

**IN THE REGIONAL COURT FOR THE REGIONAL DIVISION OF GAUTENG,
HELD AT THE SPECIALISED COMMERCIAL CRIMES COURT,
JOHANNESBURG**

CASE NO: SCCC/217/2015

In the matter between:

THE STATE

and

ABDOOL KADAR OMAR KHAN

ACCUSED

**PLEA AND SENTENCE AGREEMENT IN TERMS OF SECTION
105A OF ACT 51 OF 1977 BETWEEN THE STATE AND THE ACCUSED
(HEREINAFTER REFERRED TO AS “THE PARTIES”)**

1. **WHEREAS** the Accused is arraigned for trial on the following charges:
 - i) Contravention of Sections 2(1)(a), (c), (e), (f) and (g) and 2(2) read with Sections 1, 16 and 19 of the Counterfeit Goods Act, 37 of 1997 (“the Counterfeit Goods Act”); and
 - ii) Contravention of Sections 14 (1), (2), and (3) read with Sections 1 and 34 (1) (a) of the National Regulator for Compulsory Specifications Act, 5 of 2008 (“the NRCS Act”).

2. **AND WHEREAS** the defence desired to enter into negotiations with the Prosecution regarding the tendering of a plea.

3. **AND WHEREAS** the State as represented by Advocate Gideon Nkoana, Deputy Director of Public Prosecutions, Specialised Commercial Crime Unit, Johannesburg who is duly authorized by the National Director of Public Prosecutions in terms of Section 105A(1)(a) of Act 51 of 1977, to negotiate and enter into plea and sentence agreements on behalf of the State.

4. **AND WHEREAS** the prosecution has consulted with the Investigating Officer, Warrant Officer LL Mokhaneli of the South African Police Services, Commercial Branch, Johannesburg before entering into the said agreement.
5. **AND WHEREAS** the prosecution entered the said agreement with due regard to the nature and circumstances relating to the offences, the personal circumstances of the Accused and the interest of the community.
6. **AND WHEREAS** the complainant in the matter has been afforded an opportunity to make representations to the prosecutor regarding the contents of the agreement.
7. **AND WHEREAS** the Accused admits that prior to entering into this agreement, he has been comprehensively informed that he:
 - 7.1. has the right to be presumed innocent until he has, beyond reasonable doubt been proven to be guilty;
 - 7.2. has the right to remain silent and not to testify during the proceedings;

- 7.3. has the right not to be compelled to give self-incriminating evidence;
- 7.4. is not obliged to enter into this agreement, but that should he do so, the contents of this agreement will be placed before the Court, which could then find him guilty in terms of the provisions of the agreement and sentence him in terms thereof.
8. **AND WHEREAS** the Accused admits having entered into this agreement freely and voluntarily, while being of sound and sober senses and without having been duly influenced thereto by anyone at all and was at all relevant times assisted by his legal representative, Mr James Human.
9. **AND WHEREAS** all the parties confirm that this document states fully the terms of the agreement, the substantial facts of the matter, all other facts relevant to the sentence agreement and any admission made by the Accused;
10. **AND WHEREAS** the Accused admits that he has been made aware of the provisions of Section 105A of the Criminal Procedure Act 51 of 1977, and that he has also been made aware that this agreement is not binding on the Honourable Court.

11. AND WHEREAS

11.1. The Accused admits guilt in respect of the charges so mentioned herein, and pleads guilty thereto, on the basis as set out below, and the State is prepared to accept such plea of guilty.

11.2. The Accused admits all the facts in relation to the charges as set out below.

11.3. Therefore, the State and the Accused agree as recorded below in respect of the plea of guilty and a just sentence.

PLEA OF GUILTY AND ADMISSIONS IN RESPECT OF COUNTS 1 AND 2

12. The Accused admits that:

12.1. During the period 21 September 2009 to 21 November 2011, he, being the sole proprietor of the businesses trading under the trading styles “Aktronix” and “South Star Technologies” conducted his business at his premises situated at 26 Crucis Street, Lenasia, Gauteng, which area resorts within the

jurisdictional area of the above Honourable Court, to wit the Regional Division of Gauteng.

