



B: STANDARD TRADING TERMS AND CONDITIONS

UPDATED OCTOBER 2021

1. INTERPRETATION

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 any one 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 “Applicant” means the party described as such in the Client Application Form in Clause A1;
 - 1.3.2 “TRANSGLOBAL” means Transglobal Cargo (Pty) Ltd, registration number 1997/013531/07;
 - 1.3.3 “Carrier” means any carrier of Goods whether by road, air, rail or sea;
 - 1.3.4 “the Company” means TRANSGLOBAL;
 - 1.3.5 “the Customer” shall include:

- 1.3.5.1 the Applicant;
- 1.3.5.2 the person who instructed the Company to perform the Services;
- 1.3.5.3 the person who accepts the Company's quotation;
- 1.3.5.4 any person who contracts with the Company either directly or through the services of an agent;
- 1.3.5.5 any person at whose request or on whose behalf the Company undertakes any business or provides any advice, information or Services;
- 1.3.5.6 the Owner of the Goods;
- 1.3.6 "Dangerous Goods" means Goods which by their nature may injure, damage, taint, or contaminate, or in any other way whatsoever adversely affect any person, Goods or property, including Goods likely to harbour or attract vermin or other pests, or any Goods defined as hazardous and/or dangerous in any tariff or rules for the handling or carriage of Goods by Transnet Limited, or so classified in the IMDG Code or any other code, legislation or regulations of the Republic of South Africa, or published by any other international organisation;
- 1.3.7 "Day" means a calendar day;
- 1.3.8 "the Goods" means any goods of any nature whatsoever;
- 1.3.9 "IMDG Code" means the International Maritime Dangerous Goods Code as amended and updated by the International Maritime Organisation;

1.3.10 “the Owner” means the owner of the Goods or any other persons who may have or who acquires an interest therein;

1.3.11 “the Services” includes but is not limited to, clearing, forwarding and customs services, loading, stowage, discharge, transport, distributing, warehousing and storage of Goods and any other operations and services performed or to be performed by the Company or any other person for or on behalf of the Customer and any advice given in respect thereof;

2. APPLICATION OF TRADING TERMS AND CONDITIONS

2.1 Subject to Clause B 3, all and any business undertaken or advice, information or Services provided by the Company, whether gratuitous or not, shall be undertaken or provided subject to these trading terms and conditions and any subsequent updated versions which shall form part of and be incorporated into any contract concluded by the Customer with the Company.

2.2 These trading terms and conditions and any subsequent updated versions shall apply to the exclusion of an other trading terms and conditions unless specifically varied in writing and signed by a director of the Company and shall at all times take precedence over any terms, conditions or stipulations contained in any of the Customer’s or Carrier’s documentation.

3. APPLICABLE LEGISLATION

3.1 If the Company is obliged, in the execution of any of its duties and/or responsibilities to comply with any common law, legislative enactment or regulation, or notice or permit ("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.

3.2 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.

3.3 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 to the Law, and such amendment and/or alteration shall not in any way affect the remaining provisions of these trading terms and conditions.

4. EXCLUSION OF OBLIGATIONS OF COMMON OR PUBLIC CARRIER

4.1 The Company deals with Goods only on the basis that it is neither a common carrier nor a public carrier, nor a bailee nor a depository for reward.

5. THE COMPANY'S DISCRETION IN THE ABSENCE OF INSTRUCTIONS

5.1 In the absence of specific instructions or specific instructions given timeously in writing by the Customer to the Company –

5.1.1 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;

5.1.2 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;

5.1.3 in all cases where there is a choice of tariff rates or premiums offered by any carrier, warehouseman, transporter, underwriter, or other person depending upon the declared value of the relevant Goods or the extent

of the liability assumed by the carrier, transporter, warehouseman, underwriter or other person, it shall be in the discretion of the Company as to what declaration, if any, shall be made, and what liability, if any, shall be imposed on the carrier, warehouseman, underwriter or other person.

6. CUSTOMER'S INSTRUCTIONS

- 6.1 The Customer's instructions to the Company shall always be in writing and shall be precise, clear and comprehensive and in particular, but without limitation, shall cover any valuation or determination issued by Customs in respect of any Goods to be dealt with by or on behalf of or at the request of the Company.
- 6.2 Instructions given by the Customer shall only be accepted by the Company if timeously given;
- 6.3 The Company shall not be obliged to accept any oral instructions, standing or general instructions or instructions given late, even if received by the Company without comment, but the Company may act thereupon in the exercise of its absolute discretion.

