

STANDARD TRADING TERMS AND CONDITIONS

UPDATED SEPTEMBER 2015

1 Interpretation

In these trading terms and conditions: -

- 1.1 The headings to the Clauses are for reference purposes only and shall not aid in the interpretation of the Clauses to which they relate;
- 1.2 Unless the context clearly indicates a contrary intention, words importing any one gender include the other two genders, the singular includes the plural and vice versa, and natural persons include created entities (corporate or unincorporated) and vice versa;
- 1.3 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning, namely:
- (1) Applicant means the party described as such in a client application form;
 - (2) CFL means Celtic Freight and Logistics (Pty) Ltd, registration number 2001/001207/07, a private company duly registered in accordance with the company laws of South Africa, with its registered address at 56 Rigger Road, Spartan, Johannesburg, 1600;
 - (3) CFZ means Celtic Freight Zambia Ltd, registration number 42399, a company duly registered in accordance with the company laws of Zambia, with its registered address at Plot 10936, Off Mukatasha Road, Chinika Industrial Area, Zambia ;
 - (4) Carrier means any carrier of Goods whether by road, air, rail or sea;
 - (5) the Company means CFL and/or CFZ;
 - (6) Container means any container, reefer container, controlled atmosphere container, integral reefer container, skiptainer transportable tank or flat rack container that conforms to the International Standards Organisation (ISO) standard container type designations;
 - (7) Container Operator means a Container Operator as defined in the Customs and Excise Act No. 91 of 1964 or any person who carries on the business of transporting containerised goods, or any shipper, ship owner, charterer, ship operator, Carrier, ship's agent, shipbroker, freight forwarder, non-vessel owning common

carrier, clearing and forwarding agent, international transport operator and combined transport operator, from, on whose behalf, or at whose request or instruction the Company receives Containers;

- (8) Container Terminal Services means the cleaning, repairing, inspecting, receipt, release, sorting, loading, discharging, vanning and de-vanning, closing, sealing, handling, weighing, warehousing or storage of Containers;
- (9) the Customer shall include:
 - (a) the Applicant;
 - (b) the person who instructed the Company to perform the Services;
 - (c) the person who accepts the Company's quotation;
 - (d) any person who contracts with the Company either directly or through the services of an agent;
 - (e) any person at whose request or on whose behalf the Company undertakes any business or provides any advice, information or Services;
 - (f) the Owner of the Goods;
 - (g) the consignee or consignor of the Goods; and
 - (h) any other person claiming any right to or in respect of any such Goods;
- (10) Dangerous Goods means Goods which by their nature may injure, damage, taint, or contaminate, or in any other way whatsoever adversely affect any person, Goods or property, including Goods likely to harbour or attract vermin or other pests, or any Goods defined as hazardous and/or dangerous in any tariff or rules for the handling or carriage of Goods by Transnet Limited, or so classified in the IMDG Code or any other code, legislation or regulations in any country in which the Company carries out the Services;
- (11) Day means a calendar day;
- (12) Depot means the Independent Container Depot operated by CFZ;
- (13) FCL means a full Container load, that is a Container containing Goods for import or export for one consignee;

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| <p>(14) FCL Goods means the goods contained in an FCL Container;</p> <p>(15) the Goods means any goods or cargo whether in bulk, break-bulk or carried as project cargo of any nature whatsoever handled, transported or dealt with by or on behalf of or at the instance of the Company or which come under the control of the Company or its agents, servants nominees or sub-contractors on the instructions of the Customer, and includes any type of Container or other form of unitisation, including but not limited to a transportable tank, flat-rack pallet, package or any other form of covering, packaging, container or equipment used in connection with or in relation to the handling and transportation of such Goods, and shall also include Containers and Pallets;</p> <p>(16) IMDG Code means the International Maritime Dangerous Goods Code as amended and updated by the International Maritime Organisation;</p> <p>(17) ISO means International Organisation for Standards, Geneva, Switzerland;</p> <p>(18) Legal Requirement means any law (whether national, municipal or local), by-law, regulation, policy, procedure, license, permit, convention or requirements of any applicable authority;</p> <p>(19) LCL Container means any Container other than an FCL container, excluding empty Containers;</p> <p>(20) LCL Goods means Goods contained in an LCL Container;</p> <p>(21) Loss means physical loss, whether actual or constructive and includes loss arising out of damage, theft or any other cause whatsoever;</p> <p>(22) the Owner means the owner of the Goods and Container to which any business concluded under these Terms relates or any other persons who may have or who acquires any interest, financial or otherwise, therein;</p> <p>(23) Pallet means a wooden pallet with a standard size of 1200mm x 800mm x 144mm;</p> <p>(24) Parties means the Customer and the Company and Party means, as the context requires, any one of them;</p> <p>(25) the Services includes but is not limited to the services referred to in clause 7;</p> <p>(26) Supplier means any person with whom the Company transacts any business on behalf of a Customer and can include, without limitation, vendors of all types of goods, repairers, road, rail, air or sea transporters, suppliers of services of whatever nature, other ships agents or</p> | <p>brokers, importers and exporters, stevedores and port and other authorities; and</p> <p>(27) Transport Documents means any document referred to in the Sea Transport Documents Act 65 of 2000 (and any amendments thereto) and any other documents evidencing a contract of storage or carriage;</p> <p>(28) these Terms means these standard terms and conditions of the Company set out in this document.</p> <p>(29) Transport Unit means any device used to carry Unitised Goods; and</p> <p>(30) Unitized Goods means Goods carried in or on Containers, Pallets, trailers, tilts, railway wagons, tanks, igloos or any other unit load device specifically constructed for the carriage of goods by land, sea or air which may be packed, consolidated, bundled or palletised</p> |
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| <p>2</p> <p>2.1</p> <p>2.2</p> <p>2.3</p> <p>3</p> <p>3.1</p> <p>3.2</p> <p>(1)</p> | <p>Application of these Terms</p> <p>Subject to Clause 5, all and any business undertaken or advice, information or Services provided by the Company, whether gratuitous or not, shall automatically be undertaken or provided subject to these Terms and any subsequent updated versions which shall form part of and be incorporated into any agreement including, but not limited to, contracts of bailment, sub-bailment or deposit concluded by the Customer with the Company.</p> <p>These Terms and any subsequent updated versions shall apply to the exclusion of any other trading terms and conditions unless specifically varied in writing and signed by a duly authorised director of the Company, and shall at all times take precedence over any terms, conditions or stipulations contained in any of the Customer's or Carrier's documentation, even if any applicable terms and conditions contain a clause similar in meaning and intention to this one and regardless of when such documents purport to take effect.</p> <p>These Terms are those referred to in all the Company's notices, correspondence, receipts, emails or other electronic communications and other documents.</p> <p>Authority to contract</p> <p>Any person or Customer contracting with the Company warrants that it has full authority to engage the Company and to contract on these terms and conditions.</p> <p>In the event that the Customer is not the Owner of the Goods, the Customer:</p> <p>warrants that he is authorised to bind the Owner to these Terms;</p> |
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(2) shall in any event provide the Owner with a full copy of these Terms and bring the contents of these Terms to the attention of the Owner; and

(3) accepts that, to the extent that the Owner may attempt to deny that he is bound by these Terms, it shall remain liable to the Company for all purposes relating to any agreement between the Company and the Customer.

4 Owner's risk

All Services provided are effected at the sole risk of the Customer and the Owner, and the Customer indemnifies the Company accordingly.

5 Applicable legislation

5.1 If the Company is obliged, in the execution of any of its duties and/or responsibilities to comply with any common law, legislative enactment or regulation, or notice or permit ("the Law") of any nature whatsoever, then the Company by complying with the Law, shall not be deemed to waive nor abandon any of its rights in terms of these Terms.

5.2 In addition to Clause 5.1, in complying with the Law, the Company shall not be deemed to have assumed any onus, obligation, responsibility or liability in favour of the Customer.

5.3 If any of the terms of these Terms is repugnant to or in conflict with the Law, then and in such event the conflicting term embodied herein shall be deemed to be amended and/or altered to conform to the Law, and such amendment and/or alteration shall not in any way affect the remaining provisions of these Terms.

6 Exclusion of obligations of common or public carrier

The Company deals with Goods only on the basis that it is neither a common carrier nor a public carrier, nor a bailee, nor sub-bailee nor a depository, either gratuitously or for reward.

