

GENERAL CONDITIONS OF SALE OF SERVICES

1. DEFINITIONS

1.1 In these Conditions the under mentioned words will bear the following meanings:

1.1.1 **Abnormal Goods:** shall include Goods which by reason of their nature, weight (mass), dimensions or otherwise require special preparations to be made or unusual or special care, treatment or precautions to be taken for the transport or movement of same, which the Company in its sole discretion regards as abnormal or is otherwise described as such;

1.1.2 **Carrier:** shall mean any person/entity with whom the Company contracts to provide any of the Services for and on behalf of the Customer;

1.1.3 **Company:** shall mean Manuchar South Africa Proprietary Limited;, and unless the context indicates the contrary, the Company's shareholders, members, directors, employees, officers, subcontractors, representatives and agents;

1.1.4 **Conditions:** shall mean these General Conditions of Sale of Services;

1.1.5 **Contractor:** shall mean any third party appointed by the Company to perform any Services for or on behalf of the Company or a Customer, but excluding Customers contracting with the Company to render defined services, supply goods and the like to or for the Company. The word "Contractor" includes a Carrier and the Contractor's shareholders, members, directors, employees, officers, subcontractors, agents and representatives;

1.1.6 **Customer:** shall refer to any person, other than a Contractor, who contracts with the Company for the supply of Services, and unless the context indicates the contrary, including the Customer's shareholders, members, directors, employees, officers, subcontractors, representatives and agents, actual or ostensible;

1.1.7 **Dangerous Goods:** shall include hazardous Goods and Goods which in the opinion of the Company, are dangerous and includes anything likely to cause any damage whatsoever to persons or property (including the vehicle of the Carriers/Contractors);

1.1.8 **FBL: shall** mean a FIATA combined transport bill of lading;

1.1.9 **Goods:** shall relate to any items which are 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 Contractors on the instructions of the Customer in terms of these Conditions and includes any Transport Unit used in connection with or in relation to such items;

1.1.10 **the Group:** shall mean the Company and any company which is a holding company or subsidiary of the Company from time to time which may render Services to the Customer in terms of clause 6;

1.1.11 **Incoterms:** shall mean Incoterms 2010;

1.1.12 **Owner:** shall mean, other than the Company, the owner of the Goods and any other person who is or may have or acquire any interest, financial or otherwise, therein;

1.1.13 **Quotation:** shall mean a quotation issued by the Company containing the details of the Goods and Services ordered by the Customer and associated costs of supplying them;

1.1.14 **"Said to Contain"** means that the Company accepts the Goods on the basis of the information provided by the Customer regarding the Goods, including but not limited to their nature, quantity, condition and/or value, which information the Company is entitled to rely upon, without verification;

1.1.15 **Services:** shall mean the services provided or arranged by the Company including the clearing and forwarding, warehousing and transportation, location and delivery of Goods

within the borders of the Republic of South Africa and elsewhere;

- 1.1.16 **Surety:** shall mean any person who provides a suretyship in respect of the Customer's obligations in terms of these Conditions;
- 1.1.17 **Transport Unit:** shall mean 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.
- 1.2 Headings of clauses are inserted for purposes of convenience only and shall be ignored in the interpretation of these conditions.
- 1.3 Unless inconsistent with the context, words signifying any one gender shall include the other gender, words signifying the singular shall include the plural and vice versa and words signifying natural persons shall include artificial persons and vice versa.

2. SCOPE OF APPLICATION

- 2.1 All Services provided by the Company are provided on these Conditions. In case of a regular business relationship with the Company, the Conditions shall also apply to future transactions in which the Conditions might not explicitly be referred to. By placing an order or entering into a contract with the Company for the provision of the Services, the Customer confirms and is deemed to have read and accepted the Conditions.
- 2.2 The Company explicitly reserves the right to amend, modify or otherwise alter the Conditions from time to time.
- 2.3 No other terms or conditions relating to the Services, whether contained in the Customer's documentation or otherwise, shall be binding on the Company, the terms of these Conditions being overriding.
- 2.4 No variation of any of these Conditions by the Customer shall be binding upon the Company unless reduced to writing and signed by an officer of the Company, duly authorized thereto. These Conditions cannot be varied by email.