7. THE COMPANY'S GENERAL DISCRETION

- 7.1 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.
- 7.2 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.

8. INSURANCE

- 8.1 The Company shall have no obligation whatsoever to obtain any form of insurance cover on behalf of the Customer in respect of the Goods.
- 8.2 However and subject to the provisions of Clause B 8.6, the Company shall endeavour to place any insurance cover the Customer timeously and in writing instructs it to effect. Such insurance will be subject to such exceptions and conditions as may be imposed by the insurance company taking the risk and the Company shall not be obliged to obtain separate cover for any risk so excluded.
- 8.3 Unless otherwise agreed in writing, the Company shall not be under any obligation to obtain separate insurance in respect of separate consignments but may insure all or any of such consignments under any open or general policy held by the Company from time to time.
- 8.4 Insofar as the Company agrees to arrange insurance, the Company acts solely as agent for and on behalf of the Customer, which warrants that it has the authority of the Owner of the Goods, or the party who has the insurable interest in the Goods.

8.5 Should any insurer dispute its liability in terms of any insurance policy effected by the Company, the Customer concerned shall have recourse against such insurance company only and the Company shall not have any responsibility or liability whatsoever in relation thereto notwithstanding that the premium paid on such policy may differ from the amount paid by the Customer to the Company in respect thereof.

8.6 Notwithstanding anything to the contrary herein contained, the Company shall in no circumstance be liable for any consequences or any failure to obtain any insurance cover or any appropriate insurance cover, or otherwise, and the liability of the Company in respect of any claim brought against the Company arising out of or connected with the provisions of this Clause B 8, shall be regulated and determined in accordance with the provisions of Clauses B 36, B 38 and B 39 of these trading terms and conditions.

8.7 Notwithstanding the provisions of Clause B 8.1 the Company may in its sole discretion taking into account the nature of the Goods arrange for insurance cover in which case the provisions of Clause B 8.3 to B 8.6 inclusive shall also apply *mutatis mutandis*.

8.8 The Company may in its sole discretion taking into account the nature of the Goods, arrange for protection of the Goods, including the provision of security services, at the risk and expense of the Customer.

9. THE COMPANY'S OBLIGATIONS IN THE ABSENCE OF INSTRUCTIONS

9.1 Unless specific written instructions are timeously given to and accepted by the Company, the Company shall not be obliged to –

- 9.1.1 make any declaration for the purpose of any Law, 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;
- 9.1.2 arrange for any particular Goods to be carried, stored or handled separately from other Goods.

10. CUSTOMER'S UNDERTAKINGS

- 10.1 For all purposes hereunder the Customer shall be deemed to have in relation to the Customer's business, the Goods and the Services to be rendered by the Company in regard thereto, reasonable knowledge of all matters directly or indirectly relating thereto or arising there from including, without limitation, terms of sale and purchase and all matters relating thereto and the Customer undertakes to supply all pertinent information to the Company.
- 10.2 The Customer warrants that –
- 10.2.1 it is either the owner or the authorised agent of the Owner of any Goods in respect of which the Customer instructs the Company and that each such person is bound by these trading terms and conditions;
- 10.2.2 in authorising the Customer to enter into any contract with the Company and/or in accepting any document issued by the Company in connection with such contract, the Owner, sender or consignee is bound by these trading terms and conditions for itself and its agents and for any parties on whose behalf it or its agents may act, and in particular, but without

prejudice to the generality of the foregoing, it accepts that the Company shall have the right to enforce against them jointly and severally any liability of the Customer under these trading terms and conditions or to recover from them jointly and severally any sums due by the Customer which upon proper demand have not been paid;

10.2.3 all information and instructions supplied or to be supplied by it to the Company is and shall be accurate, true and comprehensive, and in particular, without derogating from the generality of the foregoing, the Customer shall be deemed to be bound by and warrants the accuracy of all descriptions, values and other particulars furnished to the Company for customs, consular and other purposes, and the Customer warrants that it will not withhold any necessary or pertinent information, and indemnifies the Company against all claims, losses penalties, damages, expenses and fines whatsoever, whensoever and howsoever arising as a result of a breach of the foregoing whether negligently or otherwise, including, without derogating from the generality of the foregoing, any assessment or reassessment;