7 Services offered by the Company

7.1 Subject to these Terms, the Company provides, inter alia, the following Services:

- (1) receipt of Goods from Transnet Port Terminals, Transnet Freight Rail or any other person;
- (2) Container inspection, checking and recording of seals;
- (3) Container Terminal Services;
- (4) Pallet storage;

(5) opening of Containers for inspection by the South African Revenue Services or any other Governmental authority;

(6) packing, unpacking, loading and handling of Goods and Containers;

(7) delivery of Goods at the location specified in the order;

(8) Goods storage, either directly for the Customer, or, whether the Customer has placed Goods in storage with the Company, when such Goods continue to be stored on behalf of a State warehouse or pursuant to any applicable laws or court order;

(9) removal of Goods to a State warehouse;

(10) receiving, handling and checking of documents relating to the Goods or Containers;

(11) completion of discrepancy and damage reports;

(12) provision for facilitation for the inspection of Goods;

(13) repair of damaged packaging;

(14) receipt of shipping instructions;

(15) receipt of Goods in compliance with delivery instructions;

(16) outward examination and reporting of the conditions of Goods;

(17) preparing load lists; obtaining receipts from Transport Port Terminals or other agents of the Container Operator;

(18) storage of Containers for export staging;

(19) compliance with such provisions and obligations as are imposed on a depot operator in terms of any applicable law;

(20) tracking and stock monitoring of Containers;

(21) pre-trip inspections of refrigerated Containers;

(22) any other service which by reasons of their nature are warehousing services

(23) the receipt of FCL Containers in compliance with the provisions of s64A(4) of the Customs and Excise Act as amended from time to time or any other applicable legislation dealing with the receipt of FCL Containers from time to time;

(24) receipt of Containers in bonds in terms of Section 18(1)(d) of the Customs and Excise Act;

(25) provision at each Depot of accommodation for officials of such governmental authorities as may reasonably require it and facilities for such officials to enable them to carry out their duties in terms of any applicable law;

(26) storage of Goods in terms of any provisions of the Customs and Excise Act, any other applicable legislation or court order

(27) such other services as are specifically requested by the Customer and agreed to, in writing, by the Company.

8 The Company's discretion in the absence of instructions

8.1 In the absence of specific instructions or specific instructions given timeously in writing by the Customer to the Company:

(1) it shall be in the reasonable discretion of the Company to decide at what time to perform or to procure the performance of any or all of the acts which may be necessary or requisite for the discharge of its obligations to the Customer;

(2) the Company shall have an absolute discretion to determine the means, route and procedure to be followed by it in performing all or any of the acts or Services it has agreed to perform; and

(3) in all cases where there is a choice of tariff rates or premiums offered by any carrier, warehouseman, transporter, underwriter, or other person depending upon the declared value of the relevant Goods or the extent of the liability assumed by the carrier, transporter, warehouseman, underwriter or other person, it shall be in the discretion of the Company as to what declaration, if any, shall be made, and what liability, if any, shall be imposed on the carrier, warehouseman, underwriter or other person.

9 Customer's instructions

9.1 The Customer's instructions to the Company shall always be in writing and shall be precise, clear and comprehensive and in particular, but without limitation, shall cover any valuation or determination issued by Customs in respect of any Goods to be dealt with by or on behalf of or at the request of the Company.

9.2 Instructions given by the Customer shall only be accepted by the Company if timeously given.

9.3 The Company shall not be obliged to accept any oral instructions, standing or general instructions or instructions given late, even if received by the Company

without comment, but the Company may act thereupon in the exercise of its absolute discretion.

10 The Company's general discretion

10.1 Notwithstanding anything to the contrary contained in these Terms, if at any time the Company should consider it to be in the Customer's interests or for the public benefit to depart from any of the Customer's instructions, the Company shall be entitled to do so and shall not incur any liability in consequence of doing so.

10.2 If events or circumstances come to the attention of the Company, its agents, servants, or nominees which, in the opinion of the Company, make it in whole or in part, impossible or impracticable for the Company to comply with a Customer's instructions, the Company shall take reasonable steps to inform such Customer of such events or circumstances and to seek further instructions. If such further instructions are not timeously received by the Company in writing, the Company shall, at its sole discretion, be entitled to detain, return, store, sell, abandon, or destroy all or part of the Goods concerned at the risk and expense of the Customer.

11 Insurance

11.1 The Company shall have no obligation whatsoever to obtain any form of insurance cover on behalf of the Customer in respect of the Goods.

11.2 However, and subject to the provisions of this clause CFL, which is duly registered as a juristic representative of the Prestgroup FSP license no 165, shall endeavour to place any insurance cover the Customer timeously and in writing instructs it to effect. Such insurance will be subject to such exceptions and conditions as may be imposed by the insurance company taking the risk and CFL shall not be obliged to obtain separate cover for any risk so excluded.

11.3 Unless otherwise agreed in writing, the Company shall not be under any obligation to obtain separate insurance in respect of separate consignments but CFL may insure all or any of such consignments under any open or general policy held by CFL, or concluded on CFL's behalf, from time to time.

11.4 Insofar as CFL agrees to arrange insurance, CFL acts solely as agent for and on behalf of the Customer, which warrants that it has the authority of the Owner of the Goods, or the party who has the insurable interest in the Goods.

11.5 Should any insurer dispute its liability in terms of any insurance policy effected by CFL, the Customer concerned shall have recourse against such insurance company only and CFL shall not have any responsibility or liability whatsoever in relation thereto notwithstanding that the premium paid on such policy may differ from the amount paid by the Customer to CFL in respect thereof.

- 11.6 Notwithstanding anything to the contrary contained in these Terms, the Company shall in no circumstance be liable for any consequences or any failure to obtain any insurance cover or any appropriate insurance cover, or otherwise, and the liability of the Company in respect of any claim brought against the Company arising out of or connected with the provisions of this Clause shall be regulated and determined in accordance with the provisions of Clauses 43, 44, 46, 47 of these Terms.
- 11.7 Notwithstanding the provisions of Clause 11.1 the Company may in its sole discretion taking into account the nature of the Goods arrange for insurance cover in which case the provisions of Clause 11.3 to 11.6 inclusive shall also apply *mutatis mutandis*.
- 11.8 The Company may in its sole discretion taking into account the nature and whereabouts of the Goods, arrange for protection of the Goods, including the provision of security services, at the sole risk and expense of the Customer.
- 12 **The Company's obligations in the absence of instructions**
- 12.1 Unless specific written instructions are timeously given to and accepted by the Company, the Company shall not be obliged to:
- (1) make any declaration for the purpose of any Law, convention, or contract, as to the nature or value of any Goods or as to any special interest in delivery. In particular, the Company shall be under no obligation to make any declaration or to seek any special protection or cover from any Carrier in respect of any Goods which are, or fall within the definition ascribed thereto by that body of Dangerous Goods or other Goods which require special conditions of handling or storage;
 - (2) arrange for any particular Goods to be carried, stored or handled separately from other Goods.
 - (3) decide the time of performance of all or any acts which are necessary or requisite for the discharge of its obligations.
- 12.2 The Company shall have an absolute discretion to determine means, routes and procedures to be followed by it in performing all or any of the Services it has agreed to perform and to appoint any Supplier of its choice on such terms as the Supplier offers.
- 13 **Customer's undertakings**
- 13.1 For the purposes of these Terms, the Customer shall be deemed to have, in relation to the Customer's business, the Goods and the Services to be rendered by the Company in regard thereto, reasonable knowledge of all matters directly or indirectly relating thereto or arising there from including, without limitation, terms of sale and purchase and all matters relating thereto and the Customer undertakes to supply all pertinent information to the Company.
- 13.2 The Customer warrants that:
- (1) it is either the Owner or the authorised agent, contractor or sub-contractor of the Owner of and/or the party that has risk in and to, any Goods in respect of which the Customer instructs the Company and it is authorised to accept and is accepting these Terms not only for itself but also as agent for and on behalf of the Owners of the Goods and/or the party that has risk in and to the Goods and thereby binds the Owner and/or the party that has risk in and to any Goods to the these Terms and that in such an instance it will bring these terms and conditions to the attention of the Owner and/or the party that has risk in and to the Goods;
 - (2) in authorising the Customer to enter into any contract with the Company and/or in accepting any document issued by the Company in connection with such contract, the Owner, sender or consignee is bound by these Terms for itself and its agents and for any parties on whose behalf it or its agents may act, and in particular, but without prejudice to the generality of the foregoing, it accepts that the Company shall have the right to enforce against them jointly and severally any liability of the Customer under these Terms or to recover from them jointly and severally any sums due by the Customer which upon proper demand have not been paid;
 - (3) all information and instructions supplied or to be supplied by it to the Company is and shall be accurate, true and comprehensive, and in particular, without derogating from the generality of the provisions of this Clause, the Customer shall be deemed to be bound by, and warrants the accuracy of, all descriptions, values and other particulars furnished to the Company for customs, consular and other purposes, and the Customer warrants that it will not withhold any necessary or pertinent information, and indemnifies the Company against all claims, losses penalties, damages, expenses and fines whatsoever, whensoever and howsoever arising as a result of a breach of the provisions of this clause whether negligently or otherwise, including, but not limited to, any assessment or reassessment;
 - (4) all Goods will be properly, adequately and appropriately prepared and packed, stowed, weighed, measured, labelled and marked and that the characteristics of the Goods involved are capable of withstanding the normal hazards inherent in the carrying out of the Services;
 - (5) it will, on request, provide the Company with all and any relevant documents reasonably required by the Company in order to enable the Company to respond to any request made by

