

1. INTERPRETATION

- 1.1 The headings to the clauses are for reference purposes only and shall not be used to interpret the clauses to which they relate.
- 1.2 Unless the context clearly indicates otherwise, references to one gender shall include the other two genders, the singular includes the plural and vice versa, and all terms shall apply equally to natural persons, juristic persons and other associations.
- 1.3 When any number of days is prescribed in these conditions, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a business day, in which case the last day shall be the immediately following business day.
- 1.4 In the event that the day of payment of any amount due in terms of these Conditions should fall on a day which is not a business day, then the relevant date for payment shall be the following business day.
- 1.5 Where figures are referred to in numerals and in words, if there is any conflict between the two, the word shall prevail.
- 1.6 Where any term is defined within the context of any particular clause in these Conditions, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the same meaning ascribed to it for all purposes in terms of these Conditions, notwithstanding that that term has not been defined in this interpretation clause.
- 1.7 The rule of construction that the contract shall be interpreted against the Party responsible for the drafting or preparation of these Conditions shall not apply.
- 1.8 "the Carrier" means any party with whom the Company contracts to move goods or provide services for and on behalf of the Customer.
- 1.9 "these Conditions" means these Standard Trading Terms and Conditions as amended or supplemented from time to time.
- 1.10 "the Company" means LADYLUCK TRADING 2 CC, a Close Corporation duly registered in accordance with the Company Laws of South Africa trading as WATERFORD CARRIERS CC with registration number 2005/085146/23 and registered address at Unit 23 SANDOWN PALMS, 106 WEST STREET, JHB, 2196.
- 1.11 "the Customer" means any person at whose request or on whose behalf the Company undertakes any business or provides any advice, information or services and shall be deemed to include the owner, consignee or consignor of the goods as hereinafter defined and any other person claiming right to or in respect of the goods.
- 1.12 "Dangerous Goods" means goods which by reason of their nature, quantity or mode of stowage are liable in the Company's sole opinion to endanger the lives or health of persons or any property including but not limited to containers, ships, vehicles, buildings and lifting equipment, as well as all goods defined as dangerous in the IMCO Regulations or any statute, statutory instrument or order, any regulations made by any Governmental or other public authority or by any local by-law relating to the handling, storage or carriage of goods.
- 1.13 "Goods" means any goods handled, transported, stored or otherwise dealt with by or on behalf of or at the instance of the Company or which come under the control of the Company or its agents, servants or sub-contractors on the instructions of the Customer, and includes any container, transportable tank, flat pallet, package or any other form of covering, packaging, container or equipment or transport device used in connection with or in relation to such goods.
- 1.14 "Transport" means without prejudice to generality, loading, unloading, packing, storing, safe keeping, handling of any Goods and the obtaining of requisite permits or authority for any Goods.

- 1.15 "Perishable Goods" means Goods which are perishable by reason of their nature, composition or otherwise and such require out of the ordinary care precaution handling or mode of transportation.
- 1.16 "IMCO" means Inter Governmental Consultative Organisation.
- 1.17 "Local delivery" means a delivery within 250 km radius of City Deep Inland Terminal, Houer Road, City Deep, JHB.
- 1.18 "National delivery" means a delivery that exceeds 250 km radius of the City Deep Inland Terminal, Houer Road, City Deep, JHB.

## 2. APPLICATION OF THESE CONDITIONS

- 2.1 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.
- 2.2 These Conditions shall prevail over those of any Customer or Carrier or other party with whom the Company contracts, even if any applicable terms and conditions contain a clause similar in meaning and intention to this one.

## 3. APPLICABLE LEGISLATION

- 3.1 To the extent that any of these Conditions are repugnant to or in conflict with any law, they are deemed to be amended to comply with that law, and any such amendment shall not in any way affect the remaining provisions of these Conditions.
- 3.2 If any provision of these Conditions is unenforceable, then the Company shall be entitled to elect, at any time that such provision shall be severed from the remaining provisions of these Conditions, so as to allow the remaining provisions to remain of full force and effect.

## 4. ISSUING TRANSPORT DOCUMENTS

- 4.1 The Company shall be entitled, but not obliged, to issue a transport document in respect of the whole or part of any contract for the movement of goods, including but not limited to a waybill, a consignment note or a delivery note.
- 4.2 Where the Company arranges services for goods which are or will be carried in accordance with a contract contained in or evidenced by a bill of lading, all services are arranged by the Company as agents only. The provision of such services shall be subject to the terms and conditions of the bill of lading, which may be inspected on request.

