

# STANDARD TRADING TERMS & CONDITIONS

FOR

## AFRIGISTICS (PTY) LTD

(Reg. no. 2009/000718/07)

### NOTICE REQUIRED BY CONSUMER PROTECTION ACT: LIABILITY

In so far as the South African Consumer Protection Act 68 of 2008 is applicable to transactions governed by these terms and conditions customers are hereby notified, as required by that Act, that a number of the terms and conditions set out below, and in particular clauses 3, 5, 23, 27, 28, 29, 30, 32, have the effect of limiting the risk or liability of the company, or constitute an assumption of risk or liability by the customer, or impose an obligation on the customer to indemnify the company, or constitute an acknowledgement of facts by the customer.

Afrigistics is a professional service provider and undertakes always to act in the best interests of its customers and to exercise all reasonable care in rendering services to customers.

### OPERATIONAL CONTEXT

Afrigistics is a service provider rendering a logistical and / or consulting service to the customer in connection with various types of goods that at all relevant times during the rendering of the service remains the sole and exclusive property of the customer. The company may from time to time act as an agent of the customer solely for the purpose of arranging insurance cover under any open marine or any other similar type of insurance policy.

The company will use its best endeavours to assist the customer to submit a claim against any insurer in terms of any relevant policy affording cover against any damage or loss suffered by the customer.

## 1. INTERPRETATION

1.1 In this agreement and in the annexes to this agreement :

- 1.1.1 clause headings are for convenience and reference purposes only and are not to be used in its interpretation ;
- 1.1.2 unless the context indicates a contrary intention, any gender includes the other genders; a natural person includes a juristic person and *vice versa*; the singular includes the plural and *vice versa*.

1.2 In this agreement the following expression bear the meanings assigned to them below and cognate expressions shall have a corresponding meaning :

- 1.2.1 “applicable law” means the law of the Republic of South Africa;
- 1.2.2 “business” means the furnishing of advice or information on the rendering of services, including packing etc
- 1.2.3 “the company” means Afrigistics (Pty) Ltd, registration number 2009/000718/07;
- 1.2.4 “customer” means any person, including the owner, at whose request or on whose behalf the company undertakes any business or provides and advice, information or service ;
- 1.2.5 “goods” means any goods handled, transported or dealt with by or on behalf of or at the instance of the company or which come under the control of the company or its agents, servants or nominees on the instructions of the customer, and includes any container, transportable tank, flat pallet, package or any other form of covering, packaging, container or equipment used in connection with or in relation to such goods ;
- 1.2.6 “the owner” means the owner of the goods to which any business concluded under these trading terms and conditions relates and any other person who may have or acquire any interest, financial or otherwise, therein ;
- 1.2.7 “parties” means the “company” and the “customer” and “party” shall mean either of them as the context indicates ;
- 1.2.8 “business day” means any day that is not a Sunday or a South African public holiday ;
- 1.2.9 “normal business hours” Monday to Friday between 08h00 and 18h00 and Saturday between 08h00 and 13h00 ;

- 1.2.10 "prime rate" means the prime overdraft rate of interest charged by First National Bank (South Africa) to its corporate customers in respect of unsecured overdraft facilities from time to time, as certified by any manager of that bank whose appointment, authority and designation shall not be necessary to prove ;
- 1.2.11 "VAT" means value added tax payable in terms of the South African VAT Act ;
- 1.2.12 "VAT Act" means the South African Value Added Tax Act 89 of 1991, as amended ;
- 1.2.13 "instructions & notifications" All written instructions & notifications between parties, including electronic correspondence, will only be regarded as received once the recipient of such instruction has confirmed receipt to the sender.

