



Co. Reg. No. 2005/004200/07
 Vat Reg. No. 4670221649

AGRISUPERIOR INDUSTRIAL
 PARK
 CORNER PORCELAIN ROAD
 AND M57
 (GOEDEHOOP AVENUE)
 OLIFANTSFONTEIN, 1666
 P O Box 957
 IRENE
 0062
 Tel: 011 – 635 3000
 Email:
 admin@shiman.co.za
 www.shiman.co.za

TRANSPORT AGREEMENT

COMPANY TRANSPORT REPRESENTATIVE									
FULL NAME OF THE CLIENT									
Type of entity (tick one)									
COMPANY		CLOSE CORPORATION		TRUST		SOLE PROPRIETOR		PARTNERSHIP	
REGISTRATION NUMBER OF BUSINESS OR TRUST									
IDENTITY NUMBER (SOLE PROPRIETOR/PARTNER)									
VAT REGISTRATION NUMBER									
PHYSICAL ADDRESS									
POSTAL ADDRESS									
TEL		FAX .		CELL					
Names of active directors / members / trustees / partners //				Identity numbers		Contact Number			
Contact person responsible for the account:									
CONTACT PERSON									
CONTACT DETAILS									

PLEASE NOTE THAT CREDIT TERMS ARE 30 DAYS

In terms of the National Credit Act 34 of 2005 ("the Act") the Applicant is required to state the parameters into which the annual turnover / or assets value falls

Greater than R1 million	YES	NO	Annual Turnover	R
--------------------------------	------------	-----------	------------------------	----------

CLIENT'S BANKING DETAILS

TYPE OF ACCOUNT	NAME OF BANK	ACCOUNT NUMBER	BRANCH CODE	BRANCH NAME	NAME OF ACCOUNT
Cheque					
Other					

BUSINESS TRADE RELATED REFERENCES

Company name

Address

Phone

E-mail:

Type of account:

Years trading

Amount outstanding

R

Terms/Days (30/60/90/120)

Company name

Address

Phone/Telefoon:

E-mail:

Type of account

Years trading?

Amount outstanding

R

Terms/Days (30/60/90/120)

Company name:

Address:

Telephone:

:
E-mail:

Type of account

Years trading

Amount outstanding

R

Terms/Days (30/60/90/120)

GENERAL TERMS FOR CARRIAGE OF GOODS BY ROAD

1. The Client must please read the following provisions, terms and conditions ("hereinafter referred to as **Terms**") carefully as these Terms shall apply to the transport of Goods by the Company and the rendering by the Company of all services ("**Services**"), to the Client to the exclusion of all other terms and conditions, including those of the Client.
2. **The Client must not conclude this agreement if the Client:**
 - 2.1 **Does not agree or does not understand the meaning of any of these Terms;**
 - 2.2 **Any of these Terms are untrue; and / or**
 - 2.3 **Has not been given enough time to read and comprehend the meaning of bolded terms or any terms that may be contained in this agreement.**
3. **DEFINITIONS**

In these Terms, the following words shall bear the meanings assigned to them below:

 - 3.1 "**The Company**" means Shiman (Pty) Ltd carrying any goods forming the subject matter of this contract.
 - 3.2 "**the Client**" means the party reflected on the dispatch document as the sender of the goods, whether acting on his own behalf or in his capacity as agent or in any other capacity for a third party.
 - 3.3 "**Consignment**" means the particular Goods to be conveyed by the Company in accordance with a Transport Order
 - 3.4 "**Dangerous goods**" includes those classified as such by the Act or which are considered by the carrier to be dangerous;
 - 3.5 "**Days**" means calendar days
 - 3.6 "**the handling of the goods**" includes the Goods being handled, warehoused, held, controlled, loaded or unloaded, carried or otherwise possessed by the carrier for any purpose whatsoever.
 - 3.7 "**Loading Point**" means any place agreed upon between the Parties for the loading of the Products from time to time.
 - 3.8 "**Goods In Transit Insurance**" covers Alcohol, alcoholic beverages Tinned Food, Fresh Produce, Agricultural, Fertilizer, Non Hazardous Agricultural Chemicals, Cement, Tiles, General goods **EXCLUDING** bullion, specie, jewellery, precious stones, cash, stamps, deeds, travellers cheques, documents, film, household removals, cigarettes, tyres, electronic goods, pre-paid phone cards, copper, livestock and game.
 - 3.9 "**the Goods**" means the goods forming the subject matter of this agreement and as described in the Transport Order whether contained in one or more parcels or packages and whether consigned singly or in parcels or in bulk;
 - 3.10 "**NCA**" means the National Credit Act 34 of 2005
 - 3.11 "**Offloading Point**" means any place agreed upon between the Parties for the offloading of the Products from time to time.
 - 3.12 "**Parties**" means the Company and the Client, collectively or individually as the context indicates;
 - 3.13 "**the Receiver**" means the person nominated by the Client to whom the Products are to be delivered by the Company at the offloading point;
 - 3.14 "**Services**" means the services to be rendered by the Company to the Client in terms of this Agreement.