	any government, agent or body and to provide or procure all documents reasonably requested by the Company including but not limited to those documents required for the purposes of obtaining an acquittal from the South African or Zambian Revenue Services;		scale as between attorney and own client, as well as collection commission and tracing agent's fees.
(6)	where Goods are carried in or on Transport Units save where the Company has been given and has accepted specific written instructions to load the transport unit:	15	The Company entitled to act as agent or principal in contracting
	(a) the Transport Unit has been properly and competently loaded; and	15.1	Unless otherwise agreed in writing, the Company shall carry out the Services as a principal, or to procure the Services as agent for and on behalf of the principal as it in its absolute discretion deems fit.
	(b) the Unitised Goods involved are suitable for carriage in or on the Transport Unit; and	15.2	The offer and acceptance of a fixed price for the performance of any Services shall not itself determine whether such Services are to be arranged by the Company acting as agent for and on behalf of the Customer or as a principal.
	(c) the Transport Unit is itself in a suitable condition to carry the Unitised Goods loaded therein and complies with the requirements of all relevant transport authorities and carriers.	15.3	The Customer acknowledges that when the Company, as agent for and on behalf of the Customer, concludes any contract with a third party, such agreement is concluded between the Customer and the third party on such terms as the third party may stipulate. For the sake of good order, the Company shall not bear any risk, liability or responsibility in respect of the agreement between the Customer and the third party.
(7)	in loading any Goods or Containers or Transport Units, it undertakes to comply with the provisions of the National Road Traffic Act No 93 of 1996, as amended from time to time and all regulations passed in terms of that Act. Furthermore, the Customer agrees that the responsibility for loading and transporting the Goods at the correct transporting volumes or weights and the other provisions as contained in the aforesaid legislation lies with the Customer who is responsible for ensuring that any Service requested of, and made by, the Company does not contravene any regulations of the Act insofar as the permissible volume or weight for each delivery of Goods or Containers is concerned.	15.4	Unless otherwise agreed in writing, the Company, when acting as agent for and on behalf of the Customer, shall be entitled to enter into any contract it reasonably deems necessary or requisite for the fulfilment of the Customer's instructions, including, without limitation, contracts for the:
		(1)	storage, warehousing, packing, lashing, stowage, tallying, transport, shipping, loading, unloading and/or handling of Goods by any person at any place whether on shore or afloat and for any length of time; and
		(2)	carriage or storage of Goods in break-bulk form or Unitised Goods, with or without other Goods of whatsoever nature.
14	Recovery of debts due to the Company	15.5	The Company will be entitled to charge the Customer an uplift or administration fee where services are rendered by a third party.
14.1	The Company shall be entitled to recover any amounts due to it by the Customer in respect of any Services rendered in accordance with these Terms from the Customer or the Owner, or if the Customer acts as agent for a disclosed or undisclosed principal, from the Customer or the principal, as the Company in its absolute discretion deems fit.	16	Subcontracting
14.2	The Customer agrees that in the event of the Company instituting proceedings against the Customer to recover amounts due in terms of any agreement or for breach of these Terms or for enforcement of any other obligations or for the recovery of damages owed by the Customer to the Company in terms of such agreement or these Terms, the Customer shall be liable for all legal costs, charges or other disbursements incurred by the Company, on the	16.1	Where the Company acts as principal, it shall be in the absolute discretion of the Company to fulfill the Services by the Company itself, by its own servants performing part or all of the Services, or by the Company subcontracting the performance of the Services to third parties on such conditions as may be stipulated by, or negotiated with, such third parties for the purposes of such Services, or such part thereof as they may be employed to carry out.
		16.2	Where the Company subcontracts and employs third parties to perform all of any of the Services which it has agreed to perform, the Customer agrees that the Company shall, in addition to the rights in these Terms,

have the full benefit of all rights, limitations and exclusions of liability available to such sub-contractor in the contract between the Company and the sub-contractor.

16.3 Further, where the Company employs third parties to perform all or any of the Services which it has agreed to perform, the Customer agrees that the Company shall, in addition to the provisions of clause 4, have no responsibility or liability to its Customer for any act or omission of such third party even if the Company's servants or agents supervise the third party's performance of its obligations and even though the Company may be responsible for the payment of such third party's charges; but the Company may, if suitably indemnified against all costs, (including attorney and client costs) which may be incurred by or awarded against the Company, and subject to such other terms as may be agreed by the Company in writing, take such action against the third party on the Customer's behalf as the Customer may direct.

17 Terms and conditions of agents and subcontractors

Notwithstanding anything to the contrary contained herein and without prejudice to the provisions of clause 4 the Customer agrees that the Company shall, in addition to these Terms, have the full benefit of all rights, limitations and exclusions stipulated by the carriers, warehousemen, government departments, and all other parties (whether acting as agents or subcontractors to the Company or not) into whose possession or custody the Goods may pass, or subject to whose authority they may at any time be.

18 Permits and consents

If any permit, consent or approval to handle the Goods or to provide the Services is required by any authority under any Law, none of the Company's obligations or duties shall take effect unless and until it obtains the relevant permit, consent or approval. The Customer shall provide all assistance and information required by the Company for the purpose of applying for or obtaining any such permit, consent or approval. The costs involved in obtaining the said permits, consents or approval shall be for the account of the Customer.

19 Goods requiring special arrangements

Except under special arrangements previously made in writing, in terms of Clause 22 the Company will not accept or deal with Dangerous Goods, bullion, coin, precious stones, jewellery, valuables, antiques, pictures, human remains, livestock or plants. Should the Customer nevertheless deliver such Goods to the Company or cause the Company to handle or deal with any such Goods otherwise than under special arrangements previously made in writing, the Company shall incur no liability whatsoever in respect of such Goods, including, without limitation, liability in respect of its negligent acts or omissions in respect of such Goods. A claim, if any,

against the Company in respect of the Goods referred to in this Clause 19 shall be governed by the provisions of Clauses 44, 46 and 47.

20 Containers

Without prejudice to the provisions of clause 4,

20.1 the Company shall not be liable for loss of or damage to any Goods vanned into any Container if the loss or damage is caused by:

- (1) the unsuitability of the Goods for carriage in containers, unless the Company has approved the suitability of the Goods in writing;
- (2) the unsuitability or defective condition of the Container provided that where the Container has been supplied by the Company, this paragraph shall only apply if the unsuitability or defective condition arose
 - (a) Without negligence on the part of the Company; or
 - (b) Would have been apparent upon reasonable inspection by the Customer
- (3) the fact that the Container had not been properly sealed at the commencement of the Carriage except where the Company has agreed to seal the Container.

20.2 The Company shall not be liable for any Loss or damage to any Containers.

20.3 The Customer shall defend, indemnify and hold harmless the Company against all liability, loss, damage, costs, claims and expenses arising from one or more of the matters covered by clause 20.1 and 20.2.

20.4 Where the Company is instructed to provide a Container, in the absence of a written request to the contrary, the Company is under no obligation to provide a Container of a particular type or quality.

21 Pallets

21.1 The Company shall not liable for any Loss caused to any Pallets whether this Loss is through the handling or otherwise of the Pallets by the Company.

21.2 The Customer shall defend, indemnify and hold harmless the Company against all liability, Loss, damages, costs, claims and expenses arising from the Pallet Storage.