## **2. APPLICATION OF TRADING TERMS AND CONDITIONS**

- 2.1 Subject to clause 4, all and any business undertaken or advice, information or services provided by the company, whether gratuitous or not, is undertaken or provided on these trading terms and conditions.
- 2.2 Notwithstanding anything to the contrary contained herein, the customer agrees that the company shall be entitled to deal with any goods on the terms and conditions, whether or not inconsistent with these terms and conditions, stipulated by the carriers, warehousemen, government departments, and all other parties (whether acting as agents or subcontractors to the company or not) into whose possession or custody the goods may pass, or subject to whose authority they may at any time be.
- 2.3 No variation of these trading terms and conditions shall be binding on the company unless embodied in a written document signed by a duly authorised director of the company. Any purported variation or alteration of these trading terms and conditions otherwise than as set out above shall be of no force and effect, whether such purported variation or alteration is written or oral, or takes place before or after receipt of these standard trading terms and conditions by the customer.

## **3. OWNER'S RISK**

All business, including handling, packing, loading, unloading, warehousing or transporting of goods by or on behalf of or at the request of the company is done at the sole risk of the customer (and the owner, if the customer is not the owner) and the "goods" as defined must be insured by the Customer at all times.

## **4. COMPLIANCE WITH THE LAW**

- 4.1 If the company is obliged, in the execution of any of its duties and / or responsibilities to comply with any rule of common law or legislative enactment ("the law") of any nature in any country 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.
- 4.2 In complying with the law, the company shall not be deemed to have assumed any onus, obligation, responsibility or liability in favour of the customer.
- 4.3 If any of the terms of these trading terms and conditions is repugnant to or in conflict with the applicable law, then and in such event the conflicting term embodied herein shall be deemed to be amended and/or altered to conform therewith and shall be regarded as severable, and such amendment

and / or alteration shall not in any way affect the remaining provisions of these trading terms and conditions.

## 5. EXCLUSION OF OBLIGATIONS OF COMMON OR PUBLIC CARRIER

The parties agree, and it is the basis of these trading terms and conditions, that the company shall not be regarded as, and shall not have the obligations of either a common carrier or a public carrier.

## 6. COMPANY'S RESPONSE TO INSTRUCTIONS

### 6.1 INSTRUCTIONS IN GENERAL

6.1.1 The customer's instructions to the company shall be precise, clear and comprehensive and in particular, but without limitation, shall cover any valuation or determination issued by the Customs in respect of any goods to be dealt with by or on behalf of or at the request of the company. Instructions given by the customer shall be recognised by the company as valid only if timeously given specifically in relation to a particular matter in question.

6.1.2 Oral instructions, standing or general instructions, or instructions given late, even if received by the company without comment, shall not in any way be binding upon the company, but the company may deal with such instructions in its absolute discretion.

### 6.2 SPECIAL TYPES OF GOODS

6.2.1 The customer shall obtain in advance the company's specific written consent to accept into its possession or control or into the possession or control of any of its servants, agents or employees any goods, including radio-active materials, which may be or become dangerous, inflammable or noxious, or which by their nature may injure, damage, taint or contaminate, or in any way whatsoever adversely affect any person, goods or property, including goods likely to harbour or attract vermin or other pests, subject thereto that the customer warrants that such goods, or the case, crate, box, drum, canister, tank, flat, pallet, package or other holder or covering of such goods will comply with any applicable laws, regulations or requirement of any authority or carrier and that the nature and characteristics of such goods and all other data required by such laws, regulations or requirements will be prominently and clearly marked on the outside cover of such goods.

6.2.2 If any such goods are delivered to the company, whether or not in breach of the provisions of clause 6.2.1, the company is entitled in its absolute discretion, on grounds including, without limitation, the risk to other goods, property, life or health; to destroy, dispose of, abandon or render harmless or otherwise deal with such goods 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.

### 6.3 IN THE ABSENCE OF INSTRUCTIONS

In the **absence of specific instructions given in writing by the customer to the company**, which instructions must allow the company a reasonable time to carry out the instructions and must be accepted by the company, -

6.3.1 It shall be in the discretion of the company, exercised reasonably, 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;

6.3.2 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;

- 6.3.3 In all cases where there is a choice of tariff rates or premiums offered by any carrier, warehouseman, underwriter, or other person depending upon the declared value of the relevant goods or the extent of the liability assumed by the carrier, warehouseman, underwriter or other person, it shall be in the discretion of the company to decide what declaration, if any, shall be made, and what liability, if any, shall be imposed on the carrier, warehouseman, underwriter or other person;
- 6.3.4 The company shall not be obliged to make any declaration for the purpose of any statute, convention, or contract, as to the nature or value of any goods or as to any special interest in delivery.