- 3.15 **Transport Order**" means the document issued by the Company to the Client each time that the Company is to render services to the Client in terms of this Agreement confirming the details as agreed between them.
- 3.16 Clause headings are for convenience only and are not be used in the interpretation of the clause to which they relate.
- 3.17 Unless the context clearly indicates the contrary intention, an expression which denotes any gender shall include the other genders, a natural person shall include a juristic person, and vice versa, the singular shall include the plural and vice versa and any reference to an enactment is to that enactment as at the date of signature hereof and amended or re-enacted from time to time.
- 3.18 Each and every undertaking contained in this Agreement shall be capable of independent enforcement, thus enabling any court or other competent tribunal to enforce the remainder thereof should it adjudge any particular undertaking(s) or portions thereof to be invalid.
- 3.19 The Company shall not be a public or common carrier in relation to the consignment forming the subject of these conditions and any Goods to be carried are accepted subject to the conditions contained herein. Any business undertaking, including any advice, information or service provided whether graciously or not by the Company is, and shall be subject to the conditions hereunder set out and each condition shall be deemed to be incorporated in and to be condition of this agreement between the Company and its Client. No agent or employee of the Company has the Company's authority to alter or vary these conditions either by an oral or written undertaking or promise given before or after receipt of these conditions. Goods are accepted and delivered by the Company subject to the Terms stipulated in this agreement.
4. **ROUTES AND PROCEDURES**
 - 4.1 The Client shall:
 - 4.1.1 Check whether the consignment is consistent with the delivery / dispatch note details;
 - 4.1.2 Inspect the Goods and report the existence of discrepant, damaged or missing Products or the packaging thereof;
 - 4.1.3 Signed and stamp the documentation provided by the Company confirming the quantity, quality and condition of the Products delivered to the receiver ("**POD**")
 - 4.2 The Company shall –
 - 4.2.1 Collect or deliver the Products from or to the loading and offloading points respectively during the usual working hours of the personnel employed by the Client or at such other time as may have been agreed;
 - 4.2.2 Procure that the consignment is weighed by the Company's weighbridge;
 - 4.2.3 the Company's weighbridge certificates shall constitute prima facie proof of the quantity of Products delivered to an Offloading Point.
 - 4.2.4 Supervise the loading onto a clean, dry and contaminated free Truck at the loading point;
 - 4.2.5 Securely strap each load and ensure that the consignment is protected from rain, contamination and loss during transit;
 - 4.2.6 Convey the Products from the loading point to the offloading point within the time period

