

RÖHLIG-GRINDROD (PTY) LTD
REGISTRATION NUMBER 1998/25820/07
STANDARD TRADING TERMS AND CONDITIONS

1. INTERPRETATION

- 1.1 The headings to the clauses are for reference purposes only and shall not be used to interpret the clauses to which they relate.
- 1.2 Unless the context clearly indicates otherwise, references to one gender shall include the other two genders, the singular includes the plural and vice versa, and all terms shall apply equally to natural persons, juristic persons and other associations.
- 1.3 "**the Carrier**" means any transporter, whether by road, rail, sea or air, with whom the Company contracts, whether as principal or agent, to move Goods or provide services.
- 1.4 "**the Company**" means Röhlig-Grindrod (Pty) Ltd, Registration Number 1998/25820/07, or if it exercises its right under clause 2, the member of the group in respect of which it exercises its rights.
- 1.5 "**the Customer**" means any person at whose request or on whose behalf the Company undertakes any business or provides any advice, information or services, whether gratuitous or not.
- 1.6 "**the Goods**" means any goods handled, transported, stored or otherwise dealt with by or on behalf or at the instance of the Company or which come under the control of the Company or its agents, servants or sub-contractors on the instructions of the Customer, and include any container, transportable tank, flat pallet, package or any other form of covering, packaging, container or equipment or transport device used in connection with or in relation to such Goods, and included dangerous goods and goods of high value.
- 1.7 "**the Group**" means the Company and any company which is a holding company or subsidiary of the Company from time to time which may render services to the Customer in terms of clause 2.
- 1.8 "**the Owner**" means the owner of the Goods to which any business is concluded under these trading terms and conditions and any other person who is or may have or acquire any interest, financial or otherwise, therein.

2. GROUP SERVICES

The Company may in its discretion perform all or any business undertaken or provide advice, information or services itself or, alternatively, it may procure that any member of the Group undertakes such business or provides such advice, information or services upon and subject to the terms and conditions contained herein.

3. APPLICATION

- 3.1 All and any business undertaken or advice, information or services provided by the Company, is undertaken or provided subject to these trading terms and conditions.
- 3.2 These trading terms and conditions shall prevail over those of any Customer or other party with whom the Company contracts, even if any applicable terms and conditions contain a clause similar in meaning and intention to this one, or if such terms and conditions were concluded at any other time.
- 3.3 Where these trading terms and conditions are inconsistent with any applicable tariff, these trading terms and conditions shall prevail.
- 3.4 If any provision of these trading terms and conditions is unenforceable, then the Company shall be entitled to elect, at any time that such provision shall be severed from the remaining provisions of these terms and conditions, so as to allow the remaining provisions to remain of full force and effect. Such amendment shall not in any way affect the remaining provisions of these trading terms and conditions.
- 3.5 All Goods shall be dealt with by the Company subject to these terms and conditions, whether or not inconsistent with the trading terms and conditions stipulated by any Carrier, warehouseman, government department, authority or other party (whether acting as agent or sub-contractor to the Company or not) into whose possession or custody the Goods may pass, or subject to whose authority they may be at any time.

4. **TRANSPORT DOCUMENTS**

The Company shall be entitled to issue in respect of the whole or part of any contract for the movement of Goods, a bill of lading (combined transport, through transport, port-to-port) or waybill (seafreight or airfreight). Where a bill of lading or waybill has been issued, these trading terms and conditions shall continue to apply except insofar as they conflict with the trading terms and conditions of the bill of lading or waybill concerned. The Company shall be entitled to raise an additional charge as determined by the Company to cover potential additional obligations and administration arising from the issuance of the bill of lading or waybill concerned.

5. **ACTING CAPACITY**

- 5.1 The Company in, *inter alia*, procuring the carriage, storage, packing or handling of Goods shall be entitled to act either as agent for and on behalf of the Customer or as a principal, as it in its sole and absolute discretion deems fit, unless otherwise agreed in writing.
- 5.2 When acting as agent for and on behalf of the Customer, the Company shall be entitled to enter into any contract it reasonably deems necessary for the fulfilment of the Customer's instructions, in particular but without limiting the generality of this clause, contracts for the:
- 5.2.1 carriage of Goods by any route, means or person or vehicle;
 - 5.2.2 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 period of time;
 - 5.2.3 carriage or storage of Goods with or without other Goods.
- 5.3 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, and the Company is not bound by such agreement in such circumstances.
- 5.4 Where the Company provides services for Goods which are or shall be carried in accordance with a contract contained in or evidenced by a bill of lading or waybill, all

services including cargo booking services and forwarding services are arranged by the Company as an agent only, for and on behalf of the Customer.