10.2.4 all Goods will be properly, adequately and appropriately prepared and packed, stowed, weighed, labelled and marked, having regard inter alia to the implementation by or on behalf of the Company or at its instance of the contract involved, and the characteristics of the Goods involved and are capable of withstanding the normal hazards inherent in the implementation of such contract;

10.2.5 where Goods are carried in or on containers, trailers, flats, tilts, railway wagons, tanks, igloos or any other unit load devices specifically constructed for the carriage of Goods by land, sea or air, (each such device hereinafter individually referred to as "the Transport Unit") save where the

Company has been given and has accepted specific written instructions to load the transport unit –

- 10.2.5.1 the Transport Unit has been properly and competently loaded; and
- 10.2.5.2 the Goods involved are suitable for carriage in or on the Transport Unit; and
- 10.2.5.3 the Transport Unit is itself in a suitable condition to carry the Goods loaded therein and complies with the requirements of all relevant transport authorities and carriers.

11. RECOVERY OF DEBTS DUE TO THE COMPANY

- 11.1 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 the Owner, or if the Customer acts as agent for a disclosed or undisclosed principal from the Customer or the principal, as the Company in its absolute discretion deems fit.
- 11.2 The Customer agrees that in the event of the Company instituting legal proceedings against the Customer to recover amounts due in terms of any agreement or for breach of these trading terms and conditions or for enforcement of any other obligations or for the recovery of damages owed by the Customer to the Company in terms of such agreement, the Customer shall be liable for all legal costs incurred by the Company, on the scale as between attorney and own client, as well as collection commission and tracing agent's fees.

12. THE COMPANY ENTITLED TO ACT AS AGENT OR PRINCIPAL IN CONTRACTING

- 12.1 Unless otherwise agreed in writing, the Company shall carry out the Services as a principal, or to procure the Services as agent for and on behalf of the principal as it in its absolute discretion deems fit.
- 12.2 The offer and acceptance of a fixed price for the performance of any Services shall not itself determine whether such Services are to be arranged by the Company acting as agent for and on behalf of the Customer or as a principal.
- 12.3 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 on such terms as the third party may stipulate.
- 12.4 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 -
- 12.4.1 storage, warehousing, packing, lashing, stowage, tallying, 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.
- 12.4.2 carriage or storage of Goods in break-bulk form or in or on transport units as defined in Clause B 10.2.5, with or without other Goods of whatsoever nature.

13. SUBCONTRACTING

13.1 Any business entrusted by the Customer to the Company may, in the absolute discretion of the Company, be fulfilled by the Company itself, by its own servants performing part or all of the 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.

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

14. TERMS AND CONDITIONS OF AGENTS AND SUBCONTRACTORS

14.1 Notwithstanding anything to the contrary contained herein the Customer agrees that all Goods and Services shall be dealt with by the Company on the terms and conditions, whether or not inconsistent with these trading terms and conditions, stipulated by the carriers, warehousemen, government departments, and all other parties (whether acting as agents or subcontractors to the Company or not) into whose possession or custody the Goods may pass, or subject to whose authority they may at any time be, or who provide Services in respect of those Goods.

15. PERMITS AND CONSENTS

- 15.1 If any permit, consent or approval to handle the Goods or to provide the Services is required under any Law, none of the Company's obligations or duties shall take effect unless and until it obtains the relevant permit, consent or approval. The Customer shall provide all assistance and information required by the Company for the purpose of applying for or obtaining any such permit, consent or approval.

16. GOODS REQUIRING SPECIAL ARRANGEMENTS

- 16.1 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, including, without limitation, 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 B 16 shall be governed by the provisions of Clauses B 36, B 38 and B 39.

17. GOODS REQUIRING PRIOR CONSENT OF THE COMPANY

- 17.1 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 Dangerous Goods;
- 17.2 The Company is not obliged to contract for the carrying of Dangerous Goods on behalf of the Customer. Should the Company agree to handle any Dangerous Goods for any purpose, the Customer shall;

- 17.2.1 provide a full written disclosure of the nature and properties of such Goods to the Company;
 - 17.2.2 prior to loading, give the Company special written and detailed instructions to enable the Company to place such Goods for the proper safety and handling ;
 - 17.2.3 comply with all Laws governing the loading, off-loading, storage and carriage of such goods;
 - 17.2.4 shall ensure that such Dangerous Goods, or any Transport Unit or other case, crate, box, drum, canister, tank, flat pallet, package or other holder or covering of such Dangerous Goods, will bear the warning labels and declarations required in terms of any Law or other requirements of any authority or carrier and that the nature and characteristics of such Dangerous Goods and all other data required by such Law, or other requirements will be prominently and clearly marked on the outside cover of such Dangerous Goods.
- 17.3 If any such Dangerous Goods are delivered to the Company, whether or not in breach of the provisions of Clause B 17.1, such Dangerous 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 Company shall furthermore be entitled to recover from the Customer the freight in respect of any such carriage, notwithstanding the non-delivery of such Goods.