22 Goods requiring prior consent of the Company

22.1 The Customer shall obtain, in advance, the Company's specific written consent to accept into its possession or

- control or into the possession or control of any of its servants, agents or employees any Dangerous Goods;
- 22.2 The Company is not obliged to contract for the carrying of Dangerous Goods on behalf of the Customer. Should the Company agree to handle any Dangerous Goods for any purpose, the Customer shall:
- (1) provide a full written disclosure of the nature and properties of such Goods to the Company;
 - (2) prior to loading, give the Company special written and detailed instructions to enable the Company to place such Goods for the proper safety and handling ;
 - (3) comply with all Laws governing the loading, off-loading, storage and carriage of such goods;
 - (4) shall ensure that such Dangerous Goods, or any Transport Unit or other case, crate, box, drum, canister, tank, flat pallet, package or other holder or covering of such Dangerous Goods, will bear the warning labels and declarations required in terms of any Law or other requirements of any authority or carrier and that the nature and characteristics of such Dangerous Goods and all other data required by such Law, or other requirements will be prominently and clearly marked on the outside cover of such Dangerous Goods.
- 22.3 If any such Dangerous Goods are delivered to the Company, whether or not in breach of the provisions of Clause 22.1, such Dangerous Goods may for such reason as the Company in its sole discretion deems fit including, without limitation, the risk to other goods, property, life or health, be destroyed, disposed of, abandoned or rendered harmless or otherwise dealt with at the risk and expense of the Customer and without the Company being liable for any compensation to the Customer or any other party, and without prejudice to the Company's rights to recover its charges and/or fees including the costs of such destruction, disposal, abandonment or rendering harmless or other dealing with the Goods. The Customer indemnifies the Company against all loss, liability or damage caused to the Company as a result of the tender of Goods to the Company and/or out of the foregoing. The Company shall furthermore be entitled to recover from the Customer the freight in respect of any such carriage, notwithstanding the non-delivery of such Goods.
- 22.4 All Services provided in respect of Dangerous Goods are provided in accordance with clause 4.
- 23 **Disposal of Goods**
- 23.1 Without limiting or affecting any other terms of these Terms, Goods (whether perishable or otherwise) in the care, custody or control of the Company or its sub-contractor or any third party may at the Customer's expense be sold or disposed of by the Company without notice to the Customer, shipper, consignee or any other party, if:
- (1) such Goods have begun to deteriorate or are likely to deteriorate (in the sole discretion of the Company);
 - (2) such Goods are insufficiently addressed or marked;
 - (3) the Customer, on reasonable enquiry, cannot be identified;
 - (4) the Goods have not been collected or accepted by the Customer or any other person after the expiration of 7 (seven) calendar days from the Company notifying the Customer in writing to collect or accept such Goods, provided that if the Company has no address for the Customer such notice period shall not be necessary, and payment or tender of the nett proceeds, if any, of the sale thereof after deduction of those charges and expenses incurred by the Company in respect thereof shall be equivalent to delivery of such Goods.
- 23.2 Should any amount owing by the Customer to the Company in respect of any Services rendered by the Company become due and payable and remain unpaid, the Company shall be entitled (and the Customer hereby authorises the Company) and without first obtaining an order of court, to sell all or any of the Goods, in the Company's or its agent's possession, by public auction or on reasonable notice not exceeding 14 (fourteen) calendar days by private treaty. The net proceeds of any such sale, after deducting therefrom all costs, charges and expenses incurred by the Company, shall be applied in reduction or discharge, as the case may be, of the Customer's obligations to the Company in respect of such Goods without prejudice to the Company's rights to recover from the Customer any balance which may remain owing to the Company after the exercise of such rights. Should the total amount collected by the Company, after deducting therefrom all costs, charges and expenses incurred by the Company in respect thereof, exceed the full amount of the Customer's obligations to the Company in respect of such Goods, the Company shall be obliged to refund such excess to the Customer.
- 23.3 The Customer hereby agrees that the price at which the Goods are sold in terms of clause 23.2 shall be taken to be the reasonable price of the Goods and that the Customer will have no claim against the Company in the event that it is of the opinion that the price is not reasonable.
- 24 **The acceptance of delivery**
- 24.1 If delivery of any Goods is not accepted by the Customer, consignee or party nominated by the Customer at the appropriate time and place then:
- (1) the Company shall be entitled to store the Goods or any part thereof at no risk to the Company and at the expense of the Customer; and

- (2) the provisions of Clause 23 shall apply mutatis mutandis. are not paid by such consignee or any other person immediately when due.
- 25 **Demurrage and storage** 28 **Sundry goods recognisable as the Customer's**
- 25.1 The Company shall not be liable for any demurrage, storage charges, or any other charges incurred in respect of the Goods or Containers or in the provision of the Services, howsoever arising, whether by delay or otherwise. The Company shall have no obligation to take any action in respect of any Goods which may be recognisable as belonging to the Customer unless and until it receives suitable instructions relating to those Goods together with all necessary documents.
- 25.2 Where the Company pays any such demurrage, storage charges, and/or any other charges, such charges shall be refunded to the Company by the Customer on demand. 29 **Examination of Goods**
- 25.3 The Company may, on receipt of a written request from the Customer, store or arrange for storage of the Goods or Containers on the Customer's behalf. 29.1 Where it is necessary for an examination to be held or other action to be taken by the Company in respect of any discrepancy in the Goods or Containers which are received or discharged from any vessel, vehicle, or transport unit, no responsibility shall attach to the Company for any failure to hold such examination or to take any other action.
- 25.4 Where the Company arranges for the storage of the Goods or Containers, whether in terms of Clause 25.3, or otherwise, the Goods or Containers are stored entirely at the Customer's risk and at its expense, and the Company will not be liable to the Customer for any loss or damage to the Goods of whatsoever nature and howsoever caused. 29.2 The Company will not be responsible for examining, weighing or counting any Goods or Containers received by it where such Goods are Unitised Goods in such a manner that their number cannot be quickly and easily examined, weighed or counted. Should the Company undertake to examine, weigh or count Goods or Unitised Goods so received, it shall incur no liability in respect of any error or inaccuracy in such examination, weighing or counting, whether such error or inaccuracy is the result of negligence on the part of the Company or otherwise the Company shall be entitled to levy a charge on the Customer for the examination, weight or counting of Goods in such circumstances.
- 25.5 The Company is entitled to charge the Customer demurrage, storage and/or truck detention charges, as a result of delays or otherwise, at the Company's applicable rate at the time at which the respective charges are incurred.
- 26 **Disputes as to ownership**
- 26.1 If the ownership and/or the right to take delivery of the Goods, as the case may be, is in dispute, or if a third party claims to be entitled to the Goods, or if Goods have been attached by order of court, the Company shall have the right to retain the Goods in question in its possession until the identity of the party who is entitled to take delivery of the Goods has been determined by an enforceable order of court, alternatively, has been agreed in writing by all the parties concerned, subject always to any lien and/or the payment of any costs or charges as provided for in terms of clause 26.2. 30 **Duties, taxes, imposts, levies and deposits**
- 26.2 The Company shall have the right to protect its interests in connection with the dispute or attachment, as referred to in this Clause 26, by seeking legal assistance and/or by instituting defending legal proceedings, in which case the reasonable cost thereof on an attorney and own client scale shall be for the account of the Customer. Further, the Company is entitled to charge storage, at rates that are in accordance with these Terms, for any goods retained in its possession in terms of clause 26.1. 30.1 The Customer (whether or not the cause of payment was due to an act, instruction or omission of the Company, Customer, shipper, consignee, or any other party, including without limitation the provision of incorrect information) shall be liable for any duties, taxes, imposts, tariffs, levies, wharfage, charges, freight, railrage or cartage charges, deposits or out-lays of whatsoever nature ("Duties and Charges") levied by or payable to the authorities, intermediaries, any government revenue services, or other parties at any port or place for or in connection with the Goods and whether at the time of entry and/or at any subsequent time and for any payments, fines, penalties, expenses, loss or damage whatsoever incurred or sustained by the Company in connection therewith or arising thereout.
- 27 **Collection of expenses and COD** 30.2 The Company shall bear no liability in consequence of the fact that there may be a change in the rate of Duties and Charge, before or after the performance by the Company of any act involving a less favourable Duty or Charge or by virtue of the fact that a saving might have been effected in some other way had any act been performed at a different time.
- When Goods are accepted or dealt with by the Company upon instructions to collect freight, duties, charges or other expenses from the consignee or any other person, the Customer shall remain responsible therefore if they 30.3 Without limiting the provisions of Clause 30.1 and 30.2, the Customer shall be liable for and hereby indemnifies

the Company for any duties, taxes, imposts, levies, deposits, fines, penalties, Goods and/or Services including without limitation as a result of or in connection with hijacked Goods or tariff headings.

31 Recovery of duties incorrectly paid

31.1 Where as a result of any act or omission by or on behalf or at the instance of the Company and whether or not such act or omission was negligent, any Duty or Charge has been paid or levied in an incorrect amount, then any responsibility or liability to the Customer which the Company may otherwise have will cease and fall away if the Customer does not:

- (1) within a reasonable time having regard to all the circumstances, and in particular to the time allowed for the recovery from the payee of the amount overpaid, advise the Company that an incorrect amount has been paid or levied; and
- (2) do all such acts as are necessary to enable the Company to effect recovery of the amount incorrectly paid. The fact that the Customer may not be aware that any such incorrect payment has been made shall not constitute a circumstance to be taken into account in calculating what is a reasonable time for the purpose of Clause 31.1(1). Should any act or omission by the Customer, whether or not such act or omission was due to ignorance on the part of the Customer, and whether or not such ignorance was reasonable or justified in the circumstances, prejudice the Company's right of recovery, the Customer shall be deemed not to have complied with the provisions of Clauses 31.1(1) and 31.1(2).

32 Payment by the Customer

32.1 Unless otherwise specifically agreed by the Company in writing

- (1) where the Customer is a cash Customer, payment must be made, in advance of the Company rendering the Service, on presentation of a pro-forma invoice by the Company to the Customer; and
- (2) where the Customer is a customer who has an account with the Company, the Customer shall pay to the Company, in cash, 30 (thirty) calendar days nett of presentation of a statement of all sums due to the Company.

32.2 Payment shall be made without deduction or set off and payment shall not be withheld or deferred on account of any claim or counterclaim which the Customer may allege.

32.3 Despite clause 32.1 and 32.2, the Company may before providing the relevant Services require a Customer to furnish security for the payment of such amounts as will

become due to the Company or any Supplier or to pay any such amount in advance. The Company is not obliged to pay any amount or perform any Services until it has received the amounts requested.

32.4 Payment of all amounts due to the Company shall be made:

- (1) free of exchange and any other charges into such bank account or at such address as the Company nominates in writing (which amounts shall be added to the amount payable by the Customer);
- (2) in such currency as the Company may direct; and
- (3) without demand and free of any deduction or set off.

