

**SURETYSHIP**

in favour of

**ACT Logistics (Proprietary) Limited**  
**Registration Number 1998/003807/07**  
(hereinafter referred to as “**the Creditor**”)

**1. SURETYSHIP**

1.1 I / We the undersigned

Surety 1		Surety 2	
Identity No / Registration No		Identity No / Registration No	
Street Address		Street Address	

(the “**Surety/ies**”)

Bind myself/ourselves in favour of the Creditor as Surety(ies) and co-principal debtor(s) jointly and severally with –

Customer/Debtor	
Identity No/ Registration No	

(the “**Debtor**”)

For the proper, full and punctual payment and performance of the Debtor of all its present and future obligations to the Creditor which the Debtor owes to the Creditor from whatsoever cause arising in term of a written agreement concluded or about to be concluded between the Creditor and the Debtor (“**Agreement**”)

- 1.2 I/we acknowledge and agree that I/we have taken independent legal advice and understand my/our commitments in terms of this Suretyship and the potential consequences of this Suretyship, including that I/we will become jointly and severally liable with the Debtor (i.e. legally responsible, either collectively with the debtor and other sureties, or individually), for the Debtor’s obligations to the Creditor.
- 1.3 If the Surety is a juristic person, the Surety warrants that for purposes of section 4 of the National Credit Act 34 of 2005, its asset value or annual turnover, together with the combined asset value or annual turnover of all its related juristic persons, shall at all times exceed R1 000 000.00. (A Juristic person is related to another juristic person if one of them has direct or indirect control over the whole or part of the business of the other or if a person has direct or indirect control over both of them).

**2. INTERPRETATION**

In this Suretyship, unless the context otherwise indicates –

- 2.1 “**Business Day**” means any day other than a Saturday, Sunday or statutory holiday in the Republic of South Africa;
- 2.2 “**National Credit Act**” means the National Credit Act No 34 of 2005, together with regulations made in terms thereof from time to time, all as amended or replaced from time to time;
- 2.3 any reference to a gender includes other genders, the singular includes the plural, the plural includes the singular, and any reference to a person includes a natural person, a juristic person and an artificial person.

**3. JOINT AND SEVERAL LIABILITY**

- 3.1 Where more than one Surety signs this Suretyship for the obligations of the Debtor, each one of us shall be jointly and severally bound as Surety and co-principal debtor.
- 3.2 The validity and enforceability of this Suretyship shall in no respect be subject to the obtaining of a Suretyship from another person or to the validity of the Suretyship of any other Surety.

#### 4. **ADDITIONAL SECURITY**

- 4.1 This Suretyship shall be in addition to, and not in substitution of any other security which may have been granted by me/us or any other party to the Creditor.
- 4.2 This Suretyship shall not detract in any way from other security already furnished by me/us or any other party in favour of the Creditor, which security shall remain in force until terminated in writing by the Creditor.

#### 5. **ADMISSIONS BY THE DEBTOR**

**All admissions or acknowledgments of indebtedness made or given at any time by the Debtor to the Creditor now or in the future in regard to any obligation or liability for which this Suretyship is given, including but not limited to the acceptance of the Creditor's claim by a business rescue practitioner, trustee or liquidator in the event of the business rescue proceedings being commenced against the Debtor or insolvency or liquidation of the Debtor as well as any judgment granted by a competent court against the Debtor in favour of the Creditor, bind or shall bind me/us.**

#### 6. **RIGHTS OF THE CREDITOR**

The Creditor may, without reference to me/us and without prejudice to its rights in terms of this Suretyship, as may be permissible in law, -

- 6.1 determine the extent, nature and duration of the indebtedness of the Debtor;
- 6.2 release in whole or in part, present or future security, including this Suretyship or the Suretyship of co-sureties, in respect of the Debtor's obligations to the Creditor;
- 6.3 enter into any arrangement, compromise or settlement or grant an extension to the Debtor or other sureties; and
- 6.4 cede its claims or other rights against the Debtor or against me/us to any person of its choice.

#### 7. **INSOLVENCY, LIQUIDATION, ETC**

If business rescue proceedings have commenced against the Debtor or any person who has bound himself as Surety for the Debtor, or the Debtor or any person who has bound himself as Surety for the Debtor is sequestrated, liquidated, surrendered his/her estate or placed under judicial management, administration, compromise or arrangement, either by way of statute or otherwise –

