

**STANDARD TRADING TERMS AND CONDITIONS, 2017 (V1)**

**1 INTERPRETATION AND DEFINITIONS**

In these trading terms and conditions

- 1.1 the headings to the clauses are for reference purposes only and shall not aid in the interpretation of the clauses to which they relate;
- 1.2 unless the context clearly indicates a contrary intention, words importing anyone gender include the other two genders, the singular includes the plural and vice versa, and natural persons include created entities (corporate or unincorporated) and vice versa;
- 1.3 the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning namely –
  - 1.3.1 “Company” means CWT- Aquarius Shipping International (Pty) Limited, or any other entity within its Group, or under whatever trade name it may assume from time to time and includes the Company’s servants, agents and representatives.
  - 1.3.2 “Customer” shall mean (a) any person who signs a contract with the Company including any third party which becomes a party to the contract between the Company and the Customer, (b) any holder of a Warehouse Receipt to whom such Warehouse Receipt is issued by the Company, or (c) a person with whom the Company has agreed to provide services to.
  - 1.3.3 “Party/ies” means either or both, as the context requires, of the parties referred to in 1.3.1 and 1.3.2 above.
  - 1.3.4 “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;
  - 1.3.5 “Dangerous Goods” means goods which are
    - 1.3.5.1 Specified as Dangerous Goods in the special classification of Dangerous Goods issued by the South African Transport Services from time to time; or;
    - 1.3.5.2. In fact dangerous or potentially dangerous, inflammable, flammable or noxious or which by their nature are or may become liable to cause injury or damage to any person, goods or property whatsoever;
    - 1.3.5.3. Goods considered by the Company in its sole discretion to be dangerous, potentially dangerous, inflammable, flammable or noxious or which by their nature are or may become liable to cause injury or damage to any person, goods or

- 1.3.6 “Goods liable to cause injury or damage” shall include Goods likely to harbour or encourage vermin or pests.)
- 1.3.6 “Abnormal Goods” means Goods which by reason of their nature weight (mass) dimensions or otherwise requires special preparations to be made or unusual or special care treatment or precautions to be taken for the transport movement thereof or such Goods which the Company in its sole discretion regards as abnormal.
- 1.3.7 “Perishable Goods” means Goods subject to be liable to rapid deterioration such as fish, fruit, vegetable, plant, bread, meat, game, butter, milk, eggs or live animals and such Goods which the Company in its sole discretion regards as perishable.
- 1.3.8 “Point of Collection” and “Point of Delivery” shall unless otherwise specifically stated, be these places respectively endorsed on the documents relating to the Contract in question as being the place at which the Goods are to be collected or received by the Company or the place at which the Goods are to be delivered by the Company as the case may be.
- 1.3.9 “Business” means all and any business undertaken, including any advice, information or service provided, whether gratuitously or not, by the Company.
- 1.3.10 “the Standard Trading Conditions” means the terms and conditions hereinafter set out.
- 1.3.11 “Container” means an article of transport equipment constructed to the specifications of the International Standards Organisation, including all its ancillary equipment.
- 1.3.12 “The Contract” means any contract concluded between the Company and the Customer as the case may be.
- 1.3.13 “the Group” means the Company and any Company which is a holding Company or subsidiary of the Company from time to time which may render a service to the Customer.
- 1.3.14 “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.
- 1.4. The construction, validity and performance of the Standard Trading Conditions and any other terms and/or conditions agreed between the Parties and the determination of any other dispute between the Parties arising out of the alleged improper or non-performance thereof based on any cause or action whatsoever shall be governed in all respects by the law of the Republic of South Africa.
- 1.5. The headnotes and sub-headnotes hereof are inserted for convenience only and

- shall not be relevant for the purpose of interpretation.
- 1.6. Unless inconsistent with the context, an expression which denotes –
  - 1.6.1. the singular includes the plural and vice versa:
  - 1.6.2. any gender includes the other genders:
  - 1.6.3. a natural person includes an artificial person and vice versa.

**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 affected at the sole risk of the Customer and/or the owner, and the Customer indemnifies the Company accordingly. The Customer shall not claim against CWT for any event of loss which should be conventionally covered under an all risk cargo insurance policy, on the grounds that the Customer has failed to take out all-risks cargo insurance, or insufficient all-risks cargo insurance cover, or any applicable deductibles or its underwriter denying its claim under such all-risks cargo insurance or any other reasons.

**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. Thus, goods are handled subject to these terms and conditions contained herein.

## **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 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 -

- 9.1 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;

- 9.2 arrange for any particular goods to be carried, stored or handled separately from other goods.

The Customer warrants that it shall be responsible for any restriction or penalties which may be imposed by relevant authorities or any other jurisdiction for the Goods, for instance, limit of bonded storage may be imposed by such authorities or any other applicable rules; and Customer shall bear the responsibility for any cost and / or failure to comply with the laws or rules of such authorities which may result in fines, penalties or confiscation.

## **10 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.

## **11 COMPANY'S GENERAL DISCRETION**

- 11.1 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.
- 11.2 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.

## **12 APPLICATIONS OF STANDARD TRADING CONDITIONS AND OTHER PROVISIONS**

12.1 All and any Business undertaken, advice provided, information or services provided by the Company, whether gratuitous or not, is subject to the Standard Trading Conditions which shall be deemed to be incorporated in and be a part of any agreement between the Company and its Customer.

12.2 Except as provided herein, the Company shall not be liable for any matters whatsoever and howsoever arising, whether in respect of or in connection with the Goods, the Services, any instructions, business, advice, information or otherwise. Advice and information, in whatever form it may be given, are provided by the Company for the Customer only and the Customer shall defend, indemnify and hold harmless the Company for all liability, loss, damage, costs and expenses arising out of any other person or party relying on such advice or information.

## **13 CONTRACTOR AND NOT COMMON CARRIER**

- 13.1 It is hereby agreed that the Company is not a common or public carrier and the Company does not undertake the obligations or liabilities of a common or public carrier.
- 13.2 The Company may in its absolute discretion refuse to accept for carriage any Goods or any class of Goods and shall not be obliged to give any reason for such refusal.
- 13.3 The Company deals with goods only on the basis set out in the Standard Trading Conditions.
- 13.4 Unless the Parties agree, in writing, specifically to the contrary, the Standard Trading Conditions shall prevail in all instances regardless of the Customers Standard Terms and Conditions.
- 13.5 No agent or employee of the Company, other than a director or an individual authorised thereto by the board of directors, has the Company's authority to alter or vary the Standard Trading Conditions nor shall any act or omission of the Company be construed as a variation or waiver of any of the Standard Trading Conditions.
- 13.6 Any variation to the Standard Trading Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed to in writing by the Company. Any variation of the terms or conditions, whether in a proposal, purchase order, acknowledgement acceptance or otherwise, are rejected and shall not apply unless expressly agreed to in writing by an authorised representative of the Company, notwithstanding any contrary language proposed by the Customer that any act or failure to act by the Company, constitutes acceptance of any different or additional terms or conditions.
- 13.7 The Customer warrants that it has authority to engage the services of the Company and

to contract on the basis of the Standard Trading Conditions.