3. APPOINTMENT OF THIRD PARTIES

- 3.1 The Company may in its discretion at any time unilaterally appoint any Contractors to fulfil all or any of the Company's obligations arising in terms of these Conditions and without further notice to the Customer.
- 3.2 In appointing such Contractors the Company shall be construed as being the agent of the Customer and shall under no circumstances have any responsibility to, or become liable to, the Customer regarding any act or omission by such Contractor in the performance of its obligations pursuant to such appointment, or for any loss or damage caused to the Customer or any third party as a result thereof.
- 3.3 The Customer acknowledges that when the Company, as agent for and on behalf of the Customer, concludes any contract with a Contractor, such contract is concluded between the Customer and the Contractor.
- 3.4 Unless otherwise agreed in writing, the Company, when acting as agent for and on behalf of the Customer, may enter into any contract it reasonably deems necessary or requisite for the fulfilment of the customer's instructions, including, without limitation, contracts for:
- 3.4.1 the carriage of Goods by any route or means or person;
- 3.4.2 the 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;
- 3.4.3 carriage or storage of Goods in any form or in or on any Transport Unit or with or without other goods of whatsoever nature.

3.5 Notwithstanding anything to the contrary contained herein the Customer agrees that all Services shall be provided by the Company on the terms and conditions, whether or not inconsistent with these Conditions, stipulated by the carriers, warehousemen, government departments, and all other parties (whether acting as Contractors or not) into whose possession or custody the Goods may pass, or subject to whose authority they may at any time be.

4. THE CUSTOMER'S WARRANTIES

4.1 The Customer warrants that -

4.1.1 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;

4.1.2 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 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.

4.2 The Company shall be entitled to recover any amounts due to it by the Customer in respect of any Services, 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.

5. FBL

The Company shall be entitled to issue in respect of the whole or part of any Services a FBL provided that where a FBL is issued these Conditions shall continue to apply except insofar as they conflict with the terms and conditions applicable to the FBL. The issue of the FBL by the Company shall entitle it to raise an additional charge determined by the Company, to cover its additional obligations arising under the FBL.

6. THE GROUP

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 these Conditions which shall apply mutatis mutandis to the Customer and any such member of the Group.

7. INSURANCE, EXEMPTION OF LIABILITY AND LIMITATION OF LIABILITY

7.1 The price charged by the Company for its services, including warehousing, does not factor into account the Company assuming any risks in and to the goods of the Customer. Consequently, the Customer acknowledges that the risk in and to the goods shall always vest with it and it must take all necessary and appropriate steps to hold fully comprehensive insurance cover over such goods. Therefore, under no circumstances, will the Company be liable to the Customer for any loss and/or damage caused to its goods whilst under the control and/or in the possession of the Company. Should any claim be made on the Company by the Customer or its insurer under the laws of subrogation in respect of damage or loss caused to goods then the Customer hereby indemnifies the Company and its agents and holds them harmless from all and any such claims.

7.2 In addition, under no circumstances shall the Company or its employees, directors or agents be liable to the Customer for any consequential or indirect losses caused by or arising from the services or from any act or omission by the Company including any cybercrime or cyber security breaches or incidents suffered by the Company or the Customer.

7.3 Notwithstanding, the foregoing and in the event of the Company being held liable for any loss or damage to the Customer's goods, then the amount of such liability shall not exceed twice the value of the fees and charges (excluding Vat) raised by the Company relating to such damaged and/or lost goods.

8. OFFERS AND ORDERS

- 8.1 Any order of the Customer for Services, placed either orally or in writing, shall be considered a binding offer to the Company to enter into a contract on the terms and conditions stipulated therein.
- 8.2 The Company has a discretion at all times as to whether to accept an order from the Customer and/or to supply the Services to the Customer, and may take into account, amongst other things, the timeous receipt by the Company of information relating to the Services which the Customer requires, the Customer's creditworthiness and the Customer's available credit (if applicable).
- 8.3 Orders, as well as supplements, modifications or ancillary agreements, are only binding on the Company upon (i) the Company's written confirmation of the order through a Quotation (without prejudice to any reservations to which the Quotation is made subject) or (ii) initiation of fulfillment of the order. Except to the extent that these Conditions provide otherwise, the Customer cannot cancel any order, save with the Company's explicit written approval.
- 8.4 Each order accepted by the Company constitutes a separate and binding contract for the supply of the Services specified in that order, on these Conditions.