12.2. During the mentioned period and in the mentioned area, he unlawfully and falsely contravened the provisions of the Counterfeit Goods Act referred to in the charge sheet, by importing quantities of counterfeit CBI circuit breakers and earth leakage devices (hereinafter referred to as “the counterfeit CBI circuit breakers and earth leakage devices”) into the Republic of South Africa, for purposes of trade; offering for sale; selling and distributing quantities of the counterfeit CBI circuit breakers and earth leakage devices for purposes of trade.

12.3. In particular, as per count 1, during the mentioned period he imported from the Peoples Republic of China a quantity of 123 978 (one hundred and twenty three thousand nine hundred and seventy eight) counterfeit CBI circuit breakers and earth leakage devices into the Republic of South Africa, for purposes of trade while knowing that those counterfeit CBI circuit breakers and earth leakage devices did not emanate from the complainant, Circuit Breaker Industries Limited, a South African company situated at Tripswitch Drive, Elandsfontein, Gauteng and without taking any steps to verify the authenticity of those devices.

12.4. He, while knowing that the counterfeit CBI circuit breakers and earth leakage devices did not emanate from the complainant and without having taken any steps to verify the authenticity of those devices, sold and distributed a quantity of 106 295 (one hundred and six thousand two hundred and ninety five) counterfeit CBI circuit breakers and earth leakage devices to a number of his customers, including but not limited to the transactions recorded below. The remaining quantity of 17 683 (seventeen thousand six hundred and eighty three) counterfeit CBI circuit breakers and earth leakage devices were seized pursuant to the provisions of the Counterfeit Goods Act, further details of which appear later in this agreement.

12.5. During the abovementioned period, he sold a quantity of:

12.5.1. 10 461 (ten thousand four hundred and sixty one) units comprising 8 940 (eight thousand nine hundred and forty) counterfeit CBI circuit breakers and 1 521 (one thousand five hundred and twenty one) counterfeit CBI earth leakage devices to the entity known as Electrical Power Accessories situated at 252

Anderson Street, Jeppe, Johannesburg for the total amount of R625 767 (six hundred and twenty five thousand seven hundred and sixty seven rand).

12.5.2. 35 527 (thirty five thousand five hundred and twenty seven) units comprising 32 225 (thirty two thousand two hundred and twenty five) counterfeit CBI circuit breakers and 3 302 (three thousand three hundred and two) counterfeit CBI earth leakage devices to the entity known as Famshir Electrical situated at 17 Gold Reef Road, Ormonde, Johannesburg for the total amount of R1 788 726 (one million seven hundred eighty eight thousand seven hundred and twenty six rand).

12.5.3. 552 (five hundred and fifty two) units comprising 547 (five hundred and forty seven) counterfeit CBI circuit breakers and 5 (five) counterfeit CBI earth leakage devices to the entity known as Globe Electrical situated at 260 Main Reef Road, Denver, Johannesburg for the total amount of R48 234.20 (forty eight thousand two hundred and thirty four rand and twenty cents).

- 12.5.4. 22 019 (twenty two thousand and nineteen) units comprising 19 824 (nineteen thousand eight hundred and twenty four) counterfeit CBI circuit breakers and 2 195 (two thousand one hundred and ninety five) counterfeit CBI earth leakage devices to the entity known as Greatech CC situated at 24 Marigold Crescent, Marlboro Gardens, Johannesburg for the total amount of R983 986 (nine hundred and eighty three thousand nine hundred and eighty six rand).
- 12.5.5. 29 972 (twenty nine thousand nine hundred and seventy two) units comprising 29 020 (twenty nine thousand and twenty) counterfeit CBI circuit breakers and 952 (nine hundred and fifty two) counterfeit CBI earth leakage devices to the entity known as Kensington Electrical situated at the corner of Roberts Avenue and Eleanor Street, Kensington, Johannesburg for the total amount of R1 347 279 (one million three hundred and forty seven thousand two hundred and seventy nine rand).