- 13.8 The person representing the Customer in contracting with the Company warrants that he is duly authorised and legally able to do so.
- 13.9 If any legislation is compulsorily applicable to any Business undertaken by the Company the Standard Trading Conditions shall as regards such business be read as subject to such legislation which shall be incorporated herein and if part of the Standard Trading Conditions be repugnant to such legislation such part shall as regards such business be void to that extent but no further.
- 13.10 The Company and the Customer may elect to enter into a Contract with these Standard Trading Terms and Conditions incorporated and forming part of the Contract. All Business between the Company and the Customer shall be governed by these Standard Trading Terms and Conditions together with the Contract. In the event of any conflict between the terms of the Contract and the Standard Trading Conditions, the terms of the Contract shall prevail. In the event of anything not being mentioned in the contract, the Standard Trading Terms and Conditions will govern the relationship between the Company and the Customer.
- 13.11 No indulgence or relaxation of rights granted by the Company to the Customer shall be prejudicial to or constitute a waiver of any of the Company's rights under the Standard Trading Conditions and any other terms and/or conditions agreed between the parties or at law and any waiver of rights by the Company shall not be construed as such unless reduced to writing and signed by the parties.
- 13.12 Each and every undertaking contained in the Standard Trading Conditions and any other terms and/or conditions agreed between the parties shall be capable of independent enforcement, thus enabling any court or other competent tribunal to enforce the remainder thereof should it adjudge any particular undertaking/s or portions thereof to be invalid.
- 13.13 The Standard Trading Conditions shall apply to any further or additional work carried out for the Customer.
- 13.14 The Company is entitled to amend the Standard Trading Conditions and to publish supplementary terms and conditions. All amendments and supplements shall take effect thirty (30) ordinary days from the date on which such amendment or supplement is made by the Company. As and when any such amendment or supplement is made such amendment or supplement shall be available at the offices of the Company. Whilst the Company will take reasonable steps to publicise amendments, its failure to do so shall not in any way prevent the amendment or supplement taking effect.

## 14 QUOTATIONS

- 14.1 The Company shall be entitled at any time by notice to the Customer to cancel or amend 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 amending the quotation or executory agreement.
- 14.2 Without in any way limiting the provisions of clause 14.1 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, port charges, labour and any other rates or charges which the quotation to the Customer was based, regardless of the cause of such change. Any revision of rates as aforesaid will be commensurate with the change in the currency exchange rate or the increase in such amounts payable. Any such increase shall, failing agreement between the parties, be determined by the then auditors of the Company or any other auditors nominated by the Company, who in such determination shall act as experts and not as arbitrators and whose decision shall be final and binding on the parties.
- 14.3 Quotations will remain open for 30 (thirty) days from the date on which the quotation is given by the Company to the Customer, unless otherwise stated.
- 14.4 All quotations by the Company for the performance of any services shall not be binding unless written acceptance thereof by the Customer has been received by the Company.
- 14.5 All quotations are given on the understanding that the work can be carried out in the method to be decided upon by the Company and without interruption or hindrance.
- 14.6 Quotation for classes of goods and destinations not covered by the Company's Permit issued under the Road Transport Act are given on condition that a Temporary Permit can be obtained under that Act.
- 14.7 Quotations are based on viscosity and/or dimensions and/or weight (mass) furnished by the Customer shall be subject to alteration at the option of the actual dimension and /or weight (mass) and/or viscosity and/or quality proving different from these stated.
- 14.8 Where necessary, the Company may delay the collection of a load until abnormal permits have been obtained or amended accordingly.

- 14.9 Unless specified otherwise within the body of any quotation given by the Company, reference to tonnage shall be deemed to refer to metric tonnes (i.e. 1 000 kilograms).

## 15 INSTRUCTIONS BY THE CUSTOMER

- 15.1 Wherever it is necessary, for the purpose of these conditions or any other purpose whatever, for instructions to be given to the Company, such instructions shall be recognised by the Company as valid, only if timeously given specially in relation to the matter in question. Standing or general instructions or instructions given late, even if received by the Company without comment, shall not be binding upon to Company.
- 15.2 In addition, in order to render such instructions valid, they shall either be given in writing or, if owing to the urgency of the situation it is not practicable to give same in writing they shall be given orally and thereafter confirmed in writing as soon as reasonably practicable.
- 15.3 The Company is under no obligation to enquire into the genuineness, authenticity or accurateness of any such instructions provided by the Customer to the Company.
- 15.4 If at any stage in any transaction the Company should consider that there is good reason, making it advisable in the Customer's interest to depart from any of the Customer's instructions, the Company shall be permitted to do so, and it shall not thereby incur any additional liability.
- 15.5 The Customer shall ensure that all instructions, information and documents are provided to the Company promptly to enable the Company to perform its services. The Customer shall ensure that all such instructions, information and documents provided are true and accurate.
- 15.6 The Customer shall be liable for all consequences arising from the provision of inaccurate, obscure or inadequate instructions, information and / or documents; any failure to furnish instructions, information and / or documents; or any failure to furnish any instructions, information and / or documents in time.
- 15.7 The Company shall not be obliged to furnish a confirmation for the receipt of such instructions, information and documents provided by the Customer.
- 15.8 The Customer is under no obligation to enquire into the genuineness, authenticity or accurateness of any such instructions provided by the Customer to the Company.

## 16 DESCRIPTION OF GOODS

- 16.1 The Customer shall prior to delivery of the goods to the Company provide the Company with a document giving a full description of the goods.
- 16.2 The Customer warrants the accuracy of that and all other descriptions, values and other particulars in respect of the goods furnished

to the Company for, inter alia, Customs, Consular and other purposes.

16.3 The Customer shall indemnify the Company against all losses, damages, expenses and fines arising from any inaccuracy or omission in that respect.

16.4 All goods in respect of which the Company does not receive a document giving a full accurate description thereof prior to their delivery to the Company shall be handled by the Company, its servants, agents and independent contractors entirely at the Customer's risk.

16.5 In all cases where there is a choice of tariff rates or premiums offered by carriers, warehousemen, underwriters, or others depending upon the value declared or the extent of the liability assumed by the carrier, warehousemen, underwriter or other person, it shall be in the entire discretion of the Company as to what declaration, if any, shall be made and what liability, if any, shall be imposed on the carrier, warehousemen, underwriter or other persons, unless express instructions in writing are timeously given by the Customer.

16.6 The Company shall not be obliged to make any declaration for the purpose of any statute or convention or contract as to the nature of goods or as to any special interest in delivery or otherwise unless expressly instructed by the Customer in writing. In particular, in the Republic of South Africa, the Company shall be under no obligation unless written instructions to that effect are given to the Company – to make any declaration or to seek any special protection or cover from the South Africans Transport Services, or from any other carrier, in respect of any goods which are, or fall within the definition by that body of "dangerous goods" or "goods liable to be stored in the open".

16.7 The Customer warrants and is bound by the accuracy of all descriptions, values and other particulars and / or information furnished to the Company in respect of the Goods for the purposes of customs clearance or any other purpose whatsoever.

16.8 The Company shall not be considered to be and shall not act as an expert in relation to the nature or quality of the Goods and shall not be required or be obliged to provide any notification to any party whatsoever in relation to the state, nature or quality of the Goods.

