

# AMBER BAY

INVESTMENTS 71 (PTY) LTD.  
REG. NO 2008/01 2222/07



## **AMBER BAY INVESTMENTS 71 (PTY LTD – CREDIT APPLICATION FORM**

I/We, \_\_\_\_\_  
(hereinafter referred to as "The Customer") hereby make application for credit facilities for the opening of an account with Amber Bay Investments (Pty) Ltd, registration number 2008/012222/07 (hereinafter referred to as "The Company").

The Company's Credit Application Form incorporates standard Terms and Conditions of Sale and deed of suretyship. In terms of the FICA requirements, the Company requires the Credit Application Form to be completed in full to enable the Company to have most updated Customer details on record. Please ensure the following requirements are complied with:

1. The authorised signatory on behalf of the Customer may be one of the following:
  - a) Director of a company,
  - b) Member of a CC,
  - c) Partner within a partnership
  - d) Owner within a sole proprietorship
  - e) Trustee / Executor of a trust.
2. The form must be signed by the authorised signatory and includes the full name of the authorised signatory.
3. The form must be signed by two witnesses including full names of the witnesses.
4. Each page of the form must be initialled by the authorised signatory and the witnesses.
5. Deed of Suretyship must be completed and signed by the authorised signatory and the witnesses.
6. All supporting documentation must be submitted with the application form.
7. The completed application form together with supporting documentation may be emailed or faxed to Amber Bay Investments 71 (Pty) Ltd. However, the original application form together with supporting documentation must be posted to the Company within one week of the email or faxed application. Please do not hesitate to contact us should you require any further assistance.

# AMBER BAY

INVESTMENTS 71 (PTY) LTD.  
REG. NO 2008/01 2222/07



## CREDIT APPLICATION FORM

### SECTION 1 – LEGAL ENTITY

1. Registered Name: \_\_\_\_\_
2. Trading Name: \_\_\_\_\_
3. Identity/Registration No: \_\_\_\_\_

### TYPE OF ENTITY:

- |                           |                          |                              |                          |
|---------------------------|--------------------------|------------------------------|--------------------------|
| a) Public Company (Ltd)   | <input type="checkbox"/> | b) Private Company (Pty) Ltd | <input type="checkbox"/> |
| c) Close Corporation (CC) | <input type="checkbox"/> | d) Partnership               | <input type="checkbox"/> |
| e) Sole Proprietor        | <input type="checkbox"/> | f) Trust                     | <input type="checkbox"/> |

(tick appropriate box)

### SECTION 2 – CUSTOMER DETAILS

- a) Registration Number: \_\_\_\_\_
- b) Date of Registration: \_\_\_\_\_
- c) Date of commencement: \_\_\_\_\_
- d) Registered Office Address: \_\_\_\_\_
- e) VAT Registration number: \_\_\_\_\_
- f) Physical Address: \_\_\_\_\_
- g) Period at current address: \_\_\_\_\_
- h) Postal Address: \_\_\_\_\_
- i) Contact Person: \_\_\_\_\_
- j) Telephone No: \_\_\_\_\_ Fax No: \_\_\_\_\_
- k) Mobile No: \_\_\_\_\_ Alternate No: \_\_\_\_\_
- l) Email Address: \_\_\_\_\_

# AMBER BAY

INVESTMENTS 71 (PTY) LTD.  
REG. NO 2008/01 2222/07



m) Details of Directors/Members/Trustees/Partners/Owners:

NAME	HOME ADDRESS	IDENTITY NO.	MOBILE NO.

## SECTION 3 – TRADE REFERENCES

NAME	ADDRESS	TELEPHONE NO.	CREDIT LIMIT	CREDIT TERM

## SECTION 4 – BANKING DETAILS

- a) Bank Name: \_\_\_\_\_
- b) Branch Name & Code: \_\_\_\_\_
- c) Account Number: \_\_\_\_\_
- d) Account Type: \_\_\_\_\_
- e) Name of Account Holder: \_\_\_\_\_

## SECTION 5 – MONTHLY CREDIT TERMS

- a) Estimated purchases: \_\_\_\_\_
- b) Credit Amount requested: \_\_\_\_\_
- c) Credit Term: Strictly 30 Days from Statement Date

(Credit limit requested is for assessment purposes only. Credit limit granted is at the discretion of the company.)