- 12.5.6. 502 (five hundred and two) units comprising 400 (four hundred) counterfeit CBI circuit breakers and 102 (one hundred and two) counterfeit CBI earth leakage devices to the entity known as Manstel Projects situated in Germiston for the total amount of R46 730 (forty six thousand seven hundred and thirty rand).
- 12.5.7. 2 412 (two thousand four hundred and twelve) units comprising 2 319 (two thousand three hundred and nineteen) counterfeit CBI circuit breakers and 93 (ninety three) counterfeit CBI earth leakage devices to the entity known as Soweto City Electrical for the total amount of R134 357 (one hundred and thirty four thousand three hundred and fifty seven rand).
- 12.5.8. 1 680 (one thousand six hundred and eighty) units of counterfeit CBI circuit breakers to the entity known as Tuscaloosa for the total amount of R54 600 (fifty four thousand six hundred rand).

- 12.5.9. 1 014 (one thousand and fourteen) units comprising 964 (nine hundred and sixty four) counterfeit CBI circuit breakers and 50 (fifty) counterfeit CBI earth leakage devices to the entity known as Venus Electrical for the total amount of R56 820 (fifty six thousand eight hundred and twenty rand).
- 12.5.10. 1 452 (one thousand four hundred and fifty two) units of counterfeit CBI circuit breakers to the entity known as Voltsign Electrical situated in Hillfox for the total amount of R89 846 (eighty nine thousand eight hundred and forty six rand).
- 12.5.11. 9 838 (nine thousand eight hundred and thirty eight) units comprising 9 618 (nine thousand six hundred and eighteen) counterfeit CBI circuit breakers and 220 (two hundred and twenty) counterfeit CBI earth leakage devices to the entity known as Nasco Plumbing situated at 153 Booyens Road, Booyens, Johannesburg for the total amount of R409 105 (four hundred and nine thousand one hundred and five rand).

- 12.5.12. 1 344 (one thousand three hundred and forty four) units of counterfeit CBI circuit breakers to entity known as Electrical Protection AC for the total amount of R48 384 (forty eight thousand three hundred and eighty four rand).
- 12.5.13. 716 (seven hundred and sixteen) units comprising 656 (six hundred and fifty six) counterfeit CBI circuit breakers and 60 (sixty) counterfeit CBI earth leakage devices to the entity known as Bobs Hardware situated in De Deur, Johannesburg for the total amount of R48 280 (forty eight thousand two hundred and eighty rand).
- 12.5.14. 1 024 (one thousand and twenty four) units comprising 984 (nine hundred and eighty four) counterfeit CBI circuit breakers and 40 (fourty) counterfeit CBI earth leakage devices to the entity known as Gauteng Electrical (no address) for the total amount of R52 000 (fifty two thousand rand).

- 12.6. On 21 November 2011 as per count 2, the Accused was in possession of and had under his control in the course of his business for purposes of dealing in a quantity of 17 683 (seventeen thousand six hundred and eighty three) counterfeit CBI circuit breakers and earth leakage devices. Those devices formed part of the counterfeit CBI circuit breakers and earth leakage devices which the Accused imported into the Republic of South Africa, for the purposes of trade while knowing that those counterfeit CBI circuit breakers and earth leakage devices did not emanate from the complainant and without taking any steps to verify the authenticity of those devices.
- 12.7. On that same day, 21 November 2011 the South African Revenue Service detained the quantity of 17 683 (seventeen thousand six hundred and eighty three) counterfeit CBI circuit breakers and earth leakage devices from the Accused at his premises situated at 26 Crucis Street, Lenasia, Gauteng, pursuant to the provisions of the Customs & Excise Act 91 of 1964. Those devices were examined by the complainant and the examination revealed that all 17 683 (seventeen thousand six hundred and eighty three) devices constitute “counterfeit goods” within the meaning of that term in the Counterfeit Goods Act.

12.8. On 17 September 2015, the above-mentioned quantity of 17 683 (seventeen thousand six hundred and eighty three) counterfeit CBI circuit breakers and earth leakage devices, as per the attached Schedule 1 referred to in the charge sheet, were duly seized by an Inspector in terms of the Counterfeit Goods Act. The aforementioned seizure was conducted under the authority of a search and seizure warrant obtained and executed in terms of the provisions of the Counterfeit Goods Act. The abovementioned 17 683 (seventeen thousand six hundred and eighty three) counterfeit CBI circuit breakers and earth leakage devices that were seized are hereinafter referred to as “the seized counterfeit CBI circuit breakers and earth leakage devices”. The seized counterfeit CBI circuit breakers and earth leakage devices were examined by the complainant and the examination revealed that all 17 683 (seventeen thousand six hundred and eighty three) devices constitute “counterfeit goods” within the meaning of that term in the Counterfeit Goods Act.