- 7.1 the Creditor may decide whether or not to institute a claim against the Debtor or its estate for the amount then owing by the Debtor in terms of the Agreement, without affecting or diminishing my/our liability in terms of this Suretyship;
- 7.2 the Creditor shall be entitled to apply all proceeds or payments which are received from the Debtor, business rescue practitioner, curator, liquidator or from any other source in diminishing the amount owed by the Debtor in terms of the Agreement, without affecting or diminishing my/our liability in terms of this Suretyship for payment of the amount which is owing to the Creditor by the Debtor after receipt of such proceeds or payments;
- 7.3 the Creditor shall be entitled, notwithstanding payment by me/us or any other person of any part of the amount owing in terms of this Suretyship, to prove a claim against the Debtor, the estate of the Debtor or any other Surety for any amount which may then be owing on the date of the commencement of business rescue proceedings, sequestration, liquidation, surrender, administration, compromise or arrangement; and
- 7.4 if any payment which has the effect of diminishing or discharging my/our obligations in terms hereof is set aside by law or due to any other reason, or is repaid as a result of agreement with the Creditor, I/we shall continue to be liable to the Creditor for any and all amounts owing by the Debtor as a result of such setting aside or repayment. All references in this Suretyship to debts of or amounts owing by the Debtor, shall include any debt which may originate or revive as a result of such setting aside or repayment.

#### 8. **RENUNCIATION OF BENEFITS**

- 8.1 If the National Credit Act does not apply to this Suretyship I/We renounce the benefits of all otherwise applicable legal immunities, defences and exceptions to the extent that they would or could be applicable in the absence of this renunciation, including the benefits of –
  - 8.1.1 cession of action, which means that I/we am/are not entitled to demand cession of the Creditor's rights against the Debtor and/or any co-Surety before or upon payment by me/us of the full debt owing by the Debtor to the Creditor in terms of the Agreement;
  - 8.1.2 "beneficium ordinis seu excussionis" (i.e. excussion, enabling the Creditor to proceed against me/us before proceeding against the Debtor if the Creditor chooses to do so);

- 8.1.3 “beneficium divisionis” (i.e. division, enabling the Creditor to proceed against any one of us alone for the full amount owing to the Creditor);
- 8.1.4 “exceptio errore calculi” (the exception of wrong calculation);
- 8.1.5 “exceptio non numeratae pecuniae” (the exception that money was not paid over)
- 8.1.6 “exceptio non causa debiti” (the exception that no cause of action exists)
- 8.1.7 where applicable, the “exception de duobus vel pluribus reis debendi” (the exception that all the sureties must be joined in any action, each for his proportionate share of the debt); “revision of accounts”, and
- 8.1.8 “no value received”,  
the full force, meaning and effect whereof the I/we declare myself/ourselves to be fully acquainted.

8.2 If the National Credit Act applies to this Suretyship, I/we renounce the benefits of –

- 8.2.1 cession of action, which means that I/we am/are not entitled to demand cession of the Creditor’s rights against the Debtor and/or any co-Surety before or upon payment by me/us of the full debt owing by the Debtor to the Creditor in terms of the Agreement;
- 8.2.2 “beneficium divisionis” (i.e. division, enabling the Creditor to proceed against any one of us alone for the full amount owing to the Creditor);
- 8.2.3 “beneficium ordinis seu excussinis” (i.e. excussion, enabling the Creditor to proceed against me/us before proceeding against the Debtor if the Creditor chooses to do so)
- 8.2.4 “revision of accounts”;
- 8.2.5 “no value received”; and
- 8.2.6 where applicable, the “exception de duobus vel pluribus reis debendi” (the exception that all sureties must be joined in any action, each for his proportionate share of the debt),  
the full force, meaning and effect whereof the I/we declare myself/ourselves to be fully acquainted.

**9. CONTINUING SECURITY**

**For its duration this Suretyship shall be a continuing covering security for all my/our obligations to the Creditor in terms of, or arising in connection with, this Suretyship, until all amounts owing to the Creditor and all obligations (including contingent obligations), plus such interest and costs until date of payment as are permissible in law, have been paid and fully and finally settled or discharged.**

**10. CHOSEN ADDRESS**

- 10.1 The Debtor hereby chooses it domicilium citandi et executandi (domicile address) for all purposes at the address in Clause 1.1 of the Suretyship.
- 10.2 The Debtor authorizes the Creditor to deliver notices, statements or invoices to the addresses provided in Clause 1.1.
- 10.3 For purposes of this Suretyship all notices shall be in writing. Any notice given by either party to the other which is delivered by hand shall be presumed to have been received at the time of delivery or if sent by post 7 days after the date of posting. A notice actually received by a party shall be an adequate notice to it notwithstanding that it was not delivered to its domicile address.
- 10.4 The parties may at any time by written notice vary their respective domicile addresses to any address within the Republic of South Africa.

**11. PROCEEDINGS AND JURISDICTION**

- 11.1 If I/we –
  - 11.1.1 fail to pay an amount payable by me/us to the Creditor on the date that such amount becomes payable or if I/we breach any of the provisions of this Suretyship; and
  - 11.1.2 fail to pay the amount or remedy the breach within 7 (seven) business days of the date of receipt of the written notice requiring me/us to do so, then the Creditor shall be entitled, without notice, to claim specific performance from me/us without prejudice to any other rights the Creditor may have, including the right to claim damages.

