

## WARRANTY AND ACKNOWLEDGEMENT

1. I/We warrant that the information contained herein is true and correct in every respect. I/We undertake to notify the Company (as defined below) in writing immediately of any change in this information.
2. I/We agree that the Company may use the services of any registered credit bureau or other supplier of information, to assist in assessing the Customer's credit worthiness, now and at any time in the future. I/We also agree that the Company may source information (including conduct and payment matters) from any reference source set out on page 1 of this application, or from any other industry supplier. I/We agree that the Company may disclose information regarding the Customer's credit worthiness and conduct of the account to any registered credit bureau and other suppliers in the industry.
3. I/We am duly authorised to sign this application, and confirm having read and accepted the general terms and conditions of sale below ("**General Terms and Conditions**") , which conditions shall, unless otherwise agreed in writing apply whenever any goods are purchased by me/us, from the Company.
4. I/We are duly authorized to sign this Agreement and acknowledge that the Company's General Terms and Conditions attached hereto form part of this Agreement for credit facilities and, furthermore, that I/we have read the said Terms and Conditions and agree to be bound thereto.
5. I/we acknowledge further that the Company's General Terms and Conditions attached hereto shall apply to any contract for the sale of any goods by the Company, whether that contract arises out of (i) any offer made by the Company and accepted by the Customer, or (ii) any offer made by the Customer and accepted by the Company, including any such offer made by the Customer in response to a quotation from the Company.

**Name of Entity / Individual:** \_\_\_\_\_

**Signed:** \_\_\_\_\_ **Full Names:** \_\_\_\_\_

**Capacity:** \_\_\_\_\_ **Date:** \_\_\_\_\_

## GENERAL TERMS AND CONDITIONS OF SALE

### 1. PRELIMINARY AND DEFINITIONS

- 1.1 "**Agreement**" means this Agreement and any orders, invoices or proof of delivery or such other related documents which shall include the General Terms and Conditions;
- 1.2 "**Company**" means Seal Cool Industries Proprietary Limited (Registration No. 2023/175983/07) and, where the context so requires, its affiliates, associated Company's and successors in title and/or any person acting on its behalf;
- 1.3 "**CPA**" means the Consumer Protection Act, No. 68 of 2008 and any regulations promulgated in terms thereof;
- 1.4 "**Customer**" means any person, juristic, natural or otherwise, who placed the order for the goods and who is liable for payment of the price;
- 1.5 "**goods**" means the goods requested by the Customer or services supplied by the Company to the Customer as referred to on the order and invoice;
- 1.6 "**Incidental Credit Agreement**" shall mean an incidental credit agreement as envisaged in the NCA;
- 1.7 "**NCA**" means the National Credit Act No. 34 of 2005;
- 1.8 "**person**" means the Customer and includes a natural or juristic person;
- 1.9 "**Personal Information**" shall have the meaning ascribed thereto in terms of POPI;
- 1.10 "**POPI**" means the Protection of Personal Information Act No. 4 of 2013;
- 1.11 "**price**" means the sale price of the goods as determined by the Company from time to time and reflected on the invoice, and any such taxes, duties and charges levied by the Company from time to time not included in the price;
- 1.12 "**Processing**" shall have the meaning ascribed thereto in terms of POPI and "**Process**" shall have a similar meaning as the context requires; and
- 1.13 "**services**" means the services supplied by the Company to the Customer as referred to on the order and invoice.

### 2. CPA

- 2.1 If the Customer is a juristic person, whose nett asset value or annual turnover exceeds R2 000 000.00 (two million rand) (or such other amount as the CPA may prescribed from time to time), the CPA shall not apply to this Agreement.
- 2.2 If the Customer is a natural person or juristic person, whose nett asset value or annual turnover is less than R2 000 000.00 (two million rand) (or such other amount as the CPA may prescribed from time to time), the CPA shall apply to this Agreement.