## 5. INSTRUCTIONS

- 5.1 The Customer's instructions to the Company shall be in writing and be precise, clear and comprehensive.
- 5.2 In all dealings with the Customer, the Company shall be entitled to rely upon the accuracy and completeness of any instruction and information received from the Customer.
- 5.3 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.
- 5.4 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.
- 5.5 The Company shall be entitled at any time to require the Customer to furnish such additional information as is necessary and until such additional information is received, The Company shall be entitled to defer performance until such information is received.

- 5.6 Subject to the other provisions of these Conditions, the Company shall act as an independent contractor when delivering, locally and nationally, consignments of products or such of the Customer's other required deliveries as may from time to time be requested.

**6. DISCRETION OF THE COMPANY IN THE ABSENCE OF INSTRUCTIONS BY THE CUSTOMER**

- 6.1 In the absence of specific instructions given timeously in writing by the Customer to the Company:

- 6.1.1 It shall not be obliged to provide any service not specified in the Customers instructions;
- 6.1.2 It shall not be obliged to arrange for any particular goods to be carried, stored or handled separately from other goods;
- 6.1.3 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;
- 6.1.4 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;
- 6.1.5 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 for 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.

- 6.2 Notwithstanding the above, should the Company be of the opinion that the Customer's interests will be served by rendering additional services and it is unable timeously to obtain such instructions from the Customer, the parties agree that the Company shall be entitled to provide such additional services and shall be entitled to payment of the charges in respect therefore for any Goods.

**7. COMPANY'S GENERAL OVERRIDING DISCRETION**

- 7.1 If at any time the Company should consider it to be in the Customer's interest 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.
- 7.2 If events or circumstances come to the attention of the Company, its agents, servants or sub-contractors which, in the opinion of the Company, make it wholly or partially 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.
- 7.3 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, and the Customer shall indemnify the Company and hold it harmless for any claims arising therefrom.

**8. INSURANCE**

- 8.1 The Company shall have no obligation whatsoever to obtain any form of insurance cover on behalf of the Customer in respect of the goods and will only endeavour to do so on the express request of the Customer.
- 8.2 Insofar as the Company agrees to arrange insurance, the Company acts solely as agent for and on behalf of the Customer.

- 8.3 The Company shall endeavour to effect any insurance the Customer timeously and in writing instructs it to effect, but the Customer accepts that in doing so the Company shall be obliged to comply with the Financial Advisory and Intermediary Services Act No. 37 of 2002 and may have to engage the services of a licensed financial services provider as defined in that Act, and the Customer authorises the Company to instruct such a person on its behalf.
- 8.4 Any such insurance so affected will be subject to such exceptions and conditions as may be imposed by the insurance company or underwriter taking the risk and the Company shall not be obliged to obtain separate cover for any risks so excluded.
- 8.5 Unless otherwise agreed in writing, the Company shall not be under any obligation to obtain separate insurance in respect of separate consignments but may insure all or any of such consignments under any open or general policy held by the Company from time to time.
- 8.6 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 notwithstanding that the premium paid on such policy may differ from the amount paid by the Customer to the Company in respect thereof.
- 8.7 If any insurance cover is requested and obtained, the Customer shall cease any activity which renders, or in the Company's bona fide opinion is likely to render, any insurance which the Company or any of the Carriers may have, void or endangered or to give rise to an increase in premiums therefore.
- 8.8 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, whether requested to do so by the Customer or otherwise. If the Company is nevertheless found liable, the monetary limitation of liability set out in these Conditions will apply.