18. DISPOSAL OF GOODS

18.1 Without limiting or affecting any other terms of these trading terms and conditions, Goods (whether perishable or otherwise) in the care, custody or control of the Company or its sub-contractor or any third party may at the Customer's expense be sold or disposed of by the Company without notice to the Customer, shipper, consignee or any other party, if –

18.1.1 such Goods have begun to deteriorate or are likely to deteriorate;

18.1.2 such Goods are insufficiently addressed or marked;

18.1.3 the Customer cannot be identified;

18.1.4 the Goods have not been collected or accepted by the Customer or any other person after the expiration of 21 (twenty-one) days from the Company notifying the Customer in writing to collect or accept such Goods, provided that if the Company has no address for the Customer such notice period shall not be necessary, and payment or tender of the nett proceeds, if any, of the sale thereof after deduction of those charges and expenses incurred by the Company in respect thereof shall be equivalent to delivery of such Goods.

19. THE ACCEPTANCE OF DELIVERY

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

19.1.1 the Company shall be entitled to store the Goods or any part thereof at no risk to the Company and at the expense of the Customer.

19.1.2 the provisions of Clause B 20.2 shall apply mutatis mutandis.

20. DEMURRAGE AND STORAGE

- 20.1 The Company shall not be liable for any demurrage, storage charges, or any other charges incurred in respect of the Goods or the provision of the Services, howsoever arising, whether by delay or otherwise.
- 20.2 Where the Company pays any such demurrage, storage charges, and/or any other charges, such charges shall be refunded to the Company by the Customer on demand.
- 20.3 The Company may, on receipt of written request from the Customer, store or arrange for storage of the Goods on the Customer's behalf.
- 20.4 Where the Company arranges for the storage of the Customer's Goods, whether in terms of Clause B 20.3, or otherwise, the Goods are stored entirely at the Customer's expense and in terms of and subject to these trading terms and conditions and the Company shall not be liable at common law or otherwise as a bailee or depositee, and the Company and/or Carrier will not be liable to the Customer for any loss or damage to the Goods of whatsoever nature and howsoever caused.

21. COLLECTION OF EXPENSES AND C O D

- 21.1 When Goods are accepted or dealt with by the Company upon instructions to collect freight, duties, charges or other expenses from the consignee or any other person, the Customer shall remain responsible therefore if they are not paid by such consignee or any other person immediately when due.

22. SUNDRY GOODS RECOGNISABLE AS THE CUSTOMER'S

- 22.1 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.

23. EXAMINATION OF GOODS

23.1 Where it is necessary for an examination to be held or other action to be taken by the Company in respect of any discrepancy in the Goods which are received or discharged from any vessel, vehicle, or transport unit, no responsibility shall attach to the Company for any failure to hold such examination or to take any other action.

23.2 The Company will not be responsible for examining, weighing 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 examined, weighed or counted. Should the Company undertake to examine, weigh or count Goods so received, it shall incur no liability in respect of any error or inaccuracy in such examination, weighing or 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 examination, weight or counting of Goods in such circumstances.

24. DUTIES, TAXES, IMPOSTS, LEVIES AND DEPOSITS

24.1 The Customer, whether or not the cause of payment was due to an act, instruction or omission of the Company, Customer, shipper, consignee, or any other party, including without limitation the provision of incorrect information, shall be liable for any duties, taxes, imposts, levies, deposits or out-lays of whatsoever nature levied by or payable to the authorities, intermediaries, South African Revenue Services, or other parties at any port or place for or in connection with the Goods and whether at the time of entry and/or at any subsequent time and for any payments, fines, penalties,

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

24.2 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.

24.3 Without limiting the provisions of Clause B 24.1 and B 24.2, the Customer shall be liable for and hereby indemnifies the Company for any duties, taxes, imposts, levies, deposits, fines, penalties, Goods and/or Services including without limitation as a result of or in connection with hi-jacked Goods or tariff headings.