- 5.5 Where the Company agrees to arrange insurance for the Goods, the Company does so as agent only, for and on behalf of the Customer.
- 5.6 The Customer authorises the Company to act as its agent in clearing Goods through customs, provided that a valid clearing instruction has been timeously provided to the Company by the Customer.
- 5.7 The acceptance of a fixed price by the Company for the provision of any service shall not determine whether the Company shall provide such service acting as agent for and on behalf of the Customer or as a principal.
- 5.8 The Company is neither a common carrier nor a public carrier.

6. **APPOINTMENT OF SUB-CONTRACTORS**

- 6.1 Where the Customer instructs the Company to perform any services, such services may be performed, in the absolute discretion of the Company, by its own servants performing part or all of the services, or by the Company employing third parties to provide part or all of the services on conditions that may be stipulated by, or negotiated with such third parties.
- 6.2 When the Company employs third parties to perform all or any of the functions which it has agreed to perform, the Company shall not first be obliged to obtain the Customer's approval for the employment of the third party.
- 6.3 Where the Company employs third parties to provide any services in accordance with clause 6.1 above, the Company shall have no responsibility or liability whatsoever to the Customer for any act or omissions of such third party, even though the Company may be responsible for the payment of any such third party charges.
- 6.4 The Company shall, if suitably indemnified against all costs (including attorney and own client costs) which may be incurred by or awarded against the Company, take such action against the third party on the Customer's behalf as the Customer may in writing direct.

7. CARRIAGE OF GOODS

- 7.1 Upon receipt of specific written instructions by the Customer, the Company shall arrange for the carriage and/or transport of Goods.
- 7.2 Any such carriage and/or transport, including storage and handling of the Goods, shall be arranged by the Company as agents for and on behalf of the Customer and shall be subject to the conditions stipulated by the Carrier contracted to carry the Goods.
- 7.3 The Company accepts no liability whatsoever and howsoever arising in respect of such carriage, provided that should it be found that the Company in any way retains any obligation or responsibilities with regard to the performance of the obligations by the Carrier, then the usual limitations of liability set out in these trading terms and conditions shall apply.

8. EXAMINATION, COUNTING AND INSPECTION OF GOODS

- 8.1 The Company is not obliged to examine, count or inspect any Goods in respect of which it renders any service to the Customer.
- 8.2 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 Goods which are landed or discharged from any vessel, aircraft, vehicle, or other transport unit, the Company shall not be liable for a 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 an examination is necessary.
- 8.3 In the event that the Company undertakes to examine, count or inspect any Goods in respect received from the Customer, it shall incur no liability whatsoever with regard to any error or inaccuracy in such counting, whether the error or inaccuracy is the result of negligence on the part of the Company or otherwise, and notwithstanding that the Company may have had the means and expertise to identify any discrepancies.
- 8.4 The Company shall be entitled to levy a charge on the Customer for the examination, counting or inspection of Goods.

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- 8.5 All Goods shall be deemed to have been received in good order and condition unless the Customer, within 3 days of receipt of the Goods in question, notifies the Company in writing to the contrary.
- 8.6 In the event that the Customer, upon delivery of the Goods, alleges that the shipping container seals have been tampered with, the Customer shall notify the Company immediately upon delivery, and the Company shall be entitled to nominate a representative to be present at the opening of the shipping container. In such an event, the Customer shall in no circumstances open the shipping containers without a representative of the Company in attendance.
- 8.7 The Customer shall not have any claim against the Company in the event that it fails to comply with clauses 8.5 and 8.6 above.

9. **CUSTOMER'S INSTRUCTIONS**

- 9.1 The Customer shall provide sufficient and executable instructions, in writing, to the Company for the provision of services, to enable the Company to carry out the instructions and provide the services.
- 9.2 Such instructions shall in particular, but without limitation, cover any valuation or determination issued by any customs & excise authority in respect of any Goods to be dealt with by or on behalf of or at the request of the Company.
- 9.3 Instructions given by the Customer shall be recognised by the Company as valid only if precise, clear and comprehensive, and timeously given specifically in relation to a particular matter. Oral instructions must be confirmed in writing by a representative of the Company who is duly authorised to do so.
- 9.4 Oral instructions which have not been confirmed in writing by a duly authorised representative of the Company, 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.

10. ABSENCE OF INSTRUCTIONS

10.1 Unless the Customer timeously provides precise, clear and comprehensive written instructions to the Company:

10.1.1 the Company shall, in its reasonable discretion, decide when to perform or procure the performance of any or all of the actions which may be necessary or requisite for the performance of its services to the Customer;

10.1.2 the Company shall in its reasonable discretion decide the means, route and procedure to be followed by it in performing any of the acts or services it has agreed to perform. In the event that there is a choice of tariff rates or premiums offered by a Carrier, warehouseman, underwriter or any other person which choice depends upon the declared value of the Goods in question for the extent of the liability to be assumed by the Carrier, warehouseman, underwriter or other person, it shall be in the sole and absolute discretion of the Company as to what declaration shall be made, and what liability shall be imposed on the Carrier, warehouseman, underwriter or other such person.