16.9 The Company shall be under no obligation to ensure that the samples of the Goods are identical with or match the Goods as described by the Customer or that the Goods conform to the description of the Goods provided by the Customer.

## 17 PACKING

17.1 Except where the Company is instructed to pack the goods the Customer warrants that all goods have been properly packed and sufficiently packed and/or prepared and not

to cause or be likely to cause any damage whatsoever.

## 18 CONTAINERS

18.1 The Company is not a container owner, lessor or operator and is, consequently not under any obligation to provide containers, unless agreed in writing.

18.2 The Customer warrants the suitability and safety of all Containers.

18.3 If a container has not been packed or stuffed by the Company, the Company will not be liable for loss of or damage to the contents thereof if caused by:

- The manner in which the container has been packed or stuffed;
- The unsuitability of the contents for transportation in containers;
- The unsuitability or defective condition of the container, or arose as a result of the peculiarity of the Goods; or
- The container not being properly sealed at the commencement of any transportation.

## 19 MARKING

19.1 The Customer warrants that all goods have been properly and sufficiently marked.

19.2 The Customer shall indemnify the Company against all losses, damages, expenses and fines arising from any inaccuracy or omission in that respect.

19.3 All goods which are not properly and sufficiently marked shall be handled by the Company, its servants, agents and independent contractors entirely at the Customer's risk.

## 20 INSPECTION

20.1 The Company shall at all times be entitled but not obligated to unpack any cargo to inspect same and establish the nature and sufficiency of the packing. The cost of unpacking and the repacking of the cargo shall be borne by the Customer.

20.2 The Company shall at all times be entitled but not obligated to inspect any cargo and shall be further entitled to refuse to accept any cargo whether packed or not which in its sole discretion appears in any way to be damaged or unsafe for handling, storage or carriage.

## 21 EXAMINATION OF LANDED GOODS

21.1 The Company is entitled but not obliged to examine or inspect or take any further action to check the Goods which are landed or discharged from any vessel, aircraft, vehicle, or transport unit unless specifically agreed to in writing. The Company shall not be liable to the Customer for any loss or damages howsoever arising, in the event that the carrier refuses to acknowledge the number or weight of the Goods that are forwarded by the Company as part of its services.

21.2 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.

21.3 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.

## 22 LOADING AND TRANSPORTATION

22.1 The Customer shall deliver the goods to the point of collection and shall if so required by the Company load the goods onto the vehicle designated to transport the goods.

22.2 The Customer shall accept the goods at the point of delivery and shall if so required by the Company load the goods onto or from the vehicle.

22.3 Nothing in the paragraph shall be construed as preventing the Company from loading or unloading the goods onto or from the vehicle.

22.4 The Company may at any time during any removal or transit, transfer Goods from vehicle to vehicle.

22.5 Goods left upon the Company's vehicle for any reason to suit the convenience of the Customer are held at the sole risk of the Customer.

22.6 Access to loading and off-loading sites shall be adequately prepared by the Customer prior to the arrival of the vehicle/load.

22.7 In all instances the Company receives Goods for shipment or transport, the Company shall be deemed to take the Goods as an authorised agent of the Customer and all costs shall be at the account of the Customer.

22.8 The non-availability of berthing or parking space or storage space, upon arrival of transport of the Company or the Customer, is considered to be a circumstance beyond the Company's control and no responsibility shall attach to the Company for failure to secure such place or space.

22.9 The Company is not responsible for any collection or holding of monies for the Customer or any third party's behalf in any event, for instance monies due on delivery of Goods shipped on cash-on-delivery terms.

## 23 ROUTES

23.1 The Company shall be entitled, in its sole discretion to determine or vary the means, procedures and routes to be followed in performing all or any of the services required.

## **24 DELIVERY**

24.1 A statement by the Customer as to the time of delivery of the Goods will not be binding on the Company and the Company will not be taken to guarantee the arrival time of the Goods as the Company shall arrange at its sole discretion at rate of speed at which Services shall be delivered.

24.2 In the event that the loading and/or unloading time under any bill of lading and / or charter party in respect of the Goods is inadequate regardless of the cause thereof, all costs resulting therefrom, including without limited to any demurrage charges shall be borne by the Customer, notwithstanding that the Company was the party that accepted or entered into the bill of lading and / or charter party from which such aforesaid costs arise.

24.3 Delivery shall end when the goods are tendered at the point of delivery upon the arrival of the vehicle at the point of delivery, and before the Consignment is unfastened or unsecured or unloaded.

24.4 If the Company is unable to effect delivery at the point of delivery due to circumstances beyond the control of the Company then the Company shall be entitled to deal with such goods in any manner which it, in its sole discretion, deems fit and such action taken by the Company shall be for the Customers expense and at the sole risk of the Customer.

24.5 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 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.

24.6 In the event that the Customer instructs the Company that the Goods for storage in a certain quantity will be delivered to the Company at a certain time, or the Goods for re-delivery in a certain quantity will be collected at a certain time and the Company arranges for labour and equipment to carry out such instructions of the Customer, the Customer shall reimburse the Company for any and all costs and expenses incurred by the Company if the Customer fails to deliver or collect the Goods or any part thereof or fails to deliver or collect the Goods or part thereof at the time stipulated by the Customer.

## **25 WAREHOUSING**

25.1 Pending forwarding and delivering goods may be warehoused or otherwise stored or

held at any place at the sole discretion of the Company at the Customers expense and such storage shall be at the sole risk of the Customer.

25.2 At least 2 (two) clear working days' notice shall be given by the Customer to the Company before the removal of any goods from the warehouse.

25.3 The Company shall not be bound to deliver from the warehouse any goods without an order in writing signed by the Customer who shall if required be present at the time of delivery and who shall give a receipt for the goods and the Company shall not be bound to deliver any goods without the production to it of the original inventory if any.

25.4 Unless otherwise agreed upon in writing by the Company, the Company shall be at liberty to decide where the Goods are stored. The Company shall at any time be entitled to transfer the Goods to another place of storage. The cost of any transfer and the risk of such transfer shall be borne by the Company, unless the transfer has been effected by the Company in its sole discretion in the interest of protecting the Goods, or by reason of circumstances beyond the Company's control in which case, whereby such transfer shall be effected at the sole and absolute discretion of the Company and at the sole risk and expense of the Customer. The Company shall notify that Customer of any other storage place, but failure to notify the Customer shall not give the latter any right of claim against the Company.

25.5 The following shall be applicable to Persons granted admittance to the place of storage by the Company at the request of the Customer:

- a) All persons visiting the place of storage including personnel of vessels and vehicles reporting to the warehouse, shall observe and fully comply with the Company regulations;
- b) Admittance shall be granted only during the working hours and with the attendance of the Company's employees;
- c) All expenses incurred in relation to the visit shall be paid to the Company by the Customer;
- d) The Customer shall be liable for any damage caused directly or indirectly by any Persons who are granted admittance to the place of storage including but not limited to any damage caused to the place of storage, the Goods and / or goods stored at the place of storage.

## **26 POSTAL DELIVERY**

26.1 Notwithstanding any prior dealings between the Company and Customer all documents and other matter (including cash cheques, bank drafts and other remittance) sent to the Company through the post shall be deemed not to have been received by the

Company unless and until they are actually delivered to the Company by the postal authorities or placed in the Company's post office box if so addressed.

