



• HEAD OFFICE SOUTH AFRICA
33 Hendrik Portgieter Str.
Nelspruit, 1200
Tel: +27 (13) 752 575 6
Fax: +27 (13) 752 570 6
eFax: +27 86 667 071 7
Email: entrepreneur@thegolf.co.za
Website: www.aboveaverage.yolasite.com

P.O. Box 656
Sonpark
Nelspruit
1201

• SWAZILAND
20 Smith Co. Building
Matsapa
Swaziland
Tel: 002 687 6770123
Sales: +26 767 7055

TRANSPORT AGREEMENT

Between
ABOVE AVERAGE INVESTMENTS
REGISTRATION NUMBER: 2001/065563/23

And

(Registration number

: _____

DEFINATIONS

- 1.1 ``animal/cattle feed`` means bagged, manufactured or stored at the mill and required by AA to be transported to the off-loading points.
- 1.2 "cement" means PPC cement surer build, 50 kg manufactured or stored at any PPC factory within S.A
- 1.3 ``this agreement`` means this agreement together with the following attached appendices: - Transport destination and rates, Health, Safety and environmental aspects.
- 1.4 ``AA `` means ABOVE AVERAGE CK: 2001/065563/23 contract holder with clients.
- 1.5 "Carrier" means transporter who will be responsible for hauling of the consignment to and from.
- 1.6 ``ton`` means 1000 (one thousand) Kilograms.
- 1.7 ``transport price`` means the ruling transport price determined by AA from time to time, at the date of signature of this agreement as stipulated in annexure ``A``
- 1.8 ``vehicles`` means the carrier's vehicle used to convey cattle feed by the carrier under this agreement.
- 1.9 ``agreement`` means consensus between AA and the second party to execute carrier services to the designated arrears by AA as an when required.
2. In this agreement, unless the context otherwise requires, words expressed in the masculine shall include the feminine and neuter genders, and words expressed into singular shall include the plural and vice versa.

The headings to this agreement are for the conveniences of the parties and shall not be taken into account in the interpretation of this agreement.

3. APPOINTMENT AND DURATION.

- 3.1 The carrier is hereby appointed and agrees to convey for the duration of 10 years to transport animal feed and PPC cement from both factories to the off-loading points subject to the terms and conditions of this agreement.
- 3.2 This agreement shall be deemed to commence on the date stipulated as the effective date in the contract schedule hereto as Annexure A, and shall endure for an indefinite period, provided that either party will be entitled to terminate this agreement in writing on 30 (thirty) days notice to the other party.

4. TERMS OF PAYMENT AND COST BREAKDOWN.

- 4.1 The carrier will be paid for cattle feed and cement delivered at the transport price within 30 days after receipt of original VAT invoices by AA, provided that the proof of delivery substantiated by a fully signed acceptance has been attached and AA has forwarded payment remittance.
- 4.2 AA may adjust the transport price from time to time, provided that AA will give the carrier written notice of such a price adjustment, prior to the date on which the price adjustment becomes effective.
- 4.3 The transport price excludes value added tax.
- 4.3.1 The parties agree that AA will not be entitled to set off amounts due in respect of breakage in transit, shortages in consignment delivered losses due to theft and hi-jacking, shortage of pallets, pallet hire charges and damaged goods caused by the carrier etc.

5. VEHICLES

The transporter/carrier acknowledges that it is aware that:

- 5.1.1 The annual tonnage of cattle feed may vary in accordance with the quality of cane available for crushing and production requirements at the mill and elsewhere.
- 5.1.2 Substantial damages may be suffered by AA if the carrier does not promptly uplift from the factories and transport to the relevant off-loading point all such sugar as the carrier may from time to time be

required to transport in accordance with AA instructions and the provisions of this agreement.

The carrier undertakes to provide sufficient vehicles suitably designated for purposes of carrying the consignments without any contamination of any sort.

The carrier warrants that vehicles shall at all times be compatible with the loading facilities at the factories and off-loading facilities at the off-loading point.