25. RECOVERY OF DUTIES INCORRECTLY PAID

25.1 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 –

25.1.1 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

- 25.1.2 do all such acts as are necessary to enable the Company to effect recovery of the amount incorrectly paid. 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 B 25.1.1. Should any act or omission by the Customer, whether or not such act or omission was due to ignorance on the part of the Customer, and whether or not such ignorance was reasonable or justified in the circumstances, prejudice the Company's right of recovery, the Customer shall be deemed not to have complied with the provisions of Clauses B 25.1.1 and B 25.1.2.

26. PAYMENT BY THE CUSTOMER

- 26.1 Unless otherwise specifically agreed by the Company in writing, the Customer shall pay to the Company, in cash, immediately upon presentation of account all sums due to the Company. Payment shall be made without deduction or set off and payment shall not be withheld or deferred on account of any claim or counterclaim which the Customer may allege.
- 26.2 The Company has the right to levy interest on overdue amounts at the maximum annual rate that may be levied in terms of the National Credit Act (if applicable), or the successor to such legislation, or at a rate of **8%** above the prime lending rate of ABSA Bank from time to time compounded monthly, whichever is the higher (lawful) rate.
- 26.3 All and any moneys received by the Company from the Customer shall be appropriated by the Company in its sole and absolute discretion in respect of any undisputed indebtedness owing by the Customer to the Company, notwithstanding that the Company might, when making payment, seek to appropriate the payment so made to any particular debt or portion of a debt.

- 26.4 In the event of the Company having granted any credit terms or facilities to the Customer in writing, which provide the Customer a deferred period of time to effect payment of any amount due to the Company, and in the event of the Customer being in default of payment of any one or more amount due and payable, or being in default of any other term or condition on which such credit facility was granted, and notwithstanding any other terms to the contrary whatsoever contained, the Company shall be entitled to forthwith revoke such credit facilities and declare all amounts immediately due and payable and proceed for recovery of all amounts which would be due and payable to the Company, were it not for the credit terms or facilities granted to the Customer.

27. DEBITING FEES AND DISBURSEMENTS

- 27.1 The Company shall under no circumstances be precluded from raising a debit and obtaining payment in respect of any fee or disbursements due to it notwithstanding the fact that a previous debit or debits, whether excluding or partly excluding the items subsequently requiring to be charged or recovered, had been raised and whether or not any notice had been given that further debits were to follow.

28. QUOTATIONS AND ESTIMATES

- 28.1 The Company shall be entitled at any time by notice to the Customer to cancel, amend or resile from any quotation, estimate or executory agreement in circumstances where it becomes impracticable or uneconomical for the Company to carry out the contract at the quoted or estimated rate and the Customer shall have no claim whatsoever against the Company for any loss that the Customer might incur as a result of the Company cancelling, amending or resiling from the quotation, estimate or executory agreement.

- 28.2 Without in any way limiting the provisions of Clause B 28.1, all quotations, estimates and agreements are subject to revision without notice, having regard to changes in currency exchange rates and upward movements in amounts payable by or on behalf of or at the instance of the Company to third parties including, without limitation, freight, surcharges, insurance premiums, equipment rental and labour which charges and upward movements take place after quotation or estimate. Any revision of rates as aforesaid will be commensurate with the change in the currency exchange rate or the increase in such amounts payable.
- 28.3 Quotations and estimates are based, inter alia, on weight, volume, quantities, densities, dimensions, mass, properties, and any other available technical data, loading and off-loading hours and any other relevant information supplied by the Customer and are accepted by the Company in good faith under representation of the Customer. Any variants therefrom shall entitle the Company to require the amount quoted to be adjusted to take into account such variants or to suspend, or cancel the quotation or estimate, without thereby incurring any liability whatsoever and in the event of any such cancellation, reserving to itself the right to claim from the Customer such damages as the Company may have suffered.
- 28.4 Any costs or charges, whether in the form of demurrage, detention, levies, surcharges, or otherwise, due to delays, consequences of strikes, interruptions, hindrance, local traffic, municipal regulations or the non production of necessary licences, permits or custom forms, will be charged to the Customer.
- 28.5 Where the volumes, quantities or scopes of work have increased over what has been quoted for, the Customer will be charged for any additions on a pro rata basis.