9. PRICES AND AMENDED QUOTATIONS

- 9.1 Unless explicitly otherwise agreed upon in writing, prices of the Services include all applicable taxes, levies, duties, costs, insurances and charges, that are for the Company's account in accordance with the prevailing Incoterm. All other costs or charges, including value added tax or any similar foreign tax, levy or duty in any jurisdiction, are excluded and for the Customer's account.
- 9.2 Quotations are given on the basis of costs, information provided by the Customer and foreign exchange rates prevailing at the date of the Quotation. The Company shall be entitled at any time by notice to the Customer to cancel any Quotation in circumstances where it becomes impracticable or uneconomical for the Company to supply the Services at the quoted rate and the Customer shall have no claim whatsoever against the Company for any loss that the Customer might incur as a result of such cancellation.
- 9.3 Without in any way limiting the provisions of clause 9.2, all Quotations are subject to revision by the Company without notice to the Customer in relation 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, statutory charges, equipment rental and labour, which charges and upward movements take place after the Quotation. Any revision of rates as aforesaid will be commensurate with the change in the currency exchange rate or the increase in such amounts payable.
- 9.4 If the Customer disputes the Company's revised Quotation, such dispute shall be determined by the then auditors of the Company or any other auditors nominated by the Company, who in such determination shall act as experts and not as arbitrators and whose decision shall be final and binding on the parties.

10. "ALL IN" RATE

If the Company, in its dealings with Customers or Contractors, quotes or is quoted a charge or rate which is described as being "all in" that charge or rate shall be deemed to cover all charges and disbursements from the commencement to the final completion of the Services.

11. CARRIAGE

The Company does not constitute a public or common carrier and transports Goods be they containerized or otherwise subject to these Conditions only.

12. INSTRUCTIONS AND INFORMATION

- 12.1 For all purposes hereunder the Customer shall be deemed to have in relation to the Customer's business, the 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 supply and all

matter relating thereto and the Customer undertakes to supply all pertinent information to the Company.

- 12.2 In supplying Services to any Customer the Company shall be entitled to rely upon the accuracy and completeness of any instruction and other information given to it by the Customer and recorded in writing. There is no obligation upon the Company to abide by instructions/advices not recorded in writing.
- 12.3 The Company shall be entitled at any time to require the Customer to furnish further information relating to the Services requested by the Customer and shall be entitled to postpone performance of any Services or obligation in terms hereof until such information is received.
- 12.4 In the absence of specific instructions given timeously in writing by the Customer to the Company:
- 12.4.1 it shall be in the reasonable discretion of the Company to decide at what time to perform or to procure the performance of any Services or actions which may be necessary or requisite for the discharge of its obligations to the Customer;
- 12.4.2 the Company shall have an absolute discretion to determine the means, route, packaging and procedure to be followed by it in performing all or any of the Services it has agreed to perform;
- 12.4.3 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.
- 12.5 Unless specific written instructions are timeously given to and accepted by the Company, the Company shall not be obliged to:
- 12.5.1 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 Dangerous Goods or other Goods which require special conditions of handling or storage;
- 12.5.2 arrange for any particular Goods to be carried, stored or handled separately from other Goods.

13. PACKAGING AND DELIVERY

- 13.1 If the Customer requests the Company to provide the Services in respect of any Goods, delivery of the Goods will take place in accordance with the applicable Incoterm agreed between the parties, in the absence thereof, at the Customer's risk, read with these Conditions.
- 13.2 The Customer must at its cost and risk, procure that the Goods in respect of which Services are required, are timeously delivered to the Company's premises. Except to the extent that the Company agrees otherwise in writing, the Customer is responsible for arranging and collecting any Transport Unit required to transport the Goods, packing the Goods into that Transport Unit, carrying out all export requirements, if any, relating to those Goods and/or Transport Units and sealing and delivering the Transport Units to the Company and in this regard, the Customer warrants that:
- 13.2.1 the Transport Unit has been properly and competently loaded;
- 13.2.2 the Goods are suitable for carriage in, or on, the Transport Unit; and
- 13.2.3 the Transport Unit is in a suitable condition to carry the Goods loaded thereon or therein and complies with all applicable requirements of all relevant transport authorities and carriers.
- 13.3 Except if the Customer requests the Company to pack the Goods, the Customer warrants that the Goods have been sufficiently packed and/or prepared.
- 13.4 The Goods are received by the Company on a "Said to Contain" basis. The Company is entitled but not

obliged to unpack any Goods to inspect them. The Customer shall be responsible for the cost of repacking the Goods.

