



STANDARD TRADING TERMS AND CONDITIONS OF MEIHUIZEN FREIGHT (PTY) LTD  
(Based on the SAAFF Trading Terms and Conditions)

**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 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:
  - 1.3.1 "the Company" means Meihuizen Freight (Pty) Ltd and any of their associated and/or subsidiary companies;
  - 1.3.2 "client" means the same as "Customer";
  - 1.3.3 "Conditions" means these trading terms and conditions;
  - 1.3.4 "confidential information" means any information that belongs to an individual or a juristic person which is not generally available to or known by others;
  - 1.3.5 "Customer" means the applicant as described in the application to commence a business relationship with the Company, or any person at whose request or on whose behalf the Company undertakes any business or provides any advice, information or service; or any person that used our website in agreement with the Terms of Use Policy and Privacy Policy.
  - 1.3.6 "goods" means any goods including, where not supplied by the Company, any container, transportable tank, flat pallet, package or any other form of covering, packaging, container or equipment used in connection with or in relation to such goods in respect of which the Company is requested to provide any services, either as principal or as agent on the instruction of the Customer;
  - 1.3.7 "the Group" means the Company and any company which is a holding company or subsidiary of the Company from time to time which may render a service to the Customer pursuant to these terms and conditions;;
  - 1.3.8 "individual" or "individuals" means a natural person or persons;
  - 1.3.9 "juristic person" means any entity or association of natural persons, including a partnership or other body of persons, corporate or unincorporated, or a trust having three or more trustees, or a trustee which is itself a juristic person;
  - 1.3.10 "the law" means the common law or any legislative enactment of any nature whatsoever, including the NCA;
  - 1.3.11 "the NCA" means the National Credit Act 34 of 2005, as amended from time to time;
  - 1.3.12 "the owner" means the owner of the goods and any other person who may have or who acquires any interest, financial or otherwise, therein;
  - 1.3.13 "service provider" means any third party retained by the Company to perform any services, whether as principal or agent, pursuant to these Conditions; and
  - 1.3.14 "transport document" means any document issued by the Company in relation to or associated with the transport of goods including, but not limited to, any combined transport document or bill of lading ("CTBL"), waybill, FIATA combined transport bill of lading, warehouse and/or forwarding receipt, an air waybill, a sea waybill, a consignment note, delivery note, container movement or transport order, Groupage, house bill of lading, or a received for shipment or despatch bill of lading.

**2. SERVICES PROVIDED BY THE COMPANY**

- 2.1 The Company, on instruction of its Customers, procures and/or provides, *inter alia*, the following services:
  - 2.1.1 carriage, storage, packing or handling of goods,
  - 2.1.2 customs formalities in relation to the import and export (clearing) of goods,
  - 2.1.3 advice and/or information ancillary thereto.

**3. COMPANY ENTITLED TO ACT AS AGENT OR PRINCIPAL IN CONTRACTING**

- 3.1 Save for circumstances where the Company, its servants or agents, personally undertakes or provides any services to the Customer, the Company acts as an agent for and on behalf of the Customer in procuring and/or arranging any of the services from third parties as contemplated in these Conditions.
- 3.2 Notwithstanding the provisions of clause 3.1 above, the Company may, in its sole discretion, undertake the services as a principal. In relation to the carriage of goods, where the Company acts as a principal, it shall issue a transport document reflecting itself as the contracting carrier. In respect of any other services where the Company acts as a principal, it shall, prior to rendering such service, notify the Customer in writing.
- 3.3 In circumstances where the Company issues a transport document, the terms and conditions contained therein shall, to the extent of any conflict, take precedence over these Conditions.
- 3.4 In circumstances where the Company acts as a principal, and other than as provided for in clause 3.3 above, and sub-contracts any of the services to third parties, the terms as concluded between the Company and such third party shall apply equally as between the Company and the Customer save where in conflict with these Conditions, or where the third party terms are more onerous than these Conditions, in which case these Conditions shall take precedence.

- 3.5 The offer and acceptance of a fixed price for the accomplishment of any task shall not itself determine whether such task is to be arranged by the Company acting as agent for and on behalf of the Customer or as a principal.
- 3.6 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, and the Customer is subject to the terms of such contract.
- 3.7 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:
- 3.7.1 Carriage of goods by any route or means by any person;
- 3.7.2 Storage, packing, 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
- 3.7.3 Carriage or storage of goods in break-bulk form or in or on transport units as defined in clause 12.2.5 or with or without other goods of whatsoever nature.