## **27 GOODS REQUIRING SPECIAL ARRANGEMENTS**

27.1 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 27 shall be governed by the provisions of clauses 40 and 41.

## **28 GOODS REQUIRING PRIOR CONSENT OF THE COMPANY**

28.1 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.

28.2 If any such goods are delivered to the Company, whether or not in breach of the provisions of clause 28.1, 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.

**29 TRANSIT OF ABNORMAL LOADS**

- 29.1 Where the Company is required to transport or move Abnormal Goods it shall have the right to vary these conditions or add such further terms thereto as it in its sole discretion may deem fit.
- 29.2 Abnormal indivisible loads shall only be carried if:
  - 29.2.1 Permission if obtained from the Provincial Administration and local authorities concerned and in that regard the Customer shall give the Company adequate notice to obtain abnormal permits (exemptions).
  - 29.2.2 The Road and Bridges Authorities approve a suitable and direct route and do not subsequently vary such route.
  - 29.2.3 The Customer shall indemnify the Company against all liability for the cost of repairing any damage which may be caused by the passage of the load over private property, unless such damage is the sole cause of the Company's negligence.
  - 29.2.4 Unless otherwise agreed, the Customer shall bear the cost of any traffic escorts required by the authorities and any charges for raising overhead wires, switching off power, removing obstacles along the route, or any work which might be necessary for the passage of such loads.
  - 29.2.5 Access to off-loading sites shall be prepared prior to the arrival of loads, to enable safe passage to off-loading points.

**30 FRAGILE GOODS**

- 30.1 Notwithstanding anything to the contrary herein contained, the Company shall in no circumstances be liable for any damage or loss to any glass, glassware, mirrors, pottery, crockery, china, cast cement, plaster or asbestos finished or semi-finished products or goods or any other similar or allied goods of a fragile nature, unless a special declaration of such goods is made prior to acceptance thereof and such goods can be and are specifically insured prior to acceptance of delivery at the request and expense of the Customer against all such damage or loss.
- 30.2 Such insurance will be subject to the usual exceptions and conditions of the policy of the insurance Company or underwriters taking the risk. The Company shall be entitled should they so wish to declare the said goods on any open or general insurance policy. Should the insurers dispute their liability for any reason, the

Customer shall have the recourse against the insurers only and the Company shall not be under any responsibility or liability in relation thereto notwithstanding that the premiums upon the policy may not be at the same rate as that charged by the Company or paid to the Company by their Customer.

**31 PERISHABLE AND NON-PERISHABLE GOODS**

- 31.1 Perishable Goods which are not accepted at the point of delivery or which are insufficiently addressed or marked or are otherwise not identifiable, may be sold or otherwise disposed of as the Company shall see fit without notice to the Customer, sender or owner of the goods and payment or tender by the Company to the Customer of the nett proceeds of any such sale or disposal after deduction of costs due to the Company by the Customer, shall be a complete discharge of all responsibility on the part of the Company.
- 31.2 Non-Perishable Goods which cannot be delivered either because they are insufficiently or incorrectly addressed or otherwise not identifiable or because they are not collected or accepted by the Customer may be sold or returned at the Company's option at any time after the expiration of 21 (twenty one) days from the date of a notice in writing sent to the last known address of the Customer. A written communication from any agent or correspondence of the Company to the effect that the goods cannot be delivered for any reason shall be conclusive evidence of that fact. Return of the goods to the Customer or by the Company to the Customer of the nett proceeds of any sale after deduction of such costs due to the Company by the Customer, shall be complete discharge of all responsibility on the part of the Company.
- 31.3 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 –
  - 31.3.1 such goods have begun to deteriorate or are likely to deteriorate;
  - 31.3.2 such goods are insufficiently addressed or marked;
  - 31.3.3 the Customer cannot be identified;
  - 31.3.4 the goods have not been collected or accepted by the Customer or any other person after the expiration of 14 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.
- 31.4 Should any amount owing by the Customer to the Company 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 to a private buyer or on reasonable notice not exceeding 14 days by private treaty. The net proceeds of any such sale, after deducting therefrom all costs, charges, interest 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, interest 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.

**32 DANGEROUS GOODS**

- 32.1 Except under special arrangements previously made in writing the Company will not accept or deal with any noxious, dangerous, hazardous or inflammable or explosive goods or any goods likely to cause damage. Any person delivering such goods to the Company or causing the Company to handle or deal with any such goods (except under special arrangements previously made in writing) shall be liable for all loss or damage caused thereby and shall be deemed to have indemnified the Company against all penalties, claims, damages, costs and expenses arising in connection therewith and the goods may be destroyed or otherwise dealt with at the sole discretion of the Company or any other person or entity in whose custody there may be at the relevant time.
- 32.2 If such goods are accepted under arrangements previously made in writing they may nevertheless be so destroyed or otherwise dealt with if they become dangerous to people, other goods or property. The expression "goods likely to cause damage" includes goods likely to harbour or encourage vermin or other pests and all such goods as fall within the definition of "hazardous and dangerous goods" in the South Africans Transport Services Regulations.

**33 CONDITION**

- 33.1 The onus of establishing the condition or state of any goods at any time whatsoever shall at all times remain on the Customer.

### 34 INSURANCE

- 34.1 Should the Customer require insurance for any damage or loss to goods in transit and/or warehoused goods where the Company's liability for such damage is excluded by these standard conditions, the Company will refer the Customer's request directly to the Company's broker, details of the Company broker is available on request. The costs of such insurance will be paid by the Customer directly. The Company shall not incur any liability to the Customer or to any other person or party in the event that the Customer elects not to procure such insurance.
- 34.2 The Company shall not be liable for any loss, damage to or destruction of the Goods, or for any delay in the performance or non-performance of any terms of the terms set forth herein that arise as a whole or in part to any cause not within the control of the Company, whether now or hereafter existing, including without limitation, to the following:
- a) Terrorism, threat of war, declared or undeclared war, hostilities, warlike operations, civil war or civil commotion, terrorism, revolution or the operation of international law, governmental decree, requisitioning, legislation or expropriation, confiscation orders, court orders, injunctions or third party claims, official action, quarantine, civil disturbance, sabotage, hijacking, strike, lock-out, power breakdown, interference with communication, lack of transport, labour and / or storage accommodation;
  - b) Storm, fire, fog, lightening, flood, high or low tide, frost, freezing, ice, heat, smoke, explosion, water used for extinguishing fire, burst water piping, tempest, earthquake, typhoon or other extraneous calamity or Acts of God;
  - c) Subsistence and / or collapse of the road and / or any storage facility, water leakage or seepage, dampness, odour, stench, worms and rodents, damage through rats, mice, insects or other creatures;
  - d) The natural properties of Goods, inherent changes in quality, spontaneous deterioration, self-generated heat, combustion, explosion, drying, mould, yeasts, leaks, rot and mildew, rust and sweating;
  - e) Breakage of glass, whickered bottles and flasks, cast iron and other brittle articles, inadequate packaging;
  - f) Hardship for any other circumstances making performance unreasonably burdensome; and
  - g) All other causes which are beyond the control of the Company.
- 34.3 In the event that the Goods are destroyed while the Goods are in the custody of the Company whether resulting from any of the causes set forth above or otherwise, the

date of destruction of the Goods shall count as the date of delivery to the Customer and the fees due, including warehouse charges plus any increases therein and any other applicable costs, shall be calculated up to and including the date of destruction and shall be due and payable forthwith by the Customer.