29. NO CLAIMS AGAINST THE COMPANY DIRECTORS AND EMPLOYEES

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

30. VARIATION OF THESE TRADING TERMS AND CONDITIONS

30.1 No variation of these trading terms and conditions, other than in any subsequent updated versions as provided for in Clause A 18 and B 2, shall be binding on the Company unless embodied in a written document signed by a duly authorised director of the Company.

30.2 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.

30.3 However the Company may vary or replace any clause, term or provision of these trading terms and conditions by giving notice thereof to the Customer in writing. Any such variation shall become effective from the date reflected in the said notice.

31. NON WAIVER

31.1 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.

32. GOVERNING LAW

32.1 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.

33. BENEFIT OF DISCOUNTS

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

34. LIEN

34.1 All Goods and documents relating to Goods including bills of lading and import permits, as well as all refunds, repayments, claims and other recoveries which come into the possession of or under the control of the Company, shall be subject to a special and general lien and pledge either for moneys due to the Company in respect of such goods or for other monies due to the Company from the Customer, sender, Owner, consignee, importer, or the holder of the bill of lading, or their agents, if any, from whatever cause.

34.2 In delivering the Goods and the documents relating to the Goods into the possession or control of the Company or its agents for any purpose whatsoever, such delivery shall for the purposes hereof be deemed to be

delivery of the same in pledge and as security for all amounts owed to the Company at that time or which become payable in the future. The Customer warrants that the Owner of the Goods and documents will be notified of and will consent to the Goods and documents being pledged to the Company as security. In the event of the Company utilising the services or premises of any third party for any purposes including the transportation, warehousing or storage of any Goods, such third party shall be the agent of the Company for the purposes of exercising the Company's right to retention under lien and/or pledge.

- 34.3 If any moneys due to the Company are not paid within 14 (fourteen) days after notice has been given to the person from whom the moneys are due that such goods or documents are being detained, the Goods or documents may be sold by public auction or by private treaty or in some other way disposed of for value at the sole discretion of the Company and at the expense of such person, and the nett proceeds (if any) applied in or towards satisfaction of such indebtedness.
- 34.4 The Customer shall not be entitled to effect or allow to be effected any security in respect of the Goods or the documents relating to the Goods including without limitation, any general or special notarial bond, pledge, hypothec, right of retention, or lien and pledge, without the prior written consent of the Company. The lien and pledge and right of retention in favour of the Company referred to above in Clauses B 34.1 and B 34.2, shall operate as a first and prior charge against the Goods and documents relating to the Goods and no other security shall rank prior to the Company's lien, pledge or right of retention.

35. INDEMNITY BY THE CUSTOMER

35.1 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 -

35.1.1 arising from the failure of any warranty given to the Company in respect of the Goods being true and correct; and/or

35.1.2 to any haulier, carrier, warehouseman, shipowner, charterer or other person or third party 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

35.1.3 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

35.1.4 to any Carrier of the Goods if the Company is the consignor or consignee of the Goods; and/or

35.1.5 in respect of, arising out of, or in any way related, to any Goods referred to in Clause B17, including without limitation any protective or environmental clean up measures taken with regard to the Goods.

- 35.1.6 to the South African Revenue Services, or any other customs, excise or revenue collection service, any amounts, including but not limited to VAT, duties, or penalties, which the Company may be liable to pay in respect of the Goods, arising out of any cause whatsoever, including without limitation the failure or inability of the Customer, the Owner of the goods, named importer or exporter, to acquit any Goods carried in bond or use of incorrect tariff headings.
- 35.2 Notwithstanding that the Company may seek recovery of any amount due to it, from any person other than the Customer, the Customer shall remain liable to make payment of the said amount to the Company upon demand, at any stage.

36. LIMITATION OF THE COMPANY'S LIABILITY

- 36.1 Subject to the provisions of Clause B 36.2 and Clause B 39, 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 -
- 36.1.1 any negligent act or omission or statement by the Company or its servants, agents or nominees; and/or
- 36.1.2 any act or omission of the Customer or agent of the Customer with whom the Company deals; and/or
- 36.1.3 any loss, damage or expense arising from or in any way connected with the marking, labelling, numbering, non-delivery or mis-delivery of any Goods; and/or