#### **4. MEMBERS OF THE GROUP RENDERING SERVICES TO THE CUSTOMER**

- 4.1 The Company may at its election perform all or any business undertaken or provide advice, information or services, whether gratuitous or not, either itself or it may procure that any member of the Group undertakes such business or provides such advice, information or services as principal upon and subject to the terms and conditions contained herein which shall apply *mutatis mutandis* to the Customer and any such member of the Group.
- 4.2 Each member of the Group shall be deemed to have appointed the Company as its agent for procuring, on behalf of any such a member of the Group, the benefit of these Conditions and the Company shall further be deemed to accept such benefits for such member of the Group at the time of accepting any instruction to perform any function in rendering any services to the Customer.

#### **5. GRANTING OF CREDIT AND APPLICATION OF TRADING TERMS AND CONDITIONS**

- 5.1 The granting of credit by the Company to the Customer is at the discretion of the Company.
- 5.2 All and any business undertaken or advice, information or services provided by the Company, whether gratuitous or not, is undertaken or provided subject to these Conditions.

#### **6. APPLICABLE LEGISLATION**

- 6.1 If the Company is obliged, in the execution of its duties and/or responsibilities, to comply with any applicable law, then the Company by complying therewith shall not be deemed to waive or abandon any of its rights in terms of these Conditions.
- 6.2 In addition thereto, in complying with any applicable law, the Company shall not be deemed to have assumed any onus, obligation, responsibility or liability in favour of the Customer.
- 6.3 In the event that any provision contained herein or any part of such provision is unlawful or deemed to be void for whatever reason, it shall only be void to the extent of such unlawfulness and shall not derogate from the remainder of the provision.

#### **7. COMPANY'S DISCRETION IN THE ABSENCE OF INSTRUCTIONS**

- 7.1 In the absence of specific instructions given timeously in writing by the Customer to the Company:
- 7.1.1 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;
- 7.1.2 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
- 7.1.3 In all cases where there is a choice of tariff rates or premiums offered by any carrier, warehouseman, underwriter, or other person depending upon the declared value of the relevant goods or the extent of the liability assumed by the carrier, 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.

#### **8. COMPANY'S GENERAL DISCRETION**

- 8.1 Notwithstanding anything to the contrary herein contained, if at any time the Company should consider it to be in the Customer's interests or for good public order 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.
- 8.2 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 impractical for the Company to comply with a Customer's instructions, the Company shall take reasonable steps to inform the Customer of such events or circumstances and 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.

#### **9. INSURANCE**

- 9.1 The Company shall not procure insurance on behalf of the Customer in respect of the goods. It is the Customer's obligation to procure insurance as it deems necessary.
- 9.2 The Company is a mandated juristic representative of Marsh Marine (Pty) Ltd ("Marsh"), which is authorised by the Financial Sector Conduct Authority (FSCA) to provide advice and intermediary services in the categories; short term insurance for commercial and personal lines. The Company, in such capacity, will, if requested by the Customer in writing, procure an insurance proposal from Marsh.
- 9.3 Any contract of insurance which originates as a consequence of the foregoing will be between the Customer and the underwriter(s) named in the insurance policy.

9.4 Should any insurer dispute its liability in terms of any insurance policy in respect of any goods, the Customer concerned shall have recourse against such insurer only and the Company shall not have any responsibility or liability whatsoever in relation thereto.

9.5 Notwithstanding anything to the contrary herein contained, the Company shall in no circumstances be liable for any consequences of any failure to obtain any insurance cover, even if requested to do so by the Customer, 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 9 shall be regulated and determined in accordance with the provisions of clauses 47 and 48 of these conditions.

#### 10. **COMPANY'S OBLIGATIONS IN THE ABSENCE OF INSTRUCTIONS**

11. Unless specific written instructions are timeously given to and accepted by the Company, the Company shall not be obliged to:

11.1.1 Make any declaration for the purpose of any statute, 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; and/or

11.1.2 Arrange for any particular goods to be carried, stored or handled separately from other goods.

#### 12. **CUSTOMER'S UNDERTAKINGS**

12.1 For all purposes hereunder the Customer shall be deemed to have, in relation to the Customer's business, the goods and services to be rendered by the Company in regard thereto, reasonable knowledge of all matters directly or indirectly relating thereto or arising therefrom 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.