32.5 Payments by a Customer shall not be withheld or deferred on account of any claim or counterclaim which a Customer may allege.

32.6 Despite anything to the contrary contained herein, all disbursements made by the Company on behalf of a Customer are immediately due and payable by a Customer to the Company.

32.7 In the event that the Company agreed to accept monies paid in a foreign currency, the Customer must ensure that the Company receives the full amount required by it in the currency in which the Company is required to make any disbursement or has indicated it requires such funds, after taking into account all bank charges, withholding taxes and exchange rate changes. Accordingly the Customer bears all exchange rate risks and any shortfall arising from any fluctuation in the applicable exchange rate must be paid by a Customer immediately on demand.

32.8 The Customer undertakes to pay the value added tax, where applicable, at the then prescribed rate, payable in respect of the exclusive amount reflected in an invoice issued by the Company.

32.9 The Customer agrees that a certificate signed by a director of the Company, whose authority and appointment need not be proved, showing the amount due and owing at any given time, shall constitute prima facie proof of the fact therein stated and the balance owing for the purpose of all legal proceedings against the Customer for the recovery of the said amount.

32.10 Any amount not paid on due date for payment shall bear interest at the maximum permissible rate allowed by law and accounts not settled within the agreed terms of credit are calculated on daily balance and compounded monthly in arrears.

32.11 All and any moneys received by the Company from the Customer shall be appropriated by the Company in its sole and absolute discretion in respect of any undisputed indebtedness owing by the Customer to the Company, notwithstanding that the Company might, when making

payment, seek to appropriate the payment so made to any particular debt or portion of a debt.

32.12 In the event of the Company having granted any credit terms or facilities to the Customer in writing, which provide the Customer a deferred period of time to effect payment of any amount due to the Company, and in the event of the Customer being in default of payment of any one or more amount due and payable, or being in default of any other term or condition on which such credit facility was granted, and notwithstanding any other terms to the contrary whatsoever contained, the Company shall be entitled to forthwith revoke such credit facilities and declare all amounts immediately due and payable and proceed for recovery of all amounts which would be due and payable to the Company, were it not for the credit terms or facilities granted to the Customer. Further, the Company shall, at its sole discretion and for any reason whatsoever, be entitled to close the account of a Customer on providing the Customer with 24 hours notice.

33 **Choice of tariffs**

In all cases where there is a choice of tariff rates or premiums offered by any Supplier or other person, depending upon the declared value of the relevant Goods or the extent of the liability assumed by the Supplier or other person, it shall be in the discretion of the Company as to what declaration, if any, shall be made, and what liability, if any, shall be imposed on the Supplier or other person.

34 **Debiting fees and disbursements**

The Company shall under no circumstances be precluded from raising a debit and obtaining payment in respect of any fees or disbursements due to it notwithstanding the fact that a previous debit or debits, whether excluding or partly excluding the items subsequently requiring to be charged or recovered, had been raised and whether or not any notice had been given that further debits were to follow.

35 **Quotations and estimates**

35.1 All quotations or estimates given by the Company will only be valid for (7) seven calendar days.

35.2 The Company shall be entitled at any time by notice to the Customer to cancel, amend or resile from any quotation, estimate or this agreement in circumstances where it becomes impracticable or uneconomical for the Company to carry out the contract at the quoted or estimated rate and the Customer shall have no claim whatsoever against the Company for any loss that the Customer might incur as a result of the Company cancelling, amending or resiling from the quotation, estimate or these Terms.

35.3 Without in any way limiting the provisions of Clause 35.1, all quotations, estimates and agreements are subject to

revision without notice, having regard to changes in currency exchange rates and upward movements in amounts payable by or on behalf of or at the instance of the Company to third parties including, without limitation, freight, surcharges, insurance premiums, equipment rental and labour which charges and upward movements take place after quotation or estimate. Any revision of rates as aforesaid will be commensurate with the change in the currency exchange rate or the increase in such amounts payable.

35.4 Quotations and estimates are based, inter alia, on weight, volume, quantities, densities, dimensions, mass, properties, and any other available technical data, loading and off-loading hours and any other relevant information supplied by the Customer and are accepted by the Company in good faith under representation of the Customer. Any variants therefrom shall entitle the Company to require the amount quoted to be adjusted to take into account such variants or to suspend, or cancel the quotation or estimate, without thereby incurring any liability whatsoever and in the event of any such cancellation, reserving to itself the right to claim from the Customer such damages as the Company may have suffered.

35.5 Any costs or charges, whether in the form of demurrage, detention, levies, surcharges, or otherwise, due to delays, consequences of strikes, interruptions, hindrance, local traffic, municipal regulations or the non-production of necessary licences, permits or custom forms, will be charged to the Customer.

35.6 Where the volumes, quantities or scopes of work have increased over what has been quoted for, the Customer will be charged for any additions on a pro rata basis.

36 **No claims against the company directors and employees**

The Customer undertakes that no claim shall be made against any director, servant or employee of the Company which imposes or attempts to impose upon him any liability in connection with the rendering of any Services, which are the subject of these Terms, and hereby waives all and any such claims.

37 **Variation of these trading terms and conditions**

37.1 No variation of these Terms, other than in any subsequent updated versions as provided for in Clause 37.3, shall be binding on the Company unless embodied in a written document signed by a duly authorised director of the Company.

37.2 Any purported variation or alteration of these Terms otherwise than as set out above shall be of no force and effect, whether such purported variation or alteration is written or oral, or takes place before or after receipt of these Terms by the Customer.

37.3 However the Company may vary or replace any clause, term or provision of these Terms by giving notice thereof to the Customer in writing. Any such variation shall

- become effective from the date reflected in the said notice.
- 38 **Non waiver**
- No extension of time or waiver or relaxation of any provision of these Terms shall operate as an estoppel against any party in respect of its rights under these trading terms and conditions, nor shall it operate so as to preclude such party thereafter from exercising its rights strictly in accordance with these trading terms and conditions.
- 39 **Governing law**
- These Terms and all agreements entered into between the Company and the Customer pursuant thereto and on the terms thereof shall be governed by and construed in accordance with the laws of the Republic of South Africa.
- 40 **Benefit of discounts**
- The Company is entitled to the benefits of any discounts obtained and to retain and be paid all brokerages, commissions, allowances and other remunerations of whatsoever nature and kind and shall not be obliged to disclose or account to the Customer for any such amounts received or receivable by it.
- 41 **Acceptance of benefits**
- 41.1 The Company accepts all benefits and all defences as allowed under any terms and conditions of:
- (1) any Suppliers or other party with whom the Company contracts to provide the Services;
 - (2) Any Carrier, Container Operator or other party for whom the Company acts as sub-contractor.
- 41.2 Notwithstanding anything to the contrary contained in these Terms, the Company shall be entitled to all the benefits, rights, immunities and limitations contained in any Transport Document and any statement in such Transport Document to the effect that the benefits, rights, limitations and immunities in such Transport Document and of any contracts of carriage pursuant to which such Transport Document was issued, shall apply to any employee, agent, contractor or sub-contractor of the person issuing such Transport Documents, shall be deemed to include the Company.
- 41.3 Where the Company acts as agent, it accepts any defence or benefit to which the Customer may be entitled through the Company as its agent.
- 41.4 The Company authorises every Customer, which issues a Transport Document, for on whose behalf it deals with Goods in any manner:
- (1) to act as the Company's agent to contract on its behalf with all persons to whom Transport Document is issued, in order to obtain for the Company the same benefits as those which accrue to carriers in terms of agreements evidenced by such documents, alternatively and/or in addition; and
 - (2) to act as the Company's agent to accept on its behalf the benefit of all provisions stipulated for the benefit of any employee, agent, contractor or sub-contractor in terms of any Transport Document.
- 41.5 Every Customer which issues a Transport Document undertakes to contract on the Company's behalf with persons to whom bills of lading, combined transport documents and/or any other document evidencing a contract of carriage are issued in one or both of the manners details in 41.4 to produce for the Company the same benefits as accrue to the Carrier in terms of such Transport Documents. Every Customer from or on whose behalf the Company receives the Goods, undertakes to the Company that all such Goods shall be subject to a Transport Document which shall include a provision reading (or having the same meaning) as follows:
- "The shipper, holder, consignee or any Person entitled to possession of the Goods or of this bill of lading undertakes that no claim or allegation shall be made against any person or body whomsoever by whom the Carriage or any part of the Carriage is performed or undertaken (other than the Carrier) which imposes or attempts to impose upon any such person or any vessel owner by any such person any liability whatsoever in connection with the Goods whether on or arising out of negligence on the part of such person, and if any such claim or allegation should nevertheless be made to indemnify that person against all consequences thereof. Without prejudice to the forgoing every such person shall have the benefit of all provisions herein benefitting the carrier as if such provision were expressly for his benefit; and in entering into this contract, the carrier, to the extent of these provisions, does so not only on his own behalf, but also as agent and trustee for such persons"
- 41.6 The Customer shall procure that every receipt, delivery note or any similar document issued by or on behalf of a Carrier shall contain a statement to the effect that the Company renders services in respect of such Goods as are referred to in such documents as the agent and/or sub-contractors of the Carrier and that the liability of the Company is limited in terms of these terms and conditions.
- 42 **Lien**
- 42.1 All Goods and documents relating to Goods including, without limitation, any Transport Document and import permits, as well as all refunds, repayments, claims and other recoveries, shall be subject to a special and general

lien or pledge either for moneys due in respect of such goods or for other monies due to the Company from the Customer, sender, Owner, consignee, importer, or the holder of any Transport Document, or their agents, if any.