#### 9. WARRANTIES BY THE CUSTOMER

The Customer warrants that:

- 9.1 He is authorised to agree to these Conditions on behalf of any person he represents;
- 9.2 If the Customer is a close corporation or limited liability company, then its members and/or directors personally guarantee, jointly and severally, the due performance of all the obligations of the Customer to the Company and the representative of the Customer warrants that he is duly authorised to bind such members and/or directors and act as the Customer's agent in all his dealings with the Company;
- 9.3 The Goods transported by the Company, its servants or sub-contractors in terms hereof are the Customer's sole and exclusive property or that the Customer has the requisite authority from the owners thereof;
- 9.4 All information provided is accurate and comprehensive and no necessary or pertinent information has been withheld, and the Customer indemnifies the Company against all claims, penalties, fines, damages and expenses arising as a result of any breach of this undertaking;
- 9.5 The goods will be properly, adequately and appropriately prepared and packed, stowed, labelled and marked, having regard to the characteristics of the goods involved;
- 9.6 The Goods are not in contravention of any law from time to time in force in any country to and from which they are to be transported pursuant hereto;
- 9.7 Where any goods are carried on or in transport units such as containers, flat racks, trailers, rail wagons, tanktainers or any other specially designed transport devices, then, save where the Company has been given and has accepted specific written instructions to load the transport unit:

- 9.7.1 that the transport unit has been properly and competently loaded;
- 9.7.2 that the goods concerned are suitable for the type and mode of carriage contemplated in or on the transport unit concerned; and
- 9.7.3 that the transport unit is in a proper condition to carry the goods safely and complies with the requirements of all relevant transport authorities and Carriers.
- 9.8 The goods are accompanied by all necessary completed documents, save to the extent that the Company has undertaken to prepare or procure such documents, failing which the Company shall be entitled to withhold delivery until such documents have been provided;
- 9.9 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.

#### 10. WARRANTIES AND REPRESENTATIONS BY THE COMPANY

No warranties or representations by the Company to the Customer shall be valid or binding unless expressly contained in writing and made in response to a written enquiry specifying accurately and in complete detail what information is required.

#### 11. AGENT OF CUSTOMER LIABLE IF CUSTOMER DOES NOT PAY

If any Customer acted as agent on behalf of another party, and that other party fails to pay any amounts due to the Company, the Company may recover such amounts directly from the Customer.

#### 12. COMPANY ACTS AS AGENT ONLY IN CONTRACTING

- 12.1 The Company in procuring the carriage, storage, packing or handling of goods shall act as agent for and on behalf of the Customer only.
- 12.2 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.
- 12.3 Unless otherwise agreed in writing, the Company, in 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:
  - 12.3.1 Carriage of goods by any route or means or person;
  - 12.3.2 Storage, packing, transport, loading, unloading and/or handling of goods by any person at any place and for any length of time;
  - 12.3.3 Carriage or storage of goods in breakbulk form or in or on containers or other specially designed transport units or with or without other goods of whatsoever nature.

#### 13. SUB-CONTRACTING

- 13.1 Any business entrusted by the Customer to the Company may, in the absolute discretion of the Company, be fulfilled by the Company itself, by its own servants performing part or all of the relevant services, or by the Company employing or entrusting the goods or services to third parties on such conditions and at such rates as may be stipulated by or negotiated with such third parties for the purposes of such services, or such part thereof as they may be employed to carry out irrespective the charges payable by the Customer for such third party's services exceed the going rate.

13.2 Where the Company, acting as agent only, employs third parties to perform all or any of the functions which it has agreed to perform, the Customer agrees that the Company shall have no responsibility or liability to the Customer for any act or omission of such third party, even though the Company may be responsible for the payment of such third party charges; but the Company shall, if suitably indemnified against all costs (including attorney and own client costs) which may be incurred by or awarded against the Company, take such action against the third party on the Customer's behalf as the Customer may direct.

#### 14. TERMS AND CONDITIONS OF AGENTS AND SUB-CONTRACTORS

The Customer agrees that all goods shall be dealt with 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 into whose possession or custody the goods may pass, or subject to whose authority they may at any time be.

#### 15. VALUABLE GOODS

15.1 Unless prior express written agreement has been given on its behalf by a duly authorised representative, the Company will not accept, deal with or handle bullion and precious metal objects, precious stones, bank notes, coins, cheques, credit notes, bonds, negotiable documents and securities, jewellery, works of art or antiques (except where part of a household and personal effects movement), human remains, bloodstock and livestock

15.2 If such goods are dealt with without prior written agreement, the Company shall incur no liability whatsoever for these goods, even if any loss or damage is caused by its gross negligence. If, for any reason, the Company is nevertheless found liable, the monetary limitation of liability set out in these Conditions will apply.