12.2 The Customer warrants that:

12.2.1 It is either the owner or the authorised agent of the owner of any goods in respect of which the Customer instructs the Company and that each such person is bound by these Conditions;

12.2.2 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 Conditions 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 Conditions or to recover from them any sums to be paid by the Customer which upon proper demand have not been paid;

12.2.3 All information and instructions supplied or to be supplied by the Customer to the Company is and shall be accurate, true and comprehensive, and in particular, without derogating from the generality of the foregoing, 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 foregoing whether negligently or otherwise including, without derogating from the generality of the foregoing, any assessment or reassessment;

12.2.4 The goods will be properly, adequately and appropriately prepared and packed, stowed, labelled and marked, having regard, *inter alia*, to the implementation by or on behalf of the Company or at its instance of the services to be provided, and the characteristics of the goods involved and are capable of withstanding the normal hazards inherent in the provision of such services;

12.2.5 Where goods are carried in or on containers, trailers, flats, tilts, railway wagons, tanks, igloos or any other unit load devices specifically constructed for the carriage of goods by land, sea or air, (each such device hereinafter individually referred to as "the transport unit") then save where the Company has been given and has accepted specific written instructions to load the transport unit:

12.2.5.1 That the transport unit has been properly and competently loaded;

12.2.5.2 That the goods involved are suitable for carriage in or on the transport unit; and

12.2.5.3 That the transport unit is itself in a suitable condition to carry the goods loaded therein and complies with the requirements of all relevant transport authorities and carriers.

#### 13. **GENERAL INDEMNITIES**

13.1 The Customer shall defend, indemnify and hold harmless the Company against all liability, loss, damage, claims, penalties, costs or expenses arising from:

13.1.1 The nature of the goods, except and only to the extent that such liability, loss, damage, claims, penalties, cost or expense is caused by the Company, its agents, servants or sub-contractors' gross negligence;

13.1.2 The Company acting in accordance with the Customer's or owner's instructions;

13.1.3 Any breach of warranty or obligation by the Customer or owner;

13.1.4 The negligence, in any degree, of the Customer or owner.

13.2 Except as otherwise provided in these Conditions, and except to the extent caused by the Company's sole negligence, the Customer shall be liable for and shall defend, indemnify and hold harmless the Company in respect of all duties, fines, penalties, taxes, imposts, detention charges, levies, deposits and outlays of whatsoever nature levied by or paid to any authority, including the Transnet Port Terminals and Transnet National Ports Authority and the South African Revenue Services, and for all claims, costs, expenses, loss and damage whatsoever incurred or sustained by the Company in connection with the provision of the services.

13.3 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.