# AMBER BAY

INVESTMENTS 71 (PTY) LTD.  
REG. NO 2008/01 2222/07



## **SECTION 6 – GENERAL**

- a) Auditors/Accounting Officer: \_\_\_\_\_
- b) Contact Details: \_\_\_\_\_
- c) Date of latest audited financial statements (attach copy): \_\_\_\_\_
- d) Premises owned or leased: \_\_\_\_\_
- e) Equipment owned or leased: \_\_\_\_\_

## **SECTION 7 – REQUIRED DOCUMENTATION**

Attach the following documentation to this Credit Application Form (if applicable):

- a) Certified copy of Identity documents of each Director/Member/Trustee/Partner/Owner;
- b) Certified copy of Certificate of Incorporation and Certificate to Commence Business (Companies);
- c) Certified copy of Founding Statement (Close Corporations);
- d) Certified copy of Trust Deed and Letter of Appointment of Trustee/Executor (Trust);
- e) Certified copy of VAT Registration Certificate;
- f) Deed of Suretyship to be completed and signed by the authorised signatory (Director/Member/ Trustee/Executor of Company/Close Corporation/Trust);
- g) Deed of Suretyship to be completed and signed by the authorised signatory (Partner/Owner of Partnership or Sole Proprietorship and spouse if married in Community of Property); and,
- h) Copy of latest audited annual financial statements.

# AMBER BAY

INVESTMENTS 71 (PTY) LTD.  
REG. NO 2008/01 2222/07



## **SECTION 8 – SIGNATURE**

I/We hereby acknowledges, understands and accepts the Terms and Conditions of Sale of Amber Bay Investments 71 (Pty) Ltd as attached and amended from time to time.

I/We hereby give consent to Amber Bay Investments 71 (Pty) Ltd to communicate with any person for the purposes of verifying the contents of this application or in order to obtain such additional information as they may require with regard to any information in this Credit Application Form.

I/We hereby declare that to the best of my/our knowledge that the information disclosed in this Credit Application Form is a true and correct and that my/our assets are not encumbered nor ceded other than as stated above.

SIGNED AT \_\_\_\_\_ THIS \_\_\_\_\_ DAY OF \_\_\_\_\_

\_\_\_\_\_  
NAME OF AUTHORISED SIGNATORY  
(Who by his/her signature hereto warrants that he/she is duly authorised)

\_\_\_\_\_  
(SIGNATURE)

\_\_\_\_\_  
NAME OF WITNESS

\_\_\_\_\_  
(SIGNATURE)

\_\_\_\_\_  
NAME OF WITNESS

\_\_\_\_\_  
(SIGNATURE)