#### 16. DANGEROUS GOODS

16.1 The Customer shall obtain in advance the Company's specific written consent to accept into its possession or control or into the possession or control of any of its servants, sub-contractors, agents or employees, any Dangerous Goods. For the purposes of this clause and these Conditions, "Dangerous Goods" shall also include, but shall not be limited to, hazardous goods, radio-active materials, goods which are or may become perishable, dangerous, inflammable or noxious, or which by their nature may injure, damage, taint or contaminate or in anyway whatsoever adversely affect any person, goods or property, including goods likely to harbour or attract vermin or other pests.

16.2 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.

16.3 The Customer will ensure that the Company has been advised of the nature, quantities and hazards relating to the goods to be carried and the emergency response requirements in respect of such goods.

16.4 The Customer will provide the Company with any documents required by any law, regulation or requirement of any authority for the transport by road of hazardous goods including, but not limited to, the Transport Emergency Card (Trem Card) and the Hazardous Goods Declaration Form.

16.5 If any Dangerous Goods are delivered to the Company, whether or not in breach of the provisions of the above clauses, such goods may, without notice to the Customer, for good reason as the Company in its sole discretion deems fit including, without limitation, the risk to other goods, property, life or health, be destroyed, disposed of, abandoned or rendered harmless or otherwise dealt with at the risk and expense of the Customer and without the Company being liable for any compensation to the Customer or any other party, and without prejudice to the Company's rights to recover its charges and/or fees including the costs of such destruction, disposal, abandonment or rendering harmless or otherwise dealing with the goods.

16.6 The Customer indemnifies the Company against all loss, liability or damage caused to the Company as a result of the tender of such goods to the Company

- 16.7 Even if express written agreement has been given by the Company, the Company shall nevertheless have the right to arrange or authorise another to dispose, render harmless or abandon goods which pose or develop a threat to life, health or other property, and may do so at the sole risk and expense of the Customer, who shall indemnify the Company completely for any expense, loss, damage or liability incurred by the Company in so doing.

**17. GOODS REQUIRING TEMPERATURE CONTROL**

- 17.1 The Customer undertakes not to tender for transportation any goods which require temperature control without previously giving at least two days' written notice to the Company of their nature and the particular temperature range to be maintained.
- 17.2 In the case of a temperature controlled container loaded by or on behalf of the Customer, the Customer further undertakes that the container has been properly precooled or pre-heated as appropriate, that the goods have been properly loaded in the container and that its thermostatic controls have been properly set by the Customer.
- 17.3 If the above requirements are not complied with, the Company shall not be liable for any loss of or damage to the goods caused by such non-compliance.

**18. GOODS IN CONTAINERS**

- 18.1 If a container has not been packed by the Company, the Company shall not be liable for loss of or damage to the contents if caused by:
- 18.1.1 The unsuitability of the goods for carriage in containers;
- 18.1.2 The unsuitability or defective condition of the container, provided that where the container has been supplied by or on behalf of the Company, this paragraph shall only apply if the unsuitability or defective condition arose without any wilful misconduct on the part of the Company or would have been apparent upon reasonable inspection by the Company;
- 18.1.3 The fact that the container has not been properly sealed at the commencement of the carriage, except where the Company has agreed to seal the container;
- 18.2 The Customer shall defend, indemnify and hold harmless the Company against all liability, loss, damage, costs, claims and expenses arising from one or more of the matters covered above.
- 18.3 Where the Company is instructed to provide a container, in the absence of a written request to the contrary, the Company is not under an obligation to provide a container of any particular type or quality.

**19. PERISHABLE GOODS**

- 19.1 Should the Goods be perishable in nature and have begun or are likely to deteriorate, the Company may deal with such Goods in such manner as it deems fit and without notice to the Customer.
- 19.2 The Customer indemnifies the Company against all loss, liability or damage caused to the Company as a result of the tender of such goods to the Company and against any claim by any person arising therefrom.

**20. CONDITION OF GOODS**

- 20.1 The onus of establishing the condition of the goods at the time of delivery to the Company shall at all times remain on the Customer.
- 20.2 No delivery note, receipt or any other document given at such time of delivery to the Company shall constitute proof of the condition of the goods, save to the extent that any specific record in relation thereto may have been made thereon by the Company.