- agreed upon;
- 4.2.7 Subject to the express instructions given by the Client and accepted by the Company in writing, the Company reserves to itself complete freedom in respect of means, route and procedure to be followed in the handling and transport of the Goods;
- 4.2.8 Comply with all reasonable instructions furnished to it by the Client from time to time in connection with the services;
- 4.2.9 Conduct the services in a safe, proper and workmanlike manner and exercise reasonable skill, care and diligence in the performance of the services;
- 4.2.10 Pending forwarding and delivery, Goods may be warehoused or otherwise held at any place at the sole discretion of the Company at the Client's risk and expense;
- 4.2.11 Be entitled, in the absence of express instructions of the Client to the contrary to employ independent third parties to perform all or any of the functions required by the Company. The Company shall have no responsibility or liability to the Client for any act of omission of such third party, even though the Company may be responsible for the payment of such third party's charges, but the Company shall, if suitable indemnified against all cost, take such action against the third party on the Client's behalf as its Client may reasonable direct.
5. **LOADING AND OFF-LOADING**
- 5.1 The Client must ensure that:
- 5.1.1 the Goods shall be ready for loading on the date specified;
- 5.1.2 All documentation necessary in connection with the Goods and the transportation thereof shall be fully and correctly prepared;
- 5.1.3 At all places where the Company is to collect and off-load the Goods there will be safe, suitable and adequate access and loading and off-loading facilities, and that it is possible for the Company to do so by means of ordinary staircases and/or doorways, without need for any special or additional tackle, plant, power, labour or equipment;
- 5.1.4 The Goods will be sufficiently packed and prepared for carriage;
- 5.1.5 The Client shall sign such certificates and receipts on loading and off-loading as the Company may require.
- 5.1.6 The Company shall not be under any obligation to provide any plant, power or labour which in addition to its vehicle's crew is required for the loading or unloading of any goods. Any assistance given by the Company in such loading or unloading shall be at the sole risk of the Client.
- 5.1.7 Any Client conducting any packing or other operation or activity in any area or premises provided by the Company shall do so at its own risk, and the Client indemnifies the Company against all claims or losses arising out of the presence of the Client in such area or premises.
6. **QUOTATIONS AND PACKING**
- 6.1 Quotations given shall be subject to immediate acceptance and shall be subject to withdrawal or revision by the Company; and
- 6.2 are subject to the availability of space on the trucks at the time of acceptance of the quotation.
- 6.3 All prices quoted by the Company are exclusive of value-added tax which will be levied against South African registered purchasers in terms of the Value-added Tax Act, 89 of 1991, as amended.
- 6.4 The Company shall not be responsibility for the manner in which any Goods are packed by or on behalf of the Client; whether such packing occurs originally or consequent upon a subsequent transshipment.
- 6.5 Furthermore, the Company reserves the right to decline the carriage of any Goods, which in its opinion have not been property packed.
7. **PAYMENT**
- 7.1 The Company shall provide the Client with a tax invoice on completion of the offloading of a consignment specifying the amount due in respect of the Services provided in respect of that consignment, together with the relevant POD.
- 7.2 Payment for Services shall be due as per "payment due date" reflecting per invoice and payable when due upon the issue by the Company of a Tax Invoice.
- 7.3 The Client agrees to pay interest at the rate of 2 (two) percent per month on all overdue amounts outstanding longer than 30 days reckoned from the date of statement, as determined by the Company.
- 7.4 It is recorded that standing time charges will be payable by the Client to the Company unless prior agreement to that effect has been concluded in writing between the Parties, and duly signed by both Parties.
- 7.5 The Client shall not be entitled under any circumstances to withhold payment for any Services rendered. Should the Client default in making payment of any overdue amounts owing, the Company shall be entitled, but not compelled, to forthwith demand that the whole amount outstanding on the account be paid, notwithstanding that a portion of the amount would not be owing in accordance with the agreed terms of payment.
- 7.6 All payments by the Client shall be made into a back account nominated in writing by the Company.
8. **COMPANY'S LIEN**
- 8.1 As security for all moneys (whether past or present) owing for the handling of Goods, whether forming the subject matter of this agreement or otherwise, the Company shall have a lien over all goods, documents, bills of lading, import permits as well as all repayments, refunds, claims or recoveries in its possession or under its control.
- 8.2 In addition, the Company shall be entitled to hold all Goods as security for any other moneys which may be owing to it by the Client from any cause whatsoever.
- 8.3 Even though credit may have originally been granted by the Company to the Client, the Company may at any time in its sole discretion retain possession of any Goods pending the discharge of all the Client's indebtedness to the Company, whether or not such indebtedness is related to the handling of the goods in question.
- 8.4 In the event of the Company retaining possession of the Goods in terms of 8.1 and/or 8.2 and/or 8.3, the Company shall be entitled to store or warehouse the Goods at such place as it deems fit, at the Client's expense.
- 8.5 If any moneys owing to the Company are not paid by the Client within 30 days after they have become due, the Company shall be entitled