# AMBER BAY

INVESTMENTS 71 (PTY) LTD.  
REG NO 2008/01 2222/07



## TERMS AND CONDITIONS OF SALE

1. Reference to "the Seller" and/or "the Company" shall mean Amber Bay Investments 71 (Pty) Ltd t/a Mouldings & Frames International and/or Natal Art Craft Industries and/or Novel Art & Frames and reference to "the Purchaser" and/or "the Customer" shall mean the party to whom the goods are to be supplied from time to time.
2. The Customer acknowledges that these "Terms and Conditions of Sale" may be varied at any time and/or that additional and/or new "Terms and Conditions of Sale" may become applicable from time to time. The Seller shall give written notice to the Customer of any variation to the "Terms and Conditions of Sale" in respect of any additional and/or new "Terms and Conditions of Sale" that may become applicable. Unless the Customer shall advise the Seller in writing within Ten (10) days after the receipt by it of the said written notification referred to aforesaid, that the Customer does not accept the variation, the Customer shall be deemed to have agreed to the variation and/or the new "Terms and Conditions of Sale" that may become applicable. Such variation and/or additional and/or new "Terms and Conditions of Sale" shall thereafter be binding upon the Customer. If any dispute shall arise as to which "Terms and Conditions of Sale" shall apply to the Customer in respect of any delivery of goods to the Customer, the Customer acknowledges that notwithstanding the dispute it shall, pending the outcome thereof, remain bound by the "Terms and Conditions of Sale" set out herein.
3. All orders are subject to confirmation by the Seller whose address shall be the place of acceptance of all orders. Unless the Seller's confirmation shall be otherwise in writing communicated to the Purchaser, the delivery of the goods shall be deemed to constitute the Seller's confirmation. The Seller shall not be obliged to advise of the non-acceptance of any order. Upon confirmation of the Order the sale shall be deemed to have become concluded.
4. Passing Of Ownership and Risk
  - a) The ownership of any goods sold by the Seller to the Purchaser shall not pass to the Purchaser until payment of the full purchase price thereof has been made, unless such goods are sold by the Purchaser at full market value to a *bona fide* customer of the Purchaser in the ordinary course of business.
  - b) The risk in and to the goods sold hereunder shall pass to the Purchaser on delivery thereof notwithstanding the reservation of ownership therein.
  - c) If payment of the purchase price of any goods sold to the Purchaser becomes overdue in whole or in part then, without prejudice to any of the Seller's other rights, the Seller (or its Agents) shall be entitled, without notice, to cancel the sale and recover possession of or to sell the goods or any part thereof and shall be entitled to enter upon the Purchaser's premises for the purpose of such resale or for the purpose of inspecting the contents of such premises for the purpose of re-taking possession of the goods, provided that such re-taking is allowed by Law.
  - d) If such goods have been incorporated in or used in the manufacture or make-up of other goods before payment of the purchase price, ownership of the whole of such other goods shall vest in and remain with the Seller until such payment has been made, or the other goods have been sold as aforesaid and all of the Seller's rights hereunder in the goods shall extend to those other goods. If any dispute shall arise in regard to the ownership of the goods remaining vested in the Seller, such goods shall be deemed to be pledged by the customer to the Seller as security for the customer's indebtedness to the Seller and the customer shall be deemed to hold such goods as the agent of the Seller and/or for and on behalf of the Seller.
  - e) If third parties try to assert or substantiate rights to any goods in which the Seller still has proprietary rights, the Purchaser shall be obliged to inform the Seller of any such action immediately, and the Seller shall be entitled to take whatever action it may see fit to protect its rights including cancellation of the sale and re-possession or re-sale of the goods. In the event of any such cancellation of the sale the Purchaser undertakes to maintain safe custody of the goods until re-possessed or re-sold by the Seller, and, upon request from the Seller, the Purchaser further undertakes to hand over the goods to the Seller.

# AMBER BAY

INVESTMENTS 71 (PTY) LTD.  
REG. NO 2008/01 2222/07



- f) The provisions of this clause shall prevail, notwithstanding anything to the contrary contained in these Terms and Conditions of Sale.
5. a) Delivery in respect of all orders shall be F.O.R. Seller's premises unless otherwise recorded in writing and agreed to by the Seller. If the order is F.O.R, Purchaser's nominated address, any increase in delivery charges after the date of the order may, at the discretion of the Seller, be added to the contract price.
- b) If the order is F.O.R. Seller's premises all goods delivered to the Customer shall be fully insured at the Customer's expense based on the Seller's standard premium rate, unless the Customer specifically requests the Seller in writing not to insure any goods so delivered.
- c) Where the Seller has arranged insurance on goods delivered, claims must be filed by the Purchaser with the insurers within 10 days of receipt of goods in respect of claims for shortages or damages, and in respect of claims for total non-delivery of goods, within 20 days of delivery date. Copies of such claim must be furnished to the Seller immediately.
6. All payments are to be made at the Seller's offices in Durban and/or as the case may be.
7. a) Terms of payment are strictly 30 (thirty) days from the date of statement less 2½ % (two and a half percent) settlement discount, unless other terms are approved / agreed in writing by the Seller.
- b) In the event where terms of payment granted are 60 (sixty) days or longer from date of statement, post-dated cheques, in negotiable form, shall be given by the Customer to the Seller within 30 (thirty) days from the date of statement. Unless otherwise agreed in writing by the Seller, in the event that such post-dated cheques are not given within the said period of 30 (thirty) days, the full balance then owing by the Customer to the Seller shall forthwith become due.
- c) In the event of any payment not being made on due date, then the full balance then owing by the Customer to the Seller from whatever cause arising shall forthwith become due and payable.
- d) Should the Customer's account fall into arrears in relation to his terms of payment, or should the Customer's total indebtedness to the Seller exceed the Seller's discretionary credit limit given to the Customer, the Seller shall be entitled to suspend the delivery of any goods to the Customer and shall not be obliged to deliver any further goods whatsoever.
8. The Seller and the Purchaser agree that the Magistrate's Court shall have jurisdiction in respect of any proceedings to be instituted by the Seller against the Purchaser. To the extent that it may be necessary, the Purchaser and the Seller hereby consent to the jurisdiction of the Magistrate's Court referred to aforesaid. Notwithstanding the foregoing, if the amount of the Seller's claim against the Purchaser is in excess of the jurisdiction of the Magistrate's Court, the Seller shall be entitled in its sole and absolute discretion to elect to institute proceedings against the Purchaser in any Division of the High Court of South Africa having jurisdiction.
9. a) In the event of any payment not being made on due date, interest shall be paid by the Purchaser on such overdue amount and shall be charged to the Purchaser at the prime overdraft rate of interest charged by the Seller's bankers from time to time plus ½ % (half a percent) calculated from the due date of payment to date of payment. A certificate, signed by the Seller's bankers confirming the rate of interest payable, shall be binding on the Purchaser and the Seller.
- b) In the event of the Purchaser failing to pay any amount timeously and the Seller referring the collection of such amount to its Attorneys, the Purchaser shall be liable for such collection commission as may become payable and for all costs arising from the recovery of any amount owing by the Purchaser, including Attorney and own Client costs.
10. a) The Seller shall not be responsible for any loss or damages of whatsoever nature and howsoever caused and whether general or special which the Purchaser may suffer in the event of goods being delivered after delivery date or in the event of the goods not being delivered at all. In the event of the Seller being