In particular, the company shall be under no obligation to:

- 6.3.4.1 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 ascribing such goods as dangerous goods or other goods which require special conditions of handling or storage; or
- 6.3.4.2 arrange for any particular goods to be carried, stored or handled separately from other goods.

#### 6.4 WITH INSTRUCTIONS

- 6.4.1 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 the customer of such events or circumstances and shall seek further instructions.

Unless such further instructions are received by the company in writing, at a time allowing the company a reasonable period to carry out the instructions, and accepted, the company shall in its absolute 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.

- 6.4.2 Notwithstanding anything to the contrary herein contained, if at any time the company should reasonably consider it to be in the customer's interests or for the public good to deviate 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. INSURANCE

- 7.1 All goods are carried at the customer's and or consignee's risk for all international and cross border consignments, irrespective of the mode of transport and must be insured by the Customer for the entire duration of the transport / voyage.
- 7.2. If specifically requested, the Company may endeavour to effect Marine Transit Insurance Cover on behalf of the Customer and in accordance with the Customer's instructions given in writing to the Company.
- 7.3. Such insurance will be strictly subject to the Terms and Conditions of the Companies relevant Insurance Policy, a copy of which is available on request by the Customer.
- 7.4. The Limit of Liability will be contained in the Credit Application form.

## **8. CUSTOMER'S UNDERTAKINGS**

- 8.1 For all purposes relating to these trading terms and conditions the customer shall be deemed to have in relation to the customer's business and the goods and the services to be rendered by the company in respect thereto, reasonable knowledge of all matters directly or indirectly relating thereto or arising therefrom 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.
- 8.2 The customer warrants that –
- 8.2.1 it is either the owner of, or the authorised agent of the owner of, any goods in respect of which the customer instructs the company and that both the customer and the owner, if the customer is not the owner, will comply with these trading terms and conditions;
  - 8.2.2 it has been duly authorised to enter into this contract with the company and / or to accept any document issued by the company in connection with such contract, and that the customer, owner, sender or consignee and their agents will comply with these trading terms and conditions, and in particular, but without prejudice to the generality of the foregoing, that the company shall have the right to enforce against them jointly and severally any liability of the customer under these trading terms and conditions or to recover from them any sums to be paid by the customer which upon proper demand have not been paid;
  - 8.2.3 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 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, without derogating from the generality of the foregoing, any assessment or reassessment;
  - 8.2.4 all goods will be properly, adequately and appropriately prepared and packed, stowed, labelled and marked, having regard inter alia to the implementation by or on behalf of the company or at its instance of the contract involved, and the characteristics of the goods involved and are capable of withstanding the normal hazards inherent in the implementation of such contract;
  - 8.2.5 where goods are carried in or on containers, trailers, flats, tilts, railway wagons, tanks, igloos or any other unit load devices specifically constructed for the carriage of goods by land, sea or air, (each such device hereinafter individually referred to as "the transport unit") then, save where the company has been given and has accepted specific written instructions to load the transport unit –
    - 8.2.5.1 that the transport unit has been properly and competently loaded; and
    - 8.2.5.2 that the goods involved are suitable for carriage in or on the transport unit; and
    - 8.2.5.3 that the transport unit is itself in a suitable condition to carry the goods loaded therein and complies with the requirements of all relevant transport authorities and carriers.

## **9. RECOVERY OF DEBTS DUE TO THE COMPANY**

The company shall be entitled in its absolute discretion to recover any amount due to it from the customer, who shall be deemed to be a principal in respect of any instructions relating to any contract with the company, regardless of whether the customer purports to act as an agent for a disclosed or undisclosed principal.

