

SOUTH AFRICAN ASSOCIATION OF FREIGHT FORWARDERS ("SAAFF") STANDARD TRADING TERMS AND CONDITIONS, ADAPTED BY:  
NEW HORIZON FREIGHT SOLUTION (PTY) LTD

REGISTRATION NUMBER: 2014/005065/07 VAT NUMBER: 4410266136

67 Churchill Road, Windermere, Durban, 4001

("the company")

## 1 INTERPRETATION

1.1 In this agreement, unless inconsistent with or otherwise indicated by the context:-

1.1.1 "the/this agreement" means the company's standard terms and conditions contained in this document, the Customer Proposal & Credit Application annexed hereto and any other appendices hereto;

1.1.2 "customer" means the party appointing the company in terms hereof to deliver the services;

1.1.3 "day" means a calendar day

1.1.4 "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;

1.1.5 "the owner" means the owner of the goods in respect of which the services are rendered under these terms and conditions and any other person who is or may have or may acquire any interest, financial or otherwise, therein.

1.1.6 "client" means the same as "customer" and "customer" means any person at whose request or on whose behalf the company undertakes any business or provides any advice, information or services.

1.1.7 "services" means the freight management, freight forwarding and related services undertaken by the company in terms hereof;

1.1.8 "parties" means all of the parties to this agreement and "party" shall refer to any one of them, as the case may be.

1.2 In this agreement any reference to:-

1.2.1 the singular includes the plural and vice versa;

1.2.2 "including" (or words of similar meaning) means to include without limitation, and if the expression is used with reference to specific examples the eiusdem generis rule shall not apply, and "include" shall have a corresponding meaning;

1.2.3 "person" means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality;

1.2.4 "writing" means legible writing and in English and includes any form of electronic communication contemplated in the Electronic Communications and Transactions Act, No. 25 of 2002, and "written" or "writing" shall have a corresponding meaning;

1.2.5 a party includes a reference to that party's successors in title and assigns allowed at law.

1.3 In this agreement the words "shall" and "will" and "must" used in the context of any obligation or restriction imposed on a party have the same meaning.

1.4 The clause headings in this agreement have been inserted for convenience only and shall not be taken into account in its

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interpretation.

1.5 Words and expressions defined in any sub-clause of this agreement shall, for the purpose of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.

1.6 In this agreement if any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to that provision as if it were a substantive clause in the body of the agreement, notwithstanding that it is only contained in the interpretation clause.

1.7 If any period is referred to in this agreement by way of a reference to a number of days or weeks or months or other intervals, the period shall be reckoned exclusively of the 1st (first) day and inclusively of the last day of the relevant interval, unless the last day falls on a day which is not a business day, in which case the last day shall be the next succeeding business day.

1.8 If any obligation or act is required to be performed on a particular day it shall be performed (unless otherwise stipulated) by 16h00 (local time at the place where the obligation or act is required to be performed) on that day.

1.9 This agreement shall be governed, interpreted and enforced in accordance with the laws of the Republic of South Africa from time to time.

1.10 A reference to any statutory enactment shall be construed as a reference to that enactment as at the signature date and as amended or substituted from time to time.

1.11 If amounts or figures are specified in numerals and in words and if there is any discrepancy between the numerals and the words then the words shall apply.

1.12 The rule of construction that this agreement shall be interpreted against the party responsible for the drafting of this agreement, shall not apply and no provision herein shall be construed against or interpreted to the disadvantage of a party by reason of such party having or being deemed to have structured, drafted or introduced such provision.

## 2 APPOINTMENT

2.1 The customer hereby appoints and the company hereby accepts the appointment to provide the customer with the services.

2.2 The services shall be provided on the basis of the standard trading terms and conditions set out in this agreement.

## 3 PROVISION OF SERVICES

3.1 The company is neither a common carrier nor a public carrier in providing the services.

3.2 The provision of the services and specifically the transportation of the goods in terms thereof is undertaken at the sole risk and expense of the customer.

3.3 The company shall be entitled at any time and at its sole discretion to cede, delegate, assign and/or transfer the whole or any part of this agreement, including any single or combination of rights and/or obligations contained therein, to any other entity ("the other entity").

3.4 The company may at its election perform all or any business undertaken or provide advice, information or services on behalf of the customer, whether gratuitous or not, either itself or may procure that any other entity undertakes such business or provides such advice, information or services as the company may deem fit.