**21. DISPOSAL OF GOODS WHICH ARE NOT COLLECTED OR ACCEPTED**

- 21.1 If the Customer does not accept delivery of the goods at the nominated time and place, the goods will be stored at the sole risk and expense of the Customer, regardless of whether risk and or title in the goods has passed to another party.
- 21.2 The Company shall notify the Customer in writing that he must remove the goods within 21 consecutive calendar days and pay any further charges which have accrued, failing which the Customer shall be deemed to have authorised the Company to sell the goods by public auction, or otherwise dispose of the goods if they have no value, and the Customer indemnifies the Company accordingly. Provided that if the goods are perishable, the Company shall only give the Customer two banking days notice, with time to start counting on the day after such notification.
- 21.3 If the goods are sold by public auction, the net proceeds shall first be applied to paying any money due to the Company, together with any additional storage costs and all costs of the sale, with any balance to be refunded to the Customer. If there is a shortfall, the Company shall be entitled to recover it from the Customer.

**22. COLLECTION AND DELIVERY**

- 22.1 Loading and unloading shall be performed by the Customer or its respective agents and unless otherwise agreed to in writing, the Customer will deliver goods onto and will take delivery from the side or tailboard of the Company or the Carrier's vehicle.
- 22.2 The Company will not be responsible for any loss or damage arising from the loading or unloading of the vehicle or from the overloading or unsafe loading of the vehicle.
- 22.3 Nothing in the above clauses shall be construed as preventing the Company or Carrier from giving assistance in loading or unloading goods onto or from the vehicle where such assistance is customary and practicable, but assistance so given shall be without any liability on the Company or Carrier's part, and shall be at the sole risk of the Customer.

**23. LOADING AND OFF-LOADING FACILITIES**

- 23.1 The Customer undertakes:
- 23.1.1 To provide or procure the provision of safe and adequate labour and equipment for loading and off-loading and safe, convenient and adequate loading and off-loading points and access to or from any such loading and off-loading points;
- 23.1.2 To ensure that loading and off-loading will be possible at the agreed points during such hours and days as the parties have agreed;
- 23.1.3 That if any goods require special appliances for loading upon or unloading from the vehicle, those appliances will be available at the point of collection and the place of delivery of the goods;
- 23.1.4 That the Goods shall be ready for loading on the date specified;
- 23.1.5 That all documentation necessary in connection with the Goods and the transportation thereof shall be fully and correctly prepared;
- 23.1.6 That, where applicable, the Goods will be sufficiently packed and prepared for carriage;
- 23.1.7 That it shall sign such certificates and receipts on loading and off-loading as the Company or Carrier may require.
- 23.2 Where the Customer, its agent or servant conducts any packing or other operation or activity in any area or premises provided by the Company or Carrier, it shall do so at its own risk, and the Customer indemnifies the Company and Carrier against all claims or losses arising out of its presence in such areas or premises

**24. EXAMINATION OF GOODS**

- 24.1 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.
- 24.2 Should the Company undertake to count goods so received, it shall incur no liability in respect of any error or inaccuracy in such counting, unless such error or inaccuracy is the result of wilful misconduct on the part of the Company.
- 24.3 The Company shall be entitled to levy a charge on the Customer for the counting of goods.

**25. WAREHOUSING**

- 25.1 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 risk and expense.
- 25.2 The Company shall not be liable for physical loss of or damage to the goods whilst in the care, custody and control of the warehouseman with whom the Company has contracted, nor for any consequential loss arising therefrom, nor for delay or misdelivery, including delivery of the goods to an incorrect party or location.

**26. DUTIES, TAXES, IMPOSTS, LEVIES AND DEPOSITS**

- 26.1 The Customer shall be liable for any duties, taxes, imposts, levies, deposits or outlays 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 at any time for any payments, fines, penalties, expenses, loss or damage incurred or sustained by the Company in connection therewith.
- 26.2 The Company shall bear no liability for any increase in the rate of duty, wharfage, freight 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 had any act been performed at a different time.