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

- 10.1 Unless otherwise agreed in writing, the company in procuring the carriage, storage, packing or handling of goods shall be entitled to act either as an agent for and on behalf of the customer or as a principal, as it in its absolute discretion deems fit.
- 10.2 The offer and acceptance of a fixed price for any service shall not itself determine whether such service is to be arranged by the company acting as agent or as a principal.
- 10.3 The customer acknowledges that when the company, as agent for and on behalf of the customer, concludes any contract with a third party, such contract is concluded between the customer and the third party.
- 10.4 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 carrying out the customer's instructions, including, without limitation, contracts for the –
- 10.4.1 carriage of goods by any route or means or person;
  - 10.4.2 storage, packing, transport, shipping, loading, unloading and/or handling of goods by any person at any place whether on shore or afloat and for any length of time.
  - 10.4.3 carriage or storage of goods in break-bulk form in or on transport units as defined in clause 8.2.5 or with or without other goods of whatsoever nature.

## **11. SUBCONTRACTING**

- 11.1 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 employees performing part or all of the relevant services, or by the company employing, or entrusting the goods or services to third parties on such conditions as may be stipulated by, or negotiated with, such third parties for the purposes of such services, or such part thereof as they may be employed to carry out.
- 11.2 Where the company employs third parties to perform all or any of the services which it has agreed to perform, the customer agrees that the company shall have no responsibility or liability to its customer for any act or omission of such third party, even though the company may be responsible for the payment of such third party's charges; but the company shall, if suitably indemnified against all costs, (including attorney and client costs) which may be incurred or awarded against the company, take such action against the third party on the customer's behalf as the customer may direct.

## **12. GOODS REQUIRING SPECIAL ARRANGEMENTS**

Except under special arrangements previously made in writing the company will not accept or deal with bullion, coin, precious stones, jewellery, valuables, antiques, pictures, human remains, livestock or plants. Should the customer nevertheless deliver such goods to the company or cause the company to handle or deal with any such goods otherwise than under special arrangements previously made in writing the company shall incur no liability whatsoever in respect of such goods, and in particular, shall incur no liability in respect of its negligent acts or omissions in respect of such goods. Any claim against the company in respect of the goods referred to in this clause 12 shall in any event be governed by the provisions of clauses 28 and 29.

## **13. NON-ACCEPTANCE OF DELIVERY**

If delivery of any goods is not accepted by the customer, consignee or party nominated by the customer at the agreed time and place then the company shall be entitled to store the goods or any part thereof at no risk to the company and at the expense of the customer.

## **14. WAREHOUSING**

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

## **15. COLLECTION OF EXPENSES AND C O D**

- 15.1 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 for such expenses if they are not paid by such consignee or any other person immediately when due.
- 15.2 If accepted by the company, instructions to collect payment on delivery shall be subject to the condition that the company will be entitled to assume that the recipient will effect payment and in the matter of such collection will not be liable for any negotiable instrument which is not met on due date for payment.

## **16. EXAMINATION OF LANDED GOODS**

- 16.1 Where it is necessary for an examination to be held or other action to be taken by the company in respect of any discrepancy in the goods which are landed or discharged from any vessel, aircraft, vehicle, or transport unit, no responsibility shall attach to the company for any failure to hold such examination or to take any other action unless the company has been timeously advised by the landing or discharge agent that such goods have been landed and that such a discrepancy exists.
- 16.2 The company will not be responsible for examining or counting any goods received by it where such goods are bundled, palletised or packed in any manner preventing their number to be quickly and easily counted. Should the company undertake to count goods so received, it shall incur no liability in respect of any error or inaccuracy in such counting, whether such error or inaccuracy is the result of negligence on the part of the company or otherwise. The company shall be entitled to levy a charge on the customer for the counting of goods in such circumstances.

## **17. DUTIES, TAXES, IMPOSTS, LEVIES AND DEPOSITS**

- 17.1 Whether or not payment becomes necessary as a result of any act, instruction or omission of the sender, owner, consignee or their agents, the customer shall be liable for any duties, taxes, imposts, levies, deposits or out-lays of whatsoever nature levied by or payable to the authorities, intermediaries or other parties at any port or place or in connection with the goods and whether at the time of entry and/or at any subsequent time and for any payments, fines, penalties, expenses, loss or damage or whatsoever incurred or sustained by the company in connection therewith or arising therefrom.
- 17.2 The company shall incur no liability as a result 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.

