

**STANDARD TRADING CONDITIONS – SHIPS AGENCY**

**1 Definitions**

For the purpose of these conditions –

"Agent"

shall mean Panargo Shipping (Pty) Ltd who have accepted an appointment to act in the Republic of South Africa as the Agent of a Principal.

"Agency Services"

shall mean such services as may from time to time be required by a Principal in respect of a Vessel owned, operated, managed or chartered by a Principal and, in particular but without limiting the generality of such services, to –

- Arrange berths for a Vessel;
- Provide for the entry and clearance of a Vessel;
- Provide for the payment of port charges and any dues payable in respect of a Vessel;
- Arrange for the supply of fuel, water, provisions and deck and engine room stores;
- Arrange for any repairs required to be done to a Vessel;
- Take charge of and arrange solicitation of and booking of cargo and mail for a Vessel;
- Issue bills of lading and other similar documents to shippers in the form prescribed by the Principal;
- Arrange for stevedoring and other cargo handling operations;
- Arrange for the delivery of cargo in accordance with the bills of lading issued by or on behalf of a Principal;
- Take charge of and arrange solicitation of passengers for a Vessel;
- Arrange the embarkation and disembarkation of passengers and their baggage;
- Issue passenger tickets;
- Attend to all matters appertaining to the crew of a Vessel, including in particular, engaging, the signing on, signing off and repatriation of crew;
- Perform such other activities and duties in connection with the foregoing functions as may be requisite thereto.

"Principal"

shall mean a shipowner, an operator, a manager, a managing agent or a charterer of a Vessel who has appointed an Agent to provide Agency Services in the Republic of South Africa.

"Supplier"

shall mean any person with whom an Agent transacts any business on behalf of a Principal and shall include ships chandlers, vendors of all types of goods, repairers, suppliers of services of whatever nature, other ships agents or brokers, importers and exporters, and port and other authorities in the Republic of South Africa.

"Vessel"

shall mean a ship owned, operated, managed or chartered by a Principal.

**2 Scope of Agent's Authority**

2.1 An Agent shall provide such Agency Services as are required by a Principal and in the absence of any specific instructions from a Principal an Agent shall provide such Agency Services as the Agent in his discretion deems necessary and expedient in the interests of the Principal. The Agency Services provided at the Agent's discretion as aforesaid and the terms and conditions upon which they are provided shall be deemed to have been specifically authorised and approved by the Principal.

2.2 An Agent shall be entitled to engage the services of a Supplier to perform all or any of the Agency Services and any such Supplier shall be deemed to be an independent contractor employed by the Principal and not a servant of the Agent.

**3 Remuneration of Agent**

3.1 A Principal shall be liable for and shall pay to the Agent all costs and expenses incurred by an Agent, including the charges referred to in 3.2, in providing Agency Services at the request or on the instructions of the Principal himself, the Master of the Vessel, the office of the Principal or his nominees, representatives or agents, howsoever communicated to the Agent and notwithstanding the fact that any such persons may have exceeded their authority in requesting or instructing the provision of the particular Agency Services.

3.2 A Principal shall pay to an Agent for the Agency Services rendered by the Agent the charges agreed or, in the event of there being no agreement as to charge or in the event of a particular service not being provided for in the scale of agreed charges, the Principal shall pay the Agent a reasonable charge for the services in respect of which no charge has been agreed. It shall be open to the parties to agree the charges in the Association of Ships' Agents & Brokers of Southern Africa's scale of recommended agency charges payable at ports in the Republic of South Africa.

3.3 A Principal shall reimburse an Agent for all the costs and expenses incurred by the Agent arising out of the receipt of currency from a Principal or the remittance of currency to or on behalf of the Principal.

3.4 An Agent shall not be obliged to make any disbursement whatsoever on behalf of a Principal until such time as the Agent shall have been paid all amounts due by the Principal to the Agent for Agency Services provided by the Agent and have received sufficient funds for the purpose of making the particular disbursement. An Agent may either before, during or after providing the relevant Agency Services require a Principal to furnish security for the payment of such amounts as are or will become due to the Agent by the Principal for providing the Agency Services and for the due reimbursement of disbursements made or to be made by the Agent.

3.5 Information furnished a Principal by an Agent as to the costs and expenses of providing Agency Services in the Republic of South Africa or any matter relating thereto, whether in the form of an estimate, offer, quotation or tender, shall be deemed to be information furnished for the guidance of the Principal only and shall not be binding on the Agent unless the contrary has been expressly stated in such estimate, offer, quotation or tender.