- 34.4 Without prejudice to the generality of the other provisions in these terms and conditions, the Company shall not be liable for:
- (i) Any errors in the particulars relating to the freight, duties, and any other costs and expenses relating to the Goods which are stated to be payable and which are notified to the Company by third parties;
  - (ii) Any errors in the amount of freight, duties and any other costs and expenses which are charged to the Customer. In this regard, any demand for payment of the shortfall of any such freight, duties and any other costs and expenses shall be charged to and be payable by the Customer;
  - (iii) Any consequences arising from the refusal by any carrier to sign for the number of pieces or items, weight, or any other particulars relating to the Goods;
  - (iv) Any error in the particulars of the Goods as stated in any warrants, receipts, delivery orders, confirmations, release instructions or any other similar documents notwithstanding that such error is due to the want of care or negligence on the part of the Customers employees;
  - (v) Any loss, damage or expense whatsoever suffered or incurred by the Customer as a result of or in any way due to any difference between the time in South Africa or other applicable domicile and in any other parts of the world where the Customer is located. The Company shall not be obliged to provide or perform any Services outside of working hours.
- 34.5 All additional costs which may be incurred as a result of a force majeure event, including but not limited to transportation and storage charges, warehouse or yard rentals, demurrage for vessels or trucks, insurance premium, charges in respect of delivery from Warehouses, bonded or otherwise, shall be borne by the Customer.
- 34.6 It is specifically recorded that the Company's insurance does not cover damage resulting from Force Majeure events or events normally insured by an all risk insurance policy. The Customer should at all times take out their own insurance to cover both the Goods and any incidental charges pertaining thereto, including clearing, duties, vat etc.
- 34.7 It is specifically recorded that the Company shall never be held liable for indirect or

consequential losses (whether caused negligently or otherwise).

- 34.8 No contractual penalties are applicable when contracting between the Customer and the Company.
- 34.9 It is specifically recorded that the Company has not waived any of its insurer's rights to subrogation to claim any monies from another party who is legally liable for such loss.
- 34.10 It is agreed that should the Company insurers deem that the Company is not liable for any claim, the Customer indemnifies the Company against any further action / claims in this regard.
- 34.11 In the event that the Company insurers do determine that the Company is liable to the Customer, the Customer will only be entitled to the payment agreed to by the Company insurers (less the insurance deductible) and waives any additional claims or damages that it may have incurred.
- ### 35 RECOVERY OF DEBTS DUE TO THE COMPANY
- 35.1 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 an agent for a disclosed or undisclosed principal, as the Company in its absolute discretion deems fit.
- 35.2 Unless otherwise stipulated in writing and agreed to by the Company, the following expenses shall be charged to the Customer and shall be payable by the Customer and are not included in the Fees: postage expenses, facsimile, tele printer, telegram and telephone charges, stamp fees, import duties and excise, statistical duties, consular and attestation fees, customs formalities, costs of preparing shipping documents and obtaining bankers guarantees (if any) costs, costs of weighing, measuring, tallying, taring, sampling and repairing, bundling or re-bundling, packing or repacking, additional costs of heavy objects, insurance premiums, all extra costs such as warehousing charges, quayside charges, warfage charges or consignments missing a connection, demurrage for detention or delay of vessels, trucks or other transport, hire of tarpaulins, overtime pay, the cost of working outside the working hours, cost of providing watchmen and all other out of pocket expenses whatsoever. The Company shall issue a separate invoice in respect of such aforesaid expenses, fees, duties, whatsoever and the Customer shall pay all such expenses, fees, duties whatsoever to the Company upon receipt of invoice from the Company.
- 35.3 Unless otherwise agreed to by the Company in writing, the Customer shall pay to the Company immediately all freight, duties, and all other costs and expenses

relating to the transportation of the Goods and / or customs requirements upon arrival or dispatch of the Goods which are being received or forwarded by the Company respectively. Any risk of currency exchange fluctuations shall be borne by the Customer.

35.4 Where Goods are accepted and dealt with upon instructions to collect freight, duties, charges or other expenses from the consignee of the Goods or any other persons, the Customer shall remain liable for same if the relevant charges are not paid by such consignee or other person forthwith on the due date for payment or upon demand by the Company.

### **36 COLLECTION OF PAYMENT BY COMPANY FOR CUSTOMER**

36.1 Instructions to collect payment on delivery (C.O.D.) in cash or otherwise are accepted by the Company upon the condition that the Company in the matter of such collection will be liable for the exercise of reasonable diligence and care only.

36.2 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.

36.3 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.

### **37 COMPANY ENTITLED TO ACT AS AGENT OR PRINCIPAL IN CONTRACTING**

37.1 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.

37.2 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 or as a principal.

37.3 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.

37.4 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 –

37.4.1 carriage of goods by any route or means or person;

37.4.2 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.

37.4.3 carriage or storage of goods in break-bulk form in or on transport units as defined or with or without other goods of whatsoever nature.

### **38 SUB-CONTRACTING BY THE COMPANY**

38.1 Any instructions or business accepted by 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 instructing or entrusting the goods 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.

38.2 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.

38.3 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 or awarded against the Company, take such action against the third party on the Customer's behalf as the Customer may direct.

38.4 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 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.

### **39 SUNDRY GOODS RECOGNISABLE AS THE CUSTOMER'S**

39.1 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.

### **40 LIABILITY**

40.1 The Company shall not be liable for any loss or damage unless such loss or damage, a) Occurs whilst the goods are in the actual custody of the Company and under its actual control; and b) Is proved to have been directly attributable to the wilful act or omission of the Company.

40.2 The Customer shall provide to the Company the weight of any packed container or the weight of Goods to be handled by the Company on behalf of the Customer. In any event, the Customer shall at the least provide a signed weight verification in accordance with The SOLAS Container Weight Verification Requirement and shall undertake to keep the Company indemnified for any responsibility including but not limited to any punishment or fine from the government, customs or port authorities.

40.3 Subject to the limitation of liability provisions contained 41, the Company not be liable for any shortages in the weight of Goods on account of:

40.3.1 changes in moisture levels of the Goods ("Moisture Loss"); or

40.3.2 handling, sampling, re-packing, spillage, differences in quality or quantity, weight of the Goods lost or damaged, ("Handling Loss"), such Handling Losses do not exceed 5% (five percent) of the total value and/or quantity of original deposited of the Goods or the relevant Commodity (as applicable) in terms of the Class and Grade covered by the relevant Warehouse/Storage Facility Receipts, or such limit or criteria as may be agreed from time to time.

40.4 The liability of the Company shall not be engaged if the shortage or quantity of Goods lost or damaged or improperly released does not exceed 5% (five percent) of the quantity of Goods covered by official documentation issued at the time of discovery.

40.5 In all such event the burden of proving such wilful act or omission shall at all times rest upon the party alleging it.