- 36.1.4 any loss, damage or expense arising from or in any way connected with the weight, measurements, contents, quality, inherent vice, defect or description of any Goods; and/or
- 36.1.5 any loss, damage or expense arising from or in any way connected with any circumstance, cause or event beyond the reasonable control of the Company, including but without limiting the generality of the aforesaid, strike, lock-out, stoppage or restraint of labour; and/or
- 36.1.6 damages arising from loss of market or attributable to delay in forwarding or in transit or failure to carry out any instructions given to the Company; and/or
- 36.1.7 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
- 36.1.8 damage or injury suffered by the Customer or any person whatsoever arising out of any cause whatsoever as a result of the Company's execution or attempted execution of its obligations to the Customer and/or the Customer's requirements or mandate;

Unless –

- (a) such claim arises from a grossly negligent act or omission on the part of the Company or its servants; and
- (b) such claim arises at a time when the Goods in question are in the actual custody of the Company and under its actual control; and
- (c) the Company receives written notice in terms of clause B 38.1.1 and 38.1.2.

- 36.2 Notwithstanding anything to the contrary contained in these trading terms and conditions, the Company shall not be liable for any indirect and consequential loss arising from any act or omission or statement by the Company, its agents, servants or nominees, whether negligent, grossly negligent or otherwise.

37. FORCE MAJEURE

- 37.1 Neither the Customer nor the Company shall be responsible for any delays, losses, damages, costs or the failure to perform any of their respective obligations under this agreement which arise directly from or are owing to *vis maior, casus fortuitus*, strikes, lock outs, break down or loss of machinery or equipment, hijacking, governmental orders, political disturbances, war, hostile actions, perils, dangers and accidents of the sea or other navigable waters or any other events or occurrences beyond the reasonable control of the parties.

38. TIME BAR

- 38.1 No claim of any nature whatsoever and howsoever arising in respect of the Services, any loss or damage to Goods, mis-delivery or non-delivery of Goods, delay in the delivery of any Goods or in respect of any other damages, loss or cause of action whatsoever (whether or not similar to, or in the nature of, the foregoing), may be brought against the Company or (subject in any event to the provisions of Clause B 29) any of its Directors or Employees, unless the Customer;
- 38.1.1 has given written notice of the claim to the Company, before or at the time of removal the Goods into the custody of the person entitled to take possession, or if the damage or loss is not apparent, then within 3 (three) working days of delivery at the place or port of destination; and

- 38.1.2 has provided the Company with a fully documented claim setting out the precise nature and quantum of the claim within 3 (three) months of the written notification required in clause 38.1.1.
- 38.2 In the absence of any written notification of damage or loss to the Company, the Goods shall be deemed *prima facie* to have been delivered in good order and condition.
- 38.3 In addition to Clause B 38.1 hereof, it is recorded that the Company shall in any event be discharged from all liability whatsoever and howsoever arising in respect of, any Services provided to the Customer or which the Company has undertaken to provide, or damage to or loss of Goods, unless summons or other process initiating legal proceedings is issued and served on the Company within 9 (nine) months after the cause of action in respect of any such alleged liability arose and immediate notice is given in writing to the Company of such legal proceedings having been brought.

39. MONETARY LIMITATION OF LIABILITY OF THE COMPANY

- 39.1 In those cases where the Company is liable in terms of Clause B 36, in no such case whatsoever shall any liability of the Company, howsoever arising, exceed R100,000.00 (One Hundred Thousand Rand).
- 39.2 If it is desired that the liability of the Company in those cases where it is liable to the Customer in terms of Clause B 36 should not be governed by the limits referred to in Clause B 39.1 written notice thereof must be received by the Company before any Goods or documents are entrusted to or delivered to or into the control of the Company (or its agents or sub-contractors), together with a statement of the value of the Goods. Upon receipt of such notice the Company may in the exercise of its absolute discretion agree in writing to its

liability being increased to a maximum amount equivalent to the amount stated in the notice, in which case it will be entitled to effect special insurance to cover its maximum liability and the party giving the notice shall be deemed, by so doing, to have agreed and undertaken to pay the Company the amount of the premium payable by the Company for such insurance. If the Company does not so agree the limits referred to in Clause B 39.1 shall apply.

40. GENERAL AVERAGE

40.1 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.

41. BREACH

41.1 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 (thirty) 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 or any agreement between the Customer and the Company.

41.2 No provision in these trading terms and conditions shall derogate from the Company's common law rights in the event that the Customer breaches any term or condition of the agreement.