- subject to the provisions of the NCA, without further notice:
- 8.5.1 to open and examine the Goods;
- 8.5.2 to sell the whole or any part of the Goods in such a manner and on such terms and conditions as it deems fit;
- 8.5.3 to apply the proceeds of any sale after deducting all expenses, in payment or reduction of any amount due by the Client to the Company (including the storage charges envisaged in 8.4), provided that any surplus shall be paid over to the Client without interest immediately after the sale, if the Client's address is known, and if not, upon demand made by the Client within 90 days of the sale.
- 8.5.4 The Company is not liable for any loss, damage or deterioration of such Goods attributable to the implementation of this clause.
- 8.5.5 The Company's rights under this clause are not exhaustive and are in addition to any other rights which it may have against the Client.
9. **ADDITIONAL SERVICES**
The Parties may agree that the Company shall perform services other than those provided for in this Agreement, in which event an additional fee shall be payable by the Company at a rate agreed between the Parties.
10. **GOODS IN TRANSIT INSURANCE**
- 10.1 The Transporter shall take out and maintain during this Agreement, Good in transit insurance to cover any claims by the Client of the Good described in ad-paragraph 3.8.
- 10.2 The Client indemnifies the Company and holds it harmless against any claim arising from any loss, damage or personal injury suffered by any third person or owner of the Goods or instance as a result of or in the course of such transportation.
11. **COMPLIANCE**
The Company shall, in providing the services,
-
- 11.1 comply with all legal requirements relating to the provision of the Services, the provisions of the National Road Traffic Act, 93 of 1996, the provisions of the Customs and Excise Act.
- 11.2 Comply with all reasonable instructions furnished to it by the Client from time to time in connection with the services;
12. **CLIENT'S WARRANTIES**
THE CLIENT IS BOUND BY AND WARRANTS IN FAVOUR of the Company:
- 12.1 The accuracy of all descriptions, values and other particulars furnished to the Company for customs, and other purposes. The Client indemnifies the Company against all expenses, claims or fines arising from any inaccuracy or omission of descriptions, values or other particulars (even if the inaccuracy or omission of descriptions, values or other particulars occurs without negligence);
- 12.2 That the carriage of the Goods will not violate or infringe any Act, regulation or law and the Client hereby indemnifies and holds the Company harmless against any claims and/or damages which the Company may suffer by virtue of the Client's breach of this warranty;
- 12.3 That the Goods are the Client's sole property, alternatively, the Client is authorised by the person owning the Goods to enter into this contract subject to these terms and conditions, and the Client indemnifies the Company against any claim of any nature made by the owner or any third party.
13. **LIABILITY, LIMITATION AND EXCLUSION OF LIABILITY**
- 13.1 The Company shall not have any liability whatsoever for claims for, arising from or relating to –
- 13.1.1 an act or omission of the Client or any person acting on its behalf;
- 13.1.2 the Company complying with the instructions given by or on behalf of the Client;
- 13.1.3 an act or Order of any legal authority;
- 13.1.4 the handling, loading or offloading of Products by the Client; or
the insufficiency of the packaging or labelling of the Products or containers, except where such service has been provided by the Company.
- 13.1.4 The Client confirms that the Company having been given permission to enter the loading and/or offloading points for purpose of rendering of the services in terms hereof.
- 13.2 The Company shall take precaution not to damage any of the property at the loading and/or offloading points in the execution of the Agreement and the Client hereby indemnifies the Company against all claims, damages, demand, proceedings, costs, charges and expenses whatsoever, arising in this regard.
14. **DANGEROUS GOODS**
- 14.1 Unless otherwise agreed in writing, the Client warrants that all Goods handled are fit to be so handled in the ordinary way and are not dangerous.
- 14.2 Unless otherwise agreed in writing, the Company will not handle any dangerous, corrosive, noxious, hazardous, inflammable or explosive goods or any goods which in its opinion are likely to cause damage.
- 14.3 The Client is liable for all losses or damage caused to the Company and/or third parties by all goods handled and indemnifies the Company against any ensuing claims.
- 14.4 Should the Company agree to handle any dangerous Goods for any purpose:
- 14.4.1 the Client must furnish with the Goods a written declaration detailing the trade name, chemical composition and characteristics of the Goods; and
- 14.4.2 the declaration must define the precise respects or circumstances in which the Goods are dangerous; and
- 14.4.3 the Client must ensure that the Goods bear the warning labels and declarations required in terms of the laws and regulations applicable to the transportation of dangerous Goods.
- 14.5 If, in the opinion of the Company any Goods (whether they have been declared as dangerous or not) become a danger to any person or property, the Company shall be entitled immediately and without notice to the Client to dispose of the Goods in question or take such other steps as it in its sole discretion

- deems prudent to avert danger. In such event the Company shall:
- 14.5.1 not be liable under any circumstances for the value of the Goods or for any other loss or damage whether direct or consequential sustained by the Client or owner as a result of such disposal or other steps; and
 - 14.5.2 still be entitled to recover from the Client its remuneration for the handling of the Goods together with any costs incurred by it in disposing of them or taking other steps. Unless written instructions are given to the Company, it shall be under no obligation to make any declaration or to seek any special protection or cover from in terms of any Act in respect of any goods falling within the definition by that body:
 - 14.5.2.1 of dangerous or hazardous goods; or
 - 14.5.2.2 of goods liable to be stored in the open.

15. PERISHABLE GOODS

Perishable Goods which are not taken up immediately upon arrival at their destination or which are not sufficiently marked or otherwise identifiable may be disposed of without notice to the Client, and the payment or tender to the Client of the net proceeds of any disposition (after deduction of all charges incurred by the Company) shall be equivalent to delivery.

16. FORCE MAJEURE AND IMPOSSIBILITY OF PERFORMANCE

- 16.1 In this clause the expression "*force majeure*" means war, earthquake, fire, flood, frost, tempest, drought, cyclone, act of God, decrees or restraints or acts of Government or military authority, impassable public road conditions, strikes and other industrial disputes, sabotage, civil commotion, riots, lock-outs, labour unrest or disputes, unscheduled stoppages, civil disorder, boycott, or any other similar cause wholly beyond the reasonable control of the Party affected thereby (provided that inability to meet any obligation hereunder because of lack of funds, shall in no circumstances be treated as an event of force majeure).
- 16.2 In the event that any Party shall be rendered unable to carry out the whole or any part of its obligations under this Agreement by reason of an event of force majeure, the performance of the obligations hereunder of the Party affected thereby, shall be excused during the continuance of such inability so caused, provided that—
 - 16.2.1 such inability shall insofar as possible be remedied by the Party affected hereby, with all reasonable dispatch; and
 - 16.2.2 the performance of the obligations of the Party concerned shall be resumed as soon as may be reasonably practicable after the interruption has ceased.
 - 16.2.3 Should any occurrence as referred to above arise, then during any period in which any Party hereto is prevented from fulfilling any of its obligations hereunder, the other Party shall be entitled to take such steps as may be reasonably necessary in the circumstances, to deal with the situation as it may deem fit, in

order to meet the requirements in the normal and ordinary course of its operations.