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3.5 Unless otherwise agreed in writing, the company in procuring the carriage, storage, packing or handling of goods or in concluding any contract with a third party 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 and when acting as agent for and on behalf of the customer shall be entitled to enter into any contract it deems necessary or requisite for the fulfilment of the customers instructions.

3.6 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.

3.7 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.

3.8 If, notwithstanding the provisions of 3.7 above, it is found that the company remains liable to perform any obligations not being performed by such third party, then to the extent that the term and conditions stipulated by such third party impose an obligation on the company that is more onerous than those imposed by this agreement, then such more onerous provision shall not apply as between the company and the customer and the provisions by this agreement terms and conditions shall have precedence, in all other instances the third party's terms and conditions shall apply.

#### 4 APPLICATION OF LAW

4.1 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 this agreement.

4.2 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.

4.3 If any term or condition contains herein conflicts with the law, the conflicting term or condition shall be deemed to be amended and/or altered to conform to such law, and such amendment and/or alteration shall not in any way affect the remaining provisions of these terms and conditions.

#### 5 COMPANY'S DISCRETION IN PROVIDING SERVICES

5.1 In the absence of specific instructions given timeously in writing by the customer to and accepted by the company:-

5.1.1 The company shall have the sole discretion to decide upon the timing, means, route, procedures, tariff rates, carriers, the arrangement, conveyancing, storage or handling of goods and any other matter, issue or question whatsoever relating to the rendering of the services.

5.1.2 The company shall not be obliged to 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.

5.1.3 Notwithstanding anything to the contrary herein contained, if at any time the company should in its sole discretion 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, including consequential damages, in consequence of doing so.

5.1.4 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 and accepted by the company, 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.

5.1.5 In any event, it shall always be within the company's sole discretion as to whether any instruction or request to the company, be accepted or performed by the company, notwithstanding any previous agreement to undertake or provide services to the customer and notwithstanding that the company may have granted any credit terms or facilities to the customer, expressly or by implication.

## 6 INSURANCE

6.1 The company shall not be under any obligation to insure the customer's goods.

6.2 If the customer requires the company to insure its goods the customer must request such insurance timeously in writing

6.3 Cost of insurance taken by the company on the request of the customer shall be for the customer's account.

6.4 Such insurance will be subject to the exceptions and conditions imposed by the insurance company or underwriter providing and underwriting such insurance and the company shall not be obliged to obtain separate cover for any excluded risks.

6.5 Unless otherwise agreed in writing prior to provision of the services the company shall not be under any obligation to obtain separate insurance in respect of separate consignments but may, at its sole discretion, insure all or any of such consignments under any open or general policy held by the company from time to time.

6.6 Should any insurer dispute its liability in terms of any insurance policy in respect of any goods, the customer 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.

6.7 Insofar as the company agrees to arrange insurance the company acts solely as agent for and on behalf of the customer and any insurance agreement will be between the customer and the relevant insurer.

6.8 Notwithstanding anything to the contrary herein contained the company shall not be liable for the failure to obtain any insurance cover, whether requested to do so by the customer or otherwise and the liability of the company in respect of any claim brought against the company arising out of or in connection with the provisions of this clause shall be subject to the limitation of company's liability as provided for in this agreement.

## 7 CUSTOMER'S WARRANTIES & UNDERTAKINGS

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7.1 The customer warrants and undertakes that:-

7.1.1 it is either the owner or the authorised agent of the owner of any goods in respect of which the customer request the services from the company and that each such person is bound by this agreement and that the company shall have the right to enforce against them jointly and severally, as co principal debtors, any liability of the customer in terms of this agreements or to recover from them any sums to be paid which upon proper demand have not been paid;

7.1.2 it has or will timeously furnish the company with all information relating to the rendering of the services;

7.1.3 all information and instructions supplied or to be supplied by the customer to the company is and shall be accurate, true and comprehensive;

7.1.4 in providing the information to the company the customer indemnifies the company against all claims, losses, penalties, damages (actual and consequential), expenses and fines whatsoever, whenever and however 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;

7.1.5 all goods will be properly, adequately and appropriately prepared and packed, stowed, labelled and marked, and shall be capable of withstanding the normal hazards inherent in the rendering of the services;

7.1.6 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 that the transport unit has been properly and competently loaded, the goods involved are suitable for carriage in or on the transport unit, and 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;

7.1.7 it will duly and diligently perform its obligations timeously as "time is continuously of the essence" for the performance of its obligations provided for in this agreement.