### 3. PRICING

- 3.1 Subject to clause 3.2, the price for the goods and/or services is the Company's official price list ruling for them at the date of despatch and, unless otherwise stated, is quoted nett and, subject to clause 18, but not installation costs, taxes, duties or charges of any other nature whatsoever.
- 3.2 Despite clause 3.1, the Company shall be entitled to increase the price for any reason prior to delivery of the goods to the Customer.
- 3.3 The Company has a minimum order quantity on products and will be entitled to raise a surcharge if orders are received for less than the minimum order quantity.

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**Initial of Customer**

### 4. PAYMENT TERMS

- 4.1 Unless the Customer has a credit facility with the Company, the price for the goods or services shall be payable prior to manufacturing of such goods or prior to completion of the services, either in cash or such other manner as approved by the Company.
- 4.2 If the Customer has a credit facility with the Company, payment of the price for the goods or services shall, unless stated otherwise in the Agreement or on the front of the invoice, be effected on or before the 30th (thirtieth) day of the month following the date of delivery or completion of the services.
- 4.3 The Customer agrees to pay interest to the Company. Interest at the rate of 2% (two per centum) above the prime bank lending rate, as set aside from time to time by Nedbank, per annum calculated daily and capitalized monthly in arrears shall accrue on any sum overdue.
- 4.4 Payment of the amount is due before despatch or as per agreed terms, either by means of Electronic Fund Transfer, Cash or Direct Deposit. Payments by means of Electronic Transfer or Direct Deposit must reflect on the Company's' Bank Account on the due date. The price payable shall be the net price ruling at the date of despatch. The Customer shall, in addition to the purchase price, pay any new and/or additional taxes, duties, import charges or fees or the like, imposed by any competent authority, on the goods and/or the sale and/or the purchase thereof and/or the importation thereof after the date of the order.
- 4.5 In the event of the Customer failing to fulfil any terms of payment agreed with the Company or if the Company shall at any time have any doubts as to the solvency or financial responsibility of the Company has the sole and absolute authority and discretion as to whether to make any further delivery of goods under this or any other contract except upon the receipt of cash or other security satisfactory to the Company prior to delivery of the goods.

### 5. TITLE

- 5.1 Unless otherwise agreed by the Company in writing, the risk of goods shall pass to the Customer from the moment the goods leave the Company's premises or to the carriers of such goods, whether such carrier be the agent or nominee of the Company or of the Customer.
- 5.2 The ownership of the goods delivered to the Customer shall remain vested in the Company until sums due by the Customer to the Company under this or any other contract shall have been paid in full. Until payment is so effected in full, the Customer shall be deemed to hold all such goods as security for the Company and shall, if so required by the Company, store all such goods separately from any other goods in their possession.
- 5.3 While the goods described in 5.2 are so held by the Customer, the Company has the right to sell the goods in question from the Customer's premises.
- 5.4 If the Customer is a juristic person as referred to in clause 2.1, the Customer hereby authorizes the Company to enter any premises for the purpose of taking possession of the goods, to which this Agreement relates, in the event of default in payment of the price by the Customer.
- 5.5 Where the Company manufactures or provides models, moulds, tools, dies or other manufacturing equipment on behalf of the Customer, the Company will invoice part of the costs incurred. Because the amounts charged do not cover the expenditure on the drawing, construction, running in know-how and maintenance, the models, patterns, tools and dies, including all accessories, remain the property of the Company. The same applies to alterations, replacements, models, tools and dies, and subsequent moulds. Costs for tools, moulds, etc. including VAT are payable 50 % plus VAT in advance and the balance thereafter on completion as invoiced. The Company is not obliged to retain tools, etc. longer than 3 (Three) years after the last delivery.

### 6. DISCOUNTS

- 6.1 The Customer's entitlement to any discount (trade, quantity or cash discount) allowed shall be conditional on payment being made in full, without deduction or set off on or before the due date for such payment. In the event that any payment is not made on or before its due date, such failure to pay will constitute a material breach of this agreement and the Company may, in its sole and absolute discretion, suspend all deliveries on outstanding orders until full payment has been received. The suspension of deliveries shall not result in any liability whatsoever on behalf of the Company and the Customer hereby indemnifies and holds the Company harmless against any such liability.