- 13.5 Transport rates contained in the Quotation are subject to 3 hours of loading and unloading time and exclude any additional documentation required.
- 13.6 Transport is subject to vehicle availability at time of booking.
- 13.7 Warehouse operating hours are from 7am – 5pm on Monday to Friday.
- 13.8 Transport may take place over weekends and after hours by prior agreement between the parties and at an agreed overtime charge.
- 13.9 Unless otherwise agreed, warehouse loading times are from 7am - 4pm from Monday to Friday.
- 13.10 All handling, packing, loading, unloading, warehousing and transporting of the Goods by the Company shall be effected with reasonable care and the Company shall procure that the Goods are packaged and packed so that they are capable of withstanding the normal hazards inherent in the provision of the Services.
- 13.11 The Customer must procure that all necessary documentation is delivered to the Company and all statutory requirements are complied with prior to loading and offloading the Goods.
- 13.12 The Company does not warrant that the Services requested by the Customer and provided by the Company are suitable for the Goods in question.
- 13.13 The Company is not liable for any loss, damage, expenses or costs of any nature suffered by the Customer and arising from:
- 13.13.1 the marking, labelling, packaging and/or numbering of the Goods;
- 13.13.2 or in any way connected with the weight, measurements, contents, quality, inherent vice, defect or description of any of the Goods; and/or
- 13.13.3 the Company failing to notify the Customer, consignee or receiver of the Goods to collect the Goods from the Company (whether or not the Customer requested the Company to do so); and/or
- 13.13.4 damage or injury suffered by the Customer or any person 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 in relation to the Services.
- 13.14 Although the Company will try to deliver the Goods to the Customer by the delivery date requested in the Customer's order, the Company is not bound to do so. The Company is not liable under any circumstances whatsoever, for any loss or damages of any nature (including consequential damages, loss of profit or special damages), whether within the contemplation of the parties or not, and which the Customer may suffer as a result of any delay in the delivery of the Goods. The Customer may not cancel an order as a result of any delivery delay. The Company may deliver the Goods to the Customer in more than one instalment.
- 13.15 A delivery note signed by or on behalf of the Customer constitutes prima facie (on the face of it) proof that the Goods have been delivered to and received by the Customer in good order and condition.
- 13.16 The Customer bears the responsibility of ensuring that its Consignee or Consignor's premises are suitable for the handling of containers and that semi- trailers are parked on flat, hard surfaces. The Company will accept no liability for any incidents that might occur due to unsuitable premises or on or off loading facilities.

14. **WAREHOUSING**

Pending forwarding and/or delivery by or on behalf of the Company, the Goods may be warehoused or otherwise held at any place as determined by the Company in its absolute discretion, at the Customer's expense.

15. EXAMINATION OF LANDED GOODS

The Company will not be responsible for conducting any examination or counting of any landed or delivered Goods. Should the Company undertake to count any Goods so received, the Company shall be entitled to levy a charge on the Customer for the counting of the Goods in such circumstances.

16. ACCEPTANCE, INSPECTION AND CLAIMS

16.1 Without prejudice to the Customer's right to inspect the Goods, the Customer must take delivery of the Goods immediately upon presentation. All costs incurred by the Company relating to the Customer's refusal to take delivery of the Goods are for the Customer's account, including costs of transportation and storage. If the risk for loss or damage to the Goods has not been transferred yet to the Customer according to the prevailing Incoterm, such risk shall in any event transfer to the Customer on the moment of refusal to take delivery and the Customer shall be deemed to have taken delivery of the Goods.

16.2 The Customer must inspect the Goods on delivery thereof and without delay. Any claims or returns concerning visible damage to the Goods must be notified to the Company in writing. All Goods are deemed to be accepted by the Customer as being in good order and condition unless the Company receives such claim or notice of return within 10 business days after delivery of the Goods to the Customer.

16.3 Damage that is not visible on ordinary inspection must be notified in the same manner as set out in the preceding clause 16.2 within 10 business days after delivery of the Goods to the Customer.

16.4 For claims which in the Company's opinion, are justified and accepted, the Company shall, in its sole discretion, as the case may be partly or in full refund or issue a credit note to the Customer to the value of the Services as specified in the Company's invoice. Any and all further claims or demands of the Customer in relation to Goods which are damaged on whatever legal basis are hereby rejected.

17. PAYMENTS

17.1 The Company will send the Customer an invoice and statement for the amount which the Customer owes the Company for the Services.

17.2 Except where the Company has granted credit facilities to the Customer, the Customer must pay to the Company the full amount due to the Company in respect of the Services on presentation of the Company's invoice. If the Company has granted credit facilities to the Customer, full payment of the Company's invoice must be made within 30 days after the date of the Company's statement, unless the parties agree otherwise in writing.

17.3 Payments are to be performed on the terms otherwise agreed between the parties in writing and in the currency as mentioned in the invoice. Any claim relating to the invoice must be presented to the Company not more than 12 business days after receipt of the invoice by the Customer, failing which the invoice is final and binding on the parties.