## 8 WARRANTIES AND REPRESENTATIONS BY THE COMPANY

8.1 The company makes no warranties and representations to the customer save as may be specifically provided herein or as notified in writing to the customer from time to time.

8.2 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 on behalf of the company 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.

## 9 AGENTS & SUBCONTRACTORS

9.1 Notwithstanding anything to the contrary contained herein, the customer agrees that all goods handled pursuant to the services rendered in terms hereof shall be dealt with subject to the terms and conditions, whether inconsistent or not,

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with this agreement, stipulated by the freight-forwarders, customs clearance agents, 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.

#### 10 GOODS REQUIRING SPECIAL ARRANGEMENTS

10.1 The Company, its employees, servants or agents shall not, without a prior written consent, receive in its possession, control, handle or deal with:-

10.1.1 bullion, coin, precious stones, jewellery, valuables, antiques, pictures, human remains, livestock or plants; and

10.1.2 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.

10.2 If the company agrees to provide services in regards to any of the goods and/or products referred to in 10.1:-

10.2.1 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 requirements of any authority or carrier;

10.2.2 the customer warrants 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.

10.2.3 the company shall not be liable for any damages (actual, consequential or contingent) 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.

10.3 If any of the goods referred to in 10.1 are placed into the company's control, whether or not in breach of this clause or not, such goods may, as the company in its sole discretion deems fit, 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.

#### 11 PERISHABLE GOODS

11.1 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:-

11.1.1 such goods have begun to deteriorate or are likely to deteriorate;

11.1.2 such goods are insufficiently addressed or marked;

11.1.3 the customer cannot be identified;

11.1.4 the goods have not been collected or accepted by the customer or any other person after the expiration of 21 (twenty one) 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.

11.2 Should any amount owing by the customer to the company in respect of any goods referred to in 11.1 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 (fourteen) 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.

## 12 THE ACCEPTANCE OF DELIVERY

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

12.1.1 the company shall be entitled to store the goods or any part thereof at no risk to the company and at the expense of the customer.

12.1.2 the company may deal with the goods in accordance with the provisions of 11.2.

## 13 WAREHOUSING

13.1 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 risk and expense.

13.2 All such warehousing activities shall be undertaken by the company in terms of and subject to this agreement and the company shall not be liable for any damages (actual, consequential or contingent) at common law or otherwise, as a bailee or deposittee.

## 14 COLLECTION OF EXPENSES AND C.O.D

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

14.2 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. Such payment is collected by the company at the customer's risk.

## 15 EXAMINATION OF LANDED GOODS

15.1 Where it is necessary for an examination to be held or other action to be taken on behalf of the customer in respect of any discrepancy in the goods which are landed or discharged from any vessel, aircraft, vehicle, or transport unit, the company shall not be liable or obliged to arrange such examination or inspection 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.

15.2 The company will not be responsible for examining or counting any goods received on behalf of the customer.

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

16.1 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, sub-contractors, 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 or its servants or agents in connection therewith or arising therefrom.

16.2 The company shall bear no liability in consequence of the fact that there may be a change in the rate of duty, port 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.

#### 17 RECOVERY OF DUTIES INCORRECTLY PAID

17.1 Where as a result of any act or omission by or on behalf or at the instance of the company and whether or not such act or omission was negligent, any duty, tax, levy, railage, port 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:-

17.1.1 within a reasonable time having regard to all the circumstances, and in particular to the time allowed for the recovery from the payee of the amount overpaid, advise the company that an incorrect amount has been paid or levied, and

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

17.2 The fact that the customer may not be aware that any such incorrect payment has been made shall not constitute a circumstance to be taken into account in calculating what is a reasonable time for the purpose of 17.1.1 .

17.3 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 17.1.1 and 17.1.2.

#### 18 PAYMENT BY THE CUSTOMER

18.1 The company shall be entitled to charge the customer a management fee and to recover from the customer all disbursements, levies, duties imposts or any other amounts and expenses incurred by the company in rendering the services.