- 13.4 The Customer undertakes that no claim be made against any employee, contractor, sub-contractor or agent of the Company which imposes or attempts to impose upon any of them any liability whatsoever in connection with the goods or any services provided, including advice given, if any such claim should nevertheless be made, to indemnify the Company against all consequences thereof.
- 13.5 Without prejudice to the foregoing, every such employee, contractor, sub-contractor or agent shall have the benefit of all provisions herein as if such provisions were expressly for their benefit. In entering into any contract pursuant to these Conditions the Company, to the extent of those provisions, does so not only on its behalf, but as agent for such employees, sub-contractors and agents.
- 13.6 The Customer hereby waives any claims it may have and shall defend, indemnify and hold harmless the Company from and against all claims, costs and demand whatsoever and by whomsoever made or preferred in excess of the liability of the Company under the terms of these Conditions and without prejudice to the generality of this clause this indemnity shall cover all claims, costs and demands arising from or in connection with the negligence, in whatever degree, of the Company, its employees, contractors, subcontractors and agents.
- 13.7 In clauses 13.1 to 13.6, "sub-contractors" includes direct and indirect sub-contractors and their respective employees and agents.
- 13.8 The Customer shall be liable for any loss, damage, contamination, soiling, detention or demurrage suffered or incurred before, during and after the carriage of goods by the Company or any person or vessel referred to in clauses 13.4 to 13.7 above, caused by the Customer or owner or any person acting on behalf of either of them or for which the Customer is otherwise responsible.
- 13.9 Save where caused by the fault of the Company, the Customer shall indemnify and hold the Company harmless against any loss, damages, claim, cost (including but not limited to legal costs on the attorney and own client scale) and/or other liability (including but not limited to fines and other penalties) which the Company may incur or suffer in terms of the National Road Traffic Act, 93 of 1996, and any regulations promulgated pursuant thereto, as may be in force from time to time and, in particular but without limiting the general meaning of this clause, liability which the Company may incur as a consignor or consignee as defined in the National Road Traffic Act 93 of 1996 or the regulations to that Act.
14. **GENERAL AVERAGE**
- 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 arising out of the provision of any services provided by the Company in terms of these Conditions and the Customer shall provide such security as may be required by the Company in this connection.
15. **RECOVERY OF DEBTS DUE TO THE COMPANY**
- 15.1 The Company shall be entitled to recover any amounts due to it by the Customer for services rendered, 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.
- 15.2 The Customer agrees that in the event of the Company or any member of the Group instituting legal proceedings against the Customer to recover amounts due in terms of any agreement or for breach of these Conditions or for enforcement of any other obligations or for the recovery of damages owed by the Customer to the Company or any member of the Group in terms of the provision of any services provided pursuant to these Conditions, the Customer shall be liable for all legal costs incurred by the Company or member of the Group, on the scale as between attorney and own client, as well as collection commission and tracing agent's fees.
16. **GOODS REQUIRING SPECIAL ARRANGEMENTS**
- Except under special arrangements previously made in writing the Company will not accept or deal with bullion, coins, banknotes, securities or other currency, precious stones, jewellery, valuables, antiques, pictures, human remains, livestock, plants, tobacco products, spirits, wine, mobile telephones and their components, or computers and their components or parts. 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, and in particular, shall incur no 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 16 shall be governed by the provisions of clauses 47 and 48.
17. **GOODS REQUIRING PRIOR CONSENT OF THE COMPANY**
- 17.1 The Customer shall obtain in advance the Company's specific written consent for the provision of any services herein in respect of dangerous or hazardous goods, including radio-active materials, which are or may become perishable, dangerous, inflammable or noxious, or which by their nature may injure, damage, taint or contaminate, or in any 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 the tariff or rules for carriage of Transnet Limited, or so classified in the IMDG Code or any other code or regulations of, or published by, any other International Organisation. The Customer warrants that such goods, or the case, crate, box, drum canister, tank, flat pallet, package or other holder or covering of such goods will comply with any applicable laws, regulations or requirement of any authority or carrier and that the nature and characteristics of such goods and all other data required by such laws, regulations or requirements will be prominently and clearly marked on the outside cover of such goods.
- 17.2 If any such goods are tendered by the Customer to the Company or any service provider engaged by the Company, either as principal or as agent on behalf of the Customer, whether or not in breach of the provisions of clause 17.1, such goods may for good reason as the Company or any service provider, as the case may be, 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 or any service provider being liable for any compensation to the Customer or any other party, and without prejudice to the Company or the service provider'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 and/or the service provider against all loss, liability or damage caused to the Company as a result of the tender of such goods to the Company.
18. **DUTIES, TAXES, IMPOSTS, LEVIES AND DEPOSITS**
- 18.1 The Customer, whether or not the cause of the imposition of any duty, impost, levy or tax was due to an act, instruction or omission of the sender, owner and/or consignee and their agents, if any, shall be liable for any duties, taxes, imposts, levies, deposits or out-lays of whatsoever nature levied by or payable to the authorities, intermediaries 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 or whatsoever incurred or sustained by the Company in connection therewith or arising thereout.