40.6 Notwithstanding anything to the contrary contained herein or in any law the onus of proving the Customer has complied with the terms contained herein shall at all times be on the Customer as the case may be.

40.7 In the event of the Customer failing to supply or provide to the Company document description or other information whatsoever required to be supplied to the Company in terms hereof or in terms of any law custom or practice the Company shall not be responsible for any loss damage expense cost or claims of any nature whatsoever arising out of any failure on the



part of the Company to take any special or unusual precautions and the Customer hereby indemnifies the Company against any such loss damage expense cost and claims.

- 40.8 Notwithstanding anything to the contrary herein contained the Company shall in no circumstances be liable for any damage or loss to any glass, glassware, mirrors, pottery, crockery, china, asbestos case, cement or plaster products or goods or any other similar or allied goods of a fragile nature unless a special declaration of such goods is made to the Company in writing prior to the acceptance thereof.
- 40.9 It is the responsibility of the Customer to ensure that its premises are suitable for the handling of containers and trailers and those semi-trailers are parked on flat, hard surfaces. The Company will accept no liability for any incidents that might occur due to unsuitable premises or on or off loading facilities.
- 40.10 Notwithstanding anything to the contrary contained herein, the Customer indemnifies the Company in respect of all liability for any costs and/or damage and/or claims arising out of any incident whatsoever.
- 40.11 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:
- 40.11.1 any negligent act or omission or statement by the Company or its servants, agents or nominees ; and/or
- 40.11.2 any act or omission of the Customer or agent of the Customer with whom the Company deals; and/or
- 40.11.3 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
- 40.11.4 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
- 40.11.5 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
- 40.11.6 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
- 40.11.7 loss or non-delivery of any separate package forming part of a consignment or for loss from a package or an unpacked consignment or for damage or mis-delivery; and/or
- 40.11.8 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.

- 40.12 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.
- 40.13 Notwithstanding anything set forth herein or in any other document to the contrary, to the extent permitted by law, the Company shall not be liable to the Customer or any other person or party for any consequential, exemplary, incidental, or special damage, cover damages or lost profits, diminution in value, or any other damages whatsoever relating to or resulting from the transactions contemplated in contracting and / or these terms and conditions, regardless of whether the liability resulted from any general or particular requirement or need which the Company knew or should have known of and regardless of whether the claim in question is based on warranty, contract, negligence, strict liability, tort or otherwise. In the event that any term of the contract / agreement or of these terms and conditions is found unconscionable or unenforceable for any reason, or any exclusive remedy fails of its essential purpose, this provision of this waiver shall nevertheless continue in full force and effect.
- 41 MONETARY LIMITATION OF LIABILITY OF THE COMPANY**
- 41.1 Notwithstanding anything set forth herein or in any other document to the contrary, to the extent permitted by law, in the event that the Company is proven to be liable to the Customer for any amounts, in each case, regardless of whether the claim giving rise to such amount (s) is based on warranty, contract, negligence, strict liability, tort or otherwise, the maximum aggregate liability of the Company arising out of or relating to the agreement / contract or the transactions contemplated in these terms and conditions shall not exceed the lesser of:
- 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;
  - the value of the goods declared for insurance purposes;
  - the aggregate amount of fees raised by the Company for its services in connection with the goods, but excluding any amount payable to sub-contractors, agents and third parties; or
  - US\$ 50 000,00 (fifty thousand United States Dollars)

- 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 and 41 should not be governed by the limits referred to in clause 40 and 41 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. Written confirmation of increased insurance undertakings must be provided by the Company and agreed to in writing by both parties.

**42 GENERAL AVERAGE**

- 42.1 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 INDEMNITY BY THE CUSTOMER**

- 43.1 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-
- 43.1.1 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
- 43.1.2 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

- 43.1.3 to any carrier of the goods if the Company is the consignor or consignee of the goods; and/or
- 43.1.4 in respect of any goods referred to in the clause covering goods requiring consent of the Customer.
- 43.2 The Customer consents and agrees to indemnify, defend (with counsel acceptable to the Company), save and hold harmless the Company, its subsidiaries and affiliates, and their respective officers, directors, agents, employees, successors and assigns (collectively, the "Indemnities"), from and against any and all Losses (as defined hereinafter) of whatsoever kind and nature whether incurred by the Company or alleged by others, in warranty, contract, negligence, strict liability, tort or otherwise, arising in whole or in part as a result of, or in connection with, any of the following: (i) any breach of any representation or warranty set forth in the contract / agreement or these terms and conditions by the Customer, its directors, officers, employees, agents, subcontractors or parties on whose behalf the Customer is acting and entered into the contract / agreement (collectively, the "Customer parties"), (ii) negligence of any Customer party, (iii) any defect of any kind in the Goods, (iv) any act or omission of any Customer party, (v) violation of any Law by the Customer party, (vi) an Indemnitee following the instructions of any Customer party or implementing any such instruction, (vii) any servant, agent or subcontractor or any haulier, carrier, warehouseman, or other Person or party whomsoever who may at any time be involved with the Goods, (viii) any insufficiency of the packing of the Goods, (ix) any additional expenses of an exceptional nature, including without limited to any higher wages from the loading and / or unloading of the Goods outside of normal working hours shall not be included in the fees / costs, unless specifically stipulated in writing and agreed to by the Company, and all such expenses be borne by the Customer; (x) the Company's furnishing of a confirmation of receipt, (xi) inaccuracy of any descriptions, particulars and / or information concerning the Goods that is furnished by a Customer Party or on its behalf, even if such inaccuracy is not due (whether in part or whole) to any negligence or fault on the part of the Customer Party, (xii) any and all Taxes and other payments, (xiii) failure of any Customer party to pay any indebtedness, (xiv) any injury or death of any Person or damage to property caused by or resulting from the Goods and / or the action or inaction on the part of the Customer party, (xv) any claims that has become time barred, (xvi) any general average (voluntary sacrifice) or any claims of general average (claims for extra-ordinary expenditures incurred; (xvii) any claims arising pursuant to the Company delivering the Goods to a Port for loading onto a vessel from the time of delivery at the Port. As used herein, all "Losses" means any and all liabilities, obligations, suites, claims, losses, damages, judgements, awards, penalties, injuries, actions, costs, fees and expenses (including attorneys fees and disbursements and costs of investigations, litigation, alternative dispute resolution, settlement, judgement, interest and penalties).
- 43.3 The indemnification provided for herein is without prejudice to any other rights or remedies any Indemnitee may have under Law. Matters covered by the forgoing indemnity including by way of example, but not limited to: (i) damages for personal injury, disease or death; (ii) damages for injury to personal or real property; (iii) natural resource damages; (iv) any and all costs or recalls of such Goods or products, including by way of example, but not of limitation, costs incurred in transportation, labour, removal, installations, fines, penalties and attorney's fees, and (v) all expenses, costs and fees incurred by an Indemnitee as a result of any claim for indemnification hereunder.
- 43.4 To the extent permitted by Law, if any Customer party enters upon any premises owned, leased or controlled by an Indemnitee, such Customer Party hereby waives, and hereby agrees to indemnify, defend and hold the Indemnitees harmless from, any and all Losses that any such Customer Party may have or incur as a result of their presence on said premises whether or not arising out of any act or omission (whether negligent or not) of an Indemnitee.
- 44 CLAIMS**
- 44.1 NO CLAIMS AGAINST COMPANY DIRECTORS AND EMPLOYEES**
- 44.1.1 All operations and activities relating to the Goods carried out by the Company in the provision of the Services shall be at the Customer's sole expense and risk.
- 44.1.2 The Customer shall be liable for all losses, damage and expenses suffered or incurred by the Company as a result of any action or inaction on the part of the Customer, its employees, agents and / or contractors or which may in any way be caused by the Goods entrusted by the Customer to the Company.
- 44.1.3 The Customer undertakes that no claims 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 waive all and any such claims.
- 44.1.4 Claims must be received by the Company in writing within 7 (seven) days of delivery of goods or of the time when the goods should have been delivered.
- 44.1.5 In absence of such notice no claim of whatever nature shall lie or be enforceable against the Company from whatever cause arising nor shall such claim or any other dispute be capable of set off or otherwise constitute a defence to any claim by the Company against the Customer.
- 44.1.6 A certificate by any of the directors of the Company (whose appointment or qualifications it shall not be necessary to prove) as to the amount owing by the Customer and to the effect that the date of payment of such amount has arrived shall for the purposes of any action against the Customer hereunder for provisional sentence or otherwise be sufficient and satisfactory proof of the fact therein stated until the contrary shall have been proved.
- 44.1.7 In no event shall the Company be liable to the Customer or to any other Persons with respect to any loss, damage or decrease in quantity of the Goods or in general, on account of failure by the Company to comply with any of its obligations whatsoever or howsoever arising, unless written notice thereof is given to the Company as set out in 44.1.4 and suit is brought against the Company within twelve (12) months from the date of the event or occurrence alleged to give rise to a cause of action against the Company. In relation to any loss, damage or decrease in quantity of the Goods in so far as the Company has not notified the Customer of such loss, damage or decrease in quantity, the said period of twelve (12) months shall commence on the day after which the Company notifies the Customer of such loss, damage or decrease in quantity.
- 44.1.8 All goods (and documents relating to the goods) which come into the possession will come under the control of the Company shall be subject to a special and general lien and pledge for monies due to the Company by the Customer in respect of services and/or any other goods and for any other indebtedness due to the Company by the Customer however arising.
- 44.1.9 In the event of any sum(s) due to the Company as aforesaid not being paid on due date the Company shall be entitled to give to the debtor 14 (fourteen) days prior written notice that should payment in full of the debt not be made within the said period of 14 (fourteen) days the goods will be sold and if the said debt is not paid in full within the aforesaid period sell goods by public auctioneer otherwise as the Company in its sole discretion decides and apply the proceeds if such sale to the defrayment of any costs incurred in respect of the