10.1.3 the Company shall not be obliged to arrange for any Goods to be carried, stored or handled separately from other Goods;

10.1.4 the Company shall not be obliged to make any declaration as to the nature or value of any Goods or as to any special interest in delivery, and shall be under no obligation to make any declaration or to seek any special protection or cover from any Carrier in respect of any Goods which are, or fall within the definition ascribed thereto by that body of dangerous Goods or other Goods which require special conditions of handling or storage.

11. SPECIAL INSTRUCTIONS

11.1 The Customer shall not, without giving written notice to the Company of a temperature range to be maintained, and the nature of the Goods, deliver for transportation any Goods that require specific temperature control.

11.2 Where a temperature-controlled container has been packed by the Customer, or a third party on its behalf, the Customer undertakes that:

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- 11.2.1 the container has been appropriately pre-cooled or pre-heated;
 - 11.2.2 the Goods have been properly packed into the container; and
 - 11.2.3 the container's thermostatic controls have been properly set.
- 11.3 The Company shall not be liable for any damage or loss to the Goods which is caused by the Customer's failure to comply with clause 11.1 and 11.2 above, and the Company shall be entitled to refuse receipt of such Goods, or otherwise destroy or deal with the Good as it deems fit, at the risk and expense of the Customer.

12. **SPECIAL AUTHORISATION**

- 12.1 The Customer acknowledges that prior authorisation must be obtained from the relevant authorities in certain countries prior to the shipment of Goods. In the event that the Customer intends to ship Goods to any such country, it must ensure that it duly furnishes the Company with all necessary documentation in order to enable the Company to ship the Goods.
- 12.2 If the Customer fails to provide the Company with any such documentation or authority timeously, alternatively, if the relevant customs authority refuses to grant authorisation in respect of the Customer's Goods, the Company shall not be obliged to ship such Goods onto the vessel. Furthermore, the Customer shall be liable for all costs, damages (direct and indirect), expenses, penalties, forfeiture, demurrage and disbursements resulting therefrom.

13. **GENERAL DISCRETION**

- 13.1 Notwithstanding anything to the contrary contained in these trading terms and conditions, if at any time the Company should in its reasonable discretion consider it necessary to depart from any of the Customer's instructions, the Company shall be entitled to do so and shall not incur any liability as a result.
- 13.2 If events or circumstances come to the attention of the Company, its agents, servants or sub-contractors which, in the opinion of the Company in its sole discretion, make it wholly or partially impossible or impracticable for the Company to comply with the

Customer's instructions, the Company shall take reasonable steps to inform the Customer of such events or circumstances and to seek further written instructions.

- 13.3 If such further written instructions are not timeously received by the Company, the Company shall, at its sole discretion, be entitled to detain, return, store, sell, abandon or destroy all or part of the Goods concerned at the risk and expense of the Customer, and the Customer shall indemnify the Company and hold it harmless for any claims arising therefrom.

14. **WARRANTIES**

14.1 The Customer warrants that:

14.1.1 it is either the Owner of the Goods or the authorised agent of the Owner of any Goods in respect of which the Customer instructs the Company;

14.1.2 it is authorised to agree to these trading terms and conditions on behalf of any person or company that it represents;

14.1.3 in the event that the Customer acts as the authorised agent of the Owner of the Goods, that the Owner is bound by these standard terms and conditions;

14.1.4 its annual turnover exceeds the thresholds set out in the Consumer Protection Act 68 of 2008 and the National Credit act of 34 of 2005, and, in any event, warrants that its annual turnover exceeds R3million per annum;

14.1.5 if the Customer is a close corporation or limited liability company, then its members and/or directors personally guarantee, jointly and severally, the due performance of all the obligations of the Customer to the Company and the representative of the Customer warrants that he is duly authorised to bind such members and/or directors and act as the Customer's agent in all his dealings with the Company;

14.1.6 all information provided is accurate and comprehensive and no necessary or pertinent information has been withheld, and the Customer indemnifies the Company against all claims, penalties, fines, damages (direct and indirect) and expenses arising as a result of any breach of this undertaking;