- 18.2 The Company shall bear no liability in consequence of the fact that there may be a change in the rate of duty, wharfage, cargo dues, freight, railage or cartage or any other tariff, before or after the performance by the Company of any act involving a less favourable rate or tariff 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.
19. **RECOVERY OF DUTIES INCORRECTLY PAID**
- 19.1 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, tax, levy, railage, wharfage, cargo dues, freight, cartage or any other impost 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:
- 19.1.1 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
- 19.1.2 Do all such acts as are necessary to enable the Company to effect recovery of the amount incorrectly paid or levied.
- 19.2 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 purpose of clause 19.1.1. 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 19.1.1 and 19.1.2.
20. **PAYMENT BY THE CUSTOMER**
- 20.1 Unless otherwise specifically agreed by the Company in writing, the Customer shall pay to the Company in cash immediately upon presentation of account, all sums due to the Company without deduction or set-off and payments shall not be withheld or deferred on account of any claim, counterclaim or dispute which the Customer may allege.
- 20.2 Payment of all amounts due to the Company shall be made:
- 20.2.1 Free of exchange and any other charges at such address as the Company may require.
- 20.2.2 In such currency as the Company may direct.
- 20.2.3 Without demand and free of any deduction or set-off on the due date of payment.
- 20.3 Any amount not paid on due date for payment shall bear interest at the maximum permissible rate allowed by law on accounts not settled within the agreed terms of credit and calculated on daily balance and compounded monthly in arrears or, if the Customer is an individual, the maximum interest rate as determined by the NCA or any Regulations thereto, which interest shall be capitalised monthly in accordance with the provisions of the NCA.
- 20.4 All and any moneys received by the Company from the Customer shall be appropriated by the Company firstly to satisfy any due or unpaid interest charges, secondly to satisfy any due or unpaid fees or charges, and lastly to reduce the amount of the principal debt.
- 20.5 The Customer undertakes to pay the Company Value Added Tax ("VAT") at the then prescribed rate, payable in respect of the VAT exclusive amount reflected in any invoice.
- 20.6 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 amounts due and payable, or being in default of any other term or condition on which such credit facility was granted, then notwithstanding any other term to the contrary where-so-ever 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 and facilities granted to the Customer.
- 20.7 The Customer shall not be entitled to institute any proceedings against the Company notwithstanding any allegation of the Company's default unless and until such time as it has made payment of any and all amounts invoiced by the Company.
21. **RISK OF ITEMS POSTED OR ELECTRONICALLY TRANSMITTED**
- 21.1 Subject to the provisions of clause 36, and notwithstanding any prior dealings between the Company and the Customer 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.
- 21.2 In the event that any payment to the Company is effected electronically, then the Customer bears the risk in respect of such payment until such time as the payment is received and cleared into the Company's bank account.
22. **ESTIMATES**
- Where the Company provides the Customer with an estimate of the costs in respect of any Services to be undertaken, this is merely an indication of the costs of performing such Services and may be varied without notice.
23. **FEES / TARIFF**
- The Company shall provide its fee structure / tariff to the Customer on the inception of an agreement to commence business. Such fee structure / tariff shall apply to all subsequent business and may be varied by the Company on notice to the Customer from time to time.
24. **NO CLAIMS AGAINST 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 Conditions and the Customer hereby waives all and any such claims.
25. **VARIATION OF THESE TRADING TERMS AND CONDITIONS**
- No variation of these trading terms and conditions shall be binding on the Company unless embodied in a written document signed by the managing director personally, or alternatively by two other duly authorised directors of the Company. Any purported variation or alteration of these trading terms and conditions otherwise than as set out above shall be of no force and effect.

26. **CUSTOMER'S ORAL INSTRUCTIONS**

The Customer's instructions to the Company shall be precise, clear and comprehensive and in particular, but without limitation, shall cover any valuation or determination issued by the customs authorities in respect of any goods to be dealt with by or on behalf of or at the request of the Customer. Instructions given by the Customer shall be recognised by the Company as valid only if timeously given specifically in relation to a particular matter in question. Oral instructions, standing or general instructions or instructions given late, even if received by the Company without comment, shall not in any way be binding upon the Company, but the Company may act thereupon in the exercise of its absolute discretion.

27. **NON WAIVER**

No waiver of any of these terms and conditions shall be binding or effectual for any purpose unless in writing and signed by or on behalf of the party giving the same. Any such waiver will be effective in a specific instance and for the purpose given. No failure or delay on the part of either party hereto in exercising any right, power or privilege hereunder will constitute or be deemed to be waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise of any other right, power or privilege.

28. **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 any kind whether or not they are customarily retained by or paid to freight forwarders, warehousemen or transporters and shall not be obliged to disclose or account to the Customer or principal for any such amounts received or receivable by it.

29. **LIEN**

29.1 All goods and documents relating to goods, including bills of lading 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 moneys due to the Company from the Customer, sender, owner, consignee, importer or the holder of any bill of lading or their agents, if any.

29.2 In delivering the goods into the custody of the Company, its agents or sub-contractors 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 and storage of any goods, such third party shall be the agent of the Company for purposes of exercising the Company's right to retention under lien and/or pledge.

29.3 If any moneys due to the Company are not paid within 14 days after notice has been given to the 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.

29.4 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 29.1 and 29.2, shall operate as a first and prior charge against the goods and the documents relating to the goods and no other security shall rank prior to the Company's lien, pledge or right of retention.

30. **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.