- 5.4 The carrier/transporter shall throughout the period of this agreement provide, operate and maintain the vehicles in good working order and in a clean, dry and hygienic condition to ensure that no contamination occurs to both products.

The vehicles will be used to convey both products from the mill to the off-loading point in accordance with AA reasonable instructions.

6. WARRANTY BY CARRIER

The carrier hereby warrants in favor of AA that it is duly authorized in law, and shall throughout the period of this agreement remain duly authorized in law, to convey the goods along the routes contemplated by this agreement and hereby indemnifies and holds harmless AA against any loss, costs, damages or claims made against or suffered by AA as a consequence of any breach by the carrier/transporter of this warranty or should this warranty prove to be untrue in any respect.

7. OBLIGATIONS OF THE CARRIER/TRANSPORTER

Specific conditions

The carrier hereby undertakes to convey goods from the factories to the off-loading point subject to the terms and conditions of this agreement and more specifically to the following:

- 7.1.1 Loading and delivery during normal working hours the carrier shall uplift and deliver the goods timorously so as to meet the reasonable requirements of AA as may from time to time be stipulated by AA, it being recognized that the carrier's ability to provide adequate service can be detrimental to AA.

7.2 INSURANCE.

- 7.2.1 Motor vehicle liability insurance comprising as a minimum "balance of Third-party" motor risks including passenger liability for a limit of five million rand (R 5 million).
- 7.2.2 Employer's common law liability insurance of not less than R 5 million.
- 7.2.3 Insurance for each load on an all risk basis to the value of not less than R 200 000, 00 (GIT)
- 7.2.4 Public liability insurance with a limit of not less than R 5 million.
- 7.2.5 Insurance of all the carries equipment brought on the site of a sum Sufficient to provide to the replacement value of such equipment.
- 7.2.6 Current COIDA certificate of good standing or a copy of latest paid up WCA receipt.

7.3 General Conditions

In fulfilling its obligations in terms of this agreement the carrier shall:-

- 7.3.1 Comply with, and use its best endeavors to procure that its servants, employees and agents comply with all applicable laws, by-laws and regulations.
- 7.3.2 Carry out the reasonable written instructions of AA relating to the manner in which and the times at which the carrier performs the haulage of both products in terms hereof, and to procure that its agents, servants and employees shall do likewise;
- 7.3.3 Reimburse AA for the value of any goods, destroyed or damaged whilst the sugar is the carrier's care and/or control. For the purpose of this clause the value of any sugar lost, destroyed or damaged shall be the fair market value, at the date on which any such sugar is lost, destroyed or damaged, of such product.
- 7.3.4 Be held responsible for the damaged product in transit as well as during the untarping of the product. Damaged bags that needs to be returned must be done through the carrier's agent at the carriers cost and will be reimbursed at 30% of the based value of the each bag based on the mass of the returned product measured at factory.

- 7.3.5 The transporter/carrier shall promptly deliver all products to the off-loading points in the same good order and conditions as the sugar was received by the carrier.

7.5 INDEMNITY

The carrier hereby indemnifies and holds harmless AA against any losses, claims or damages incurred by or suffered by AA or made against AA by third parties, including AA employees, business associates and partners, in respect of damage to property or bodily injury or death arising out of the negligence of the Transporter/carrier or its employees acting within the course and scope of Employment or its sub-contractors as the case may be.

8. LOADING, OFF-LOADING AND RISK

8.1 cattle feed and Cement Loading

8.1.1 Loading of products is the client's responsibility. All operations after the loading, such as taping and securing the load, as well as the provision for tarpaulins, belts, corner plates and nets, is the responsibility of the carrier. It will be the responsibility of the carrier to provide clean vehicles and trailers with ample clean waterproof covers. Each and every load must be covered with tarpaulins or other waterproof covers and must be adequately secured. The means of securing must be such that the load will not be damaged in any way. Loaded vehicles not complying with these requirements will not be permitted to leave the mill/factory.