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- 14.1.7 the Goods concerned are suitable for the type and mode of carriage contemplated in or on the transport device concerned, and that the transport device is in a proper condition to carry the Goods safely and complies with the requirements of all relevant transport authorities and Carriers;
- 14.1.8 the Goods comply with all relevant laws and regulations;
- 14.1.9 the Goods are accompanied by all necessary completed documents, save to the extent that the Company has undertaken to prepare or procure this, failing which the Company shall be entitled to withhold delivery until the document has been provided;
- 14.1.10 the Goods are appropriately stowed, marked, and labelled, and properly packed to withstand handling and storage;
- 14.1.11 it has the requisite International Maritime Dangerous Goods Code (IMDG) certification to handle hazardous Goods, where applicable.
- 14.1.12 no claims shall be made against any director, member, servant, employee or agent of the Company in their respective personal capacities which imposes or attempts to impose upon them any liability in connection with the rendering of any services which are the subject of these trading terms and conditions or any act or omission arising during the course and scope of their employment, and it hereby waives all and any such claims.
- 14.2 No warranties or representations by the Company to the Customer shall be valid or binding unless expressly contained in writing and made by a representative of the Company with the actual authority of the Company to do so, in response to a written enquiry specifying accurately and in complete detail what information is required.

15. VALUABLE GOODS, LIVESTOCK AND BLOOD STOCK

- 15.1 The Company shall not accept, deal with or handle bullion and precious metal objects, precious stones, bank notes, coins, cheques, credit notes, bonds, negotiable documents and securities, jewellery, works of art or antiques (except where part of a household and personal effects movement), blood stock and livestock, plants or

human remains, unless prior express written agreement has been given on its behalf by a duly authorised representative.

- 15.2 In the event that such Goods are dealt with without such express prior written agreement, the Company shall incur no liability whatsoever for these Goods, even if any loss or damage is caused by its gross negligence. If, for any reason, the Company is nevertheless found liable, the usual limitations of liability set out in these trading terms and conditions shall apply.

16. HAZARDOUS OR DANGEROUS GOODS

- 16.1 The Company shall not be obliged to accept into its 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 and all such Goods likely to fall within in the definition of "hazardous or dangerous goods" in terms of the South African Transport Services Regulations (published in terms of section 73 of Act 65 of 1981) International Maritime Dangerous Goods Code, as amended from time to time, unless the Company's specific written consent is first obtained by the Customer.
- 16.2 The Customer warrants that such Goods, or the case, container, crate, box, drum canister, tank, flat, pallet, package, other specialist packaging or other holder or covering of such Goods shall 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 shall be prominently and clearly marked on the outside cover of such Goods.
- 16.3 If any such Goods are delivered to the Company, whether or not in breach of the provisions of clause 16.1, 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.

16.4 The Customer indemnifies the Company against all loss, liability or damage suffered by the Company as a result of the Customer's failure to comply with clauses 16.1 to 16.3 above.

17. PERISHABLE GOODS

17.1 Goods including but not limited to perishable goods 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:

17.1.1 such Goods have begun to deteriorate or are likely to deteriorate, or are insufficiently addressed or marked; or

17.1.2 the Customer cannot be identified;

17.1.3 the Goods have not been collected or accepted by the Customer or any other person after the expiration of 7 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.

17.2 Should any sum 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 without further notice to the Customer and without first obtaining an order of court, to sell all or any of the Goods by public auction by private treaty. The net proceeds of any such sale, after deducting all costs, charges and expenses incurred by the Company, shall be applied in reduction or discharge as the case may be, of the Customer's obligations to the Company in respect of such Goods, but without prejudice to the Company's right to recover from the Customer any balance which may remain owing to the Company.

18. ABANDONED GOODS

- 18.1 If delivery of the Goods is not accepted by the Customer, consignee or party nominated by the Customer at the time and place agreed by the Company and the Customer, consignee or party nominated by the Customer, then the Company may accept that the Customer has abandoned the Goods.
- 18.2 The Company may store or destroy any abandoned Goods, or any part thereof, at the Customer's sole risk and expense. The Company shall not be liable for any damages (direct or indirect) which the Customer may suffer as a result of such storage.
- 18.3 The Customer hereby consents to the Company selling, or abandoning to Customs (and in that event, recovering from the Customer all related costs), or destroying, all or any of, the abandoned Goods and recovering all sums which the Customer owes to the Company for the Services in accordance with the provisions of clause 18.2 if, *inter alia*:
- 18.3.1 the Customer fails to timeously pay any sums which it owes to the Company for the Services provided in respect of the abandoned Goods; or
- 18.3.2 the Customer fails to collect or accept delivery of the abandoned Goods at the place designated by the Company within 14 days from, and including, the date when the Goods are discharged by the Carrier.

19. STOP, DETENTION OR SEIZURE

In the event that any Goods are stopped, detained or seized by a customs authority, the South African Police Services or any other government authority at a port of discharge or a port of loading, then any instruction by the Customer or any authority to move the Goods to a customs warehouse or any other premises, shall be carried out in its capacity as agent only, for and on behalf of the Customer, and at the sole risk and expense of the Customer.