3.6 In the event of an Agent providing Agency Services at the request of both an owner and the charterers of a Vessel, the owner and charterer shall respectively be obliged to remunerate the Agent on the basis set out in clause 3.2.

3.7 In the case of any charterparty providing that the Agent appointed by the charterer shall be the Vessel's Agent, the charterer and owner of the Vessel shall be jointly and severally liable to the Agent for the payment of the Agent's charges and any costs and expenses incurred by the Agent on their behalf, as if each of them were a Principal under these conditions.

**4 Guarantees by Agent**

A Principal shall under no circumstances require an Agent to furnish a guarantee or to provide security for the performance of any obligations by the Principal or the Agent on behalf of the Principal. In the event of an Agent, by reason of legislation or the requirement of a competent authority, being obliged to guarantee the obligations of a Principal or secure the fulfilment of the Agent's obligations on behalf of the Principal, the Principal shall prior to the furnishing of such guarantee or security by the Agent indemnify the Agent as is provided for in Clause 6 and in addition pay to the Agent the applicable commission calculated on the maximum amount of any loss the Agent may sustain were any such guarantee or security to be acted upon.

**5 Liability of Agent to Principal**

5.1 An Agent shall only be liable for damage or loss arising or resulting from any default by him in providing the Agency Services where such damage or loss has been caused by the wilful default or gross negligence of the Agent or his servants.

5.2 In the event of the Agent electing not to refer any claim by a Principal, which the Agent disputes, to arbitration for determination and the Principal fails to prosecute the claim as envisaged in section 15 (1) of the Act 68 of 1969 within one year from the date on which the damage or loss occurred, such claim shall be deemed to have been extinguished by effluxion of time.

5.3 Notwithstanding anything to the contrary in these conditions contained the liability of an Agent to a Principal shall be limited to payment of R20,000.00 in respect of any one call of a Vessel per port.

5.4 An Agent shall under no circumstances be liable for damage or to loss of goods delivered to him for forwarding or clearing or for safekeeping.

5.5 An Agent shall not be liable for the default or negligent act howsoever arising whether wilful or otherwise on the part of any Supplier providing goods or services to a Principal at the Agent's instance and request, such Supplier being deemed to be an independent contractor employed by the Principal.

5.6 An Agent shall not be responsible for any money paid or remitted by him on behalf of a Principal to any person pursuant to any request or instruction given the Agent by a Principal.

5.7 An Agent shall not be liable for any loss or damage of whatsoever nature sustained by a Principal directly or indirectly attributable to war, danger of war, riots, labour strikes, slowdown strikes, lock-outs, boycotts, sabotage, overburdening of any port and the like, which may affect or interrupt the regular and normal conduct of trade. In the event of the Agent being precluded from providing Agency Services due to any such circumstances beyond his control or to any other circumstances constituting force majeure the Agent shall nevertheless be entitled to be reimbursed by the Principal for costs and expenses incurred by him in taking all such steps as may be necessary to protect the interests of the Principal, in particular shed hire and/or storage charges paid by the Agent at the applicable tariff rates.

**6 Indemnities by Principal**

6.1 The Principal indemnifies and holds the Agent harmless against any loss or damage the Agent may sustain by reason of –

6.1.1 claims by Suppliers for the cost and expenses of goods or services provided the Principal at the Agent's special instance and request;

6.1.2 payment of any taxation which may be levied on passenger earnings or freight earned on cargo loaded in the absence of reciprocal Intergovernmental taxation agreements;

6.1.3 any claims arising out of guarantee furnished by the Agent pursuant to the provisions of Clause 4.

6.2 The Principal undertakes to place the Agent in sufficient funds or to furnish the Agent with security to the satisfaction of the Agent to ensure the due fulfilment by the Principal of his obligations under the aforesaid indemnity, either prior to the commencement of, during or after the performance of the aforesaid Agency Services, as may be required by the Agent.

**7 Agent's Lien**

7.1 All goods or currency received by an Agent from or on behalf of a Principal shall be held by an Agent, subject to a general lien and right of retention, for money due to the Agent by the Principal for any reason whatsoever and should the general lien be not satisfied within a reasonable time from the day when the goods or currency are first received or should the contract of agency between the Principal and Agent be terminated without the Agent having been paid all amounts owing to him by the Principal –

7.1.1 the goods may be sold by auction or otherwise and the proceeds of the sale applied to the satisfaction of the lien and expenses incurred by and about the sale; and

7.1.2 the Agent shall be entitled to set off and to deduct from the amount of the currency held by him as aforesaid any amount owing to him by the Principal.