**27. PAYMENT BY THE CUSTOMER**

- 27.1 The charges of the Company for any service shall exclude VAT, surcharges or duties of any kind.
- 27.2 The Company shall, if the cost to it of providing any service is increased for any reason, be entitled by notice to increase its charges.
- 27.3 Should the Company for whatever reason be required to provide additional services then it shall be entitled to charge a usual or reasonable charge for such additional services.
- 27.4 Unless otherwise specifically agreed by the Company in writing, the Customer shall pay to the Company in within 30 (thirty) days of presentation of its invoice, all sums due to the Company without deduction or set-off and payment shall not be withheld or deferred on account of any claim or counterclaim which the Customer may allege.
- 27.5 In addition to the above, the Customer shall pay to the Company in advance such amounts as the latter may stipulate in respect of anticipated charges and disbursements.
- 27.6 In the event of the Customer breaching any of its obligations and/or failing to timeously make payment of any amount to the Company, the Customer agrees to pay, and shall be liable to pay, all legal costs on the attorney and own client scale, including collection charges and tracing agents fee incurred by the Company and recovering any such amount from the Customer as well as interest at the prevailing rate of interest from due date to date of final payment.
- 27.7 The Company may in its sole discretion appropriate any payments made by the Customer to any principal debt owed by the Customer to the Company, irrespective of when it arose, or to interest only, or to legal or other costs, or to any such combination of principal debt, interest and costs as it may in its sole discretion determine, irrespective of any purported allocation or appropriation being made by the Customer at the time of payment or at any other time.

- 27.8 The Company shall not be obliged to disburse any monies on behalf of the Customer until it is in receipt of funds sufficient to cover same.
- 27.9 The Company reserves the right to withdraw any credit facilities afforded to the Customer at any time without prior notice and the nature and extent of such facilities shall at all times be at the Company's sole discretion.
- 27.10 All payments shall be made to the Company at one of the branches or by electronic transfer into their bank account or at such other address as directed.

**28. COLLECTION OF EXPENSES AND COD**

Where goods are accepted or dealt with by the Company upon instructions to collect any charges or other expenses from the consignee or any other person, the Customer shall remain responsible for payment if such charges or other expenses are not paid by the consignee or any other person immediately when due.

**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 and pledge either for monies due in respect of such goods or for other monies due to the Company from the Customer, sender, owner, consignee, importer or the holder of the bill of lading or their agents, if any.
- 29.2 If any monies due to the Company are not paid within 14 days after notice has been given to the person from whom the monies are due that such goods or documents are being detained, the Company shall be entitled and the Customer hereby authorises the Company and without first obtaining an order of court, to sell all or any of the Goods by auction or otherwise or in some other way dispose of for value at the sole discretion of the Company and at the expense of such person. The net proceeds of any such sale, after deducting therefrom all costs, charges and expenses incurred by the Company, shall be applied in reduction or discharge as the case may be, of the Customer's obligations to the Company 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.

**30. QUOTATIONS**

- 30.1 Quotations are based, inter alia, on quantities, densities, dimensions, mass, properties, other technical data, available loading and off-loading hours and other information supplied by the Customer and will be valid for a period of 7 (seven) days only.
- 30.2 Any variance there from shall entitle the Company to require the charges quoted to be adjusted to take into account such variance, or to suspend performance, or to cancel the contract, without thereby incurring any liability whatsoever, and in the event of any such cancellation reserving to itself the right to claim from the Customer such damages as the Company may have suffered.
- 30.3 Quotations are further subject to revision based on, but not limited to:
- 30.3.1 Work being carried out by the methods and the route to be decided by the Company without interruption, hindrance or postponement;
- 30.3.2 The availability of vehicles and/or staff on the dates required;
- 30.3.3 Any delay due to interruption, hindrance, local traffic, municipal regulation or nonproduction over which the Company has no control;
- 30.3.4 Increased volumes, quantities or scope of work beyond that upon which the quotation was based;

30.3.5 Change of route for reasons beyond the Company's control;

30.3.6 Stoppages or delays caused by circumstances beyond the control of the Company, or such that the Company could not reasonably foresee or prevent the cause of such stoppage or delay arising.

30.4 Any postponement or cancellation by the Customer shall entitle the Company to charge the expenses incurred and/or losses to the Company arising there from.

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

30.6 The Company shall be entitled by notice to the Customer to cancel or resile from any quotation within 10 days in circumstances where it becomes either impracticable or uneconomical for the Company to carry out the contract 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 the Company cancelling or resiling from the quotation.