20. RELEASE OF GOODS

- 20.1 The Customer shall ensure that it timeously furnishes the Company with the necessary clearance documents to customs clear the Goods, pay all sums due in respect of the

Goods and collect the relevant Goods from the port of discharge before 10h30 on the last day of free storage granted by the port of discharge, failing which the Company may move the Goods into a customs licensed depot at the sole risk and expense of the Customer.

20.2 In the event that the Customer does not collect the relevant Goods with 14 days from, and including, the date when they are discharged by the Carrier:

20.2.1 the Company may continue to store the Goods at the Customer's sole risk and expense; or

20.2.2 the Company or State authority may move the Customer's Goods to a State's warehouse and store them there; or

20.2.3 the Company may consider the Customer's Goods to be Abandoned Goods in accordance with clause 18 of these terms and conditions.

20.3 The Company is only obliged to release the Goods in question when it receives, in respect of those Goods, the relevant bill of lading, the customs processed bill of entry, proof of payment of all cargo dues, any other documentation required by law or which the Company notifies the Customer that it requires. In addition, the Company is not obliged to release the Goods to the Customer until it receives as freely available funds, free of any set-off, withholding and bank charges, all sums owed to the Company in respect of any services rendered by the Company.

20.4 In the event that the Customer fails, within 3 business days after the date of the Company's invoice, to pay all sums payable in respect of that invoice, then the Company may charge the Customer a late payment penalty as determined by the Company.

21. **WAREHOUSING**

21.1 The Company may, at its sole and absolute discretion:

21.1.1 attend to the warehousing or holding of the Goods at any place as determined by the Company in its absolute discretion, pending forwarding and/or delivery by or on behalf of the Company, and at the Customer's expense; or

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- 21.1.2 store the Goods at the Company's warehouse, bonded or otherwise, or a warehouseman with whom the Company has contracted, at the special instance and request of the Customer, and at the Customer's expense.
- 21.2 The Company shall not be liable for physical loss or damage to the Goods whilst in the care, custody and control of the Company or the warehouseman with whom the Company has contracted in accordance with clauses 21.1 and 21.2 above, nor for any consequential loss arising therefrom, nor for delay, incorrect or misdelivery.
- 21.3 The Company shall not be liable for any penalties, duties, VAT, taxes or sums raised in forfeiture by customs in respect of Goods stored at a bonded warehouse by the Company for and on behalf of the Customer and the Customer hereby indemnifies and holds the Company harmless for all such sums.

22. DUTIES, TAXES, IMPOSTS, LEVIES AND DEPOSITS

- 22.1 The Customer shall be liable for all duties, taxes, imposts, levies, deposits or outlays of whatsoever nature levied by or payable to the authorities, intermediaries, agents or any other parties at any port or place in respect of the Goods.
- 22.2 The Customer shall be liable for any payments, fines, penalties, expenses, loss or damage (direct or indirect) incurred or sustained by the Company in connection with this clause 22, and whether these are charged or levied at the time of entry and/or any subsequent time.
- 22.3 The Company shall not, under any circumstances, be liable for any increase in the rate of duty, railage, cartage, freight or any other tariff whatsoever, before or after the performance by the Company of any act involving a less favourable rate or tariff, or because a more favourable tariff may have been applicable in the event that a particular service had been rendered at another time.

23. INSURANCE

- 23.1 The Company is not obliged to obtain insurance in respect of the Goods, and is not obliged to procure any insurance cover for and on behalf of the Customer, unless timeously and in writing instructed to so by the Customer.

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- 23.2 In the event that the Customer timeously and in writing instructs the Company to procure insurance in respect of the Goods or for and on its behalf, the Company shall endeavour to procure any such insurance, and the Customer accepts that in doing so the Company shall be obliged to comply with the Financial Advisory and Intermediary Services Act No. 37 of 2002 and may have to engage the services of a licensed financial services provider as defined in that Act. In the event that the Company has to engage the services of a financial services provider, the Customer authorises the Company to instruct such a person on its behalf.
- 23.3 Any such insurance so effected shall be subject to such exceptions and conditions as may be imposed by the insurance company or underwriter taking the risk and the Company shall not be obliged to obtain separate cover for any risks so excluded.
- 23.4 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.
- 23.5 In the event that any insurer dispute its liability in terms of any insurance policy in respect of any Goods, the Customer concerned shall have recourse against such insurer only and not against the Company.