**8 Termination of Agency**

8.1 Without prejudice to any other remedies a Principal or an Agent may have against each other, either party shall have the right at any time by giving notice in writing or by means of a telex message or telegram to the other to terminate the contract of agency between the Principal and the Agent forthwith in any of the following events –

8.1.1 if either party commits a breach of any of the terms of these conditions or of the appointment by a Principal of an Agent;

8.1.2 if for any material reason an Agent is precluded from performing the Agency Services;

8.1.3 should a Principal or an Agent enter into liquidation whether compulsory or voluntary (otherwise than for the purpose of amalgamation or reconstruction) or compound with his creditors or take or suffer any similar action in consequence of debt.

**9 Domicilium**

The Principal shall when appointing an Agent as his Agent give written notice to the Agent of the Principal's domicilium citandi et executandi in the Republic of South Africa. In the absence of such notice the Principal hereby chooses the Vessel as his domicilium citandi et executandi.

**10 Arbitration**

All disputes of whatsoever nature which shall at any time arise between the Agent and a Principal or an Agent and a Supplier concerning any matter or thing governed by these conditions or their construction or effect or as to the rights, duties or their liabilities of an Agent, a Principal, or a Supplier under these conditions shall at the election of the Agent be referred to arbitration. Should the Agent decide that the dispute be referred to arbitration such dispute shall be referred to a single arbitrator to be agreed upon by the parties to the dispute or, failing such agreement, to be nominated by the president for the time being of The Maritime Law Association of the Republic of South Africa in accordance with and subject to the provisions of the Arbitration Act, 1965, or any statutory modification or re-enactment thereof for the time being in force.

**11 Applicable Law**

Any question regarding the efficacy or interpretation of these conditions or any part thereof shall be determined in the Republic of South Africa at the port or in the city in which or nearest to the place where the circumstances giving rise to the dispute occurred, in accordance with the laws in force in the Republic of South Africa.

**12 Headings**

The above headings are for the ease of reference only and have no bearing on the interpretation or meaning of the Clauses themselves.

**STANDARD TRADING CONDITIONS – CLEARING & FORWARDING**  
Adopted from the Trading Terms and Conditions of the South African Association of Freight Forwarders

