

## SURETYSHIP AGREEMENT

I/We, the undersigned,

NAME: \_\_\_\_\_

NAME: \_\_\_\_\_

IDENTITY NUMBER: \_\_\_\_\_

IDENTITY NUMBER: \_\_\_\_\_

MARITAL STATUS: \_\_\_\_\_

MARITAL STATUS: \_\_\_\_\_

OF: (ADDRESS):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

OF: (ADDRESS):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

do hereby bind myself/ourselves, jointly and severally, as surety and co-principal debtor/s in solidum to **DGS FROZEN FOODS (PTY) LTD** (hereinafter referred to as "**the Creditor**"), his/their order or assigns for the due and proper payment by \_\_\_\_\_ (hereinafter referred to as "**the Debtor**") of each and every amount and payment which the Creditor shall receive from the Debtor in terms of an Agreement of Purchase and Sale between the Debtor and Creditor.

1. I/We agree that if by virtue of any Act of Law or otherwise howsoever, any agreement of indebtedness guaranteed by me/us in terms hereof is terminated and the Debtor is released partly or wholly from liability and/or its liability is suspended or rendered temporarily unenforceable, I/We shall be liable forthwith for the performance of all the Debtor obligations and payment of any amount due by them including damages.
2. It shall always be in the discretion of the Creditor to determine the extent, nature and duration of the facilities (if any) to be allowed to the Debtor.
3. Without derogating from the generality of any of the provisions of this surety-ship, or the ambit of the obligations embraced, my/our liability shall cover all claims for compensation or damages which the Creditor may at any time have as a result of the cancellation or termination of any contract between Debtor and Creditor (or the Creditor' predecessor in title) which takes place pursuant to the provisions of Section 37(1) of the Insolvency Act No. 24 of 1936, as amended, or where the Debtor is a company, as applied by virtue of the provisions of the Companies Act No. 61 of 1973, as amended, or pursuant to any corresponding legislation.
4. All judgements against the Debtor flowing from any principal indebtedness covered by the Surety-ship and all acknowledgements of indebtedness and admissions by the Debtor shall be binding on me/us.

5. Notwithstanding the amount involved, I/We hereby consent to the jurisdiction of the Magistrate's Court having jurisdiction over my/our person/s in respect of all proceedings connected with this Surety Agreement, notwithstanding that the value of the matter in dispute might exceed the Court's jurisdiction.
6. For the purpose hereof I/we choose *domicilium citandi et executandi* the physical address as set out herein and any change in such address shall be given in writing by me/us and delivered by hand or sent by registered mail or email, to the Creditor upon notification of which address so notified shall serve as a new *domicilium citandi et executandi*.
7. I/We do hereby expressly renounce the benefits arising from the legal exceptions "*non numeratae pecuniae*", "*non causa debiti*", "*errore calculi*" and "*beneficia excusions et divisionis*", with the force and effect of which I/We hereby declare myself/ourselves to be fully acquainted and I/We agree and declare that this Suretyship is to be in addition and without prejudice to any other Suretyship/s and security/ies now or hereafter to be held by the Creditor and shall remain in force as a continuing security notwithstanding any intermediate settlement of account and notwithstanding our death or legal disability.
8. In the event of :
  - 8.1 any liquidation, judicial management or sequestration of the Debtor, or any other surety for the Debtor,
  - 8.2 any composition or compromise by the Debtor or any such other Surety, whether in terms of the company law or Insolvency Law or under common law, I/We bind myself/ourselves not to file any claim against the Debtor or any other Surety until the Creditor's claims against the Debtor have been paid in full.
9. As security for my/our obligations in terms hereof, I/we cede to the Creditor all the claims which I/We now have or may in future have against the Debtor from any cause of indebtedness whatsoever (including those arising from payment made by me/us hereunder), hereby undertaking on demand by the Creditor all documents (duly endorsed where appropriate) evidencing or embodying or relating to any such claims.
10. Notwithstanding any part payment by me/us or on my/our behalf, I/We 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 Debtor or against any other Surety for the Debtor in respect thereof unless and until the indebtedness of the Debtor to the Creditors shall have been discharged in full.
11. For the purposes of any action against me/us hereunder, for provisional sentence or otherwise, a certificate by the Creditor or its auditor as to the amount owing by the Debtor and to the effect that the due date for payment of such amount has arrived shall be sufficient and satisfactory proof of the facts therein stated until the contrary shall have proved.
12. I/We acknowledge that all amounts due and payable by the Debtor to the Creditor shall be recoverable from and paid by me notwithstanding that the Debtor may have any claim or counter-claim of whatsoever nature and howsoever arising against the Creditor.
13. The Creditor shall be at liberty, without an any way affecting its rights against me/us or diminishing or otherwise affecting my/our obligations to it hereunder, to do any act, whether pursuant to the provisions of any contract concluded with the Debtor or otherwise, as it in its

sole discretion may deem fit, notwithstanding that in doing or omitting to be any such acts, the Creditor may have acted negligently (whether grossly or otherwise) and, in particular, but without limiting the generality of the a foregoing, the Creditor shall without in any way affecting its rights against me/us or diminishing or otherwise affecting my/our obligations to it hereunder be entitled to :-

-release securities and other sureties; and

-give time to or compound or make any other arrangements with the Debtor or other parties aforesaid; and

-allow or grant to the Debtor or any surety any latitude or indulgence, without reference to or approval by me/us.

14. I/We shall not be entitled to withdraw or cancel this Suretyship unless and until all indebtedness, commitments and obligations (including contingent obligations) of the Debtor to the Creditor shall have been fully discharged or extinguished, and then only after the expiry of 10 (Ten) days after the receipt of notice in writing given by me/us to the Creditor.
15. If this Deed has been prepared in a form for signature by more than one Surety, then each Surety who signs it acknowledges and records that, notwithstanding the fact that it provides for signature hereof by other sureties, there is a separate, distinct and independent contract of suretyship brought into existence by each Surety who does sign it. Accordingly, if for any reason any surety named herein shall fail to sign this Deed of Suretyship for any reason, cease to be or is not binding on any one of the Sureties, then the obligations of the other/s shall be and continue to be binding and remain of full force and effect in terms hereof.
16. The Creditor shall be entitled to appropriate any moneys received by it from me/us hereunder towards the payment of such cause of debt or amount owing by the Debtor to the Creditor as it may determine in its absolute discretion.
17. No consensual cancellation, variation or modification of the terms of this Deed of Suretyship shall be binding on the Creditor unless reduced to writing and signed by or on behalf of the creditors and by me/us.
18. I/We shall be responsible for all costs, charges and expenses of whatsoever nature which may be incurred by the Creditor in enforcing its rights in terms hereof including, without limitation, legal costs on the scale as between attorney and client and collection commission, irrespective of whether any action has been instituted against me or not.

THUS DONE AND SIGNED AT \_\_\_\_\_ ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_.

**AS WITNESSES**

1. \_\_\_\_\_

\_\_\_\_\_  
**SURETY(1)**

2. \_\_\_\_\_

\_\_\_\_\_  
**SURETY(2)**  
( if applicable)

-END -