24. **PAYMENT**

- 24.1 Unless otherwise specifically agreed by the Company in writing, the Customer shall pay to the Company in cash, by way of electronic funds transfer, immediately upon presentation of invoice, all sums due to the Company without deduction or set-off and payment shall not be withheld or deferred on account of any claim counterclaim, or non-performance which the Customer may allege.
- 24.2 In the event that payment is made by way of cheque or other negotiable instrument sent to the Company through the post, such payment will be deemed not to have been received until it has cleared into the Company's bank account.
- 24.3 In the event that the Customer has not paid the entire sum due by the due day, then the entire sum in respect of all services rendered by the Company to the Customer

and funds disbursed by the Company on behalf of the Customer (whether or not these funds are related to the transaction in respect of which the Customer has defaulted), shall become immediately due, owing and payable to the Company. In addition, the Customer shall be liable for the payment of interest, calculated daily and compounded monthly at the prime rate of interest plus 2%, in respect of all such sums.

- 24.4 In the event of the Customer breaching any of its obligations and/or failing to timeously make payment of any sum to the Company, the Customer agrees to pay, and shall be liable to pay, all legal costs on the attorney and own client scale, including collection charges and tracing agents fee incurred by the Company in recovering any such sum from the Customer.
- 24.5 The Company may in its sole discretion appropriate any payments made by the Customer to any principal debt owed by the Customer to the Company, irrespective of when it arose, or to interest only, or to legal or other costs, or to any such combination of principal debt, interest and costs as it may in its sole discretion determine, irrespective of any purported allocation or appropriation being made by the Customer at the time of payment or at any other time.
- 24.6 A certificate of balance signed by the Company's Chief Executive Officer and Chief Financial Officer stating the indebtedness of the Customer to the Company or certifying that certain services were rendered and/or funds disbursed and/or Goods delivered, shall be *prima facie* evidence of the Customer's indebtedness to the Company or of the rendering of such services, disbursement of such funds or delivery of such Goods.
- 24.7 The Company may, at any time, withdraw any credit facilities afforded to the Customer without prior notice and the nature and extent of such facilities shall at all times be at the Company's sole discretion, and the entire sum owed to the Company at the time of such withdrawal shall immediately become due, owing and payable to the Company.
- 24.8 If any Customer acted as agent on behalf of another party, and that other party fails to pay any sums due to the Company, the Company may recover such sums directly from the Customer.

25. CHARGES INCORRECTLY PAID

25.1 Where as a result of any act or omission by or on behalf of 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 charge has been paid or levied in an incorrect sum, then the Company's liability and responsibility to the Customer, if any, shall cease if the Customer fails:

25.1.1 within 6 months of making such a payment, to advise the Company that an incorrect sum has been paid or charged; and

25.1.2 perform all acts and provide all information necessary to enable the Company to effect recovery of any sum incorrectly paid.

25.2 The fact that the Customer may not be aware that any incorrect payment has been made shall not render clause 25.1.1 inapplicable. Should any act or omission by the Customer, whether or not such act or omission was due to the Customer's ignorance of the incorrectly paid charge, and regardless of whether or not such ignorance was reasonable or justified in the circumstances, prejudice any right of recovery on the part of the Company, the Customer shall be deemed not to have complied with the provisions of this clause 25.

26. DEAD FREIGHT

26.1 The Customer shall be liable for the full cost of any services rendered and/or disbursements, expenses, damages, fines or penalties incurred by the Company in respect of:

26.1.1 any dead freight as a result of a booking cancelled by the Customer; or

26.1.2 Goods which are loaded on board a vessel, irrespective of whether the vessel sails or if the Goods are, or must be, transhipped.

27. LIEN AND PLEDGE

- 27.1 All Goods and documents relating to Goods, including but not limited to bills of lading, waybills (whether seafreight or airfreight) and import permits as well as all refunds, repayments, claims and other recoveries, shall be subject to a special and general lien and pledge either for sums due in respect of such Goods or for other sums due to the Company from the Customer, sender, Owner, consignee, importer or the holder of the bill of lading or their agents, if any.
- 27.2 If any sums due to the Company are not paid within 7 days after notice has been given to the person from whom the sums are due that such Goods or documents are being detained, they may be sold by auction or by private treaty, without further notice to the Customer, Owner or consignee, at the sole discretion of the Company and at the expense of such person, and the net proceeds applied in or towards the satisfaction of such indebtedness.