- 1 INTERPRETATION**  
In these trading terms and conditions the headings to the clauses are for reference purposes only and shall not aid in the interpretation of the clauses to which they relate;
- 1.1 unless the context clearly indicates a contrary intention, words importing any one gender include the other two genders, the singular includes the plural and vice versa, and natural persons include created entities (corporate or un-incorporate) and vice versa;
- 1.2 the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning namely
- 1.3.1 "the company" means the company referred to above, or if it exercises its right under clause 2, the member of the group in respect of which it exercises its rights;
- 1.3.2 "customer" means any person at whose request or on whose behalf the company undertakes any business or provides any advice, information or service;
- 1.3.3 "goods" means any goods handled, transported or dealt with by or on behalf of or at the instance of the company or which come under the control of the company or its agents, servants or nominees 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 used in connection with or in relation to such goods;
- 1.3.4 "the group" means the company and any company which is a holding company or subsidiary of the company from time to time which may render services to the customer in terms of clause 2;
- 1.3.5 "the owner" means the owner of the goods to which any business concluded under these trading terms and conditions relates and any other person who is or may have or acquire any interest, financial or otherwise, therein.
- 2 MEMBERS OF THE GROUP RENDERING SERVICES TO THE CUSTOMER**  
The company may at its election perform all or any business undertaken or provide advice, information or services, whether gratuitous or not, either itself or it may procure that any member of the group undertakes such business or provides such advice, information or services as principal upon and subject to the terms and conditions contained herein which shall apply mutatis mutandis to the customer and any such member of the group.
- 3 APPLICATION OF TRADING TERMS AND CONDITIONS**  
Subject to clause 5, all and any business undertaken or advice, information or services provided by the company, whether gratuitous or not, is undertaken or provided on these trading terms and conditions.
- 4 OWNER'S RISK**  
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/or the owner, and the customer indemnifies the company accordingly.
- 5 APPLICABLE LEGISLATION**
- 5.1 If the company is obliged, in the execution of any of its duties and/or responsibilities to comply with any common law or legislative enactment ("the law") 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 trading terms and conditions.
- 5.2 In addition thereto, in complying with the law, the company shall not be deemed to have assumed any onus, obligation, responsibility or liability in favour of the customer.
- 5.3 If any of the terms of these trading terms and conditions is repugnant to or in conflict with the law, then and in such event the conflicting term embodied herein shall be deemed to be amended and/or altered to conform therewith, and such amendment and/or alteration shall not in any way affect the remaining provisions of these trading terms and conditions.
- 6 FIATA COMBINED TRANSPORT BILL OF LADING**  
The company shall be entitled to issue in respect of the whole or part of any contract for the movement of goods a FIATA combined transport bill of lading ("FBL") provided that where a FBL is issued these trading terms and 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.
- 7 EXCLUSION OF OBLIGATIONS OF COMMON OR PUBLIC CARRIER**  
The company deals with goods only on the basis that it is neither a common carrier nor a public carrier.
- 8 COMPANY'S DISCRETION IN THE ABSENCE OF INSTRUCTIONS**  
In the absence of specific instructions given timeously in writing by the customer to the company -
- 8.1 It shall be in the reasonable discretion of the company to decide at what time to perform or to procure the performance of any or all of the acts which may be necessary or requisite for the discharge of its obligations to the customer;
- 8.2 The company shall have an absolute discretion to determine the means, route and procedure to be followed by it in performing all or any of the acts or services it has agreed to perform;
- 8.3 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.
- 9 COMPANY'S GENERAL DISCRETION**
- 9.1 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.
- 9.2 If events or circumstances come to the attention of the company, its agents, servants, or nominees which, in the opinion of the company, make it in whole or in part, impossible or impracticable for the company to comply with a customer's instructions the company shall take reasonable steps to inform such customer of such events or circumstances and to seek further instructions. If such further instructions are not timeously received by the company in writing, the company shall, at its sole discretion, be entitled to detain, return, store, sell, abandon, or destroy all or part of the goods concerned at the risk and expense of the customer.
- 10 INSURANCE**  
The company shall endeavour to effect an insurance the customer timeously and in writing instructs it to effect. Such insurance will be subject to such exceptions and conditions as may be imposed by the insurance company or underwriter taking the risk and the company shall not be obliged to obtain separate cover for any risks so excluded. 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. 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. Insofar as the company agrees to arrange insurance the company acts solely as agent for and on behalf of the customer.
- 11 COMPANY'S OBLIGATIONS IN THE ABSENCE OF INSTRUCTIONS**  
Unless specific written instructions are timeously given to and accepted by the company, the company shall not be obliged to -
- 11.1 make any declaration for the purpose of any statute, convention, or contract, as to the nature or value of any goods or as to any special interest in delivery. In particular, the company shall be under no obligation to make any declaration or to seek any special protection or cover from any carrier in respect of any goods which are, or fall within the definition ascribed thereto by that body of dangerous goods or other goods which require special conditions of handling or storage;
- 11.2 arrange for any particular goods to be carried, stored or handled separately from other goods.
- 12 CUSTOMER'S UNDERTAKINGS**
- 12.1 For all purposes hereunder the customer shall be deemed to have in relation to the customer's business, the goods and 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 sale and purchase and all matter relating thereto and the customer undertakes to supply all pertinent information to the company.
- 12.2 The customer warrants that -
- 12.2.1 it is either the owner or the authorised agent of the owner of any goods in respect of which the customer instructs the company and that each such person is bound by these trading terms and conditions;
- 12.2.2 in authorising the customer to enter into any contract with the company and/or in accepting any document issued by the company in connection with such contract, the owner, sender or consignee is bound by these trading terms and 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 trading terms and conditions or to recover from them any sums to be paid by the customer which upon proper demand have not been paid;
- 12.2.3 all information and instructions supplied or to be supplied by it to the company is and shall be accurate, true and comprehensive, and in particular, without derogating from the generality of the foregoing, the customer shall be deemed to be bound by and warrants the accuracy of all descriptions, values and other particulars furnished to the company for Customs, consular and other purposes, and the customer warrants that it will not withhold any necessary or pertinent information, and indemnifies the company against all claims, losses penalties, damages, expenses and fines whatsoever, whensoever and howsoever arising as a result of a breach of the foregoing whether negligently or otherwise including, without derogating from the generality of the foregoing, any assessment or reassessment;
- 12.2.4 all goods will be properly, adequately and appropriately prepared and packed, stowed, labelled and marked, having regard inter alia to the implementation by or on behalf of the company or at its instance of the contract involved, and the characteristics of the goods involved and are capable of withstanding the normal hazards inherent in the implementation of such contract;
- 12.2.5 where goods are carried in or on containers, trailers, flats, tilts, railway wagons, tanks, igloos or any other unit load devices specifically constructed for the carriage of goods by land, sea or air, (each such device hereinafter individually referred to as "the transport unit") then save where the company has been given and has accepted specific written instructions to load the transport unit -
- 12.2.6 that the transport unit has been properly and competently loaded; and
- 12.3 that the goods involved are suitable for carriage in or on the transport unit; and
- 12.4 that the transport unit is itself in a suitable condition to carry the goods loaded therein and complies with the requirements of all relevant transport authorities and carriers.
- 13 RECOVERY OF DEBTS DUE TO THE COMPANY**  
The company shall be entitled to recover any amounts due to it by the customer in respect of instructions relating to or in terms of any contract in respect of particular goods from the customer, 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.
- 14 COMPANY ENTITLED TO ACT AS AGENT OR PRINCIPAL IN CONTRACTING**
- 14.1 Unless otherwise agreed in writing, the company in procuring the carriage, storage, packing or handling of goods shall be entitled to act either as an agent for and on behalf of the customer or as a principal, as it in its absolute discretion deems fit.
- 14.2 The offer and acceptance of a fixed price for the accomplishment of any task shall not itself determine whether such task is to be arranged by the company acting as agent for and on behalf of the customer or as a principal.
- 14.3 The customer acknowledges that when the company, as agent for and on behalf of the customer, concludes any contract with a third party, such agreement is concluded between the customer and the third party.
- 14.4 Unless otherwise agreed in writing, the company, when acting as agent for and on behalf of the customer, shall be entitled to enter into any contract it reasonably deems necessary or requisite for the fulfilment of the customer's instructions, including, without limitation, contracts for the -
- 14.4.1 carriage of goods by any route or means or person;
- 14.4.2 storage, packing, transport, shipping, loading, unloading and/or handling of goods by any person at any place whether on shore or afloat and for any length of time.
- 14.4.3 carriage or storage of goods in break-bulk form or in or on transport units as defined in clause 12.2.5 or with or without other goods of whatsoever nature.
- 15 SUBCONTRACTING**
- 15.1 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 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.
- 15.2 Where the company 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 its customer for any act or omission of such third party, even though the company may be responsible for the payment of such third party's charges; but the company shall, if suitably indemnified against all costs, (including attorney and 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.
- 16 TERMS AND CONDITIONS OF AGENTS AND SUBCONTRACTORS**  
Notwithstanding anything to the contrary contained herein the customer agrees that all goods shall be dealt with by the company on the terms and conditions, whether or not inconsistent with these trading terms and conditions, stipulated by the carriers, warehousemen, government departments, and all other parties (whether