- 12.9. The quantity of 123 978 (one hundred and twenty three thousand nine hundred and seventy eight) counterfeit CBI circuit breakers and earth leakage devices which the Accused imported into the Republic of South Africa, for purposes of trade, constitute “counterfeit goods” within the meaning of that term in the Counterfeit Goods Act.
- 12.10. The quantity of 106 295 (one hundred and six thousand two hundred and ninety five) counterfeit CBI circuit breakers and earth leakage devices which the Accused sold and distributed constitute “counterfeit goods” within the meaning of that term in the Counterfeit Goods Act.
- 12.11. The quantity of 17 683 (seventeen thousand six hundred and eighty three) that comprise the seized counterfeit CBI circuit breakers and earth leakage devices constitute “counterfeit goods” within the meaning of that term in the Counterfeit Goods Act.

- 12.12. The Accused generated a total amount of R5 353 012 (five million three hundred and fifty three thousand and twelve rand) from the sales and distribution of the aforementioned counterfeit CBI circuit breakers and earth leakage devices, which includes but is not limited to the transactions referred to earlier in this agreement.
- 12.13. The Accused admits that he contravened the provisions of the Counterfeit Goods Act by dealing in counterfeit goods as contemplated in the Counterfeit Goods Act. The Accused engaged in such conduct while knowing that those counterfeit CBI circuit breakers and earth leakage devices did not emanate from the complainant, Circuit Breaker Industries Limited, a South African company situated at Tripswitch Drive, Elandsfontein, Gauteng and without taking any steps to verify the authenticity of those devices.
- 12.14. During all times relevant and material to the above actions, the Accused knew or should have reasonably foreseen that such actions were wrongful and unlawful and constituting an offence.
- 12.15. The Accused did not have any rights or justification to act in the manner as described in the paragraphs that appear above.

PLEA OF GUILTY AND ADMISSIONS IN RESPECT OF COUNTS 3 AND 4

13. The Accused admits that:

13.1. During the period 21 September 2009 to 21 November 2011, he, being the sole proprietor of the businesses trading under the trading styles “Aktronix” and “South Star Technologies” conducted his business at his premises situated at 26 Crucis Street, Lenasia, Gauteng, which area resorts within the jurisdictional area of the Above Honourable Court, to wit the Regional Division of Gauteng.

13.2. During the mentioned period and in the mentioned area, he unlawfully and falsely contravened the provisions of the National Regulator for Compulsory Specifications Act, 5 of 2008 (“the NRCS Act”) referred to in the charge sheet by:

13.2.1. selling, including offering for sale or advertising for sale and having in his possession for purposes of sale quantities of earth leakage devices to which a compulsory specification applies, namely, the Compulsory Specification for Earth Leakage Protection Units VC 8035 and which earth leakage

devices were not in accordance with; did not comply with and were not manufactured in accordance with the Compulsory Specification for Earth Leakage Protection Units VC 8035. The aforementioned earth leakage devices are hereinafter referred to as “the non-compliant earth leakage devices”;

13.2.2. selling, including offering for sale or advertising for sale and having in his possession for purposes of sale quantities of circuit breakers to which a compulsory specification applies, namely, the Compulsory Specification for Circuit Breakers VC 8036 and which circuit breakers were not in accordance with; did not comply with and were not manufactured in accordance with the Compulsory Specification for Circuit Breakers VC 8036. The aforementioned circuit breakers are hereinafter referred to as “the non-compliant circuit breakers”.

13.3. The non-compliant earth leakage devices referred to above and the non-compliant circuit breakers referred to above are hereinafter collectively referred to as “the non-compliant earth leakage devices and circuit breakers”.

- 13.4. The Compulsory Specification for Earth Leakage Protection Units VC 8035 and the Compulsory Specification for Circuit Breakers VC 8036 are hereinafter collectively referred to as “the respective Compulsory Specifications”.
- 13.5. He, without taking any steps to confirm that the devices in question complied with the respective Compulsory Specifications, offered for sale, sold and had in his possession for purposes of sale a quantity of 123 978 (one hundred and twenty three thousand nine hundred and seventy eight) non-compliant earth leakage devices and circuit breakers were not in accordance with the respective Compulsory Specifications; did not comply with the respective Compulsory Specifications and were not manufactured in accordance with the respective Compulsory Specifications.
- 13.6. He failed to keep or supply the National Regulator with the records as prescribed by the Minister and also without paying such fees to the National Regulator as prescribed by the Minister.