16.3 Notwithstanding the a foregoing, if either party is precluded by, or as a result of an event of force majeure from fulfilling its obligations for a period of more than 30 (thirty) consecutive days, then either Party shall be entitled, but not obliged, to cancel this Agreement and neither Party shall be entitled to claim damages as a result of such cancellation.

17. DISCLOSURE OF PERSONAL INFORMATION

- 17.1 The Client understands that the personal information given in the account application form is to be used by the Company for the purpose of assessing the Client credit worthiness. The Client confirms that the information given is accurate and complete.
- 17.2 The Company has the Client's consent at all times to contact and request information from any persons, credit bureaus or business, including those mentioned in the account application form and to obtain any information relevant to the Client's credit assessment, including but not limited to, information regarding the amounts purchased from the suppliers per month, length of time the Client has dealt with such supplier, type of goods or services purchased and manner and time of payment.
- 17.3 The Client agrees and understands that information given in confidence to the Company by a third party on the Client will not be disclosed to the Client;
- 17.4 The Client hereby consents to and authorises the Company at all times to furnish credit information concerning the Client's dealings with the Company to a credit bureau and to any third party seeking a trade reference regarding the Client in his dealings with the Company.

18. EVENTS OF DEFAULT

- Without derogating from the rights of the Company in law or otherwise, an event of default shall occur should:
 - 18.1 the Client fails to pay any amount to the Company on the due date thereof; the Client performs any act analogous to an act of insolvency specified in the Insolvency Act, 1936 of the Companies Act, both as amended or substituted from time to time or such comparable laws applicable in the Client's country of residence/ incorporation;
 - 18.2 any judgment be granted against the Client and remain unsatisfied for a period of 7 (seven) days after date of judgment or should the Client fail within 7 (seven) days of such judgment to take the necessary steps to appeal against or rescind such judgment and thereafter to pursue such appeal or rescission with due diligence to a successful conclusion;
 - 18.3 any order of Court, whether provisional or final, and whether voluntarily or compulsorily, be granted for the winding up of the Client;

- 18.4 the Client gives notice to take steps to convene a meeting of its shareholders/directors to adopt a resolution placing it in liquidation or under business rescue or similar proceedings in the Client's country of residence or incorporation, whether provisionally or finally;
- 18.5 the Client enters into a compromise, composition or arrangement with its creditors generally, or any class thereof;
- 18.6 any warranty or representation made by the Client which was taken into consideration, and was materially relied upon by the Company in accepting an Order from the Client as set out herein or accepting the relevant security, guarantee or suretyship as collateral, be found to be untrue or incorrect in any material respect as determined by the Company in its sole discretion;
- 18.7 If the Client fails to remedy such event of default (where capable of remedy) within the applicable grace period calling upon the Client to do so, or if the event is not capable of remedy and the Company gives notice that such event has occurred and the Company is exercising its rights pursuant hereto, then all the Client's indebtedness to the Company will be due and payable immediately irrespective of any terms or conditions otherwise applicable to such indebtedness.

19. GOVERNING LAW AND DISPUTE RESOLUTION

- 19.1 These Terms are to be governed, interpreted and implemented in accordance with South African law and the Client consents to the jurisdiction of the High Court of South Africa for any proceedings arising from these Terms.
- 19.2 The Company shall have the right, at its election, to institute proceedings in the Magistrate's Court having jurisdiction.
- 19.3 If the Company institutes legal proceedings against the Client pursuant to these Terms, and succeeds in such legal proceedings, the Client shall pay all costs incurred by the Company in doing so, including but not limited to collection costs, tracing fees, and legal fees on an attorney and client scale.

20. CESSION

The Client hereby cedes and in favor of the Company, all of the Client's right, title and interest in and to the Debts, as security for the due performance by the Client of all of its obligations according to the terms herein contained. Debts shall mean all the rights title and interest in and to any claims, of whatsoever nature and howsoever arising, which the Client may, now or hereafter, have against any person whomsoever, and all and any monies, amounts and performance which may now be or hereafter become due and owing to the Client, of whatsoever nature and howsoever arising, by any person whomsoever. This cession shall operate as a continuing covering security in favour of the Company and shall continue of full force and effect at all times notwithstanding any intermediate discharge or settlement of or fluctuation in

the Client's obligations. The provisions of the cession shall have the effect of a pledge.