# AMBER BAY

INVESTMENTS 71 (PTY) LTD.  
REG. NO 2008/01 2222/07



required to effect delivery by instalments, its failure to effect any one delivery and/or late delivery of any one instalment, shall not affect the validity of this contract and the Purchaser shall not have the right to refuse to accept delivery of any late delivery or of the balance of the goods to be delivered. The Seller shall not be liable for any consequential damage that the Purchaser may suffer as a result of the late delivery or non-delivery of the goods.

- b) In executing orders to Purchaser's requirement, the Seller shall be entitled to exceed or deliver less than the quantity ordered by not more than 10% (10 percent).
11. The Purchaser shall advise the Seller of any claims and shortages within 48 hours from date of receipt of goods, after which no claims whatsoever will be recognised and the Purchaser shall be deemed to have accepted the goods in full compliance with the order. The Seller's liability is limited to the cost price of goods supplied to the Purchaser and the Seller will not be responsible for loss of profit and/or goodwill of consequential losses of any kind. The sale or use by the Purchaser of any defective goods, unless otherwise agreed to by the Seller in writing, is entirely at the Purchaser's own risk.
12. Claims by the Purchaser referred to in Clause 11 above do not exonerate the Purchaser from payment for goods when the relevant invoice falls due for payment.
13. No goods shall be returned to the Seller for any reason whatsoever without securing the Seller's prior written agreement and no goods will be accepted for return by the Seller without such prior written agreement. No representative of the Seller has authority to accept the return of goods for any reason whatsoever unless this has been authorised by the Seller's Head Office in writing. The return of any goods, without such agreement shall be at the Purchaser's sole risk and expense.
14. a) If after the date on which the goods are ordered there is an increase in the rate of Foreign Exchange, customs duties, excise duties, customs surcharge or any other tax thereon, which affects the cost of the Seller's raw material, such increase may, at the discretion of the Seller, be added to the contract price.
- b) In the event of an increase in the cost of raw materials, the Seller reserves the right to increase the price of any contract by notifying the purchaser thereof. The Purchaser shall have the right to cancel the balance of the contract, but unless the Seller receives written notice of such cancellation within 7 (seven) days of the Purchaser being notified of an increase, the Purchaser shall be deemed to have accepted such increase.
15. No discount is allowed on Value Added Tax, excise duty, railage or delivery charges of any kind charged to the Purchaser's account. Any increase or decrease in the rates of these items after the date of the order shall be for the Purchaser's account.
16. No extension of time or other indulgence that may be granted to the Purchaser by the Seller shall constitute a waiver of the Seller's rights in terms of this agreement and nor shall any such extension or other indulgence operate or be deemed to operate so as to prejudice the Seller in any way whatsoever.
17. No representative of the Seller is authorised to vary any of the Terms and Conditions of Sale as herein contained. Any of Terms and Conditions of Sale may only be varied in writing by the Chief Executive of the Seller or by a resolution of the Board of Directors of the Seller.