- 42.2 In delivering the Goods and any Transport Document or any other documents relating to the Goods into the custody of the Company or its agents for any purpose whatsoever, such delivery shall for the purposes hereof be deemed to be delivery of the same in pledge and as security for all amounts owed to the Company at that time or which become payable in the future. In the event of the Company utilising the services or premises of any third party for any purposes including the transportation, warehousing or storage of any Goods, such third party shall be the agent of the Company for the purposes of exercising the Company's right to retention under lien and/or pledge.
- 42.3 If any moneys due to the Company are not paid within 14 (fourteen) calendar days after notice has been given to the Customer or person from whom the moneys are due that such goods or documents are being detained, they may be sold by public auction or by private treaty or in some other way disposed of for value at the sole discretion of the Company and at the expense of such person, and the nett proceeds (if any) applied in or towards satisfaction of such indebtedness.
- 42.4 The Customer shall not be entitled to effect or allow to be effected any security in respect of the Goods or the documents relating to the Goods including without limitation, any general or special notarial bond, pledge, hypothec, right of retention, or lien and pledge, without the prior written consent of the Company. The lien and pledge and right of retention in favour of the Company referred to above in Clauses 42.1 and 42.2, shall operate as a first and prior charge against the Goods and documents relating to the Goods and no other security shall rank prior to the Company's lien, pledge or right of retention.
- 42.5 The exercise by the Company of its lien is without prejudice to any other rights it may have in law or arising out of any agreement.
- 42.6 The Company shall be entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by or paid to freight forwarders.
- 42.7 The Company shall have the right to enforce against the Owner and the Customer jointly and severally any liability of the Customer under these terms and conditions or to recover from them any sums to be paid by the Customer which upon demand have not been paid.
- 43 **Indemnity by the Customer**
- 43.1 Without prejudice to any of the Company's rights and securities under these Terms, the Customer indemnifies and holds harmless the Company against all liabilities, damages, costs and expenses whatsoever incurred or suffered by the Company arising directly or indirectly from or in connection with the Customer's express or

implied instructions or their implementation by or on behalf of or at the instance of the Company in relation to any Goods and in particular, but without limitation of the foregoing, in respect of any liability whatsoever which may be incurred:

- (1) arising from the failure of any warranty given to the Company in respect of the Goods being true and correct;
- (2) to any haulier, carrier, warehouseman, shipowner, charterer or other person or third party whatsoever at any time involved with such Goods arising out of any claim made directly or indirectly against any such person by the Customer or by any consignor, consignee or owner of such Goods or by any person having an interest in such Goods or by any other person whatsoever;
- (3) to any owner or consignee of such Goods who is not the Customer of the Company where the Company performs the service of a deconsolidation agent, or any other service;
- (4) to any Carrier of the Goods if the Company is the consignor or consignee of the Goods;
- (5) in respect of, arising out of, or in any way related, to any Goods referred to in Clause 22, including without limitation any protective or environmental clean-up measures taken with regard to the Goods;
- (6) to the South African Revenue Services, or any other customs, excise or revenue collection service, any amounts, including but not limited to VAT, duties, or penalties, which the Company may be liable to pay in respect of the Goods, arising out of any cause whatsoever, including without limitation the failure or inability of the Customer, the Owner of the goods, named importer or exporter, to acquit any Goods carried in bond or use of incorrect tariff headings;
- (7) by reasons of claims by Suppliers for any amounts owing in respect of goods or services provided to a Customer at the Company's special instance and request;
- (8) by reasons of any force majeure or circumstances beyond the Company's control as contemplated in clause 45;
- (9) by reasons of the exercise by the Company of its lien;
- (10) by reasons of a failure by any Customer to comply with its obligations in terms of any agreement, whether or not evidenced by a Transport Document;

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| <p>(11) by reason of the Company going under business rescue;</p> <p>(12) by reasons of payment of any taxation which may be levied on passenger earnings or freight earned on Goods loaded in the absence of reciprocal intergovernmental taxation agreements;</p> <p>(13) by reasons of any guarantee furnished by the Company pursuant to the provisions of clause 50;</p> <p>(14) by reason of any claim in respect of a container handling machine being inoperative for any reason whatsoever;</p> <p>(15) by reasons of any theft, damage or claim or any nature whatsoever to Containers;</p> <p>(16) the Company performing the Service of a deconsolidation Company;</p> <p>(17) any limitation of liability or indemnity by any Supplier or subcontractor or agent of the Customer or the Company;</p> <p>(18) any fine, penalty, duty, impost, levy, deposit or other amount payable to the South African Revenue Service or any other authority arising out of or in connection with the Services other than any income taxes payable by the Company in the consideration for the provision of the Services; and/or</p> <p>(19) any amount in excess of the Company's liability, if any liability, in terms of clauses 44 and 47.</p> | <p>in the event that it is found, for whatever reason, that the Goods are carried at the Company's risk, subject to the provisions of Clause 44.2 and Clause 47, the Company shall, in any event, not be liable for any claim of whatsoever nature (whether in contract or in delict) and whether for damages or otherwise, howsoever arising including but without limiting the generality of the aforesaid:</p> <p>(1) any negligent act or omission or statement by the Company or its servants, agents or nominees;</p> <p>(2) compliance with the instructions given to the Company by the Customer or another person entitled to give them;</p> <p>(3) any act or omission of the Customer or agent of the Customer with whom the Company deals;</p> <p>(4) any loss, damage or expense arising from or in any way connected with the marking, labelling, numbering, non-delivery or mis-delivery of any Goods;</p> <p>(5) any loss, damage or expense arising from or in any way connected with the weight, measurements, contents, quality, inherent vice, defect or description of any Goods;</p> <p>(6) any loss, damage or expense arising from or in any way connected with any circumstance, cause or event beyond the reasonable control of the Company, including but without limiting the generality of the aforesaid, strike, lock-out, stoppage or restraint of labour;</p> <p>(7) damages arising from loss of market or attributable to delay in forwarding or in transit or failure to carry out any instructions given to the Company;</p> <p>(8) incorrect information provided by the Customer to the Company;</p> <p>(9) handling, loading, stowage or unloading of the Goods by the Customer or any person acting on its behalf</p> <p>(10) any Goods which are the subject of the Services;</p> <p>(11) defaults of sub-contractors or Suppliers;</p> <p>(12) any money paid or remitted by the Company on behalf of a Customer to any person, pursuant to any request or instruction give to the Company by a Customer;</p> <p>(13) insufficiency of the packing of labelling of the Goods;</p> <p>(14) fire, flood, storm or other natural phenomena;</p> |
| <p>43.2 All Customers undertake to place the Company in sufficient funds or to furnish the Company with security to the satisfaction of the Company to ensure the due fulfilment of that Customer of its obligations under the aforesaid indemnity, either prior to the commencement of, during or after the performance of the Services, as may be required by the Company.</p> | |
| <p>43.3 Notwithstanding that the Company may seek recovery of any amount due to it, from any person other than the Customer, the Customer shall remain liable to make payment of the said amount to the Company upon demand, at any stage.</p> | |
| <p>43.4 Advice and information, in whatever form it may be given, is provided by the Company for the Customer only and the Customer shall defend, indemnify and hold harmless the Company for all liability, loss, damage, costs and expenses arising out of any other person relying on such advice or information.</p> | |
| <p>44 Limitation of the Company's liability</p> | |
| <p>44.1 Notwithstanding that the Customer agrees that the Goods are carried on an Owner's risk basis in terms of clause 4,</p> | |

