay at least the minimum payment due each month.
- 15.2 We will apply the payments as follows:
- 15.2.1 first to pay any interest that is due;
- 15.2.2 second to pay any fees or charges that are due;
- 15.2.3 third to reduce the amount of the Principal Debt that you still owe to us.

## 16 EARLY SETTLEMENT

- 16.1 You may end this agreement early on the conditions set out below. If you end this agreement early, the date on which this Agreement ends will be called the settlement date.

- 16.2 To end this Agreement early, you should contact us to find out the amounts you still owe us. You may ask to end the agreement immediately or at a future settlement date. We will tell you the total amount you owe on the settlement date, that will include all of the following:
- 16.2.1 the amount of the Principal Debt you owe at the settlement date;
  - 16.2.2 interest you owe on the Principal Debt at the settlement date;
  - 16.2.3 the fees and charges you owe at the settlement date.
- 16.3 **You must destroy (by cutting through the magnetic stripe and account number). A Card that is not destroyed correctly may still be used and should this happen you will be responsible for the payment of all transactions that may take place.**

## **17 YOU MUST PAY A DEFAULT ADMINISTRATION FEE FOR LETTERS OF DEMAND**

We will charge you a fee each time you miss one or more payments and we have to write a letter to you to advise you of your default. This fee is called a default administration fee as per the NCA.

## **18 YOU MUST PAY COLLECTION COSTS IF WE BRING LEGAL PROCEEDINGS**

- 18.1 If we bring legal proceedings against you to enforce payment of amounts you owe us, you are liable to pay all costs we incur in collecting the payment.
- 18.2 The costs are determined by various laws, including:
- 18.2.1 the Supreme Court Act, 1959
  - 18.2.2 the Magistrates' Court Act, 1944
  - 18.2.3 the Attorneys Act, 1979
  - 18.2.4 the Debt Collectors Act, 1998.
- 18.3 The collection costs exclude the default administration fee.

## **19 WHEN YOU ARE IN DEFAULT**

- 19.1 **You are in default of this Agreement if:**
- 19.1.1 **you do not pay any amount you owe us on the due date;**
  - 19.1.2 **you breach any of the terms and conditions of this Agreement and you do not correct this within 7 (seven) days after we let you know;**
  - 19.1.3 **anything you said, declared or promised is incorrect or false;**
  - 19.1.4 **you voluntarily surrender your estate or die;**
  - 19.1.5 **you are placed under administration or become insolvent;**
  - 19.1.6 **you cannot pay your debt;**
  - 19.1.7 **your assets have been attached or judgment has been given against you;**
  - 19.1.8 **you try to reach an agreement with your creditors to delay payment of your debt.**



## **20 WHAT WILL HAPPEN IF YOU ARE IN DEFAULT**

- 20.1 If you are in default, we may –
- 20.1.1 give you written notice of such default and suggest that you refer this Agreement to a debt counsellor, an alternative dispute resolution agent, a consumer court or an Ombud with jurisdiction, to resolve any dispute or reach an agreement to bring repayments up to date.
  - 20.1.2 take legal steps to enforce this Agreement if –
    - 20.1.2.1 we gave you written notice as above or we gave notice to end any debt review process; and
    - 20.1.2.2 you are in default under this Agreement for at least 20 (twenty) Business Days; and
    - 20.1.2.3 it has been at least 10 (ten) Business Days since we gave you notice as above; and
    - 20.1.2.4 if we gave you notice as above and you did not respond to that notice, or you did not accept our proposal; and
  - 20.1.3 recover collections costs and default administration charges from you.

## **21 CERTIFICATE OF INDEBTEDNESS**

A certificate signed by any of our managers specifying the amount owing by you to us and further stating that such amount is due, owing and payable by you, shall be sufficient proof of the amount thereof and of the fact that such amount is so due, owing and payable for the purpose of obtaining provisional sentence or other judgment in any competent court. It shall not be necessary to prove the appointment of the person signing any such certificate.

## **22 WE NEVER LOSE OUR RIGHTS**

We do not lose any of our rights under this agreement if we do not immediately and in every instance insist on them. You may not raise it as a defence if we have a right but do not enforce it at the relevant time. For example, if we allow you extra time to pay your monthly payments in one month, it does not mean we have allowed you extra time the next or any other month.

**23 GOVERNING LAW**

South African law governs this agreement and it must be interpreted by the laws of the Republic of South Africa. This applies even if the parties do not live in the Republic of South Africa.