21. CERTIFICATE OF BALANCE

A certificate issued and signed by the director of the Company, whose authority needs not be proved, in respect of any indebtedness of the Client to the Company; or in respect of any other fact including (but not limited to) to services rendered shall be *prima facie* evidence of the Client's indebtedness to the Company.

22. DOMICILIUM CITANDI ET EXECUTANDI

- 22.1 The Client's physical address stated on the account application shall be recognized as the Client's *domicilium citandi et executandi* for the service of any court documents resulting from this Agreement.
- 22.2 The Client's physical, email and / or postal addresses as per this Agreement will be deemed to be the Client's service address for all other documents (including monthly statements) resulting from or in terms of this Agreement.
- 22.3 **It will not be necessary for the Company to prove that the documents referred to in clause 22.2 above were received by the Client. In the event of the Client not receiving any of the documents in clause 22.2 above, the Client must timeously acquire a duplicate from the Company, failing which it will be accepted that said documents were received by the Client.**
- 22.4 The Client may change his *domicilium* address by 7 (seven) days' notice in writing to the Company.
- 22.5 Notwithstanding any provision to the contrary, a written notice or communication received by the Client shall be an adequate written notice or communication notwithstanding that it was not sent to or delivered at that Client chosen address.

23. RELATIONSHIP

This Agreement shall not constitute a partnership or joint venture, between the Company and the Client and neither Company and the Client will hold itself out as an agent, partner or representative of the other.

23.1 WHOLE AGREEMENT AND NO WAIVER

- 23.2 This Agreement and the respective Transport Orders contain all the terms of the agreement between the Parties and no amendment, variation, consensual cancellation or addition shall be of any force or effect unless and until recorded in writing and signed by the Parties hereto.
- 23.3 Save for those contained herein, no representations, warranties or statements have been given or made by, or shall be binding on, either Party have induced either party to enter into this Agreement.
- 23.4 The granting of any indulgence by either Party to the other shall not constitute a waiver by the first-mentioned Party of any term or condition of this Agreement, nor as a waiver or novation of any of the rights

of such Party, nor estop such Party from exercising its rights, and no waiver of any breach shall operate as a waiver of any continuing or subsequent breach.

23.5 The Client may not cede all or any of his/its rights or delegate all or any of his/its obligation in terms of these Terms to any party without the prior written consent of the Company.

23.6 If there is any conflict between these Terms and the terms and conditions of,

quotation or other communication received from the Client, these Terms shall prevail.

24. WARRANTY BY SIGNATORIES

By his/her signature hereto each of the signatories to this Agreement warrants that he/she is duly authorized to conclude this Agreement by the Party on whose behalf he/she so signs.

SIGNED AT _____ ON THIS ____ DAY OF _____ 20__

* FOR AND ON BEHALF OF THE CLIENT (1) SIGNATURE: _____

FULL NAME & SURNAME	
ID NUMBER	

* FOR AND ON BEHALF OF THE PURCHASER (2)

SIGNATURE: _____
(If CLIENT is married within property alternatively a partnership)

FULL NAME & SURNAME	
ID NUMBER	

* WITNESS SIGNATURE: _____

FULL NAME & SURNAME	
ID NUMBER	

*Compulsory

SIGNED AT _____ ON THIS ____ DAY OF _____ 20__

* FOR AND ON BEHALF OF THE COMPANY SIGNATURE: _____

FULL NAME & SURNAME	
---------------------	--

* WITNESS SIGNATURE: _____

FULL NAME & SURNAME	
ID NUMBER	

*Compulsory



Co. Reg. No. 2005/004200/07
Vat Reg. No. 4670221649

AGRISUPERIOR INDUSTRIAL
PARK
CORNER PORCELAIN ROAD
AND M57
(GOEDEHOOP AVENUE)
OLIFANTSFONTEIN, 1666
P O Box 957
IRENE
0062
Tel: 011 – 635 3000
Email:
admin@shiman.co.za
www.shiman.co.za

SURETY AGREEMENT

DEED OF SURETYSHIP

IN FAVOUR OF:

SHIMAN (PTY) LTD registration number 2005/004200/07, with its principal place of business at AGRISUPERIOR INDUSTRIAL PARK, CORNER PORCELAIN ROAD AND M57, GOEDEHOOP AVENUE, OLIFANTSFONTEIN. (hereinafter referred to as "the Company")

By signing this deed of suretyship, you will be liable jointly and individually with the CLIENT (as described below) for the CLIENT's obligations to the Company. Accordingly, you agree to assume risks and liabilities, and you may be liable for additional debts, costs and obligations.