18.2 Unless otherwise specifically agreed by the company in writing the customer shall pay to the company on or before due date in accordance with the credit facilities agreed upon between the parties all sums due to the company without



deduction or set-off, in South African Rands and free of exchange and bank charges and payments shall not be withheld or deferred on account of any claim or counterclaim which the customer may allege.

18.3 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 indebtedness owing by the customer to the company.

18.4 The customer shall be liable for interest on all overdue amounts payable under this agreement at a rate equal to 4% (four per cent) per annum above the prime overdraft rate per annum of the company's commercial bank from time to time, reckoned from the due dates of such amounts until full and final payment.

18.5 Should the client believe that the invoice issued is incorrect in any respect, the customer must notify the company thereof in writing within 5 (five) days of receipt of the invoice, failing which the invoice will be deemed to be correct in every respect and the customer will be precluded from raising any objections in respect thereof.

18.6 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 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.

18.7 In the event of the company having granted any credit terms or facilities to the customer whether in writing, verbally, impliedly or by established conduct and practice, which provide the customer a deferred period of time to effect payment of any amount due to the company, and in the event of the customer being in default of payment of any one or more amount due and payable, or being in default of any other term or condition on which such credit facility was granted, then notwithstanding any other term to the contrary wheresoever contained, the company shall be entitled to forthwith revoke such credit facilities and declare all amounts immediately due and payable and proceed for recovery of all amounts which would be due and payable to the company, were it not for the credit terms or facilities granted to the customer.

18.8 In the event of non-payment of any amount due by the customer to the company by due date, the company shall be entitled to immediately cease the performance of any services to be rendered on behalf of the customer, and the customer shall have no claim against the company for any loss, damage or harm suffered by the customer as a result thereof.

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

18.10 In addition to the interest provided for in 18.4 above, the customer shall be liable for an interest facility fee equating to 5% (five per cent) of the total overdue amount in the event of the customer failing to pay the fees and charges set out in 18.1 above within 10 (ten) days of due date(s).

18.11 The customer undertakes not to permit unauthorised use of its account with the company and waives the right to dispute the authority of anyone who instructs the company to render services on the customer's account.

## 19 DEBITING FEES AND DISBURSEMENTS

19.1 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.

## 20 ESTIMATES AND LANDED COSTS

20.1 The company shall be entitled at any time by notice to the customer to cancel or resile from any estimate or landed costing or executory agreement in circumstances where it becomes impracticable or uneconomical for the company to carry out the contract at the estimated rate and the customer shall have no claim whatsoever against the company for any loss that the customer might incur as a result of the company cancelling or resiling from the estimate or landed costing or executory agreement.

20.2 Without in any way limiting the provisions of 20.1 all estimates or landed costings 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.

20.3 Any increase provided for herein 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.

## 21 NO CLAIMS AGAINST COMPANY DIRECTORS AND EMPLOYEES

21.1 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 this agreement and hereby waives all and any such claims.

## 22 CUSTOMER'S INSTRUCTIONS

22.1 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 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 mater 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.

22.2 The customer shall not provide details of its account number to any unauthorised person. The unauthorised use of the customer's account shall be at the customer's own risk. The customer agrees that it shall not be entitled to refuse to pay any invoice for services rendered by the company on the grounds that the person who ordered the services on behalf of the customer did not have the authority to do so.

## 23 BENEFIT OF DISCOUNTS

23.1 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 render an account to the customer or principal for any such amounts received or receivable by it.

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## 24 LIEN

24.1 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 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.

24.2 In delivering the goods into the custody of the company or its agents for any purpose whatsoever, such delivery shall for the purposes hereof, be deemed to be delivery of the same in pledge and as security for all amounts owed to the company at that time or which become payable in the future.

24.3 In the event of the company utilizing the services or premises of any third party for any purposes including the transportation or storage of any goods, such third party shall be the agent of the company for purposes of exercising the company's right to retention under lien and/or pledge.

24.4 If any moneys due to the company are not paid within 14 (fourteen) 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.

24.5 The customer shall not be entitled to effect or allow to be effected any security in respect of the goods or the documents related to the goods, including without limitation, any general or special notarial bond, pledge, hypothec, right of retention or lien and pledge, without the prior written consent of the company. The lien and the pledge and right of retention in favour of the company, referred to in this clause, shall operate as a first and preferent claim against the goods and the documents relating to the goods and no other security shall rank prior to the company's lien, pledge or right of retention.