**24 YOU AGREE THAT WE MAY BRING LEGAL PROCEEDINGS IN THE MAGISTRATE'S COURT**

You agree that we may bring legal proceedings against you for this Agreement in any Magistrate's Court that has the authority to hear and decide on the case. (This authority is called jurisdiction.) You agree to the jurisdiction of the Magistrate's Court even if the amount we claim from you is more than the Magistrate's Court limit. This does not stop us from bringing legal proceedings in a High Court that has jurisdiction.

**25 TRANSFERRING RIGHTS OR OBLIGATIONS**

25.1 You may not transfer any of your rights or obligations under this Agreement.

25.2 You agree that we may transfer some or all our rights and obligations under this Agreement to any other person. We do not have to inform you or get your permission to transfer our rights and obligations. If this clause applies, then "we", where used in this agreement, will include the person to whom we have transferred any of our rights or obligations in terms of this clause.

**26 YOU HAVE THE RIGHT TO APPLY TO A DEBT COUNSELLOR**

You have the right to apply to a debt counsellor who will consider your application to determine if you are over-indebted (this means that you have more debts than you are able to pay) or if you were given credit recklessly.

## 27 PROCESS TO FOLLOW IF YOU HAVE A COMPLAINT

- 27.1 If you have a complaint or dispute, you can do any one or more of the following:
- 27.1.1 Visit an Refinery store and ask the customer services desk to connect you to the Tenacity Service Centre
  - 27.1.2 Contact our Service Centre on 0860 900 400
  - 27.1.3 Write a letter of complaint and send it to –  
Tenacity Financial Services, P.O. Box 140, Kuils River, 7579, South Africa
  - 27.1.4 Email: [refinery@tenacityinc.co.za](mailto:refinery@tenacityinc.co.za)
- 27.2 If we cannot resolve your complaint we will let you know. If you are not satisfied with the outcome of your dispute or complaint, you can refer the complaint or dispute to an alternative dispute resolution agent or contact the applicable regulatory body on the contact details below.
- 27.3 You can file any credit related complaints with the National Credit Regulator on:
- Telephone: (011) 554-2600 or 0860 627 627
  - Fax: (011) 484-6122
  - E-mail: [info@NCR.org.za](mailto:info@NCR.org.za)
  - Post Address: 127, 15th Road, Randjespark, Midrand

## 28 ADDRESSES FOR NOTICES

- 28.1 You agree to accept any notice and legal processes under this Agreement at the address you give to us on the phone or on your application. This address is known in law as your domicile. The notices and processes include letters reminding you of payments you have missed, letters of demand, a summons and other legal notices. A legal process includes the ways we can enforce any court judgment, for example, a summons, attaching your property and selling it to recover money you owe to us. Legal process also refers to the formal/legal document served to start proceedings, for example, a summons. If we send you a letter by registered post, we will treat it as if you received the letter four (4) days after we posted it. If you dispute this, you will have to prove that you did not receive the letter at that time.
- 28.2 If you want to change the address at which you agree to accept notices and legal processes, the you must give us notice by mail to PO Box 140, Kuils River, 7579 or emailed to [refinery@tenacityinc.co.za](mailto:refinery@tenacityinc.co.za)

## 29 THESE TERMS AND CONDITIONS ARE THE WHOLE AGREEMENT

- 29.1 The Agreement is the whole agreement between you and us. Neither party is legally obliged to comply with any express or implied term, condition, undertaking, representation, warranty, or promise not recorded in the Agreement. The Agreement replaces any arrangement or understanding held by the parties before this Agreement was signed.
- 29.2 If you want copies of documents relating to your account, we will send these to you and we may charge a fee for this.
- 29.3 We monitor and record all our telephone calls and other interactions with you.

### **EACH CLAUSE IS SEPARATE**

- 29.4 The parties acknowledge that each clause of this Agreement is separate. If any clause of this Agreement is or becomes illegal, invalid or unenforceable for any reason or in any jurisdiction, it will be treated as if it had not been written.
- 29.5 This does not:
- 29.5.1 make the rest of the agreement illegal, invalid or unenforceable
  - 29.5.2 affect the legality, validity or enforceability of the clause in another jurisdiction.

### **30 WE MAY CHANGE THESE TERMS AND CONDITIONS**

- 30.1 We may change the provisions of the Agreement at any time and most of the time do not need your permission to do so. We will inform you of any changes and the date the changes apply from by doing one or more of the following:
- 30.1.1 sending you a notice of the changes we intend to make or have made;
  - 30.1.2 sending you a new set of terms and conditions to replace these terms and conditions; or
  - 30.1.3 setting out the changes on your monthly statement.