- (15) the failure or malfunction, for whatever reason and regardless of negligence on the part of the Company or breach by it of these terms and conditions, or the Company's computer systems or software programmes provided or operated by the Company or by any other person with whom the Company conducts business, or any third party, and which systems shall include any electronic automated information service provided by the Company;
- (16) the provision by the Company to the Customer in whatever manner and/or form of incorrect information, including data as defined in the Electronic Communications and Transactions Act, No. 25 of 2002, as amended from time to time, where such incorrect information has been generated by and provided to the Company by any person with whom the Company conducts business, and/or any other third party;
- (17) the Company's execution or attempted execution of its obligations to a Customer and/or a Customer's instructions, requirements or mandate; and/or
- (18) the Company complying with any Legal Requirement;
- (19) loss or non-delivery of any separate package forming part of a consignment or for loss from a package or an unpacked consignment or for damage or mis-delivery; and/or
- (20) damage or injury suffered by the Customer or any person whatsoever arising out of any cause whatsoever as a result of the Company's execution or attempted execution of its obligations to the Customer and/or the Customer's requirements or mandate;
- (21) Unless:
- (a) such claim arises from a grossly negligent act or omission on the part of the Company nor its servants; and
- (b) such claim arises at a time when the Goods in question are in the actual custody of the Company and under its actual control; and
- (c) the Company receives written notice in terms of clause 46.1(1) and 46.1(2).
- 44.2 Notwithstanding anything to the contrary contained in these Terms, the Company shall not be liable for any indirect and consequential loss arising from any act or omission or statement by the Company, its agents, servants or nominees, whether negligent, grossly negligent or otherwise.
- 45 **Force Majeure**
- 45.1 Notwithstanding any rights afforded to the Company in terms of the common law, the Company shall not be liable for any delays, losses, damages, costs or the failure to perform any of its obligations of any nature sustained by a Customer directly or indirectly attributable to war, danger of war, riots, labour strikes, slowdown strikes, lock outs, boycotts, sabotage, overburdening of any port, storm, adverse weather conditions, embargo, government intervention, machinery breakdown, fire or any circumstance beyond the control of the Company, which may affect or interrupt its regular and normal conduct of trade or provision of the Services (Force Majeure Circumstances).
- 45.2 In the event of the Company being precluded from providing the Services due to any such Force Majeure Circumstances, the Company will give notice to the Customer and shall be excused from performance of its obligations but will nevertheless be entitled to be reimbursed by a Customer for costs and expenses incurred by it in taking all such steps as may be necessary to protect the interests of a Customer, including without limitation, shed hire and / or storage charges paid by the Company at the applicable tariff rates and/or any taxes, penalties or duties. Should the force majeure continue for a period of more than 30 calendar day, the Company shall no longer have an obligation to perform the Services.
- 46 **Time bar**
- 46.1 No claim of any nature whatsoever and howsoever arising in respect of the Services, any loss or damage to Goods, mis-delivery or non-delivery of Goods, delay in the delivery of any Goods or in respect of any other damages, loss or cause of action whatsoever (whether or not similar to, or in the nature of, the foregoing), may be brought against the Company or (subject in any event to the provisions of Clause 36) any of its Directors or Employees, unless the Customer:
- (1) has given written notice of the claim to the Company, before or at the time of removal of the Goods into the custody of the person entitled to take possession, or if the damage or loss is not apparent, then within 3 (three) Business Days of delivery at the place or port of destination; and
- (2) has provided the Company with a fully documented claim setting out the precise nature and quantum of the claim within 3 (three) months of the written notification required in clause (1).
- 46.2 In the absence of any written notification of damage or loss to the Company, the Goods shall be deemed *prima facie* to have been delivered in good order and condition.
- 46.3 In addition to Clause 46.1 hereof, it is recorded that the Company shall in any event be discharged from all liability whatsoever and howsoever arising in respect of, any Services provided to the Customer or which the Company

has undertaken to provide, or damage to or loss of Goods, unless summons or other process initiating legal proceedings is issued and served on the Company within 9 (nine) months after the cause of action in respect of any such alleged liability arose and immediate notice is given in writing to the Company of such suit having been brought.

47 Monetary limitation of liability of the Company

47.1 In those cases where the Company is liable in terms of Clause 44, in no such case whatsoever shall any liability of the Company, howsoever arising, exceed

(1) in respect of all claims, of whatsoever nature, relating to the Goods (excluding Containers), which ever is the least of

(a) the value of, or

(b) R20 per kilogram of,

the Goods, lost, damaged, misdirected, misdelivered or in respect of which a claim arises, provided that no claim of any nature whatsoever, shall ever exceed the maximum net insurance cover of the Company which pertains specifically to the Goods (if any) as updated from time to time.

(2) In respect of all claims arising out of loss of or damage to Container, which for whatever reason are not excluded by the provisions of these terms and conditions:

(a) The reasonable cost of repair thereof; or

(b) The lesser the market or depreciated value thereof at the date of such loss or damage in the event of total loss and/or damage being beyond economical repair

(3) In respect of any and all other claims, whether related to the Goods or other property and/or equipment, including claims arising out of or in any way attributable to delay, which for whatever reason are not excluded by the provisions of these Terms, the amount of the Company's charges in respect of the Services.

47.2 If it is desired that the liability of the Company in those cases where it is liable to the Customer in terms of Clause 44 should not be governed by the limits referred to in Clause 47.1 written notice thereof must be received by the Company before any Goods, Containers or documents are entrusted to or delivered to or into the control of the Company (or its agents or sub-contractors), together with a statement of the value of the Goods. Upon receipt of such notice the Company may in the exercise of its absolute discretion agree in writing to its liability being increased to a maximum amount equivalent to the

amount stated in the notice, in which case it will be entitled to effect special insurance to cover its maximum liability and the party giving the notice shall be deemed, by so doing, to have agreed and undertaken to pay the Company the amount of the premium payable by the Company for such insurance. If the Company does not so agree the limits referred to in Clause 47.1 shall apply.

48 General average

48.1 The Customer indemnifies and holds harmless the Company in respect of any claims of a general average nature which may be made against the Company and the Customer shall provide such security as may be required by the Company in this connection.

49 Breach

49.1 If the Company breaches any of these Terms and fails to remedy such breach within 30 (thirty) calendar days of the date of receipt of written notice requiring it to do so then the Customer shall be entitled to compel performance by the Company of the obligations it has defaulted in, but shall not be entitled to cancel these Terms or any agreement between it and the Customer evidenced by or including these Terms ("Agreement").

49.2 No provision in these Terms shall derogate from the Company's common law rights in the event that the Customer breaches any term or condition of the terms or any agreement.

49.3 the Company shall be entitled to cancel these Terms or any Agreement by written notice if:

(1) the Customer commits any breach of its obligations under these Terms or the agreement and fails to remedy that breach within 7 (seven) calendar days of it's being given written notice to do so;

(2) the customer commits any act of insolvency in terms of any applicable insolvency legislation;

(3) the Customer is deemed to be unable to pay its debts in terms of any deeming provision of any applicable legislation relating to companies or insolvency;

(4) the Customer compromises or attempts to compromise with its creditors;

(5) any provisional or final order is granted for the sequestration, winding up, bankruptcy or judicial management, of the Customer, or any equivalent order is made in terms of any applicable law with regard to the status of the Customer; or

(6) the Customer fails to satisfy any default or other judgment granted against it, within 10 (ten) calendar days.

50 Warranties and representations by the Company

The Company makes no warranties and representations to the Customer save as may be specifically provided herein or as notified in writing by the Company to the Customer from time to time. The Customer acknowledges that the Company is not in any way bound by any oral statement, representation, guarantee, promise, undertaking, inducement or otherwise which may have been made at any time by any salesman, employee, representative or any person acting or purporting to act for or on behalf of the Company, whether negligently or otherwise unless such statements, representations, guarantees, promises, undertakings, warranties or inducements are supplied or made in writing by an employee duly authorised by written resolution of the board of directors of the Company in response to a written enquiry specifying accurately and in complete detail what information is required.

51 Disputes & performance

51.1 Should there be any dispute of any nature whatsoever between the parties in regard to any aspect, matter or thing relating to these Terms or any Agreement and whether or not the Company has executed its obligations in terms of these Terms or any Agreement it has with the Customer, then and in such event the Customer shall nevertheless be obliged to perform its obligations in terms of these Terms or any such Agreement as though the Company had performed properly and to the Customer's satisfaction.

51.2 The Customer's remedy, having performed its obligations as provided in Clause 51.1, shall be limited to a claim against the Company for repayment of either the whole or a portion of the amount which the Customer alleges constitutes an overpayment.

51.3 Without affecting the generality of Clauses 51.1 and 51.2 the Customer shall not be entitled to withhold payment of any amounts, by reason of any dispute with the Company, whether in relation to the Company's performance in terms of these Terms or any Agreement, or lack of performance or otherwise, after which payment the Customer's rights of action against the Company in terms of this Clause can be enforced. Until such payment is made, any rights that the Customer may have, shall be deemed not yet to have arisen and it is only the payment to the Company which releases such rights and makes them available to the Customer in respect of any claim that he may have against the Company.

51.4 In any dispute between the Company and the Customer the Company shall be deemed to have performed its obligations in a proper and workmanlike manner and strictly in accordance with any agreement between it and the Customer, until such time as the Customer proves the contrary.

52 Dispute resolution

52.1 Any dispute arising out of or in connection with these Terms or any Agreement (including but not limited to

any question regarding its existence, validity, implementation, execution, interpretation, rectification, breach, termination or cancellation) shall in the first place be discussed by representatives from both parties (who may not be legal representatives unless they are in the employ of either Party) at a meeting, with the object of arriving, if possible, at an amicable and negotiated solution to such dispute. Such meeting shall be held at a venue as agreed by the Parties within (5) five calendar days after either Party has called for such a meeting by notice in writing to the other Party. Such written notice must include details of the dispute and copies of all relevant correspondence and documentation.