## 25 INDEMNITY BY THE CUSTOMER

25.1 Without prejudice to any of the company's rights and securities under this agreement 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 respect of any claims of a general or 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.

## 26 LIMITATION OF COMPANY'S LIABILITY

26.1 Subject to the provisions of 26.2 and 26.4, 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 unless such claim arises from a grossly negligent act or omission on the part of the company or its servants, and 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 the claim is not time barred by virtue of the provisions of 29 hereof or otherwise.

26.2 Notwithstanding anything to the contrary contained in this agreement, the company shall not be liable for any indirect, consequential and/or contingent loss arising from any act or omission or statement by the company, its agents, servants

or nominees, whether negligent or otherwise.

26.3 All handling, packing, unpacking, loading, unloading, palletising, de-palletising, warehousing and transporting of goods by or on behalf of or at the request of the customer, owner or the company are effected at the sole risk of the customer and/or the owner, and the customer indemnifies the company in respect thereof.

26.4 Should it be found that the company is liable to the customer in terms of the provisions of 26.1 above, any such liability of the company shall be limited to a claim sounding in money for the following respective amounts:-

26.4.1 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; and/or

26.4.2 the value of the goods declared for insurance purposes; and/or

26.4.3 double the amount of the fees raised by the company for its services in connection with the goods, but excluding any amount payable to subcontractors, agents and third parties; whichever is the lowest.

## 27 BREACH & CANCELLATION

27.1 If the company breaches any of its obligations contained in this agreement the customer may compel the company to rectify its breaches by giving a 30 (thirty) days written notice to do so.

27.2 The customer shall not be entitled to cancel this agreement pursuant to breaches by the company and the customer shall only have recourse to a claim for specific performance and/or a claim for damages as limited in terms of the provisions of this agreement.

27.3 The company may cancel this agreement at its sole discretion for whatsoever reason, including breaches by the customer, upon 7 (seven) days notice to the customer.

27.4 The company may avail itself to any of its common law rights and remedies in the event of breaches by the customer.

27.5 All legal costs incurred by the company in consequence of the company taking steps to enforce the agreement and/or instituting legal action against the customer and/or recovering monies due by customer to the company shall be recoverable by the company from the customer on an attorney and own client basis.

## 28 PERFORMANCE DURING DISPUTES

28.1 Should the customer allege that the company has breached its obligations provided for herein or there is a dispute as to the validity of, the formation or existence of, the carrying into effect of, the interpretation or application of the provisions of, the parties' respective rights and obligations in terms of or arising out of, the validity, enforceability, rectification, termination or cancellation, whether in whole or in part of this agreement then and in such event the customer shall nevertheless be obliged to perform its obligations in terms of this document as though the agreement exists, is enforceable and the company had performed properly and to the customer's satisfaction.

28.2 It is specifically recorded that 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 agreement may 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.

28.3 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.

28.4 The company shall be entitled at its option to institute any legal proceedings which may arise out of or in connection with this agreement in any Magistrate's Court having jurisdiction, notwithstanding the fact that the claim or value of the matter in dispute might exceed the jurisdiction of such Magistrate's Court in respect of the cause of action.

28.5 The company reserves the right to discontinue any account in respect of the customer and summarily to cancel any agreement in respect of which payments have fallen in arrears, and in the event of his rights being exercised all amounts owing shall immediately become due and payable on demand.

## 29 TIME BAR

29.1 No claim of any nature whatsoever and howsoever arising in respect of any loss or damage to goods, mis-delivery of goods, delay in delivery of any goods or in respect of any other damage, loss or cause of action whatsoever may be brought against the company or (subject in any event to the provisions of 26 above) any of its directors or employees, unless the customer has delivered a written notice, duly received by the company, of such claim specifying the full details of the claim within 5 (five) days of the end of any transit or of the cause of the claim coming to the customer's knowledge, or the date when such cause should reasonably have come to its knowledge (whichever is the earliest) nor may any such claim be brought after the expiry of the period of 9 (nine) months, calculated from the date of the cause of the claim coming to the customer's knowledge, or the date when such cause should reasonably have come to its knowledge, or the date of delivery of the goods or, in the event that goods have not been delivered, the date upon which the goods should have been delivered in the ordinary course of business (whichever is the earliest).