acting as agents or subcontractors to the company or not) into whose possession or custody the goods may pass, or subject to whose authority they may at any time be.

#### 17 GOODS REQUIRING SPECIAL ARRANGEMENTS

Except under special arrangements previously made in writing the company will not accept or deal with bullion, coin, precious stones, jewellery, valuables, antiques, pictures, human remains, livestock or plants. Should the customer nevertheless deliver such goods to the company or cause the company to handle or deal with any such goods otherwise than under special arrangements previously made in writing the company shall incur no liability whatsoever in respect of such goods, and in particular, shall incur no liability in respect of its negligent acts or omissions in respect of such goods. A claim, if any, against the company in respect of the goods referred to in this clause 17 shall be governed by the provisions of clauses 40 and 41.

#### 18 GOODS REQUIRING PRIOR CONSENT OF THE COMPANY

18.1 The customer shall obtain in advance the company's specific written consent to accept into its possession or control or into the possession or control of any of its servants, agents or employees any goods, including radio-active materials, which may be or become dangerous, inflammable or noxious, or which by their nature may injure, damage, taint or contaminate, or in any way whatsoever adversely affect any person, goods or property, including goods likely to harbour or attract vermin or other pests. 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.

18.2 If any such goods are delivered to the company, whether or not in breach of the provisions of clause 18.1, such goods may for good reason as the company in its discretion deems fit including, without limitation, the risk to other goods, property, life or health be destroyed, disposed of abandoned or rendered harmless or otherwise dealt with at the risk and expense of the customer and without the company being liable for any compensation to the customer or any other party, and without prejudice to the company's rights to recover its charges and/or fees including the costs of such destruction, disposal, abandonment or rendering harmless or other dealing with the goods. The customer indemnifies the company against all loss, liability or damage caused to the company as a result of the tender of goods to the company and/or out of the foregoing.