- 13.7. The aforesaid non-compliant earth leakage devices and circuit breakers do not comply with SANS 10142-1, governed by the Occupational Health and Safety Act 85 of 1993 as amended.
- 13.8. He sold a quantity of 106 295 (one hundred and six thousand two hundred and ninety five) non-compliant earth leakage devices and circuit breakers to a number of his customers, including but not limited to the transactions recorded below. Those non-compliant earth leakage devices and circuit breakers were not in accordance with the respective Compulsory Specifications; did not comply with the respective Compulsory Specifications and were not manufactured in accordance with the respective Compulsory Specifications.
- 13.9. During the abovementioned period, he sold a quantity of:
- 13.9.1. 10 461 (ten thousand four hundred and sixty one) units comprising 8 940 (eight thousand nine hundred and forty) non-compliant circuit breakers and 1 521 (one thousand five hundred and twenty one) non-compliant earth leakage devices to the entity known as Electrical Power Accessories situated at 252 Anderson Street, Jeppe, Johannesburg for the total

amount of R625 767 (Six Hundred and Twenty Five Thousand Seven Hundred and Sixty Seven Rand).

- 13.9.2. 35 527 (thirty five thousand five hundred and twenty seven) units comprising 32 225 (thirty two thousand two hundred and twenty five) non-compliant circuit breakers and 3 302 (three thousand three hundred and two) non-compliant earth leakage devices to the entity known as Famshir Electrical situated at 17 Gold Reef Road, Ormonde, Johannesburg for the total amount of R1 788 726 (one million seven hundred eighty eight thousand seven hundred and twenty six rand).
- 13.9.3. 552 (five hundred and fifty two) units comprising 547 (five hundred and forty seven) non-compliant circuit breakers and 5 (five) non-compliant earth leakage devices to the entity known as Globe Electrical situated at 260 Main Reef Road, Denver, Johannesburg for the total amount of R48 234.20 (forty eight thousand two hundred and thirty four rand and twenty cents).

- 13.9.4. 22 019 (twenty two thousand and nineteen) units comprising 19 824 (nineteen thousand eight hundred and twenty four) non-compliant circuit breakers and 2 195 (two thousand one hundred and ninety five) non-compliant earth leakage devices to the entity known as Greatech CC situated at 24 Marigold Crescent, Marlboro Gardens, Johannesburg for the total amount of R983 986 (nine hundred and eighty three thousand nine hundred and eighty six rand).
- 13.9.5. 29 972 (twenty nine thousand nine hundred and seventy two) units comprising 29 020 (twenty nine thousand and twenty) non-compliant circuit breakers and 952 (nine hundred and fifty two) non-compliant earth leakage devices to the entity known as Kensington Electrical situated at the corner of Roberts Avenue and Eleanor Street, Kensington, Johannesburg for the total amount of R1 347 279 (one million three hundred and forty seven thousand two hundred and seventy nine rand).

- 13.9.6. 502 (five hundred and two) units comprising 400 (four hundred) non-compliant circuit breakers and 102 (one hundred and two) non-compliant earth leakage devices to the entity known as Manstel Projects situated in Germiston for the total amount of R46 730 (forty six thousand seven hundred and thirty rand).
- 13.9.7. 2 412 (two thousand four hundred and twelve) units comprising 2 319 (two thousand three hundred and nineteen) non-compliant circuit breakers and 93 (ninety three) non-compliant earth leakage devices to the entity known as Soweto City Electrical for the total amount of R134 357 (one hundred and thirty four thousand three hundred and fifty seven rand).
- 13.9.8. 1 680 (one thousand six hundred and eighty) units of non-compliant circuit breakers to the entity known as Tuscaloosa for the total amount of R54 600 (fifty four thousand six hundred rand).