I/We, the undersigned,

NAME & SURNAME : _____

Identity/Registration/IT number: _____

Domicilium citandi et executandi (physical address) _____

NAME & SURNAME: _____

Identity/Registration/IT number: _____

Domicilium citandi et executandi (physical address) _____

(hereinafter referred to as the "**the Sureties**")

The Sureties are jointly and severally (which means that each Surety and the Client is jointly

and individually responsible to pay the full amount owing) to the Company as surety for and co-principal with the -

CLIENT: _____

Registration number/ID number: _____

(hereinafter referred to as "the Debtor/s"),

on the terms contained in this deed of suretyship ("the Suretyship"), for the due and punctual performance and discharge on demand of all and any claim, indebtedness, liability or other commitment, direct or indirect, which the Debtor does now or will at any future time owe to the Company, from whatsoever cause and howsoever arising.

By signing this suretyship, the Surety/ies will be liable for all the debts and obligations which the Debtor owes to the Company at any time (including debts and obligations incurred by the Debtor before you signed this suretyship, debts and obligations incurred by the Debtor after the Surety/ies sign this suretyship, and all types of debts and obligations which the Debtor owes the Company). Therefore, the Surety/ies will be assuming additional risks and liabilities, which may result in you being liable for increased or additional debts, costs and obligations.

- 1. The Surety/ies shall each be bound to this Suretyship despite the fact that any intended co-Surety:
 - 1.1 does not sign this Suretyship, or
 - 1.2 may not be bound to this Suretyship, or
 - 1.3 may be released from this Suretyship
- 2. The Company shall have the right, in its sole discretion but acting reasonably, and without in any way affecting its rights against the Surety/ies or diminishing or otherwise affecting the Surety/ies obligations to it hereunder, to release any surety and/or security and/or to give time to or compound or make other arrangements with the Debtor or any Surety and/or to allow or grant the Debtor or any Surety any latitude or indulgence, without our approval.
- 3. To the extent allowed by law, notwithstanding any part payment by the Surety/ies, they shall have no right to any cession of action in respect of such part-payment and shall not be entitled to take any action against the Company or against any other Surety in respect thereof unless and until the indebtedness of the Company has been discharged in full.
- 4. To the extent allowed by law, the Company may at any time without our consent, cede, delegate, assign or transfer and make over all of its rights, title and interest in and arising out of this Suretyship.
- 5. This Suretyship shall be a continuing covering Suretyship and shall remain in force notwithstanding any immediate settlement of amounts owing by the Debtor, the expiration or earlier termination of any agreements between the Debtor and the Company, or the death or legal disability of any Surety. The Surety/ies further acknowledge that all amounts due and payable by the Debtor to the Company shall be recoverable from the Surety/ies notwithstanding the fact that the Debtor may have any claim or counterclaim against the Company. The Surety/ies hereby agree that any judgment and any arbitration award in the Company's favour flowing from any indebtedness covered by this Suretyship shall be binding on them.
- 6. The Sureties shall not be entitled to withdraw or cancel this

- Suretyship unless and until all the indebtedness, commitments and obligations (including contingent obligations) of the Debtor to the Company are paid in full and extinguished, and then only after receipt of notice in writing given to the Surety/ies by the Company, confirming the withdrawal or cancellation of this Suretyship or the acceptance of a subsequent suretyship. Notwithstanding anything herein or elsewhere contained on termination of this Suretyship, the Surety/ies shall each remain liable as surety and co-principal debtor for all sums of money owed by the Debtor to the Company at the date of termination.
- 7. This Suretyship is in addition to and without prejudice to any other suretyships, guarantees, securities or indemnities now or hereafter held by the Company in connection with the obligations of the Debtor.
- 8. To the extent allowed by law, the Surety/ies hereby waive:
 - 8.1 *presentment*, which means that a negotiable instrument does not need to be presented to the person upon whom it is drawn for acceptance or for payment;
 - 8.2 *notice of dishonor*, which means that notice does not need to be given by the holder of a bill of exchange when a negotiable instrument is dishonored; and
 - 8.3 *protest*, which means that a notary does not need to provide formal evidence when a negotiable instrument is dishonored,
 - 8.4 of any promissory note, bill of exchange, cheque or other negotiable instrument made, drawn, accepted, endorsed or discontinued by the Debtor or to be so made drawn, accepted, endorsed or discontinued by us.
- 9. To the extent allowed by law, the Surety/ies each waive their right to be, or to apply to be, joined in any proceedings taken by the Company against the Debtor. Further, in the event of the liquidation of the Debtor, or any composition or compromise by the Debtor, the Surety/ies undertake not to file any claim against the Debtor until the Company's claims against the Debtor have been paid in full.
- 10. To the extent allowed by law, the Surety/ies each renounce the following benefits:
 - 10.1 *"excussion"*, which means that you are not entitled to demand that the Company first exhausts legal remedies against the Debtor before it can claim payment from a