11.2 I/we will pay all legal costs of the Creditor, as may be permissible in law, in covering any amount that I/we owe to the Creditor.

11.3 Notwithstanding clauses 11.1 and 11.2, if this Suretyship is subject to the National Credit Act, the Creditor will –

11.3.1 give me/us written notice of default and propose that I/we refer this Suretyship to a debt counselor, alternative dispute resolution agent, consumer court or ombud with jurisdiction, with the intent that the Creditor and I/we resolve any dispute under this Suretyship and develop and agree on a plan to bring any outstanding payments up to date;

11.3.2 commence legal proceedings to enforce its rights under the Suretyship and recover collection costs and default administration charges from me/us (as defined in the National Credit Act) if –

11.3.2.1 it has given me/us the notice as referred to in Clause 11.3.1 above or it has given notice to terminate any debt review process in terms of the National Credit Act which may then be underway in respect of this Suretyship; and

11.3.2.2 I/we are and have been in default under this agreement for at least 20 (twenty) business days; and

11.3.2.3 at least 10 (ten) business days have elapsed since the Creditor delivered the notice contemplated in Clause 11.3.1; and

11.3.2.4 I/we have not responded to that notice; or

11.3.2.5 have responded to the notice by rejecting the Creditor's proposal if any made in terms of Clause 11.3.1.

11.4 A certificate signed by a manager of the Creditor specifying the amount owing by the Debtor to the Creditor and further stating that such amount is due, owing and payable by the Debtor to the Creditor, shall be sufficient (prima facie) proof of the amount thereof and of the fact that such amount is so due, owing and payable for the purpose of obtaining provisional sentence or other judgment against me/us in any competent court. It shall not be necessary to prove the appointment of the person signing any such certificate.

## 12. GOVERNING LAW

12.1 This Suretyship shall in all respects be governed by the laws of the Republic of South Africa.

12.2 In terms of Section 45 of the Magistrate's Courts Act 32 of 1944, the Surety consents to the jurisdiction of any Magistrate's Court in the area which the Surety resides or works, notwithstanding the amount involved. This does not prevent the Creditor from bringing legal proceedings in a High Court that has jurisdiction.

## 13. WHOLE AGREEMENT

This document (together with its annexures if any) contains the whole agreement between the Creditor and me/us regarding this Suretyship. No addition to, variation or cancellation of this Suretyship shall be of any force or effect unless reduced to writing and signed by all the relevant parties.

## 14. INDULGENCE

No indulgence, latitude or extension of time which the Creditor may allow the Surety shall be regarded to be a waiver of rights by the Creditor or a novation of the Surety's liabilities under this Suretyship.

## 15. SEVERABILITY

If any clause of this Suretyship becomes unenforceable for any reason whatsoever, that clause is severable from and shall not affect the validity of any other clause.

## 16. REPRESENTATION

If the Surety is a legal person or is represented by another person, then the signatory/signatories warrant and represent to the Creditor that they are duly authorized to enter into this Suretyship.

## 17. RIGHT TO SETTLE

I/We acknowledge being aware of the fact that I/we may terminate this Suretyship at any time by paying an amount equal to the aggregate of –

17.1 the unpaid balance of the debt owing by the Debtor in terms of the Agreement at that date ("Settlement Date"); and

17.2 all unpaid interest and other fees and charges due and payable by the Debtor to the Creditor in terms of the Agreement up to and including the Settlement Date; and

17.3 if the Agreement is a large credit agreement as defined in the National Credit Act, an early termination charge in an amount equal to –

17.3.1 the maximum early termination charge prescribed under the National Credit Act from time to time where a fixed interest rate is applicable to the Agreement; or

17.3.2 no more than the interest that would have been payable under the Agreement for a period equal to the difference between –

17.3.3 three months; and

17.3.4 the period of notice of settlement (if any) given by me/us.

**18. CONFIRMATION**

I/We confirm that –

18.1 this Suretyship was fully and properly completed in all respects at the time of signature especially with reference to the name of the Debtor; and

18.2 my/our liability in terms of this Suretyship shall be for an unlimited amount.

**19. SIGNATURE**

**19.1 Surety**

Name of Surety 1		Name of Surety 1	
Designation		Designation	
Place of Signature		Place of Signature	
Date of Signature		Date of Signature	
Signature of Surety / On behalf of Surety		Signature of Surety / On behalf of Surety	

**19.2 Witnesses**

Name of Witness 1		Name of Witness 1	
Identity Number		Identity Number	
Place of Signature		Place of Signature	
Date of Signature		Date of Signature	
Signature of Witness		Signature of Witness	