28. QUOTES

- 28.1 Any quote given by the Company to the Customer shall not exceed the time period specified on that quote, unless otherwise agreed in writing by the Company and the Customer.
- 28.2 Any quote given by the Company to the Customer shall only be valid if it is in writing.
- 28.3 Any additional services which the Company is obliged or entitled to provide, which have not been quoted for, shall be charged at the usual rate of the Company in respect of such services, or where there is no usual rate, at a reasonable charge.
- 28.4 The Company shall be entitled by notice to the Customer to cancel or resile from any quote or agreement in the event that it becomes either impracticable or uneconomical for the Company to carry out the contract at the quoted rate and the Customer shall have no claim whatsoever against the Company for any loss that the Customer may incur as a result of the Company cancelling or resiling from the quote or agreement.
- 28.5 Without in any way limiting the provisions of clause 28.4, all quotes and agreements are subject to revision without notice having regard to changes in currency exchange rates and upward movements in sums 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 quote.

- 28.6 Any such revision of rates as aforesaid shall be commensurate with any change in the currency exchange rate or the increase in such sums payable. Any such increase shall, failing written agreement between the parties, be determined by the auditors of 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.
- 28.7 The Company shall be entitled to determine and fix the freight rate in accordance with the prevailing rate of exchange applicable to the relevant currency, at any time it deems appropriate.

29. **DISCOUNTS**

The Company shall be entitled to the benefits of any discounts obtained from any authority, public or private entity, and to retain and be paid all brokerages, commissions, allowances, rebates and other remunerations or fees of whatsoever nature and kind and shall not be obliged to disclose or account to the Customer for any such sums received or receivable by it.

30. **LIABILITY**

- 30.1 All handling, packing, loading, unloading, warehousing and transporting of Goods by or on behalf of or at the request of the Company are effected at the sole risk of the Customer, and the Customer indemnifies the Company accordingly, notwithstanding that any resultant loss or damage was caused by breach of contract or negligence of the Company, its servants or agents or any other party for whose conduct the Company would otherwise in law be responsible.
- 30.2 The Company shall not be liable for any claim relating to a contractually agreed date or delivery time.
- 30.3 The Company shall not in any circumstances be liable for indirect or consequential loss or damage caused by delay or any other cause whatsoever and howsoever caused, unless the Company is proved to have been grossly negligent in its actions.

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- 30.4 The Company shall not under any circumstances be liable for a claim for any loss, damage or liability arising out of or caused directly or indirectly by or contributed by one or more of the following:
- 30.4.1 a negligent act or omission of the Customer or any person acting on behalf of the Customer other than the Company, its servants, agents or sub-contractors;
 - 30.4.2 compliance with the instructions of any person entitled to give instructions to the Company;
 - 30.4.3 the lack or insufficiency of or defective condition of packing in the case of Goods which, by their nature, are liable to wastage or to be damaged when not packed or when not properly packed;
 - 30.4.4 inherent vice of the Goods;
 - 30.4.5 fire;
 - 30.4.6 a nuclear incident;
 - 30.4.7 any cause or event which the Company could not avoid or prevent by the exercise of reasonable diligence;
 - 30.4.8 war (whether war be declared or not), hostilities, military or usurped power, acts of a foreign enemy or power, civil war, revolution, rebellion, insurrection, civil strife, riots, civil commotion, terrorist act (or act by any person acting from political motives);
 - 30.4.9 piracy, capture, seizure, arrest, restraint or detainment or consequences arising therefrom;
 - 30.4.10 confiscation, expropriation, nationalisation, requisition, destruction or damage caused by the order of any Government, public or local authority;
 - 30.4.11 mines, torpedoes, bombs, weapons of explosion or of war whether derelict or not;
 - 30.4.12 strikes, lockouts, labour disturbances, stoppages, riots or civil commotions.

31. **GENERAL INDEMNITIES**

- 31.1 The Customer indemnifies and holds harmless the Company against all liability, damages, costs and expenses incurred or suffered by the Company arising directly or indirectly from or in connection with the Customer's express or implied instructions or the implementation by or on behalf of or at the instance of the Company, or any act or omission within the discretion of the Company, in relation to any Goods and in respect of any liability whatsoever.
- 31.2 In particular, and without limiting the generality of clause 31.1 above, the Customer shall defend, indemnify and hold harmless the Company against any loss, liability, costs or expense arising from:
- 31.2.1 any breach or warranty of the Customer, or arising from the negligence of the Customer or owner of the Goods;
 - 31.2.2 the nature of the Goods or the defective condition of containers (including overweight containers) or vehicles not provided by the Company;
 - 31.2.3 any storage or handling of the Goods by the Customer or any third party on its behalf;
 - 31.2.4 the Company's compliance with the Customer's instructions or requirements of any relevant authority.
 - 31.2.5 any claims arising under General Average against the Company, and undertakes to provide such security immediately upon receipt of a request by the Company to do so.
- 31.3 Any advice or information given by the Company to the Customer is for the use of the Customer only, and the Customer shall indemnify, hold harmless and defend the Company against any liability, damage, loss, delay, costs or expenses arising out of any other person acting upon such advice or information. The Customer shall not pass on any advice or information given by the Company, without the Company's written consent.