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**Signature of Customer**

- 6.2 The Customer has no right to withhold payment for any reason whatsoever, and agrees that no extension of payment of any nature shall be extended to the Customer, and such extension will not be applicable or enforceable unless agreed to by the Company, reduced to writing and signed by the Customer and a duly authorized representative of the Company.

## 7. DAMAGE

- 7.1 The Company shall not be liable for any damage to goods delivered by any person other than the employees of the Company, provided such damage can be attributed to the employee's negligence.

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Initial of Customer

## 8. CANCELLATION, RETURNS AND SUSPENSION

- 8.1 If the goods ordered by the Customer are special order goods as defined in the CPA, the Customer shall not enjoy the rights afforded by Section 17 of the CPA, which include the cancelling of any advance order or booking.
- 8.2 Special order goods are goods that the Company was expressly or implicitly required or expected to procure, create or alter specifically to satisfy the Customer's requirements.
- 8.3 If a Customer referred to in clause 2.2 orders goods not defined as special order goods in terms of the CPA, then the Customer may cancel the order, provided that:
- 8.3.1 The Company may require payment of a reasonable deposit for such goods in advance; and
- 8.3.2 Impose a reasonable cancellation charge in the event of the Customer cancelling the order.

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Signature of Customer

- 8.4 If the Customer is not a juristic person as defined in clause 2.1, then in addition to the warranties in clause 8, the Customer will enjoy the protection afforded by Section 20 of the CPA, which includes, *inter alia*:
- 8.4.1 The right to return goods to the Company, where the goods were intended to satisfy a particular purpose as communicated to the Company, and within 10 (ten) business days after delivery to the Customer, the goods have been found to be unsuitable for that particular purpose;
- 8.4.2 Goods returned as aforesaid must be returned to the Company at the Customer's risk and expense, provided that upon the return of the goods, the Company shall refund the Customer the price paid for the goods less any amount that the Company may charge as provided for in Section 20(6) of the CPA, provided the goods are returned undamaged.
- 8.5 A Customer referred to in clause 2.1 may not return goods to the Company without the prior written consent of a duly authorized representative of the Company and, in the event of such consent being granted, the Customer will not be entitled to a credit for the returned goods unless, when returning such goods, it simultaneously advises the Company in writing of the original delivery note number or the original invoice number.
- 8.6 Should a Customer return goods in accordance with clause 8.6, a restocking charge might be levied by the Company.
- 8.7 Upon the termination of the Agreement for any reason whatsoever, all amounts then owed by the Customer to the Company shall forthwith become due and payable in full without any set-off or deduction.
- 8.8 Should any amount owed by the Customer not be paid on the due date, then, without prejudice to any other rights the Company may have, the Company may immediately suspend the carrying out of any of its obligations in terms of this Agreement until payment is made, as well as, in the sole discretion of the Company, claim immediately all monies outstanding in terms thereof.
- 8.9 Should a Customer referred to in clause 2.1 have any claim for delivery of any incorrect quantity or for any damaged or lost goods, it shall be obliged to notify the Company of such claim within 2 (two) business days of delivery having been effected, failing which any such claim will lapse.

## 9. WARRANTY

- 9.1 If the Customer is a natural person or juristic person as defined in clause 2.2, the Customer shall enjoy the warranties and/or protections contained in the CPA as it relates to safe, good quality goods, implied warranty of quality and warranties on repaired goods.
- 9.2 If the Customer is a natural person or juristic person as defined in clause 2.1, the Company does not warrant the fitness of any goods for a particular purpose unless an express written guarantee is given to the Customer in respect of each sale and, if no such written guarantee is given, the goods will nevertheless be warranted to within the normal limits of industrial quality and as warranted by the Company in writing.

## 10. LIABILITY

- 10.1 All conditions and/or warranties as to the conformity of any goods with samples or descriptions as to the condition, quality or fitness for any purpose whatsoever of the goods, be and are hereby excluded.
- 10.2 The Company shall not be liable for any loss or damage of whatsoever nature, whether caused by the negligence of the Company, their employees, servants or agents or in any other way whatsoever and shall under no circumstances be liable for any loss of profit, business or production, business interruption, or any similar loss or damage whether direct, indirect or consequential, however caused.