31. **BREACH**

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

31.2 In circumstances where:

31.2.1 The Customer commits any breach of its obligations under the agreement and fails to remedy that breach within 7 (seven) days of its being given written notice to do so;

31.2.2 The Customer commits any act of insolvency in terms of any applicable Insolvency Legislation;

31.2.3 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;

31.2.4 The Customer compromises or attempts to compromise with its creditors;

31.2.5 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;

31.2.6 The Customer fails to satisfy any default or other judgment granted against it, within 10 (ten) days;

31.2.7 The Customer, being an individual, is or becomes over indebted as defined in the NCA, or becomes subject to a debt rearrangement order or agreement in terms of the NCA,

the Company shall have the right, without prejudice to any other rights which it may have against the Customer:

- (i) to treat as immediately due and payable all outstanding amounts which are not yet due and payable and to claim such amount as well as any other amounts in arrears including interest and any anticipated disbursements; and/or

- (ii) to suspend performance of its obligations hereunder as well as under any other contract with the Customer until the Customer has remedied its breach, and/or
- (iii) to cancel the agreement for the provision of the service(s) pursuant to these Conditions.

32. **GOVERNING LAW**

These Conditions 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 law of the country where the Company has its registered office.

33. **LEGAL PROCEEDINGS AND JURISDICTION**

33.1 The parties agree that any legal action or proceedings arising out of or in connection with these Conditions or any agreement entered into with the Company, or the granting of any credit, shall be instituted out of the High Court of South Africa, Western Cape Division, Cape Town ("the Court"), and the Customer submits to the jurisdiction of the Court.

33.2 Notwithstanding the above, the Company may, in its sole discretion, institute proceedings against the Customer in any competent court.

34. **NOTICES**

All notices in terms of these Conditions shall be given in writing and delivered by hand or sent by email to the addresses provided for in the Application to Commence a Business Relationship or submitted on our website. The Customer appoints as his/her/its *domicilium citandi et executandi* for all purposes under these Conditions the physical address and email address stipulated in the Application to Commence a Business Relationship or provided by the website user on our website inline with the Terms of Use Policy.

35. **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 with it governed by these Conditions.

36. **SPECIAL CONDITIONS RELATED TO ELECTRONIC DATA**

36.1 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.

36.2 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.

36.3 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, of the Company's computer systems and/or software programmes, provided and/or operated by the Company and/or by any person with whom the Company conducts business, and/or any third party, and which systems shall include the Company's electronic automated information service provided to its Customers. Please also refer to our Terms of Use Policy on our website.

37. **CONFIDENTIAL INFORMATION AND PRIVACY POLICY**

37.1 The Customer acknowledges that all confidential information given by the Customer to the Company will be used by the Company to assess the Customer's credit worthiness. The Customer confirms that all information given by the Customer in the application form is accurate and complete. The Customer hereby acknowledges that he/she is in agreement with our Terms of Use Policy and Privacy Policy that can be accessed on our website.

37.2 The Customer consents to the Company requesting and obtaining confidential and other information relevant to the Customer's credit worthiness from any persons, credit bureaux, or businesses, and the Customer consents to the Company furnishing any confidential or other information concerning the Customer's dealings with the Company to a credit bureaux or any third party requesting a trade reference regarding the Customer.

**TERMS SPECIFICALLY APPLICABLE TO CIRCUMSTANCES WHERE COMPANY ACTS AS A PRINCIPAL**

38. **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. The transportation, storage and handling of all goods is undertaken at the sole risk and expense of the Customer and subject to these Conditions.

39. **OWNER'S RISK**

All packing, unpacking, palletising or de-palletising, sorting, storing (whether in the open or otherwise), loading, unloading, warehousing, transporting or other handling of goods by or on behalf of or at the request of the Customer, owner or the Company, is effected at the sole risk of the Customer and/or the owner, and the Customer indemnifies the Company against any claim which might be brought against the Company, howsoever arising, from such packing, unpacking, palletising or de-palletising, sorting, storing (whether in the open or otherwise), loading, unloading, warehousing, transporting or other handling of goods.

40. **TRANSPORT DOCUMENTS**

The Company shall be entitled to issue, in respect of the whole or part of any contract for the transport of goods, a transport document provided that where a transport document is issued these Conditions shall continue to apply as between the Company on the one part and the Customer and/or the owner on the other part. To the extent that they conflict with the terms and conditions applicable to the transport document, in which event the provisions of the transport document shall to the extent of such conflict only, have precedence.