- 13.9.9. 1 014 (one thousand and fourteen) units comprising 964 (nine hundred and sixty four) non-compliant circuit breakers and 50 (fifty) non-compliant earth leakage devices to the entity known as Venus Electrical for the total amount of R56 820 (fifty six thousand eight hundred and twenty rand).
- 13.9.10. 1 452 (one thousand four hundred and fifty two) units of non-compliant circuit breakers to the entity known as Voltsign Electrical situated in Hillfox for the total amount of R89 846 (eighty nine thousand eight hundred and forty six rand).
- 13.9.11. 9 838 (nine thousand eight hundred and thirty eight) units comprising 9 618 (nine thousand six hundred and eighteen) non-compliant circuit breakers and 220 (two hundred and twenty) non-compliant earth leakage devices to the entity known as Nasco Plumbing situated at 153 Booyens Road, Booyens, Johannesburg for the total amount of R409 105 (four hundred and nine thousand one hundred and five rand).

- 13.9.12. 1 344 (one thousand three hundred and forty four) units of non-compliant circuit breakers to entity known as Electrical Protection AC for the total amount of R48 384 (forty eight thousand three hundred and eighty four rand).
- 13.9.13. 716 (seven hundred and sixteen) units comprising 656 (six hundred and fifty six) non-compliant circuit breakers and 60 (sixty) non-compliant earth leakage devices to the entity known as Bobs Hardware situated in De Deur, Johannesburg for the total amount of R48 280 (forty eight thousand two hundred and eighty rand).
- 13.9.14. 1 024 (one thousand and twenty four) units comprising 984 (nine hundred and eighty four) non-compliant circuit breakers and 40 (fourty) non-compliant earth leakage devices to the entity known as Gauteng Electrical (no address) for the total amount of R52 000 (fifty two thousand rand).

- 13.10. On that same day, 21 November 2011 the South African Revenue Service detained the quantity of 17 683 (seventeen thousand six hundred and eighty three) non-compliant earth leakage devices and circuit breakers from the Accused at his premises situated at 26 Crucis Street, Lenasia, Gauteng, pursuant to the provisions of the Customs & Excise Act 91 of 1964. The Accused was in possession of those non-compliant earth leakage devices and circuit breakers for purposes of trade.
- 13.11. Representative samples of the aforementioned non-compliant earth leakage devices and circuit breakers that were detained were tested against the respective Compulsory Specifications and which tests revealed that those devices were not in accordance with; did not comply with and were not manufactured in accordance with the respective Compulsory Specifications.
- 13.12. He accordingly admits that he contravened the related provisions of the NRCS Act.
- 13.13. During all times relevant and material to the above actions of the Accused, he knew that such actions were wrongful and constituting of an offence.

- 13.14. He did not have any right or justification to act in the manner as described in the paragraphs that appear above.

OTHER FACTS RELEVANT TO THE SENTENCE AGREEMENT

14. **PREVIOUS CONVICTIONS:**

Accused has no previous convictions.

15. **MITIGATING CIRCUMSTANCES:**

15.1. The Accused was born on 22 April 1962 and is currently 55 years of age.

15.2. He is married for 11 years and has 2 children born from the marriage, a boy 11 years of age and a girl 7 years of age.

15.3. The accused and his family are South African citizens and reside at the same address before their marriage. From this one can only conclude that the accused is a stable person also having regard, as is mentioned above, that he has no previous convictions.

15.4. The accused is a businessman and trades in electrical equipment such as the devices that are the subject matter in the present criminal case. He however only started importing electrical equipment 5 years ago via the internet.

15.5. The Accused has never had any complaints from customers.

15.6. The accused at all material times co-operate in the investigation of the matter and has taken the authorities and the above Honourable Court into his confidence.

15.7. The Accused stands to lose everything since there is also a civil matter pending in the High Court of South Africa, Gauteng Division, Pretoria, for damages suffered by the Complainant as a result of the conduct of the Accused.