8.1.2 Responsibility and risk of the product will pass to the carrier from the time of loading until delivery and off-loading of the product at the destination. Responsibility for consignment passes to the carrier immediately after loading operations are completed.

8.2 OFF-LOADING AT THE OFF-LOADING POINT.

8.2.1 Untarping of goods is the responsibility of the carrier.

8.2.2 Off-loading of goods is the responsibility of the Agent/Customer, at the off-loading point.

- 8.2.3 The carrier's responsibility for the consignment terminates upon the completion of the off-loading operations, together with obtaining a signed "proof of delivery" (POD) document from the Agent/Customer and returning it on weekly basis (Tuesday) with a valid invoice to AA logistic department.
- 8.3 AA acknowledges that efficient loading operations are essential for the carrier to meet its delivery commitment in terms hereof and shall ensure that:-
 - 8.3.1 Suitable plant or equipment required to load any consignment is readily available at the mill.
 - 8.3.2 The vehicles are permitted ingress to and egress from the mill.

9. SUB-CONTRACT

- 9.1 The transporter shall not, without the prior written consent of AA, have the Power or authority to employ any other carrier as sub-contractor.
- 9.2 If the transporter/carrier employs a sub-contractor for any purpose same shall be subject to the condition that the carrier shall at all times remain liable to "AA" For the due and proper performance of all its obligations in terms of this Agreement and the use of such contractor shall not in any way affect the duties or liabilities created by this agreement and no vinculum juries shall be created between AA and any such sub-contract.

10. BREACH

If either party commits any material breach of any term of this agreement, the other party shall be entitled to give the defaulting party not less than 14 (fourteen) days written notice calling upon such defaulting party to remedy such breach, and if the defaulting party fails to do so, the other party shall in addition to any other remedy it may have in terms of this agreement or at law, be entitled.

- 10.1 To claim specific performance and damages: - or
- 10.2 to do or cause to be done whatever may be necessary to remedy such breach and to claim damages from the defaulting party including the cost of remedying such breach: - or

10.3 To cancel the agreement and claim damages.

11. NOTICES

11.1 The parties choose domicilium citandi at executandi ("domicilium") for all purpose relating to this Agreement, including the giving of any notice and the serving of any process, the addresses stipulated in the contract schedule attached to this agreement as Annexure A.

11.2 Either party shall be entitled from time to time, by giving written notice to the other, to vary its physical domicilium to any other physical address (not being a Post office box or poste restante), to vary its postal domicilium to any other postal address and to vary its facsimile domicilium to any other facsimile number.

11.3 Any notice given by either party to the other ("addressee") which is delivered by hand between the hours of 09:00am and 16:00pm on any business day to the addresses physical domicilium for the time being shall be deemed to have been received by the addressee at the time of delivery.

11.4 Any notice given by either party to the other which is successfully transmitted by facsimile to the addressee's facsimile domicile for the time being shall be deemed (unless the contrary is proved by the addressee) to have been received by the addressee on the day immediately succeeding the date of successful transmission thereof.

11.5 Any notice in terms of or in connection with this agreement shall be valid and effective only if in writing and if received or deemed to be received by the addressee.

12. GENERAL

12.1 Any indulgence or relaxation which may be shown or extended by AA to the carrier shall be without prejudice to AA's rights under agreement, and no waiver by AA on any occasion of any of its rights shall debar AA from exercising such rights on any subsequent occasion.

12.2 No amendment, alteration or cancellation of this agreement will be binding unless reduced to writing and signed by both parties.

12.3 This agreement is personal to the parties. Neither party shall, without the prior written consent of the other, sub-contract, cede, assign or delegate any of its rights and/or obligations in terms of this agreement.

Signed at _____ on _____ this _____ day

Of 2011

WITNESS

FOR THE CARRIER/ TRANSPORTER

Who warrants his authority

Signed at _____ on _____ this _____ day

Of 2011

WITNESS

FOR ABOVE AVERAGE INVESTMENTS.

Who warrants his authority