# AMBER BAY

INVESTMENTS 71 (PTY) LTD.  
REG. NO 2008/01 2222/07



## DEED OF SURETYSHIP

I/We, the undersigned

**Identity No. / Registration No.** \_\_\_\_\_

Hereby bind myself/ourselves in favour of

**AMBER BAY INVESTMENTS 71 (PTY) LIMITED**

Registration No. 2008/012222/07

("The Company") & its successors in title as surety for and co-principal debtor *in solidum* with

**Identity No. / Registration No.** \_\_\_\_\_

("The Customer") for -

1. The payment on demand of all monies, which the Customer may now or from time to time hereafter owe or in which the Customer may be indebted to the Company from whatever cause arising.
2. It shall be in the discretion of the Company to determine the extent, nature and duration of the facilities to be allowed to the Customer.
3. All acknowledgments of indebtedness and admissions by the Customer shall be binding on me/us.
4. The Company shall be entitled without prejudice to its rights hereunder to release any securities given to it or to give time to or compound or make any arrangements with or enter into any compromise with the Customer in regard to the payment of the indebtedness of the Customer to it which the Company in its absolute discretion deems fit.
5. I/We undertake not to prove a claim against the Customer's estate for any amount I/we may be called upon to pay under this suretyship until all amounts (including interest and costs) due by the Customer to the Company have been paid in full.
  - 5.1 Any dividend received by the Company in respect of its claim against the Customer shall be appropriated in the first instance to the payment of that part of the Customer's indebtedness to the Company which is not covered by this suretyship.
6. I/We agree that the Company shall be entitled, without prejudicing its rights against me/us -
  - 6.1 To prove a claim against the Customer's estate for the full amount of the indebtedness of the Customer to the Company; and
  - 6.2 To claim from me/us the full amount of my/our indebtedness.
7. The Company is irrevocably authorised to apply any monies received by it from me/us in terms of this suretyship against the indebtedness to it of the Customer in such manner as the Company in its discretion may think fit.
8. This suretyship shall remain in force as a continuing security notwithstanding my/our death or legal disability and may not be terminated by me/us until the Customer has fulfilled all its obligations to the Company in terms of the Agreement and paid all claims of whatever nature which the Company may have against the Customer in terms of the Agreement or arising out of the agreement or the termination of the Agreement.
9. This suretyship shall be in addition to and without prejudice to any other suretyship or securities now held or hereafter held by the Company from or on behalf of the Customer.
10. A certificate signed by the Company (or by its auditors or any one of its managers, whose appointment, qualification and/or authority shall be presumed unless the contrary is proved) as to the amount of my/our indebtedness hereunder or that of the Customer to the Company at the date of that certificate, shall be -
  - 10.1 *Prima facie* evidence of the amounts of indebtedness shown in that certificate;
  - 10.2 Binding on me/us (unless I/we prove the incorrectness thereof) in any proceedings instituted by the Company in any competent court for the purpose of obtaining provisional sentence or judgment against me/us.
11. I/We record that my/our obligations hereunder shall include obligations owed by the Customer to the Company jointly with any other person.
12. The Company shall be entitled, at its option, to institute action against me/us on this suretyship either in the

# AMBER BAY

INVESTMENTS 71 (PTY) LTD.  
REG. NO 2008/01 2222/07



- Magistrate's Court (notwithstanding the amount claimed in that action) or in the Durban and Coast Local Division of the High Court of South Africa. I/We hereby consent to the jurisdiction of both these Courts.
13. Should the Company cede the whole of its right of action against the Customer to any third party, then the Company's rights under this suretyship shall be deemed to have been simultaneously ceded and transferred to the cessionary in question.
  14. Should I/we at any time in defending any action based on this suretyship allege that-
    - 14.1 no money was paid over by the Company to the Customer (*non numerator pecuniae*); and/or
    - 14.2 there is no reason or cause for the Customer's obligation to the Company (*exceptio non causa debiti*); and/or
    - 14.3 errors have been made in the calculation of the amount claimed (*exceptio errore calculi* and revision of account); then the onus of proving such a defence will rest on me/us.
  15. I/We renounce the benefits of exclusion, division, *non-causa debiti*, *beneficium novae constitutionis de deobus vel pluribus reis debendi* and cession of action, the full meaning and effect of which I/we know and understand.
  16. I/We choose as my/our *domicilium citandi et executandi* for all purposes hereunder

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and any notice may be given to me/us by delivery or pre-paid registered post at this address.