52.2 In the event of the representatives being unable to negotiate and agree on an amicable settlement of such dispute within 7 (seven) calendar days after such meeting has been held, or such further period as agreed between the parties in writing, or if no meeting is held as requested, then

(1) if the dispute is one where the capital amount in dispute is under R400 000.00, the dispute shall be referred to a Senior Counsel of the Johannesburg Bar or a practicing attorney with 25 (twenty five) years' experience appointed by the Parties. In the event that the Parties cannot agree on the appointment within 7 (seven) calendar days, or such further period as agreed between the parties, then the other party may request that the President of the Law Society of the Northern Provinces appoint an appropriate Senior Counsel of the Johannesburg Bar or a practicing attorney with 25 (twenty five) years' experience for final determination; or

(2) if the dispute is one where the capital amount in dispute is over R400 000.00, the dispute shall be referred to mediation in accordance with the then current rules of the Arbitration Foundation of Southern Africa ("AFSA") and follow the process in terms of clauses 52.3 to 52.16.

52.3 In the event of the matter not being resolved within 7 (seven) calendar days, or such further period as agreed between the parties, from the date of commencement of the determination or mediation envisaged in clause 52.2 the matter will be referred to and finally resolved in accordance with the Rules of the Arbitration Foundation of South Africa ["AFSA"] subject to clause 52.8.

52.4 The periods for negotiation or mediation may be shortened or lengthened by written agreement between the Parties.

52.5 The number of arbitrators shall be (1) one. The language to be used in the arbitration proceedings shall be English.

52.6 The arbitrator shall be, if the question in issue is:

(1) primarily an accounting matter, an independent practising accountant of not less than (15) fifteen years standing;

- (2) primarily a legal matter, a practising advocate or attorney of not less than (15) fifteen years standing;
- (3) primarily a transport matter, a transport specialist of not less than (15) fifteen years standing;
- (4) any other matter, a suitably qualified and experienced independent person;
- agreed upon by the Parties, and failing agreement within 14 (fourteen) calendar days after the date on which the arbitration is demanded, shall be appointed by the chairman for the time being of AFSA who may be instructed by either Party to make that nomination at any time after the expiry of the 14 (fourteen) calendar day period.
- 52.7 Should the Parties to the dispute fail to agree whether the dispute is principally a legal, accounting, transport or other matter within 7 (seven) calendar days after the arbitration was demanded, the matter shall be deemed to be a legal matter.
- 52.8 The arbitration shall be held in Johannesburg, South Africa in accordance with the formalities and/or procedures determined by AFSA unless the arbitrator decides otherwise, in which event it shall be in accordance with the formalities and/or procedures determined by the arbitrator, and may be held in an informal and summary manner, on the basis that it shall not be necessary to observe or carry out the usual formalities of procedure, pleadings and/or discovery, or the strict rules of evidence.
- 52.9 The arbitrator shall be entitled:
- (1) to investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with the dispute and for that purpose shall have the widest powers of investigating all the books and records of any Party, and the right to take copies or make extracts therefrom and the right to have them produced and/or delivered at any reasonable place required by him for the aforesaid purposes;
- (2) to interview and question under oath any of the Parties, and/or any director or officer of the Parties;
- (3) to make such award, including an award for specific performance, an interdict, damages or a penalty or otherwise as he in his discretion may deem fit and appropriate.
- 52.10 The arbitration shall be held as quickly as possible after it is demanded with a view to its being completed as soon as possible after it has been so demanded.
- 52.11 Immediately after the arbitrator has been agreed upon or nominated in terms of clause 52.6, any of the Parties shall be entitled to call upon the arbitrator to fix a date and place when and where the arbitration proceedings shall be held and to settle the procedure and manner in which the arbitration proceedings will be held.
- 52.12 Subject to clause 52.13, any award that may be made by the arbitrator:
- (1) shall be final and binding;
- (2) will be carried into effect; and
- (3) may be made an order of any court to whose jurisdiction the Parties are subject.
- 52.13 The final (but not any interim) determination in the arbitration set out in this clause 52 will be subject to appeal in terms of the Rules of AFSA, the appeal to be determined by an appellate panel of three persons appointed jointly by the Parties, or failing such joint appointment appointed as to one by each Party and one by AFSA.
- 52.14 The provisions of this clause shall not prevent a Party from seeking and obtaining urgent relief in a court of competent jurisdiction, subject to the provisions of clause 53.
- 52.15 The arbitration proceedings shall be confidential and neither Party shall disclose to any third party any information regarding the proceedings, the award and/or settlement terms without the prior written consent of the other Party.
- 52.16 This clause 52 shall constitute a Customer's irrevocable consent to the arbitration proceedings, should the Company elect to refer any dispute to arbitration.
- 52.17 The provisions of this paragraph shall continue to be binding on the Parties notwithstanding any termination or cancellation of these Terms or any Agreement.
- 52.18 Notwithstanding the provisions of this clause 52, the Company may, in its sole discretion choose another form of dispute resolution in its sole and absolute discretion.
- 53 **Jurisdiction**
- Subject to the provisions of clause 52:
- 53.1 The Parties agree that the Company may at its election bring any legal action or proceedings arising out of or in connection with this Agreement in the division of the High Court of South Africa, Gauteng Local Division, Johannesburg and a Customer irrevocably submits to the non-exclusive jurisdiction of such Court.
- 53.2 Where the other contracting party is a peregrinus (foreign persona) such party submits and consents to the jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg.
- 53.3 Notwithstanding the above, the Company shall have the option of proceeding out of a Magistrates' Court having jurisdiction notwithstanding that the amount of the claim may exceed the jurisdiction of that Magistrates' Court, to which jurisdiction the Customer and/or other contracting party hereby consents.

- 53.4 Notwithstanding the above, such consent to jurisdiction will not preclude the Company's right to attach or arrest an asset belonging to such party in accordance with the Admiralty Jurisdiction Regulation Act No 105 of 1983, whether to found or confirm jurisdiction, or to obtain security for its claim, or otherwise, whether the claim is to be prosecuted in that jurisdiction or elsewhere.
- 54 **Time for performance by the Customer**
- Time is of the essence for the performance by the Customer of all obligations owed to the Company in terms of any agreement which is governed by these Terms.
- 55 **Severability**
- If any provision of these Terms is unenforceable, then the Company shall be entitled to elect (which election may be made at any time) that such provision shall be severed from the remaining provisions of these Terms which shall not be affected and shall remain of full force and effect.
- 56 **Notices**
- 56.1 The Customer elects as its *domicilium citandi et executandi* for service of all legal or other notices, documents, consents or approvals any address set out in any application form, order or correspondence sent by the Customer to the Company.
- 56.2 Notices given to the above addresses or by facsimile or electronic mail to the correct fax number or electronic mail address shall be deemed to have been duly given:
- (1) 14 (fourteen) calendar days after posting, if sent by registered post;
 - (2) on delivery, if delivered by hand; and
- 56.3 Despite anything to the contrary in this Agreement, any notice or document actually received by a Customer is effective even if it was not sent and/or delivered to the address in clause 56.1.
- 56.4 The Company appoints its *domicilium citandi et executandi* as 56 Rigger Road, Spartan, Johannesburg.
- 56.5 Either party may by written notice to the other party change its chosen address and/or telefax number for the purposes of Clause 56.1 to any other address or telefax number, provided that the change shall become effective on the fourteenth day after the receipt of the notice by the addressee.
- 57 **Risk of items posted or electronically transmitted**
- 57.1 Subject to the provisions of Clause 56, and notwithstanding any prior dealings between the Company and the Client all documents, cash, cheques, bank drafts or other remittances, sent to the Company through the post or electronically transmitted shall be deemed not to have been received by the Company unless and until they are actually received by the Company.
- 57.2 In the event that any payment to the Company is effected electronically, then the Client bears the risk in respect of such payment until such time as the payment is received and cleared into the Company's bank account.
- 58 **Special conditions related to electronic data**
- 58.1 Notwithstanding the provisions of any legislation or other law regulating electronic communications and transactions, the Company shall only be deemed to have received electronic data and/or messages when such electronic data and/or messages have been retrieved, processed and read by the addressee.
- 58.2 Under no circumstances whatsoever and howsoever arising (including negligence on the part of the Company or its employees) shall the Company be liable for any loss or damage arising from or consequent upon the provision by the Company to the Customer in whatever manner and/or form, of incorrect information, including electronically communicated information or data, where such incorrect information or data has been generated by and provided to the Company by any person with whom the Company conducts business and/or any other third party.
- 58.3 The Company shall furthermore under no circumstances whatsoever be liable for any loss or damage arising from or consequent upon any failure and/or malfunction for whatever reason and regardless of negligence in whatever degree on the part of the Company or the Company's computer systems and /or software programmes, provided and/or operated by the Company and/or by any person with the Company conducts business and/or third party, and which systems shall include the Company's electronic automated information services provided to its Customers.