17.4 Any loss as a consequence of the volatility in foreign exchange rates, is for the Customer's account.

17.5 The Customer undertakes to collect/accept all documents when presented by the Company. Further, the Customer will carry out all measures necessary for the immediate transfer of necessary funds in accordance with the payment terms.

17.6 Interest shall accrue on overdue payments at the "mora" interest rate in terms of Section 1 of the Prescribed Rate of Interest Act, 1975. The aforesaid interest shall be compounded monthly in arrear and shall be paid together with the amount of the invoice due.

17.7 In addition to interest as aforesaid, the Company may recover from the Customer that fails to make payment of any amount on or before the due date for payment thereof, default administration costs and collection costs, including legal costs on the attorney and own client scale.

17.8 The Customer shall pay to the Company upon demand and in advance such amount as the Company may from time to time request in respect of anticipated charges and disbursements.

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- 17.9 The Company shall not be obliged to disburse any monies on behalf of the Customer in relation to any Services until it is in receipt of funds adequate to cover same and the Company shall not be liable for any loss or damages suffered by the Customer or any third party as a result of any failure to disburse such monies.
- 17.10 The Company shall be entitled to keep for its own benefit, and shall not be obliged to make known to the Customer, any discount, allowances, commission or brokerage obtained in the course of executing the Customer's instructions.
- 17.11 All charges due by the Customer to the Company shall be paid free of deduction, set-off or demand and may not be withheld or deferred on account of any claim or counterclaim which the customer may allege.
- 17.12 The Customer acknowledges that payment is due by the last day of the month following the month in which the Services specified in the Company's invoice were supplied.
- 17.13 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 Customer might, when making payment, seek to appropriate the payment so made to any particular debt or portion of a debt.
- 17.14 The Company shall under no circumstances be precluded from raising a debit and obtaining payment in respect of any fee 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.
- 17.15 The Company's obligation to supply the Services shall be suspended as long as the Customer is in arrears with any payment owing to the Company, without notice and without prejudice to the Company's right to claim compensation. If any doubt exists as to the Customer's ability to fulfil its payment obligations towards the Company, the Company reserves the right to suspend transport or deliveries until satisfactory securities have been provided or advance payment has been made, as requested by the Company in its sole discretion.
- 18. COLLECTION OF EXPENSES AND C O D**
- 18.1 When Services are provided 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 therefor if they are not paid by such consignee or any other person immediately when due.
- 18.2 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 the matter of such collection will not be liable for any negotiable instrument which is not met on due date for payment.
- 19. DUTIES, TAXES, IMPOSTS, LEVIES AND DEPOSITS**
- 19.1 Except as otherwise provided in these Conditions, the Customer, whether or not the cause of payment 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 Services 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.
- 19.2 The Company shall bear no liability in consequence of the fact that there may be a change in the rate of duty, wharfage, 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.
- 20. RECOVERY OF DUTIES INCORRECTLY PAID**
- 20.1 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, 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:

- 20.1.1 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
- 20.1.2 do all such acts as are necessary to enable the Company to effect recovery of the amount incorrectly paid.
- 20.2 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 the purpose of clause 20.1.1. 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 20.1.1 and 20.1.2.

21. THE COMPANY'S GENERAL DISCRETION

- 21.1 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 the public good 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.
- 21.2 If events or circumstances come to the attention of the Company and/or its Contractors 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 the 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.
- 21.3 The Company shall not bear liability nor in any way be responsible regarding:
 - 21.3.1 any failure on its part and for any reason (including that of its directorship, management, employees and agents) to follow any instructions given by the Customer;
 - 21.3.2 any loss or damage suffered by the Customer or any third party as a result of the Company's implementation of any instructions provided by the Customer in relation to the Services. The Customer indemnifies the Company against any loss or damage, including fines, penalties and claims imposed/raised by inter alia any authority and/or third parties, which the Company may suffer/be cited for, and where borne by the Company, the Customer will be obliged to reimburse the Company accordingly;
 - 21.3.3 any failure to adhere to times or dates for delivery given by the Customer in writing or otherwise.
- 21.4 The Company shall not be obliged to handle, store or transport any Goods which appear to have been damaged or to be unsafe for handling, storage or transport.
- 21.5 The Customer warrants the authenticity of all Goods transported, the correctness and accuracy of all descriptions, values and other information provided to the Company for inter alia, customs and excise, revenue and consular or other purposes.