41.3 the Company shall be entitled to cancel any agreement between it and the Customer by written notice if –

- 41.3.1 The Customer commits any breach of its obligations under the agreement and fails to remedy that breach within 7 (seven) days of it's being given written notice to do so;
- 41.3.2 The Customer commits any act of insolvency in terms of any applicable insolvency legislation;
- 41.3.3 The Customer is deemed to be unable to pay its debts in terms of any deeming provision of any applicable legislation relating to companies or insolvency;
- 41.3.4 The Customer compromises or attempts to compromise with its creditors;
- 41.3.5 Any provisional or final order is granted for the sequestration, winding up, bankruptcy or judicial management, of the Customer, or any equivalent order is made in terms of any applicable law with regard to the status of the Customer;
- 41.3.6 The Customer fails to satisfy any default or other judgment granted against it, within 10 (ten) days.

42. WARRANTIES AND REPRESENTATIONS BY THE COMPANY

- 42.1 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.

43. DISPUTES & PERFORMANCE

- 43.1 Should there be any dispute of any nature whatsoever between the parties in regard to any aspect, matter or thing relating to these trading terms and conditions and whether or not the Company has executed its obligations in terms of any agreement it has with the Customer, then and in such event the Customer shall nevertheless be obliged to perform its obligations in terms of any such agreement as though the Company had performed properly and to the Customer's satisfaction.
- 43.2 The Customer's remedy, having performed its obligations as provided in Clause B 43.1, shall be limited to a claim against the Company for repayment of either the whole or a portion of the amount which the Customer alleges constitutes an overpayment.
- 43.3 Without affecting the generality of Clauses B 43.1 and B 43.2 the Customer shall not be entitled to withhold payment of any amounts, by reason of any dispute with the Company, whether in relation to the Company's performance in terms of any agreement, or lack of performance or otherwise, after which payment the Customer's rights of action against the Company in terms of this Clause can be enforced. Until such payment is made, any rights that the Customer may have, shall be deemed not yet to have arisen and it is only the payment to the Company which releases such rights and makes them available

to the Customer in respect of any claim that he may have against the Company.

- 43.4 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.

44. DISPUTE RESOLUTION

- 44.1 The parties agree that any legal action or proceedings arising out of or in connection with these trading terms and conditions, or the granting of any credit, may at the Company's sole discretion, be brought in the relevant court in the country having territorial and civil jurisdiction, where the Company's registered office is situated at the commencement of the proceedings, and the Customer irrevocably submits to the non-exclusive jurisdiction of such court. The Company shall have the option within that jurisdiction, or any other competent jurisdiction, of proceeding either in the high court or an inferior court, notwithstanding that the amount of the claim may exceed the jurisdiction of that inferior court, to which jurisdiction the Customer hereby consents.

45. TIME FOR PERFORMANCE BY THE CUSTOMER

- 45.1 Time is of the essence for the performance by the Customer of all obligations owed to the Company in terms of any agreement which is governed by these terms and conditions.

46. SEVERABILITY

46.1 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 remain of full force and effect.

47. NOTICES

47.1 All notices in terms of these trading terms and conditions shall be given in writing and delivered by hand or sent by telefax. The Customer appoints as his/her/its *domicilium citandi et executandi* for all purposes under these trading terms and conditions its service address and telefax number provided by the Customer in terms of Clause A 2 of the Application Form. The Company appoints its *domicilium citandi et executandi* as **20 MERIDIAN DRIVE UMHLANGA RIDGE 4319.**

47.2 Either party may by written notice to the other party change its chosen address and/or telefax number for the purposes of Clause 47.1 to any other address or telefax number, provided that the change shall become effective on the fourteenth day after the receipt of the notice by the addressee.

48. SPECIAL CONDITIONS RELATED TO ELECTRONIC DATA

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

- 48.2 Under no circumstances whatsoever and howsoever arising (including negligence on the part of the Company or its employees) shall the Company be liable for any loss or damage arising from or consequent upon the provision by the Company to the Customer in whatever manner and/or form, of incorrect information, including electronically communicated information or data, where such incorrect information or data has been generated by and provided to the Company by any person with whom the Company conducts business and/or any other third party.
- 48.3 The Company shall furthermore under no circumstances whatsoever be liable for any loss or damage arising from or consequent upon any failure and/or malfunction for whatever reason and regardless of negligence in whatever degree on the part of the Company or the Company's computer systems and /or software programmes, provided and/or operated by the Company and/or by any person with the Company conducts business and/or third party, and which systems shall include the Company's electronic automated information services provided to its Customers.