#### 31. NO CLAIMS AGAINST INDIVIDUALS IN THEIR PERSONAL CAPACITIES

The Customer undertakes that no claims shall be made against any member, servant, employee or agent of the Company in their respective personal capacities which imposes or attempts to impose upon them any liability in connection with the rendering of any services which are the subject of these Conditions or any act or omission arising during the course and scope of their employment and hereby waives all and any such claims.

#### 32. BENEFIT OF DISCOUNTS

The Company is entitled to the benefits of any discounts obtained and to retain and be paid all brokerages, commissions, allowances and other remunerations of whatsoever nature and kind and shall not be obliged to disclose or account to the Customer for any such amounts received or receivable by it.

#### 33. INDEMNITY BY THE CUSTOMER

33.1 The Customer indemnifies and holds harmless the Company against all liability, damages, costs and expenses incurred or suffered by the Company arising directly or indirectly from or in connection with the Customer's express or implied instructions or the implementation by or on behalf of or at the instance of the Company, or any act or omission within the discretion of the Company, in relation to any goods and in respect of any liability whatsoever.

#### 34. FORCE MAJEURE

34.1 Performance of the obligations of either party in terms of these Conditions shall be suspended for as long as and to the extent that it is unable to do so because of any cause beyond its control (which shall include, without limitation, an act of God or State or war, whether declared or not, or sabotage, fire, drought, flood, epidemic, civil commotion, riot, strike, industrial action and changes in legislation, provided that the party claiming such inability;

34.1.1 Shall, when that party knows that such inability is likely to occur and when it occurs, immediately give notice to the other party (which shall be confirmed in writing as soon thereafter as is possible) detailing the circumstances on which it relies and an estimate of the likely duration of such inability;

34.1.2 Shall, when that party knows that such inability is likely to terminate and when it terminates, immediately give notice thereof to the other party, (which shall be confirmed in writing as soon thereafter as is possible).

- 34.1.3 That the Parties hereto shall co-operate and collaborate together and use all reasonable efforts to overcome, or failing which, minimize the effect of such inability.

**35. EXCLUSION OF COMPANY'S LIABILITY**

- 35.1 All handling, packing, loading, unloading, warehousing and transporting of goods by or on behalf of or at the request of the Company are effected at the sole risk of the Customer, and the Customer indemnifies the Company accordingly, even if any resultant loss or damage was caused by breach of contract or negligence of the Company, its servants or agents or any other party for whose conduct the Company would otherwise in law be responsible.
- 35.2 The Company shall not be liable for any claim relating to a contractually agreed date or delivery time.
- 35.3 The Company shall in no circumstances be liable for direct, indirect or consequential loss or damage caused by delay or any other cause whatsoever and howsoever caused.
- 35.4 The Company shall not be liable for any loss or damage whatsoever including fines, suffered by the Customer or any third party as a result of the Company giving effect to any instruction from the Customer.
- 35.5 The Company shall not be liable for any payment is made to any person or statutory authority pursuant to the execution of the Customer's instructions where it transpires that such payment should not have been made.
- 35.6 The Company shall not under any circumstances be liable for a claim for any loss, damage or liability arising out of or caused directly or indirectly by or contributed to by one or more of the following:
- 35.6.1 An act or omission of the Customer or any person acting on behalf of the Customer other than the Company, its servants, agents or sub-contractors;
- 35.6.2 Compliance with the instructions of any person entitled to give instructions;
- 35.6.3 The lack or insufficiency of or defective condition of packing in the case of goods which, by their nature, are liable to wastage or to be damaged when not packed or when not properly packed;
- 35.6.4 Any loss, damage or expense arising from or in any way connected with the marking, labelling, numbering, non-delivery or mis-delivery of any goods;
- 35.6.5 Inherent vice of the goods;
- 35.6.6 Damages arising from loss of market or attributable to delay in forwarding or in transit or failure to carry out any instructions given to the Company;
- 35.6.7 Any demurrage charges claimed by any third party, unless the demurrage charges arise out of the Company's wilful misconduct;
- 35.6.8 Fire;
- 35.6.9 A nuclear incident;
- 35.6.10 Any cause or event which the Company could not avoid or prevent by the exercise of reasonable diligence;
- 35.6.11 War (whether war be declared or not), hostilities, military or usurped power, acts of a foreign enemy or power, civil war, revolution, rebellion, insurrection, civil strife, terrorist act (or act by any person acting from political motives);