22. HARMFUL GOODS

- 22.1 If the Company in its sole discretion considers that the Goods in respect of which it provides the Services may cause harm of any nature, including but not limited to the risk to other goods, property, life or health or the proliferation of vermin, the Company shall be entitled to deal with both the Transport Unit and the Goods in such a manner as it deems fit (which shall, inter alia include destruction or abandonment) without notice and compensation being given to any person, and further in circumstances where the Company will be entitled to charge its full fee including any costs incurred in dealing with the Transport Unit and the

Goods as above.

22.2 The Customer shall be liable for the Company's costs and shall indemnify the Company against any claim by any person arising out of or in connection with the exercise by the Company of its right in terms of this clause.

22.3 The Customer indemnifies the Company against any harm and any related damage claims arising regarding containers containing potentially harmful/dangerous contents and further regardless of whether the Company had knowledge of such contents or not.

23. **VALUABLE GOODS**

In the event of a Transport Unit containing valuables including without limitation; any bullion, coins, precious stones, jewelry, antiques, pictures, bank notes, securities, documents or otherwise, livestock or plants, the Company shall not in any way be liable for any loss or damage to such Goods.

24. **PERISHABLE GOODS**

Where a Transport Unit contains perishable Goods and same have begun or are likely to perish, the Company may deal with those contents in such manner as it deems fit and without notice to any person. In these circumstances, the Customer shall be liable for the Company's costs of, and shall indemnify the Company against any claim by any person arising out of the Company's handling of the goods.

25. **ABNORMAL GOODS**

Where the Contractor is required to provide the Services in respect of Abnormal Goods it shall have the right to vary these Conditions or add such further terms thereto as it in its sole discretion may deem fit.

26. **DANGEROUS GOODS**

26.1 Notwithstanding that the Company agrees to provide the Services in respect of Dangerous Goods, the Company may nevertheless for good reason, alternatively where compelled, destroy or otherwise deal with such Goods. Under such circumstances, the Goods will be dealt with at the entire risk of the Customer, without compensation being due to same or any other party and without prejudice to the Company's right to inter alia debit charges and fees including that relating to the cost of destruction or disposal.

26.2 The Customer shall be responsible for compliance with all regulations relating to Dangerous Goods in force in any country including such country's territorial waters.

27. **CLAIMS AGAINST THE COMPANY**

27.1 Except as otherwise provided in these Conditions, any claim emanating from a Customer arising out of any act or omission on the part of the Company must be delivered to the Company in writing within 30 days of the act or omission complained of or of the date upon which the act or omission ought to have occurred as the case may be failing which it shall be deemed to have been extinguished for all purposes.

27.2 Notwithstanding any of the conditions contained herein, the Customer agrees that in circumstances where the Company is held liable for loss, damage, expense or penalty raised against it as a result of actions, omissions or negligence on the part of a Contractor, then the Company shall on request by the Customer, act as the Customer's agent in obtaining settlement from the Contractor and shall be liable to settle such claim only upon receipt of the Contractor's settlement and in the amount of such settlement only.

28. **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 and the Customer shall provide such security as may be required by the Company in this regard.

29. LIEN

- 29.1 The Company shall maintain a lien over all corporeal and incorporeal property in its possession, including but not limited to all Goods and documents relating to Goods such as bills of lading and import permits, as well as all refunds, repayments, claims and other recoveries, and associated with the indebtedness for any reason whatsoever by the Customer in favour of the Company.
- 29.2 The Company reserves the right to enforce the above lien until all monies due to it by the Customer are paid up together with interest accumulating thereon.
- 29.3 If any debt by the Customer in favour of the Company remains unpaid after the lapse of 30 days from the date upon which it became due, the Company may sell/dispose of the property forming the subject matter of the lien on any basis that it deems fit, and without in such circumstances, becoming liable for any loss consequent upon or incidental to the exercise of such right of sale.
- 29.4 Any expenses and charges incurred or levied by the Company in enforcing the lien, including; storing, handling and selling the said property shall be borne by the Customer. The proceeds of the sale shall be applied towards offsetting the entire indebtedness of the Customer to the Company and any surplus accumulating hereafter will be refunded to the Customer.
- 29.5 If property in question is not owned by the Customer, the Customer hereby confirms being empowered on behalf of the Owner, to deal with same and authorizes the Company to exercise its rights in terms hereof.

30. INDEMNITY

Should any claim be made on the Company or any of its directors, employees or agents arising out of or incidental to the goods which it is handling and/or warehousing, then the Customer indemnifies the Company, its directors, employees, or agents from all claims, costs and losses including legal expenses, that the Company may incur arising from such claim/s.

31. LEGAL CHARGES

In the event of the Company resorting to instructing its attorneys to recover money or Goods from the Customer or Contractor, same shall be liable for and pay all legal costs incurred by the Company on an attorney and own client scale and inclusive of collection commission, related disbursements (including sheriff's fees, legal counsel expenses and the like).