#### 19 PERISHABLE GOODS

19.1 Without limiting or affecting any other terms of these trading terms and conditions, goods (whether perishable or otherwise) in the care, custody or control of the company may at the customer's expense be sold or disposed of by the company without notice to the customer, sender, owner or consignee, if -

19.1.1 such goods have begun to deteriorate or are likely to deteriorate;  
19.1.2 such goods are insufficiently addressed or marked;  
19.1.3 the customer cannot be identified;  
19.1.4 the goods have not been collected or accepted by the customer or any other person after the expiration of 21 days from the company notifying the customer in writing to collect or accept such goods, provided that if the company has no address for the customer such notice period shall not be necessary, and payment or tender of the net proceeds, if any, of the sale thereof after deduction of those charges and expenses incurred by the company in respect thereof shall be equivalent to delivery of such goods.

19.2 Should any amount owing by the customer to the company in respect of any referred to in clause 19.1 become due and payable and remain unpaid, the company shall be entitled and the customer hereby authorises the company and without first obtaining an order of court, to sell all or any of the goods by public auction or on reasonable notice not exceeding 14 days by private treaty. The net proceeds of any such sale, after deducting therefrom all costs, charges and expenses incurred by the company, shall be applied in reduction or discharge as the case may be, of the customer's obligations to the company in respect of such goods without prejudice to the company's rights to recover from the customer any balance which may remain owing to the company after the exercise of such rights. Should the total amount collected by the company, after deducting therefrom all costs, charges and expenses incurred by the company in respect thereof, exceed the full amount of the customer's obligations to the company in respect of such goods, the company shall be obliged to refund such excess to the customer.

#### 20 THE ACCEPTANCE OF DELIVERY

If delivery of any goods is not accepted by the customer, consignee or party nominated by the customer at the appropriate time and place then: -

20.1 The company shall be entitled to store the goods or any part thereof at no risk to the company and at the expense of the customer.  
20.2 The provisions of clause 19.2 shall apply mutatis mutandis.

#### 21 WAREHOUSING

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

#### 22 COLLECTION OF EXPENSES AND C O D

22.1 When goods are accepted or dealt with by the company upon instructions to collect freight, duties, charges or other expenses from the consignee or any other person, the customer shall remain responsible therefor if they are not paid by such consignee or any other person immediately when due.

22.2 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.

#### 23 SUNDRY GOODS RECOGNISABLE AS THE CUSTOMER'S

The company shall have no obligation to take any action in respect of any goods which may be recognisable as belonging to the Customer unless and until it receives suitable instructions relating to those goods together with all necessary documents.

#### 24 EXAMINATION OF LANDED GOODS

24.1 Where it is necessary for an examination to be held or other action to be taken by the company in respect of any discrepancy in the goods which are landed or discharged from any vessel, aircraft, vehicle, or transport unit, no responsibility shall attach to the company for any failure to hold such examination or to take any other action unless the company has been timeously advised by the landing or discharge agent that such goods have been landed and that such a discrepancy exists.

24.2 The company will not be responsible for examining or counting any goods received by it where such goods are bundled, palletised or packed in any manner such that their number cannot be quickly and easily counted. Should the company undertake to count goods so received, it shall incur no liability in respect of any error or

inaccuracy in such counting, whether such error or inaccuracy is the result of negligence on the part of the company or otherwise. The company shall be entitled to levy a charge on the customer for the counting of goods in such circumstances.

#### 25 DUTIES, TAXES, IMPOSTS, LEVIES AND DEPOSITS

25.1 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 goods and whether at the time of entry and/or at any subsequent time and for any payments, fines, penalties, expenses, loss or damage or whatsoever incurred or sustained by the company in connection therewith or arising thereout.

25.2 The company shall bear no liability in consequence of the fact that there may be a change in the rate of duty, cargo dues, freight, railage or cartage or any other tariff, before or after the performance by the company of any act involving a less favourable rate or tariff or by virtue of the fact that a saving might have been effected in some other way had any act been performed at a different time.

#### 26 RECOVERY OF DUTIES INCORRECTLY PAID

Where as a result of any act or omission by or on behalf of the company or the company and whether or not such act or omission was negligent, any duty, tax, levy, railage, cargo dues, freight, cartage or any other impost or charge has been paid or levied in an incorrect amount, then any responsibility or liability to the customer which the company may otherwise have will cease and fall away if the customer does not -

26.1 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

26.2 do all such acts as are necessary to enable the company to effect recovery of the amount incorrectly paid.