- 16.1 Any notice in terms hereof shall be deemed to be received three (3) days after the date upon which it is posted to me/us.
17. As a continuing covering security for all my/our present and future obligations to the Company in terms of this suretyship, I/we hereby irrevocably cede to the Company all or any claims which now or which may hereafter become due to me/us by any person from any cause of indebtedness whatsoever including any claim arising from the execution of this suretyship.
  - 17.1 I/We hereby undertake on demand by the Company to take any such steps and to furnish all and any documents that may be necessary to enable the Company to enforce the rights accorded to it in terms of this cession.
  - 17.2 I/We hereby agree that the Company shall be entitled –
    - 17.2.1 at any time to notify any of my/our Customers of the cession by me/us;
    - 17.2.2 to collect and recover from such Customers any sum or sums covered hereby;
    - 17.2.3 to compromise any claims hereby ceded as the Company may in its discretion deem fit.
  - 17.3 The Company shall apply every amount so recovered after deduction of all and any costs incurred by the Company in regard to the collection thereof –
    - 17.3.1 in reduction; or
    - 17.3.2 satisfaction;as the case may be of the indebtedness hereby secured.
  - 17.4 I/We hereby irrevocably and in *rem suam* authorise and appoint the Company with full power to sign and execute all and any documents on my/our behalf which may be necessary to give effect to or to enforce the rights afforded to the Company in terms of this cession.
  - 17.5 In the event of the Company allowing any payments to be made to me/us and allowing me/us to accept and retain such payments, the Company shall not in consequence lose any of its rights as cessionary hereunder to any balance of such claim or to any other claim hereby ceded.
  - 17.6 No –
    - 17.6.1 leniency;
    - 17.6.2 relaxation;
    - 17.6.3 omission;on the part of the Company in the exercise of any of its rights as cessionary in respect of any claim hereunder shall prejudice or otherwise affect the security hereby given to the Company.
  - 17.7 I/We agree if prior to the signature of this suretyship, I/we have ceded all or any such claims to anyone, this cession shall be deemed to be a cession of all my/our reversionary rights in and to any such claims after payment of all amounts secured by the prior cession or after the loss for any reason or abandonment if any of the rights of the cessionary hereunder.
  - 17.8 The whole of this cession shall remain in full force and effect until all the liabilities of the Customer to the Company have been extinguished.
18. I/We will pay the costs of and incidental to the preparation and execution of this suretyship and the stamp duty payable thereon.
  - 18.1 If I/we default in any of my/our obligations in terms of this suretyship and the Company instructs an attorney to

# AMBER BAY

INVESTMENTS 71 (PTY) LTD.  
REG NO 2008/01 2222/07



enforce the Company's rights hereunder, I/we undertake to pay that attorney's legal costs and collection commission as between attorney and client whether such costs are incurred in legal proceedings or not.

19. Unless inconsistent with the context, words relating to any gender shall include the other genders, words relating to the singular shall include the plural and *vice versa*, and words relating to natural persons shall include association of persons having corporate status by statute or common law.

SIGNED AT \_\_\_\_\_ THIS \_\_\_\_\_ DAY OF \_\_\_\_\_

\_\_\_\_\_  
NAME OF GUARANTOR

\_\_\_\_\_  
(SIGNATURE)

\_\_\_\_\_  
NAME OF SPOUSE OF GUARANTOR  
(IF MARRIED IN COMMUNITY OF PROPERTY)

\_\_\_\_\_  
(SIGNATURE)

\_\_\_\_\_  
NAME OF WITNESS

\_\_\_\_\_  
(SIGNATURE)

\_\_\_\_\_  
NAME OF WITNESS

\_\_\_\_\_  
(SIGNATURE)

POPI ACT: ALL INFORMATION PROVIDED IS TREATED AS CONFIDENTIAL AND WILL NOT BE DISCLOSED WITHOUT AUTHORISATION