35.6.12 Confiscation, expropriation, nationalisation, requisition, destruction or damage caused by the order of any Government, public or local authority;

35.6.13 Strikes, lockouts, labour disturbances, stoppages, riots or civil commotions.

### 36. MONETARY LIMITATION OF LIABILITY OF THE COMPANY AND TIME WITHIN WHICH TO COMMENCE PROCEEDINGS

36.1 If, in spite of the exclusion of liability in these Conditions, the Company is found to be liable, its liability shall not exceed whichever is the least of the following respective amounts:

36.1.1 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, including the value of the goods declared for insurance purposes;

36.1.2 Double the amount of 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;

36.1.3 ZAR 20,000.00 for any one occurrence.

36.2 Any claim by the Customer arising out of any act or omission by the Company shall be delivered to the Company in writing within 30 (thirty) days of the commission of any act or omission of any act required, as the case may be, failing which such claim shall be deemed to have been extinguished for all intents and purposes and the Customer shall have no legal recourse against the Company in respect thereof whatsoever.

36.3 The Company shall be discharged from all liability whatsoever in respect of any claim of whatsoever nature unless summons or other proper process originating action is served on the Company within 1 (one) year of the date on which the incident giving rise to such cause of action occurred. The Company may, on written request, extend such period in writing.

36.4 If it is desired that the liability of the Company should not be governed by the limits in these Conditions, 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 contained in these Conditions shall apply.

### 37. BREACH

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

### 38. VARIATION OF THESE CONDITIONS

No variation of these Conditions, including this clause, shall be binding on the Company unless embodied in a written document signed by a duly authorised member of the Company. Any purported variation or alteration of these Conditions otherwise than as set out above shall be of no force and effect, whether such purported variation or alteration is written or oral, or takes place before or after receipt of these Conditions by the Customer.

### 39. NON WAIVER

No extension of time or waiver or relaxation of any of these Conditions shall operate as an estoppel against any party in respect of its rights under these Conditions, nor shall it operate so as to preclude such party thereafter from exercising its rights strictly in accordance with these Conditions.

**40. 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 laws of the Republic of South Africa.

**41. 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 Durban and Coast Local Division of the High Court of South Africa, exercising its Admiralty Jurisdiction, and the Customer irrevocably submits to the nonexclusive jurisdiction of such court.

**42. ARBITRATION**

- 42.1 The Company may in its sole discretion refer any dispute arising from or in connection with these Conditions to arbitration, which arbitration shall bind both the Company and the Customer.
- 42.2 For the purpose of arbitration, the parties shall jointly nominate and agree upon an arbitrator who shall be an Advocate of the High Court of South Africa of no less than 10 (ten) years standing. Should the parties fail to agree on the arbitrator to be appointed, he shall be appointed by the President from time to time of the Maritime Law Association of South Africa whose decision in this regard shall be final and binding on the parties.
- 42.3 The arbitration shall be subject to and conducted in accordance with the Rules for the Conduct of Arbitration ("the Rules") published from time to time by the Association of Arbitrators (Southern Africa) and then enforced.
- 42.4 Subject to any rights of appeal contained in the Rules or the Arbitration Act No. 42 of 1955, all arbitration awards shall be final and binding upon the parties and capable of being made an order of any competent court of law.

**43. DOMICILIUM AND NOTICES**

- 43.1 The Customer's physical address as set out in the credit application form or, failing which, on the Customer's most recently reviewed letterhead or, failing which, the Customer's registered or physical address, shall constitute the Customer's domicilium citandi et executandi for all purposes in connection with any agreement entered into by the Customer and the Company, unless the Customer provides an alternative domicilium by written notice to the Company.
- 43.2 The Company's physical address as set out in the credit application form or, failing which, on the Company's most recently reviewed letterhead or, failing which, the Company's registered or physical address, shall constitute the Company's domicilium citandi et executandi for all purposes in connection with any agreement entered into by the Customer and the Company.
- 43.3 Notices given to the above addresses or by facsimile or electronic mail to the correct fax number or electronic mail addresses shall be deemed to have been duly given:
  - 43.3.1 14 days after posting, if sent by registered post;
  - 43.3.2 on delivery, if delivered by hand;
  - 43.3.3 on dispatch, if sent by facsimile or electronic mail.