## **18. RECOVERY OF DUTIES INCORRECTLY PAID**

- 18.1 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 liability to the customer which the company may otherwise incur will cease and fall away if the customer does not –

- 18.1.1 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



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

18.2 The fact that the customer may not be aware that any such incorrect payment has been made shall not constitute a circumstance to be taken into account in calculating what is a reasonable time for the purpose of clause 18.1 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 18.1 and 18.2.

## **19. PAYMENT OF COMPANY'S REMUNERATION**

19.1 Unless otherwise agreed between the parties in writing, the company's remuneration shall be payable by the customer by cash, cheque or electronic bank transfer ("EFT"), without deduction or set-off, within thirty (30) days from date of statement, and payments shall not be withheld or deferred on account of any claim or counterclaim which the customer may allege.

19.2 Any moneys received by the company from the customer shall be appropriated by the company in its sole and absolute discretion in respect of any indebtedness owed by the customer to the company, notwithstanding that the customer might, when making payment, seek to appropriate the payment so made to any particular debt or portion of a debt.

## **20. LATE PAYMENTS**

20.1 If a party ("the defaulting party") fails to pay any amount which is owing by it to the other party ("the innocent party") on the due date, without prejudice to other rights which the innocent party may have, the innocent party shall thereupon be entitled to claim and recover from the defaulting party an additional amount in respect of interest on such unpaid amount calculated at 3% (three percent) above the prime rate or the maximum permissible rate allowed under the National Credit Act, Act 34 of 2005, whichever is the greater, from the due date to the date of actual payment.

20.2 The interest referred to in clause 20.1 above shall be compounded monthly in arrears as from the end of the month during which the liability for interest first arises.

## **21. RISK OF POSTED ITEMS**

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

## **22. QUOTATIONS**

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

22.2 Without in any way limiting the provisions of clause 22.1 all quotations and agreements are subject to revision without notice as a result of changes in currency exchange rates and upward movements in amounts payable by or on behalf of or at the instance of the company to third parties, including, without limitation, freight, surcharges, insurance premiums, equipment rental and labour which charges and upward movements take place after quotation. Any revision of rates as aforesaid will be commensurate with the change in the currency exchange rate or the increase in such amounts payable. Any such increase shall, failing agreement between the parties, be determined by the then auditors of the company or any other auditors nominated by the company, who in such determination shall act as experts and not as arbitrators and whose decision shall be final and binding on the parties.

**23. NO CLAIMS AGAINST COMPANY DIRECTORS AND EMPLOYEES**

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

**24. SUBMISSION TO JURISDICTION**

The parties agree that any legal action or proceedings arising out of or in connection with these trading terms and conditions shall be brought in the division of the High Court of South Africa where the company's head office is situated at the commencement of the proceedings, and the customer irrevocably submits to the non-exclusive jurisdiction of such court.

**25. BENEFIT OF DISCOUNTS**

The company is entitled to the benefits of any discounts obtained, and to retain and be paid all brokerages, commissions, allowances and other remuneration of whatsoever nature and kind, and shall not be obliged to disclose or account to the customer or its principal any such amounts received or receivable by it.

**26. LIEN**

All goods and documents relating to goods, including bills of lading and import permits, as well as all refunds, repayments, claims and other recoveries, shall be subject to a special and general lien and pledge either for moneys due in respect of such goods or for other moneys due to the company from the customer, sender, owner, consignee, importer or the holder of the bill of lading or their agents, if any. If any moneys due to the company are not paid within 14 days after notice has been given to the person from whom the moneys are due that such goods or documents are being detained, the goods or documents may be sold by auction or disposed of in some other way for value, in the sole discretion of the company and at the expense of such person, and the net proceeds shall be applied towards satisfaction of the indebtedness to the company.

**27. INDEMNITY BY THE CUSTOMER**

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

27.1 to any haulier, carrier, warehouseman or other person whatsoever at any time involved with such goods, arising out of any claim made directly or indirectly against any such person by the customer or by any consignor, consignee or owner of such goods or by any person having an interest in such goods or by any other person whatsoever; and/or

27.2 to any owner or consignee of such goods who is not the customer of the company where the company performs the service of a deconsolidation agent, or any other service; and/or

27.3 to any carrier of the goods if the company is the consignor or consignee of the goods.