41. **DISPOSAL OF GOODS**

41.1 Without limiting or affecting any other terms of these Conditions, goods (whether perishable or otherwise) in the care, custody or control of the Company may at the Customer's expense be sold by private treaty or public auction or otherwise disposed of by the Company, in its sole discretion, without notice to the Customer, sender, owner or consignee, if:

- 41.1.1 Such goods have begun to deteriorate or are likely to deteriorate;
- 41.1.2 Such goods are insufficiently addressed or marked;
- 41.1.3 The Customer cannot be identified; or
- 41.1.4 The goods have not been collected or accepted by the Customer or any other person after the expiration of 21 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 net 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.
- 41.2 Should any amount owing by the Customer to the Company in respect of any matters referred to in these Conditions become due and payable and remain unpaid, or in the event that any goods are not accepted for delivery as provided for in clause 42 below, the Company shall be entitled and the Customer hereby authorises the Company without the need to obtain an order of court, to sell all or any of the goods by public auction or on reasonable notice, being not less than 14 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 to the reduction or discharge as the case may be, of the Customer's obligations to the Company 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.
- 42. THE ACCEPTANCE OF DELIVERY**
- 42.1 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:
- 42.1.1 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
- 42.1.2 The provisions of clause 41.1.4 shall apply *mutatis mutandis*.
- 43. WAREHOUSING**
- 43.1 In providing the services, the goods may be warehoused or otherwise held at any place as determined by the Company in its absolute discretion, at the Customer's risk and expense.
- 43.2 Where the Company acts, in the capacity as warehouseman, as a principal, whether in premises owned, leased or operated by it, or in premises operated by a third party, all goods are received, stacked, stored, moved, despatched and otherwise handled, at the risk of the Customer and the owner thereof. All such activities shall be undertaken by the Company in terms of and subject to these Conditions and the Company shall not be liable at law, as a bailee or deposittee.
- 43.3 The Customer and the owner warrant that:
- 43.3.1 All goods delivered to the Company for warehousing shall be properly packed and labelled and in the event of any such goods requiring special storage, packaging or labelling by reason of its nature or properties or in accordance with any regulation, convention or statute, that all such requirements shall be complied with; and
- 43.3.2 Notice of any special storage requirements of any such goods shall be given to the Company in writing prior to the delivery of the goods into the custody of the Company or its agents, provided that the Company shall not be obliged to take delivery of any such goods in the event of it being of the view that such goods or the handling or storage thereof are for any reason whatsoever undesirable.
- 43.4 In the event that the Company agrees to undertake the packing of the goods into any container or the packaging or unitisation of the goods for any purpose, such packing shall be undertaken at the sole risk and expense of the Customer and it shall be the obligation of the Customer to provide the Company with full packing and labelling instructions in writing, including but not limited to any requirements as to internal or other securing, mass distribution, maximum aggregate mass restrictions, labelling, temperature control or other restrictions, information as to the properties of the goods and any noxious or other possible hazardous or dangerous properties they might possess.
- 43.5 Notwithstanding anything else to the contrary herein contained, the Customer and the owner of the goods indemnify the Company against any consequences (including all damages and consequential losses) howsoever resulting, whether due to the negligence of the Company, its servants, agents or sub-contractors in any degree, from the storage of any goods tendered for transport or warehousing. Failure to provide all relevant information to the Company shall render the Customer liable in damages to the Company.
- 44. COLLECTION OF EXPENSES AND COD**
- 44.1 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 are not paid by such consignee or any other person immediately when due.
- 44.2 If accepted by the Company, instructions to collect payment on delivery shall be subject to the condition that the Company will be entitled to assume that the recipient will effect payment and in regard to the collection will not be liable for any negotiable instrument which is not met on due date for payment. Such payment is collected by the Company at the Customer's risk.
- 45. SUNDRY GOODS RECOGNISABLE AS THE CUSTOMER'S**
- 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.
- 46. EXAMINATION OF LANDED GOODS**
- 46.1 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 which are landed or discharged from any vessel, aircraft, vehicle, or transport unit, no responsibility or liability shall attach to the Company for any failure to hold such examination or to take any other action unless the Company has been timeously advised by the landing or discharge agent that such goods have been landed and that such a discrepancy exists.



- 46.2 The Company will not be responsible for examining or counting any goods received by it where such goods are bundled, palletised or packed in any manner such that their number cannot be quickly and easily counted. Should the Company undertake to examine or count goods so received, it shall incur no liability in respect of any error or inaccuracy in such counting, whether such error or inaccuracy is the result of negligence on the part of the Company, its servants, agents or sub-contractors, or otherwise. The Company shall be entitled to levy a charge on the Customer for the counting of goods in such circumstances.