29.2 In addition to 29.1, it is recorded that the company shall in any event be discharged from all liability whatsoever and howsoever arising in respect of any services provided to the customer or which the company has undertaken to provide, unless summons or other legal process initiating legal proceedings is issued and served on the company within 9 (nine) months after the cause of action in respect of which any such alleged liability arose and immediate notice is given in writing to the company of such a suit having been brought.

## 30 DOMICILIUM CITANDI ET EXECUTANDI & NOTICE

30.1 The parties choose as their domicilia citandi et executandi their respective addresses set out in the credit application annexed hereto, or at such other address in the Republic of South Africa of which the party concerned may notify the others in writing provided that no street address mentioned in this sub clause shall be changed to a post office box or poste restante and such change of address will be effective 5 (five) days after receipt of the notice of the change, for all purposes arising out of or in connection with this agreement at which addresses all processes and notices arising out of or in connection with this agreement, its breach or termination may validly be served upon or delivered to the parties.

30.2 Any notice given in terms of this agreement shall be in writing and shall:-

30.2.1 if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;

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30.2.2 if transmitted by facsimile be deemed to have been received by the addressee on the day following the date of dispatch;  
30.2.3 if transmitted by electronic mail be deemed to have been received by the addressee on the date that the message enters the electronic information system of the addressee, subject to the company's rights provided in 31.1; unless the contrary is proved.

30.3 Notwithstanding anything to the contrary contained or implied in this agreement, a written notice or communication actually received by one of the parties from another including by way of facsimile transmission shall be adequate written notice or communication to such party.

### 31 SPECIAL CONDITIONS RELATING TO ELECTRONIC DATA

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

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

31.3 The company shall furthermore under no circumstances whatsoever be liable for any loss or damage arising from or consequent upon any failure and/or malfunction for whatsoever reason and regardless of negligence in whatever degree on the part of the company, of the company's computer systems and/or software programs, provided and/or operated by the company and/or by any person with whom the company conducts business and/or any third party and which systems shall include the company's electronic automated information services provided to its customers.

### 32 GENERAL TERMS

32.1 If any provision of the terms and conditions contained in this agreement 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 this agreement which shall not be affected and shall remain of full force and effect.

32.2 No variation of this agreement, including this 32.2, 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 this agreement 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 this agreement by the customer.

32.3 If any law comes into operation subsequent to the signature of this agreement which law affects any aspect or matter or issue contained in this agreement, the parties undertake to enter into negotiations in good faith regarding a variation of this agreement in order to ensure that neither this agreement nor its implementation constitutes a contravention of such law.

32.4 The expiration, cancellation or other termination of this agreement shall not affect those provisions of this agreement which expressly provide that they will operate after such expiration, cancellation or other termination or which of

necessity must continue to endure after such expiration, cancellation or other termination, notwithstanding that the relevant clause may not expressly provide for such continuation.

32.5 This agreement constitutes the whole Agreement between the Parties as to the subject matter hereof and no agreements, representations or warranties between the Parties regarding the subject matter hereof other than those set out herein are binding on the parties.

32.6 No latitude, extension of time or other indulgence which may be given or allowed by any party to the other party in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any party arising from this agreement, and no single or partial exercise of any right by any party under this agreement, shall in any circumstances be construed to be an implied consent or election by such party or operate as a waiver or a novation of or otherwise affect any of the parties' rights in terms of or arising from this agreement or estop or preclude any such party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

32.7 This agreement is signed by the parties on the dates and at the places indicated opposite their respective names.

32.8 This agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one and the same instrument.

32.9 The persons signing this agreement in a representative capacity warrant their authority to do so.

32.10 The company records all incoming and outgoing calls for quality and security purposes.

Signed for and on behalf of the customer at \_\_\_\_\_ (place)

this the \_\_\_\_\_ day of \_\_\_\_\_  
(date).

The signatory appends his/her signature hereto, guarantees his/her authority to act on behalf of the customer and declares that the customer shall be bound to these terms and conditions in this agreement and furthermore that at the time of signature hereof

the document was duly completed with no blank spaces upon it that still required completion.

\_\_\_\_\_  
\_\_\_\_\_

FULL NAMES OF PERSON AUTHORISED TO SIGN ON BEHALF OF THE CUSTOMER SIGNATURE (CUSTOMER)

\_\_\_\_\_