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Initial of Customer

- 10.3 Unless otherwise stated, the goods are subject to the following tolerances:

For section, if measurable, width, height and diameter  $\pm$  2.5% wall thickness or web thickness  $\pm$  10%



For insulating tubing (special dimensions) internal diameter  $\pm 5\%$  wall thickness  $\pm 10\%$   
For other tubing's internal diameter  $\pm 2.5\%$  wall thickness  $\pm 10\%$   
For rigid PVC pipes (special dimensions) diameter  $\pm 2.5\%$   
Wall thickness  $\pm 10\%$

Tolerance on make-up Production lengths (excluding pipes):

1. Rigid PVC sections  $\pm 0.5\%$  minimum  $\pm 2\text{mm}$
2. Flexible PVC sections  $\pm 1\%$  minimum  $\pm 2\text{mm}$
3. CAB sections  $\pm 1\%$  minimum  $\pm 2\text{mm}$

Bundles and rolls:

1. From 5.50 mm  $\pm 0.5\%$
2. Above 50m  $\pm 0.4\%$

Shore. A hardness data is subject to a tolerance range of  $\pm 3$  for the thermoplastics and  $\pm 5$  for elastomers

- 10.4 Under no circumstances shall the Company be bound by or in any way liable for any representation made or any information or advice given to the Customer or any person whatsoever by the Company or by any person who is, or who is deemed by law to be, a servant or agent of the Company, whether such representation is made or information or advice is given in pursuance of this or any other contract or in any other way whatsoever.
- 10.5 The Company shall under no circumstances be bound by or liable for any description, information or illustration contained in any catalogue, price list, brochure, leaflet or other document of any kind and nothing contained in any such document shall form part of this or any other contract between the Company and the Customer.
- 10.6 In placing an order for the goods the Customer warrants that it has tested the goods of the description and specification and that such goods are suitable for any purpose for which the Customer requires them.

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**Signature of Customer**

#### 11. INSURANCE

- 11.1 Whilst every protection is taken in packaging, goods are consigned uninsured against loss or damage in transit and shall be at the Customer's risk and the Company cannot be held liable for the negligence or otherwise of couriers, carriers, and freight forwarders.

#### 12. RISK

- 12.1 The Customer acknowledges and warrants that it shall insure the goods and keep the goods in good order and condition; as such goods remain the property of the Company until receipt of payment of the price, taxes, levies and other charges.

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**Signature of Customer**

#### 13. ACCOUNT COLLECTION

- 13.1 The Customer indemnifies and undertakes to make payment to the Company of all costs and interest, including costs as between attorney and client, debt collection costs, or any other costs on a fixed or contingent basis with regard to the collection of any monies owed by the Customer to the Company.
- 13.2 Any such legal costs or other costs shall form part of any legal proceedings instituted by the Company to recover the price from the Customer.

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**Signature of Customer**

#### 14. GOVERNING LAW

- 14.1 This Agreement is governed by the laws of the Republic of South Africa.
- 14.2 The Company shall be entitled, but not obligated, to institute any action against the Customer arising out of this Agreement in any Magistrate's Court having jurisdiction over the Customer in terms of Section 28 of the Magistrate's Court Act, No. 32 of 1944, as amended, and for this purpose the Customer consents in terms of Section 45 of that Act to the jurisdiction of such Magistrate's Court, notwithstanding that the claim of the Company may exceed the jurisdiction of such court.
- 14.3 The United Nations' Convention on Contracts for the International Sale of Goods is excluded from this Agreement.

#### 15. SEVERANCE

- 15.1 Any part of this Agreement is severable, the one from the other, and if any provision is held to be invalid or unenforceable for any reason, then the unenforceability of that term or condition shall not affect the remainder of this Agreement, which will remain in full force and effect.