storage and sale of the goods and thereafter in reduction of the said debt.

44.1.10 Should the Company decide to sell the goods otherwise than public auction it shall have the right to fix the price at which such goods are to be sold and neither the Customer nor any other person shall have the right to object to such price.

**44.2 CLAIMS BY THE COMPANY AGAINST THE CUSTOMER AND THIRD PARTY**

44.2.1 Interest shall be charged on all outstanding amounts at the rate of 2% above the prime rate of interest charged to the Company by its current bankers. A certificate by the Company's accountant as to the principal amount outstanding and the interest thereon shall be sufficient evidence as to the amount outstanding in respect of any debt due to the Company.

**44.3 CLAIMS AGAINST THE COMPANY BY THIRD PARTIES**

44.3.1 The Company hereby authorises the Customer to contract on its behalf with third parties so as to limit the liability of the Company to such parties.

44.3.2 To the extent that a Customer contracts with third parties to stipulate in favour of the Company so as to limit the liability of the Company to those third parties such stipulations are hereby accepted.

44.3.3 The Customer warrants that no claim shall be made against the Company in connection with the goods or dealing with them by any third party, including the servants, agents and independent contractors of the Company and shall indemnify the Company for any loss suffered by the latter in respect of such claim.

**44.4 CLAIMS AGAINST THE SERVANTS AND AGENTS OF THE COMPANY BY THE CUSTOMER**

44.4.1 The Customer undertakes that no claim shall be made by it against any servant, agent or independent contractor of the Company in connection with its dealings with the goods.

44.4.2 That undertaking is also hereby given by the Customer to each and every servant, agent or independent contractor of the Company and is hereby accepted by the Company acting on their behalf as their agent.

44.4.3 The Company hereby stipulates in favour of each and every one of its servants, agents and independent contractors that the Customer shall have no right of action whatsoever against any such servant, agent and independent contractor in connection with its dealings with the goods, which stipulation is hereby accepted by the Customer and is open for acceptance by the said servants, agents and independent contractors for an indefinite period of time.

**44.5 CLAIMS AGAINST THE SERVANTS AND AGENTS OF THE COMPANY BY THIRD PARTIES**

44.5.1 The Customer warrants that no claim shall be made against any servant, agent or independent contractor of the Company in connection with the goods by any third party.

44.5.2 The Customer shall indemnify any servant, agent or independent contractor of the Company for any loss suffered in that respect.

44.5.3 That indemnity is hereby given by the Customer to each and every servant, agent and independent contractor of the Company and is hereby accepted by Company acting on their behalf as their agent.

44.5.4 The Company hereby stipulates in favour of each and every one of its servants, agents and independent contractors that the Customer shall indemnify each and every servant, agent and independent contractor of the Company in connection with its dealings with the goods against claims by third parties, which stipulation is hereby accepted by the Customer and is open for acceptance by the said servants, agents and independent contractors for an indefinite period of time.

**45 COSTS**

45.1 Save where otherwise agreed between the Company and Customer, all work undertaken by the Company shall be charged for at the rate specified in the Company's quotation as amended from time to time.

45.2 The Customer, senders, owners and their agents, if any shall be liable for any duty tax, impost or outlays of whatsoever nature levied by the authorities at any port or place for or in connection with the goods, and for any payments, fines, expenses, loss or damage incurred or sustained by the Company in connection therewith.

45.3 The Company is entitled to retain and be paid all brokerages, commissions, allowance and other remuneration's customarily retained by or paid to persons engaged in the transport and storage of goods and shall not be obliged to disclose or account to the Customer for any such remuneration received by it from third parties.

45.4 The Company shall be entitled to charge the Customer a reasonable amount in addition to the fees / costs for any operations of an unusual nature and / or which requires additional time or effort to carry out.

45.5 The Company may at any time require pre-payment from the Customer for any costs and expenses which may be incurred in relation to the Services. Refusal of the Customer to provide such pre-payment may render the Company to be entitled to refuse, suspend, interrupt, or terminate the Services without providing any written notification. The Company shall at no event

be under any obligation to make any payments whatsoever to perform any Services on behalf of the Customer until the Company has received the required pre-payment.

45.6 The Customer shall be liable for any duties, taxes, imposts, levies, deposits or outlay or any kind whatsoever which are levied or imposed by the authorities at any port or place or Government operation in connection with the Goods (and for any payments, fines, expenses, loss or damage whatsoever incurred or sustained by the Company in connection therewith).