- 10.2 Surety; "division", which means that you the Company is entitled, acting reasonably, to recover the full debt owed by the Debtor from any one Surety to the exclusion of any other Sureties;
- 10.3 "cession of action", which means that you are not entitled to demand cession of the Company's rights against the Debtor and/or any other Surety before payment by you of the full debt owing by the Debtor to the Company;
- 10.4 "revision of accounts", which means that you are not entitled to allege that the accounts were not examined by the Debtor;
- 10.5 "no value received", which means that you are not entitled to allege that the Debtor received no benefit;
- 10.6 "error in calculation", which means that you are not entitled to allege that there has been a wrong calculation of the debt of the Debtor; and
- 10.7 "no cause of indebtedness", which means that if, in any legal proceedings which are instituted by the Company against you, you dispute the existence of any amount owing by the Debtor, the onus of proving this will rest on you, the meaning whereof we are fully acquainted with and fully understand.

11. CERTIFICATE OF BALANCE

A certificate issued and signed by the Director of the Company, whose authority need not be proved, in respect of any indebtedness of the Debtor and/or the Surety to the Company; or in respect of any other fact including (but not limited to) the fact that the Services rendered, shall be *prima facie* evidence of the Debtor's/Surety/ies indebtedness to the Company.

12. CESSION

The Client hereby cedes and in favor of the Company, all of the Client's right, title and interest in and to the Debts, as security for the due performance by the Client of all of its obligations according to the terms herein contained. Debts shall mean all the rights title and interest in and to any claims, of whatsoever nature and howsoever arising, which the Client may, now or hereafter, have against any person whomsoever, and all and any monies, amounts and performance which may now be or hereafter become due and owing to the Client, of whatsoever nature and howsoever arising, by any person whomsoever. This cession shall operate as a continuing covering security in favour of the Company and shall continue of full force and effect at all times notwithstanding any intermediate discharge or settlement of or fluctuation in the Client's obligations. The provisions of the cession shall have the effect of a pledge.

- 13. To the extent allowed by law, any admission or acknowledgment made by the Debtor shall be binding on each of us.

- 14. No addition to, deletion from or variation of any of the terms hereof will be of any force or effect unless reduced to writing and signed by or on behalf of the Company and each of us. This Suretyship contains all the terms in respect of the subject matter hereof and there are no conditions precedent suspending in its operation.
- 15. Each paragraph in this Suretyship is severable, the one from the other and if any paragraph or clause is found to be defective or unenforceable for any reason by any competent court, the remaining clauses will continue to be of full force and effect.
- 16. This Suretyship shall be governed in all respects by the laws of the Republic of South Africa and we hereby consent to the jurisdiction of the High Court having jurisdiction The Company shall have the right, at its election, to institute proceedings in the Magistrate's Court having jurisdiction in respect of any action to be instituted against us by the Company in terms hereof.
- 17. Each reference to "the Company" herein includes a reference to the Company's successors in title or its assigns.
- 18. No extension of time or other indulgence granted by the Company to the Debtor in regard to the payment of any sum or money or the performance of any obligation will release the Surety/ies from liability under this Suretyship.
- 19. In this Suretyship: (i) words importing one gender include the other genders; (ii) the singular includes the plural and vice versa; (iii) natural persons include artificial persons and vice versa; and (iv) references to a "person" include a natural person, company, close corporation or any other juristic person or other corporate entity, a charity, trust, partnership, joint venture, syndicate, or any other association of persons.
- 20. The Surety/ies hereby warrant that they are not married in community of property or in the event that they are married in community of property they hereby warrant that they have obtained the consent of their respective spouses prior to signing this Suretyship.
- 21. To the extent that this Suretyship is governed by or subject to the Consumer Protection Act, 68 of 2008 and/or the National Credit Act, 35 of 2005 ("hereinafter referred to as the Act") no provision of this Suretyship is intended to contravene the applicable provisions of the Act. All provisions of this Suretyship will be deemed to be qualified to the extent required in order to ensure compliance with the applicable provisions of the Act and this Suretyship must be interpreted and applied accordingly.

SIGNED AT _____ ON THIS _____ DAY OF _____ 20_____

*** FOR AND ON BEHALF OF THE SURETY (1) SIGNATURE: _____**

FULL NAME & SURNAME	
ID NUMBER	

* FOR AND ON BEHALF OF THE SURETY (2) SIGNATURE: _____
(If Applicant is married within property alternatively a partnership)

FULL NAME & SURNAME		
ID NUMBER		

* WITNESS SIGNATURE: _____

FULL NAME & SURNAME		
ID NUMBER		

*Compulsory