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**Initial of Customer**

- 15.2 This document contains the entire Agreement between the parties and neither party shall be bound by any undertakings, representations or warranties not recorded herein.
- 15.3 No alteration, cancellation, variation of or addition hereto shall be of any force or effect unless reduced to writing and signed by the parties as an addendum to this offer or their duly authorised signatories.
- 15.4 No indulgence, leniency or extension of time which either party ("**the grantor**") may grant or show to the other, shall in any way prejudice the grantor or preclude the grantor from exercising any of its rights in the future.
- 15.5 The Customer agrees that (a) this Agreement represents the entire Agreement between the Customer and the Company and that no alterations or additions to this Agreement may be effected unless agreed to by both parties, reduced to writing and signed by the Customer and a duly authorised representative of the Company; (b) this agreement will govern all future contractual relationships between parties; (c) this Agreement is applicable to all existing debts and future debts between parties; (d) this Agreement is final and binding and is not subject to any suspensive or resolutive terms and conditions; (e) any conflicting conditions stipulated by the Customer are expressly excluded; (f) these terms supersede all previous conditions of Agreement without prejudice to any securities or guarantees held by the Company.

## 16. INTELLECTUAL PROPERTY

- 16.1 The Customer acknowledges that the Company is the owner of the intellectual property rights, including copyright, patent and design rights in relation to the goods (the "**Intellectual Property Rights**"), and that the Customer does not acquire any right or interest in such Intellectual Property Rights by reason of its purchase of the goods from the Company.
- 16.2 The Company gives no warranty that the goods conform to any statutory requirement or that the goods do not infringe any patent or trademark (whether registered or not), the risk whereof shall be at all times upon the Customer.
- 16.3 Where the goods are manufactured and supplied to the requirements or specifications of the Customer, the Customer shall indemnify the Company against all claims made against the Company in respect of any breach of any statutory requirements or the infringement of any copyright, patent or trademark (whether registered or not).

## 17. ALLOCATION TO OLDEST INDEBTEDNESS

- 17.1 Should the Customer have a line of credit with the Company, all payments by the Customer to the Company shall be deemed to be a payment in reduction of the oldest indebtedness of the Customer to the Company.

## 18. DELIVERY

- 18.1 Subject to the provisions of clause 7, 10, 11 and 12, delivery of the goods shall be deemed to take place when the goods are delivered by the Company or its agent at the location specified for each order by the Customer.
- 18.2 The Company shall use its best endeavours to comply strictly with realistic delivery dates specified by the Customer and accepted by the Company. However, it is accepted that the time allowed for delivery is an estimate only.
- 18.3 The Company will not be held liable for loss or damage caused by its non-acceptance of orders or by any delay in making delivery of the goods pursuant to accepted orders.
- 18.4 Where goods are sold to a Customer and the Customer intends taking delivery of such goods from the Company's premises, the Customer is obliged to take delivery of such goods within 3 (three) business days of being notified that they are available for collection. After that time, the Company will be entitled to levy a reasonable charge for the storage of the goods.
- 18.5 Due to the nature of the manufacturing process, the Company shall have the right to over or under deliver to the extent of 10% (Ten Per Centum). In the event of over or under delivery the price payable by the Customer shall be increased or decreased pro rata.

## 19. PARTIAL DELIVERY

- 19.1 If, for any reason whatsoever, the Company is unable to effect delivery of all the goods requested by the Customer:
  - 19.1.1 The Company shall deliver such goods as it is then able to do so, and the Customer is obliged to accept such partial delivery;
  - 19.1.2 The Company will, should it be in a position to do so, tender delivery of the balance of the goods not delivered in terms of clause above, and the Customer hereby agrees to accept delivery thereof.

## 20. CLAIMS FOR SHORT DELIVERY

- 20.1 Should the Customer have any claim whatsoever arising out of the partial delivery of the goods, as envisaged by clause 19 above or the delivery of damaged goods, the Customer will notify the Company of such shortfall or damage by endorsing the delivery note accordingly.
- 20.2 Should the Customer not give timeous notice of partial delivery in terms of clause 19.1.1 above or the delivery of damaged goods within 2 (two) business days of delivery of the goods, the Customer shall be deemed to have received the goods set out in the delivery note and relevant invoices.