26.3 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 26.1. 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 26.1 and 26.2.

#### 27 PAYMENT BY THE CUSTOMER

27.1 Unless otherwise specifically agreed by the company in writing the customer shall pay to the company in cash immediately upon presentation of account all sums due to the company without deduction or set-off and payments shall not be withheld or deferred on account of any claim or counterclaim which the customer may allege.

27.2 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.

27.3 In the event that payment to the company is effected electronically, the customer bears the risk in respect of such payments until such time as the funds are received and cleared into the company's bank account.

#### 28 DEBITING FEES AND DISBURSEMENTS

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.

#### 29 RISK OF POSTED ITEMS

Notwithstanding any prior dealings between the company and the customer all documents, cash, cheques, bank drafts or other remittances, sent to the company through the post shall be deemed not to have been received by the company unless and until they are actually received by the company.

#### 30 QUOTATIONS

30.1 The company shall be entitled at any time by notice to the customer to cancel or resile from any quotation or executory agreement in circumstances where it becomes 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 or executory agreement.

30.2 Without in any way limiting the provisions of clause 30.1 all quotations and agreements are subject to revision without notice having regard to changes in currency exchange rates and upward movements in amounts payable by or on behalf of or at the instance of the company to third parties including, without limitation, freight, surcharges, insurance premiums, equipment rental and labour which charges and upward movements take place after quotation. 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, falling 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.

#### 31 NO CLAIMS AGAINST COMPANY DIRECTORS AND EMPLOYEES

The customer undertakes that no claim shall be made against any director, servant or employee of the company which imposes or attempts to impose upon him any liability in connection with the rendering of any services which are the subject of these trading terms and conditions and hereby waives all and any such claims.

#### 32 CUSTOMER'S ORAL INSTRUCTIONS

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

#### 33 VARIATION OF THESE TRADING TERMS AND CONDITIONS

No variation of these trading terms and conditions shall be binding on the company unless embodied in a written document signed by a duly authorised director of the company. Any purported variation or alteration of these trading terms and conditions otherwise than as set out above shall be of no force and effect, whether

such purported variation or alteration is written or oral, or takes place before or after receipt of these standard trading terms and conditions by the customer.

**34 NON WAIVER**

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

**35 GOVERNING LAW**

These trading terms and 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.

**36 SUBMISSION TO JURISDICTION**

The parties agree that any legal action or proceedings arising out of or in connection with these trading terms and 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.

**37 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, or principal for any such amounts received or receivable by it.

**38 LIEN**

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 moneys due in respect of such goods or for other moneys due to the company from the customer, sender, owner, consignee, importer or the holder of the bill of lading or their agents, if any. If any moneys due to the Company are not paid within 14 days after notice has been given to the person from whom the moneys are due that such goods or documents are being detained, they may be sold by auction or otherwise or in some other way disposed of for value at the sole discretion of the Company and at the expense of such person, and the nett proceeds applied in or towards satisfaction of such indebtedness.

**39 INDEMNITY BY THE CUSTOMER**

Without prejudice to any of the company's rights and securities under these trading terms and conditions, the customer indemnifies and holds harmless the company against all liabilities, damages, costs and expenses whatsoever incurred or suffered by the company arising directly or indirectly from or in connection with the customer's express or implied instructions or their implementation by or on behalf of or at the instance of the company in relation to any goods and in particular, but without limitation of the foregoing, in respect of any liability whatsoever which may be incurred-

- 39.1 to any haulier, carrier, warehouseman or other person whatsoever at any time involved with such goods arising out of any claim made directly or indirectly against any such person by the customer or by any consignor, consignee or owner of such goods or by any person having an interest in such goods or by any other person whatsoever; and/or
- 39.2 to any owner or consignee of such goods who is not the customer of the company where the company performs the service of a deconsolidation agent, or any other service; and/or
- 39.3 to any carrier of the goods if the company is the consignor or consignee of the goods; and/or
- 39.4 in respect of any goods referred to in clause 18.