### **PROVISIONS LIMITING OR EXCLUDING THE COMPANY'S LIABILITY**

#### **47. GENERAL LIABILITY**

- 47.1 Except insofar as otherwise provided by these Conditions, the Company shall not be liable for any claims, whether arising in contract or delict, which are in any way related or attributable to:
- 47.1.1 Any act or omission of the Customer or any person acting on its behalf;
  - 47.1.2 Compliance with the instructions given to the Company by the Customer or any other person entitled to give them;
  - 47.1.3 Insufficiency of the packing or labelling of the goods except where such service has been provided by the Company;
  - 47.1.4 The weight, measurements, contents, quality, defect or description of any goods;
  - 47.1.5 Handling, loading, stowage or unloading of the goods by the Customer or any person acting on its behalf;
  - 47.1.6 Inherent vice of the goods;
  - 47.1.7 Riots, civil commotions, strikes, lockouts, stoppage or restraint of labour from whatsoever cause;
  - 47.1.8 Fire, flood or storm;
  - 47.1.9 Damages, costs, claims, penalties and/or charges of whatever nature arising from loss of market or attributable in any way to delay in forwarding or in transit or failure to carry out any instructions given to the Company, including any indirect and/or consequential loss;
  - 47.1.10 Loss or non-delivery of any separate package forming part of a consignment or for loss for a package or an unpacked consignment or for damage or mis-delivery;
  - 47.1.11 Injury or death suffered by the Customer or any person arising from any cause, including but not limited to the Company's, its agents, servants or sub-contractors' negligence in whatever degree, as a result of the Company's performance or attempted performance of its obligations to the Customer and/or the Customer's requirements or mandate;
  - 47.1.12 The failure and/or malfunction, for whatever reason, and regardless of negligence in whatever degree on the part of the Company, its agents, servants or sub-contractors, and/or breach by it of these Conditions, of the Company's computer systems and/or software programs, including those "Information System Services" as defined in the Electronic Communications and Transactions Act, No. 25 of 2002, as amended from time to time, provided and/or operated by the Company and/or by any person with whom the Company conducts business, and/or any third party, and which systems shall include the Company's electronic automated information service provided to its Customers;
  - 47.1.13 The provision by the Company to the Customer in whatever manner and/or form, or 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;
  - 47.1.14 Any cause which the Company could not avoid and the consequences whereof it could not prevent by the exercise of reasonable diligence.
- 47.2 Notwithstanding anything to the contrary contained in these Conditions, the Company shall not be liable for: any loss or damage to property other than the goods themselves; any indirect or consequential loss or damage; loss of profit; delay or deviation arising from any cause, including but not limited to the Company's, its agents, servants or sub-contractors' negligence, in any degree, or breach by it of any of these Conditions.

#### **48. MONETARY LIMITATION OF LIABILITY OF THE COMPANY**

- 48.1 Notwithstanding anything contained herein, if and in the event that the Company is liable to the Customer, in no such case whatsoever shall any liability of the Company, howsoever arising, exceed whichever is the least of the following respective amounts:
- 48.1.1 The value of the goods evidenced by the relevant documentation or declared by the Customer for customs purposes or for any purpose connected with their transportation;
  - 48.1.2 The value of the goods declared for insurance purposes;
  - 48.1.3 Double the amount of the fees raised by the Company for its services in connection with the goods, but excluding any amount payable to sub-contractors, agents and third parties.
- 48.2 If it is desired that the liability of the Company in those cases where it is liable to the Customer should not be governed by the limits referred to in clause 48.1, written notice thereof must be received by the Company before any goods 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 48.1 shall apply.

#### **49. TIME BAR**

- 49.1 Unless notice of loss or damage and the general nature of such loss or damage is provided by the Customer to the Company in writing within three days of the completion of the services, or if the loss or damage is not apparent within this period, within three days of delivery of the goods to the Customer, and/or owner and/or consignee and/or receiver (as the case may be), such delivery as

aforesaid shall be *prima facie* evidence that the goods were delivered in good order and condition as described in any transport document.

49.2 In addition to clause 49.1 hereof, it is recorded that the Company shall in any event be discharged from all liability whatsoever and howsoever arising in respect of any service provided to the Customer or which the Company has undertaken to provide, unless summons or other process initiating legal proceedings is issued and served on the Company within 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 a suit having been brought.