15.8. The Accused did not in any way waste the above Honourable Court's time and is remorseful.

16. **AGGRAVATING CIRCUMSTANCES:**

- 16.1. Circuit Breakers and Earth Leakage Devices are safety critical devices intended to protect the electrical installation as well as humans and animals against fire and electrocution hazards. For this reason, it is of paramount importance that circuit breakers and earth leakage devices that are installed in homes and businesses comply with the Compulsory Specification for Circuit Breakers, VC 8036 and the Compulsory Specification for Earth Leakage Devices, VC 8035. The installation of non-compliant circuit breakers and earth leakage devices could have devastating consequences, posing a significant risk to human and animal life as well as to property.
- 16.2. Compliant earth leakage devices detect small stray currents that may leak into equipment or living beings, which could result in damage to equipment, shock and death. During testing, the counterfeit and non-compliant earth leakage devices of the Accused failed to comply with the requirements of the Compulsory Specification for Earth Leakage Protection Units VC 8035 resulting in those devices failing to interrupt the circuit when a dangerous leakage current was detected. The consequences of such non-compliant devices are significant and includes electric shock with ventricular fibrillation being the main cause of death. There is also evidence of death as a result of asphyxia or

cardiac arrest. The normal steady pumping of the heart can be disturbed by electric current and when an electric current is applied to the heart during a vulnerable period, the heart will fibrillate and cease its pumping action. Blood pressure then falls and blood is then not circulated to the brain, resulting in death.

16.3. As a result of the conduct of the Accused in selling a quantity of 9 235 (nine thousand two hundred and thirty five) counterfeit and non-compliant earth leakage devices, the Accused has exposed an estimated 9 235 (nine thousand two hundred and thirty five) businesses and homes including humans and animals to the risks referred to above. The offences for which the Accused is charged is accordingly very serious.

16.4. During testing, the non-compliant circuit breakers of the Accused failed to comply with the Compulsory Specification for Circuit Breakers VC8036. This can result in failure of the electrical installation or attached equipment resulting in those devices becoming a life threatening danger, through becoming a fire hazard due to *inter alia* the continued temperature rise within the circuit breaker itself or the conductors in the electrical installation or the appliance connected to the circuit. During the testing of the non-compliant circuit breakers of the Accused, a variety of

failures occurred including contact tips welding, excessive temperature rise and material characteristic not being compliant. This can result in a fire hazard, in the electrical installation as well as in equipment, resulting in destruction of property and the loss of life.

- 16.5. As a result of the conduct of the Accused in selling a quantity of 97 060 (ninety seven thousand and sixty) counterfeit and non-compliant circuit breakers, the Accused has exposed an estimated 15 230 (fifteen thousand two hundred and thirty) businesses and homes to the above risks, which also includes all living beings within these premises.

17. **AGREEMENT IN RESPECT OF A JUST SENTENCE**

It is agreed that the following will be a just sentence in the circumstances of the charge as set out above:-

AD COUNT 1:

The Accused is sentenced to a fine of R11, 31(Eleven Rand and Thirty One Cents) OR 1 (one) hour imprisonment per unit (x123 978 units), wholly

suspended for a period of 5 (five) years on condition that the Accused does not contravene the provisions of the Counterfeit Goods Act, 37 of 1997.

AD COUNT 2:

The Accused is sentenced to a fine of R11,31 (Eleven Rand and Thirty One Cents) or 1 (one) hour imprisonment per unit (x17 683 units), half of which is suspended for a period of 5 (five) years on condition that the Accused does not contravene the provisions of the Counterfeit Goods Act, 37 of 1997.

AD COUNTS 3 AND 4:

BOTH COUNTS TAKEN TOGETHER FOR THE PURPOSES OF

SENTENCING:

The Accused is sentenced to a term of imprisonment of 1 (one) years suspended for a period of 3 (three) years on condition that the Accused does not contravene the provisions of the National Regulator for Compulsory Specifications Act 5 of 2008.

Signed at **Johannesburg** on this ____ day of **June 2016**

I, **Gideon Nkoana**, duly authorized in writing by the National Director of Public Prosecutions in terms of s105A of the Criminal Procedure Act 51 of 1997 to negotiate with a view of reaching a plea and sentence agreement and to conclude such an agreement on behalf of the State, hereby declare in terms of s105A of Act 51 of 1977, I negotiated the above plea and sentence agreement.

ADVOCATE GIDEON NKOANA
DEPUTY DIRECTOR OF PUBLIC RELATIONS
(SPECIALISED COMMERCIAL CRIME UNIT)

LEGAL REPRESENTATIVE OF ACCUSED
JAMES HUMAN

ACCUSED

ABDOOL KADAR OMAR KHAN