**40 LIMITATION OF COMPANY'S LIABILITY**

- 40.1 Subject to the provisions of clause 40.2 and clause 41, the company shall not be liable for any claim of whatsoever nature (whether in contract or in delict) and whether for damages or otherwise, howsoever arising including but without limiting the generality of the aforesaid -
- 40.1.1 any negligent act or omission or statement by the company or its servants, agents or nominees; and/or
  - 40.1.2 any act or omission of the customer or agent of the customer with whom the company deals; and/or
  - 40.1.3 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; and/or
  - 40.1.4 any loss, damage or expense arising from or in any way connected with the weight, measurements, contents, quality, inherent vice, defect or description of any goods; and/or
  - 40.1.5 any loss, damage or expense arising from or in any way connected with any circumstance, cause or event beyond the reasonable control of the company, including but without limiting the generality of the aforesaid, strike, lock-out, stoppage or restraint of labour; and/or
  - 40.1.6 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; and/or
  - 40.1.7 loss or non-delivery of any separate package forming part of a consignment of for loss from a package or an unpacked consignment or for damage or mis-delivery; and/or
  - 40.1.8 damage or injury suffered by the customer or any person whatsoever arising out of any cause whatsoever as a result of the company's execution or attempted execution of its obligations to the customer and/or the customer's requirements or mandate; unless -
    - (a) such claim arises from a grossly negligent act or omission on the part of the company or its servants; and
    - (b) such claim arises at a time when the goods in question are in the actual custody of the company and under its actual control; and
    - (c) in the instance provided in clause 40.1.7 above, the company receives a written notice within 5 days after the end of the transit where the transit ends in the Republic of South Africa and within 14 days after the end of the transit where the transit ends at a place outside the Republic of South Africa.
- 40.2 Notwithstanding anything to the contrary contained in these trading terms and conditions, the company shall not be liable for any indirect and consequential loss arising from any act or omission or statement by the company, its agents, servants or nominees, whether negligent or otherwise.

**41 MONETARY LIMITATION OF LIABILITY OF THE COMPANY**

- 41.1 In those cases where the company is liable to the customer in terms of clause 40.1, in no such case whatsoever shall any liability of the company, howsoever arising, exceed whichever is the least of the following respective amounts -
- 41.1.1 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;
  - 41.1.2 the value of the goods declared for insurance purposes;
  - 41.1.3 double the amount of the fees raised by the company for its services in connection with the goods, but excluding any amount payable to sub-contractors, agents and third parties.
- 41.2 If it is desired that the liability of the company in those cases where it is liable to the customer in terms of clause 40.1 should not be governed by the limits referred to in clause 40.1 written notice thereof must be received by the company before any goods or documents are entrusted to or delivered to or into the control of the company (or its agents or sub-contractors), together with a statement of the value of the goods. Upon receipt of such notice the company may in the exercise of its absolute discretion agree in writing to its liability being increased to a maximum amount equivalent to the amount stated in the notice, in which case it will be entitled to effect special insurance to cover its maximum liability and the party giving the notice shall be deemed, by so doing, to have agreed and undertaken to pay the company the amount of the premium payable by the company for such insurance. If the company does not so agree the limits referred to in clause 41.1 shall apply.

**42 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 connection.

**43 BREACH**

If the company breaches any of these trading terms and 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 trading terms and conditions and any agreement between the customer and the company.

**44 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.

**45 DISPUTES**

- 45.1 Should there be any dispute of any nature whatsoever between the parties in regard to any aspect, matter or thing relating to these trading terms and 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.
- 45.2 The customer's remedy, having performed its obligations as provided in clause 45.1, 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.
- 45.3 Without affecting the generality of clauses 45.1 and 45.2 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 this clause can be enforced. Until such payment is made, any rights that the customer may have, shall be deemed not yet to have arisen and it is only the payment to the company which releases such rights and makes them available to the customer in respect of any claim that he may have against the company.
- 45.4 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.

**46 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 terms and conditions.

**47 SEVERABILITY**

If any provision of these terms and conditions is unenforceable, then the company shall be entitled to elect (which election may be made at any time) that such provision shall be severed from the remaining provisions of these terms and conditions which shall not be affected and shall remain of full force and effect.

**48 SPECIAL CONDITIONS RELATING TO ELECTRONIC DATA**

Notwithstanding the provisions of any legislation or other law regulating electronic communications and transactions, the company shall only be deemed to have received electronic data and / or messages, when such electronic data and / or messages have been retrieved, processed and read by the addressee.

Under no circumstances whatsoever and howsoever arising (including negligence on the part of the company or its employees) shall the company be liable for any loss or damage arising from or consequent upon the provision by the company to the customer in whatever manner and / or form, of incorrect information, including electronically communicated information or data, where such incorrect information or data has been generated by and provided to the company by any person with whom the company conducts business, and / or any other third party.