32. FORCE MAJEURE, HARDSHIP

- 32.1 Neither party is liable for any failure to meet any of its obligations in terms of this Agreement, or any delay in meeting them, to the extent to which the failure or delay is caused by force majeure. For the purposes of this clause, force majeure means any event or circumstance which makes it permanently or temporarily impossible for a party to perform all or some of its obligations and which:
- 32.1.1 is beyond a party's reasonable control;
- 32.1.2 could not reasonably have been provided against before concluding this agreement;
- 32.1.3 cannot reasonably be avoided or overcome;
- 32.1.4 is not attributable to the other party; and
- 32.1.5 which may include war, invasion, hostilities, civil war, acts of terrorism, riot, civil commotion, disorder, labour dispute, strike, lock-out, go slow, accident, vehicle breakdown, load shedding, any government act or omission, roadblocks, searches, natural catastrophes such as earthquake, hurricane or cyclone; but
- 32.1.6 which does not include any inability to pay by any party because of a lack of funds.
- 32.2 The affected party must give notice to the other party immediately upon the occurrence of a force majeure

or as soon as reasonably possible and subject to clause 32.3, must resume performance of its obligations as soon as the cause of the force majeure has ceased.

- 32.3 Each party must take all reasonable and necessary steps at its own expense to mitigate the consequences of any force majeure which affects the performance of its own obligations. If the event of force majeure is of such a nature that it will not result in an impossibility of performance by the Company of the obligation in question, but will delay the performance thereof, the Company shall be entitled to such extensions of time in which to perform that obligation as may be reasonable in the circumstances, taking into account the interest of both parties: provided that if the force majeure situation persists for a period in excess of 7 days the Customer shall be entitled upon written notice to the Company to terminate the affected order but shall not be entitled to recover any damages which it may suffer as a result of such termination, any delays and/or the force majeure event.

33. SEVERABILITY

Each provision in these Conditions is severable from the others, notwithstanding the manner in which they may be linked together or grouped grammatically, and if in terms of any judgment or order, any provision, phrase, sentence, clause is found to be defective or unenforceable for any reason, the remaining provisions, phrases, sentences, clauses shall nevertheless continue to be of full force. In particular, and without limiting the generality of the foregoing, the parties hereto acknowledge their intention to continue to be bound by these Conditions notwithstanding that any provision may be found to be unenforceable or void or voidable, in which event the provision concerned shall be severed from the other provisions, each of which shall continue to be of full force.

34. LAW AND DISPUTES

- 34.1 Clauses customarily used in commerce shall be interpreted in accordance with the applicable Incoterm.
- 34.2 Within the scope of application of these Conditions, the ICC eTerms 2004 are applicable and the Customer agrees to be bound by such ICC eTerms 2004.
- 34.3 If the Company is obliged, in the execution of any Services, to comply with any common law or legislative enactment of any nature whatsoever, then the Company by complying therewith, shall not be deemed to waive nor abandon any of its rights in terms of these Conditions.
- 34.4 In addition thereto, in complying with such law, the Company shall not be deemed to have assumed any onus, obligation, responsibility or liability in favour of the Customer.
- 34.5 If any of these Conditions is repugnant to or in conflict with such law, then and in such event the conflicting term of these Conditions shall be deemed to be amended and/or altered to conform with such law, and such amendment and/or alteration shall not in any way affect the remaining provisions of these Conditions.

34. SUBMISSION TO JURISDICTION

The parties agree that any legal action or proceedings arising out of or in connection with these Conditions shall be brought in the division of the High Court of South Africa where the Company's head office is situated at the commencement of the proceedings, and the Customer irrevocably submits to the non-exclusive jurisdiction of such court.

35. RELAXATION

- 35.1 No relaxation by a party of any of its rights in terms of this agreement at any time shall prejudice or constitute a waiver of such rights and same shall be entitled to exercise its rights thereafter as if the said relaxation had not taken place.
- 35.2 No act or omission by or on behalf of the Company shall be construed as an acceptance of liability or a waiver of rights or an acceptance of the correctness of an interpretation or viewpoint expressed by a Customer or Contractor unless it does so expressly.

36. NOTICES

- 36.1 All written notices given by one party to the other shall be deemed to have been validly served if delivered by hand or email to the address, as the case may be, reflected on then current official letterhead of each party. Such physical addresses will further constitute the parties' chosen domicilium citandi et executandi addresses at which same will accept service of all documentation and legal process.
- 36.2 Such notices shall, if delivered by hand, be deemed to have been received on the date of delivery, if sent by email be deemed to have been received on the business day (in the country to which the email was sent) following dispatch.