32. LIMITATION OF LIABILITY AND TIME BAR

- 32.1 Notwithstanding the exclusion of liability in accordance with the provisions of these limitations of liability, if the Company is found to be liable to the Customer for any reason, its liability shall under no circumstances exceed whichever is the least of the following respective sums:
- 32.1.1 The value of the Goods in accordance with the relevant documentation, or as declared by the Customer for customs purposes or for any purpose connected with their transportation, including the value of the Goods declared for insurance purposes;
- 32.1.2 Double the sum of fees raised by the Company for its services in connection with the Goods, but strictly excluding any sum payable to sub-contractors, agents and third parties;
- 32.1.3 ZARR100,000.00 for any one occurrence.
- 32.2 The Company shall be discharged from all liability whatsoever in respect of any claim of whatsoever nature and howsoever arising unless summons or other proper process originating action is served on the Company within nine months of the date on which the incident giving rise to such cause of action occurred. The Company may, on written request by the Customer and if agreed to by the Company, extend such period in writing.
- 32.3 In the event that the Customer and the Company agree that the liability of the Company should not be governed by the limits in these trading terms and conditions, written notice thereof must be given to and 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.
- 32.4 Upon receipt of any such notice, the Company may in its sole and absolute discretion agree in writing to its liability being increased to a maximum sum equivalent to the sum stated in the notice, in which case it shall 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 sum of the premium

payable by the Company for such insurance. If the Company does not so agree, the normal limits contained in these trading terms and conditions shall apply.

33. BREACH

33.1 In the event that 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 7 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.

33.2 The Customer shall under no circumstances be entitled to cancel the application of these standard trading terms and conditions, or any other agreement between the Customer and the Company.

34. ARBITRATION

34.1 The Company may in its sole discretion refer any dispute arising from or in connection with these trading terms and conditions to arbitration, which arbitration shall bind both the Company and the Customer.

34.2 For the purpose of arbitration, the parties shall jointly nominate and agree upon an arbitrator who shall be a Senior Advocate of the High Court of South Africa. Should the parties fail to agree on the arbitrator to be appointed, he shall be appointed by the President from time to time of the Maritime Law Association of South Africa whose decision in this regard shall be final and binding on the parties.

34.3 The arbitration shall be subject to and conducted in accordance with the Commercial Rules or Expedited Rules published by the Arbitration Foundation of Southern Africa ("the Rules") and then enforced.

34.4 Subject to any rights of appeal contained in the Rules or the Arbitration Act No. 42 of 1965, all arbitration awards shall be final and binding upon the parties and capable of being made an order of any competent court of law.

35. NON-VARIATION

- 35.1 No variation of these trading terms and conditions, including this clause, shall be binding on the Company unless it is in writing and signed by a duly authorised director and prescribed officer of the Company, which director and prescribed officer must have the actual authority to vary these terms and conditions.
- 35.2 Any purported variation or alteration of these trading terms and conditions otherwise than described in clause 35.1 shall be of no force and effect.

36. NON WAIVER

No extension of time or waiver or relaxation of any of these trading terms and conditions shall operate as an estoppel against the Company or the Customer in respect of its rights under these trading terms and conditions, and shall not preclude the Company or the Customer from thereafter exercising its rights strictly in accordance with these trading terms and conditions.

37. LAW AND JURISDICTION

- 37.1 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.
- 37.2 The Customer hereby consents to the non-exclusive jurisdiction of the High Court of South Africa, South Gauteng Local Division, Johannesburg, exercising its Admiralty Jurisdiction.

38. DOMICILIUM AND NOTICES

- 38.1 The Customer's physical address as set out in the credit application form or, failing which, on the Customer's most recently reviewed letterhead or, failing which, the Customer's registered or physical address, shall constitute the Customer's *domicilium citandi et executandi* for all purposes in connection with any agreement entered into by

the Customer and the Company, unless the Customer provides an alternative *domicilium* by written notice to the Company.

38.2 The Company's physical address as set out in the credit application form or, failing which, on the Company's most recently reviewed letterhead or, failing which, the Company's registered or physical address, shall constitute the Company's *domicilium citandi et executandi* for all purposes in connection with any agreement entered into by the Customer and the Company.

38.3 Notices given to the above addresses or by facsimile or electronic mail to the correct fax number or electronic mail addresses shall be deemed to have been duly given:

38.3.1 14 days after posting, if sent by registered post;

38.3.2 on delivery, if delivered by hand;

38.3.3 on dispatch, if sent by facsimile or electronic mail.

39. **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 carried out at the sole risk of the Customer and/or Owner, and the Customer indemnifies the Company accordingly.