## 21. FORCE MAJEURE

- 21.1 Customer shall not have any claim of any nature whatsoever against the Company for any failure by the Company to carry out any of its obligations under this Agreement as a result of any act, event, or circumstance, or any combination thereof, which: (i) is beyond the reasonable control of the Company; (ii) was not foreseeable, or if foreseeable, could not have been avoided, materially prevents,

hinders, or delays the Company in its performance of its obligations under this Agreement; and (iv) is without fault or negligence on the part of the Company (“**Force Majeure**”).

21.2 The Company shall be entitled to cancel or delay deliveries, or to reduce the amount delivered, if it is prevented from, hindered in or delayed in manufacturing or delivery by normal routes or means any goods to which this Agreement applies, as a result of Force Majeure.

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**Initial of Customer**

21.3 For the purposes of clause 21.1 and 21.2 above, Force Majeure shall include, but not be limited to, strikes, lock-outs, accidents, shortages or unavailability of raw materials from normal sources or routes of supply, shortage or unavailability of labour, any default or delay of subcontractors, riots, political or civil disturbances, the elements, any act of any State of Government or any other authority, or any other cause beyond the Company’s reasonable control.

## **22. ORDER PROCEDURE**

22.1 The Customer must comply with ordering procedures issued by the Company from time to time.

## **23. CERTIFICATE OF BALANCE**

23.1 A certificate signed by any director or manager of the Company showing the amount due and owing by the Customer to the Company at any given time shall be sufficient evidence of the amount due by the Customer and such certificate shall be sufficient for purposes of summary judgment or provisional sentence or other legal proceedings.

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**Signature of Customer**

## **24. DOMICILIUM**

24.1 The Customer agrees that the addresses provided in the credit application applied for with the Company and/or that appears on any orders presented to the Company shall constitute its *domicilium citandi et executandi* for all purposes in respect of this Agreement.

24.2 The Customer undertakes to notify the Company within 7 (seven) days of any changes of its address in writing and failure to do so shall not invalidate any notices sent to the Customer’s *domicilium citandi et executandi*.

## **25. RETURN OF GOODS**

25.1 If, in the exercise of its discretion, the Company shall agree, at the request of the Customer, to accept the return of goods for credit in accordance with clause 8 above, provided such goods were supplied by the Company and are not faulty or subject to any claim, then the Company shall be entitled, without the necessity of any further agreement, to claim from the Customer a handling charge of 10% (ten per centum) of the invoice price of the goods returned.

## **26. NATIONAL CREDIT ACT NO. 34 OF 2005**

26.1 To the extent that the NCA is applicable to this Agreement, the Agreement shall constitute an Incidental Credit Agreement. For that reason:

26.1.1 the provisions of the NCA regulating reckless credit does not apply to this Agreement; and

26.1.2 the Company does not have to be registered with the National Credit Regulator in order to enter into this Agreement.

## **27. CESSION AND ASSIGNMENT**

27.1 The Customer shall not be entitled to cede, assign or delegate any of its rights and/or obligations in terms of or arising from this Agreement to any third party without the prior written consent of the Company.

27.2 The Company shall be entitled to cede, assign or delegate any of its rights and/or obligations in terms of or arising from this Agreement to any third party, without written notice to the Customer.

## **28. DATA PROTECTION AND PRIVACY**

28.1 To the extent that the Customer discloses any Personal Information to the Company, the Company shall ensure that reasonable technical and/or organisation measures are undertaken to: (i) prevent loss of, damage to or unauthorised destruction of such Personal Information; (ii) prevent unlawful access to or Processing of such Personal Information and (iii) ensure that all Personal Information disclosed by the Customer is Processed strictly in accordance with the provisions of POPI.

28.2 The Customer, in terms of this Agreement, gives it/their express consent to the Company to Process it/their Personal Information in accordance with this Agreement.



**FOR OFFICE USE**

REFERENCES:

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_
- 4. \_\_\_\_\_

Representative  
Number: \_\_\_\_\_

Settlement Discount: \_\_\_\_\_ Limit: \_\_\_\_\_

Invoice Discount: \_\_\_\_\_ Account Number: \_\_\_\_\_

**ACCOUNT CHECKED:** \_\_\_\_\_ **ACCOUNT APPROVED:** \_\_\_\_\_

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**Initial of Customer**