37. CESSION OF CLAIMS

- 37.1 The Customer and Surety hereby jointly and severally, irrevocably and in rem suam (concerning (in) one's own affairs) cede and assign as a pledge unto and in favour of the Company, all the right, title, interest in and to all claims of whatsoever nature and description and howsoever arising which the Customer and/or Surety may now or at any time hereafter have against all and any persons, companies, corporations, firms, partnership, associations, syndicates and other legal personae whomsoever without exception as continuing covering security for the due payment of every sum of money which may now or at any time hereafter be or become owing by the Customer and/or Surety from whatsoever cause or causes arising, it being acknowledged that this cession is a cession in securitatum debiti (as security for the debt) and is not an out-and-out cession.
- 37.2 Should it transpire that the Customer and/or Surety entered into prior deeds of cession or otherwise disposed of any of the right, title and interest in and to any of the claims which will from time to time be subject to this cession, then this cession shall operate as a cession of all the Customers and/or Surety's reversionary rights.
- 37.3 This Cession shall be and remain in full force and effect as a continuing security notwithstanding any fluctuation, or temporary extinction of the Customer and/or Surety's indebtedness to the Company.
- 37.4 For the purpose of giving effect to the foregoing Cession both the Customer and Surety hereby nominate, constitute and appoint the Company to be its Attorney and Agent, in rem suam (concerning (in) one's own affairs), with full authority for the Customer and/or Surety and in the Customer and/or Surety's name to demand, sue for, recover and receive all sums of money hereby ceded and assigned and with the authority to sign all documents on the Customer and/or Surety's behalf and in the Customer and/or Surety's name in connection with the recovery of the said sums and to give acquaintances and receipts for the Customer and/or Surety.
- 37.5 The Customer and Surety agree that, on request by the Company, they shall be obliged to hand over to the Company all books of account, contracts, invoices, documents and the like which it may require for the purposes of ascertaining the amounts due to the Customer and/or Surety for the purpose of recovery of payment.
- 37.6 The Customer and Surety shall be obliged to furnish the Company with a schedule of all debts due to the Customer and/or Surety by its debtors monthly and upon demand. Notwithstanding the foregoing, the Company or its nominee shall at all times be entitled to inspect all or any of the Customer and Surety's records as the Company deems fit. Failure by either party to give effect to the foregoing shall not in any way prejudice the rights of the Company hereunder, and the Company shall at all times be deemed to have perfected its security in terms hereof.

38. CESSION BY COMPANY

Should the Company cede its claim against the Customer and Surety to any third party ("the Cessionary"), then the above Cession of Claims and Deed of Suretyship shall be deemed to have been given by the Customer and Surety to such Cessionary as continuing covering security for the due payment of every sum of money which may at the time of such Cession or at any time there after be or become owing by the Company and Surety to the Cessionary (whether acquired the Cessionary by way of Cession or otherwise), and such Cessionary shall be entitled to exercise all rights in terms of the Cession of Claims and Deed of Suretyship as if such Cessionary were the Company hereunder.

39. NATIONAL CREDIT ACT

These terms and conditions must not be construed so as to constitute a credit agreement or a relationship of credit provider and credit consumer in terms of the National Credit Act, 34 of 2005, as amended.

40. BREACH

If the either Party ("Defaulting Party") breaches any of these Conditions or any agreement between it and the other party, and fails to remedy such breach within 14 days of the date of receipt of written notice requiring it to do so by the other party ("the Innocent Party") then the Innocent Party shall be entitled to compel performance by the Defaulting Party of the Defaulting Party's obligations, or to cancel this Agreement by giving written notice to that effect to the Defaulting Party.

41. 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.

42. DISPUTES

42.1 Should there be any dispute of any nature whatsoever between the parties in regard to any aspect, matter or thing relating to these Conditions and whether or not the Company has executed its obligations in terms of 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 any such agreement as though the Company had performed properly and to the Customer's satisfaction.

42.2 The Customer's remedy, having performed its obligations as provided in clause 42.1, shall be limited to an action against the Company for repayment of either the whole or portion of the amount which the Customer alleges, constitutes an overpayment.

42.3 Without affecting the generality of clauses 42.1 and 42.2, 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 any agreement, or lack of performance or otherwise, after which payment the Customer's rights of action against the Company in terms of these Conditions, 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 it may have against the Company.

42.4 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.

43. 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.