**46 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.

**47 ADDITIONAL CHARGES**

If any additional carriage or warehousing is necessary or if any further or additional work has to be carried out by the Company at the request of the Customer or otherwise, the necessity and charge for such further or additional work, carriage, warehousing etc. will be at the sole discretion of the Company.

**48 DUTIES, TAXES, IMPOSTS, LEVIES AND DEPOSITS**

48.1 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 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 there out.

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

48.3 The Customer owners and consignees and their agents, if any, shall be liable for any duty, tax, imposts or outlays of whatsoever nature levied by the Authorities at any port or place for or in connection with the goods, and for any payments, fines,

expenses, loss or damage incurred or sustained by the Company in connection therewith.

#### **49 RECOVERY OF DUTIES INCORRECTLY PAID**

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

49.1.1 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

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

49.2 The fact that the Customer may not be aware that any such incorrect payment has been made shall not constitute a circumstance to be taken into account in calculating what is a reasonable time for the purpose of clause 49.1. 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 49.1.1. and 49.1.12.

#### **50 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.

#### **51 PAYMENT**

51.1 Unless a written agreement to grant credit has been entered into by the Company terms of payment shall be cash on presentation of invoice.

51.2 Any costs due to the Company in terms of Paragraph 51 hereof or otherwise are payable without deduction or set off and without prejudice to the Company's rights against the Customer or any other person.

51.3 Should any payment(s) not be made in accordance with the applicable term(s) of payment as set out above the Customer will be liable for interest on such overdue amounts at the maximum rate of interest allowed by law.

51.4 Should the Customer default on any payment(s), the Company reserves the right to declare all invoice amounts due and payable without notice to the Customer and the Company shall have the right to charge a finance fee of 2% (or the highest rate allowed by law) per month, for any invoice that is past due.

51.5 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, set-off, counter claim or rebate whatsoever and payments shall not be withheld or deferred on account of any claim or counterclaim which the Customer may allege.

51.6 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.

51.7 The Customer warrants that the duly authorised person accepting these conditions will be personally liable in the event that the Customer fails to adhere to the payment terms thereof.

51.8 In the event that the Company resorts to legal proceedings or other means for the recovery of amounts due and payable by the Customer hereunder ("the Indebtedness"), the Customer shall. In addition to the Indebtedness and interest payment under clause 51.3 and 51.4, be liable to the Company for a further amount equivalent to 10% of the Indebtedness on account of all clerical expenses which may be incurred by the Company in resorting to such proceedings or other means in addition to the applicable legal fees as charged on an attorney and own client scale.

#### **52 LIEN**

52.1 All goods and documents relating to goods including bills of lading and import permits as well as refunds, repayments, claims and other recoveries, shall be subject to a special and general lien and pledge either for monies due in respect of such goods or for other monies due to the Company from the Customer, sender, owner, importer or the holder of the bill of lading or their agents, whether such lien and rights are afforded by law, these terms and conditions or otherwise. The lien and right of retention shall also extend to any insurance claims collected on behalf of the Customer by the Company, and as far as necessary, the right shall be deemed to have been transferred to the Company for further security.

52.2 If any amounts due to the Customer are not paid within 14 (fourteen) days after notice has been given to the person from whom

the monies are due that such goods or documents are being detained they may at the option of the Company be sold by auction, private treaty or otherwise, or in some other way disposed of for the value at the sole discretion of the Company and at the expense of such person and the nett proceeds applied in or towards the satisfaction of such indebtedness or part thereof. In order to give effect to such sale the Company may open and examine any part of the consignment.

52.3 At the option of the Company, the whole or any part of the consignment may be sold, either by public auction or by private treaty, and to apply the proceeds of any such sale, after deducting all the expenses thereof, in payment of or towards any sum due by the Customer to the Company. It is specifically agreed that the Customer waives the need (if any) of the Company to obtain a court order to dispose of the consignment and that the Company may do so at the expiry of the notice set out in 52.2.

52.4 The Company shall pay over the surplus (if any) of the proceeds of such sale, after application thereof in terms of 52.3. to the Customer, but shall otherwise be released from all liability whatsoever in respect of the consignment.

52.5 The Customer shall still be responsible for the storage fees and any other applicable fee for the Goods during detention under lien.

#### **53 WARRANTIES**

##### **53.1 WARRANTIES AND REPRESENTATIONS BY THE COMPANY**

53.1.1 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.

53.1.2 The Customer expressly warrants that they are either the owners or the authorised agents of the owners of the Goods and further warrants that they are authorised to accept and are accepting these terms and conditions

not only for themselves but also as agents for and on behalf of all other persons who are or may thereafter become interested in the Goods. Should this be disputed, the Customer shall still remain liable to the Company for all costs regardless of ownership.

- 53.1.3 Without prejudice to 53.1.2, the Company shall have the right to enforce these terms and conditions not only against the Customer but also against the sender and / or consignee and / or owner of the Goods to the extent permitted by Law.
- 53.1.4 All ownership and title over the Goods shall be established and verified by the Customer, or between the Customer and its client or other third party, and it is acknowledged and understood that the Company has no responsibility or liability with respect to any conflicting claims arising out of a dispute contesting rights of ownership or title to the Goods.
- 53.1.5 If the Customer is not the owner of all or any of the goods included in any consignment and is entering into a contract or is acting as agent for and on behalf of any other party then this agreement shall be deemed to have been concluded upon specific warranty given by the Customer that he has been duly and properly authorised to enter into this contract and to agree and accept the terms and conditions herein set out on behalf of such other party who shall be subject to and bound by all terms and conditions set out herein as if specifically named.
- 53.1.6 The Customer warrants the accuracy in respect of the information supplied to the Company by the Customer or any other person acting on the Customers behalf relating to the goods and any other matters incidental thereto.

## 54 JURISDICTION

- 54.1 These conditions are all agreements made by the Company with the Customer and/or its agents wherever made shall be governed by and constituted according to the laws of South Africa and shall be subject to the exclusive jurisdiction of the courts of the Republic of South Africa.
- 54.2 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 Supreme 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.

## 55 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.

## 56 DISPUTES

- 56.1 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 satisfaction.
- 56.2 The Customer's remedy, having performed its obligations as provide, 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.
- 56.3 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.
- 56.4 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.

## 57 TIME FOR PERFORMANCE BY THE CUSTOMER

- 57.1 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.

## 58 SEVERABILITY

- 58.1 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 of full force and effect.

## 59 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.

## 60 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.

## 61 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.

## 62 MISCELLANEOUS

- 62.1 If any provision of these terms and conditions, or the application thereof, becomes or is declared by a Court of competent jurisdiction to be illegal, invalid, void or unenforceable, the remainder of the terms and conditions shall continue in full force and effect and the application of such provision to the other Person or circumstances shall be interpreted as reasonably to effect the intent of these terms and conditions.
- 62.2 By requesting that the Company perform Services, and / or by executing the booking confirmation and / or other documentation to which these terms and conditions apply, the Customer consents and agrees to be bound by the terms hereof and represents and warrants the truth and accuracy of the matters set forth herein to be represented and / or warranted by the Customer.

## 63 EFFECTIVE DATE

- 63.1 For existing Customers, these terms and conditions become effective on 01 March 2017 and remain enforceable until further notice.
- 63.2 For new Customers, these terms and conditions become effective immediately and remain in force until further notice.