**28. LIMITATION OF COMPANY'S LIABILITY**

28.1 Subject to the provisions of clause 28.2, the company shall not incur any liability 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, for

28.1.1 any negligent act or omission or statement by the company or its servants, agents or nominees ;

and/or

- 28.1.2 any act or omission of the customer or agent of the customer with whom the company deals; and/or
- 28.1.3 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
- 28.1.4 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
- 28.1.5 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
- 28.1.6 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
- 28.1.7 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
- 28.1.8 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 employees, agents or nominees; and
- b) such claim arises at a time when the goods in question are in the actual custody of the company and under its actual control; and
- c) in the instance provided for in clause 28.1.7 above, the company receives a written notice within 5 days after the end of the transit if the transit ends in the Republic of South Africa and within 14 days after the end of the transit if the transit ends at a place outside the Republic of South Africa.

- 28.2 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, employees or nominees, whether negligent or otherwise.

## **29. GENERAL AVERAGE**

The customer indemnifies and holds harmless the company in respect of any claims of a general average nature which may be made against the company and the customer shall provide such security as may be required by the company in this connection.

## **30. BREACH**

If the company breaches any of these trading terms and conditions or any agreement between it and the customer and fails to remedy such breach within 30 days of the date of receipt of written notice requiring it to do so, then the customer shall be entitled to compel performance by the company of the obligations it has defaulted in, but shall not be entitled to cancel these trading terms and conditions and any agreement between the customer and the company.

### **31. WARRANTIES AND REPRESENTATIONS BY THE COMPANY**

The company makes no warranties and representations to the customer save as may be specifically provided herein or as notified in writing by the company to the customer from time to time. The customer acknowledges that the company is not in any way bound by any oral statement, representation, guarantee, promise, undertaking, inducement or otherwise which may have been made at any time by any salesman, employee, representative or any person acting or purporting to act for or on behalf of the company, whether negligently or otherwise, unless such statements, representations, guarantees, promises, undertakings, warranties or inducements are supplied or made in writing by an employee duly authorised by written resolution of the board of directors of the company in response to a written enquiry specifying accurately and in complete detail what information is required.

### **32. DISPUTES**

- 32.1 Should there be any dispute of any nature whatsoever between the parties concerning any aspect of these trading terms and conditions, including 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.
- 32.2 The customer's remedy, provided it has performed its obligations in terms of clause 33.1, shall be limited to an action against the company for repayment of either the whole or portion of the amount which the customer alleges, constitutes an overpayment.
- 32.3 Without affecting the generality of clauses 33.1 and 33.2 the customer shall not be entitled to withhold payment of any amount 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 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 by payment to the company that such rights arise and become available to the customer in respect of any claim that he may have against the company.
- 32.4 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.

### **33. SEVERABILITY**

If any provision of these terms and conditions is unenforceable, then the company shall be entitled to elect within a reasonable 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.

### **34. FORCE MAJEUR**

- 34.1 Delay or failure to comply with or breach of any of the terms and conditions of this agreement if occasioned by or resulting from an act of God or public enemy, fire, explosion, earthquake, perils of the sea, flood, storm or other adverse weather conditions, war declared or undeclared, civil war, revolution, civil commotion or other civil strife, riot, strikes, blockade, embargo, sanctions, epidemics, act of any Government or other Authority, compliance with Government orders, demands or regulations, or any circumstances beyond the reasonable control of the party so failing, will not be deemed to be a breach of this agreement.
- 34.2 Should either party be prevented from carrying out its contractual obligations by force majeure lasting continuously for a period of 30 (thirty) days, the parties will consult with each other regarding the future implementation of the contract. If no mutually acceptable arrangement is arrived at within a period of 14 (fourteen) days thereafter, either party will be entitled to terminate the agreement forthwith on written notice to the other party.

**35. WAIVER**

No extension of time or waiver or relaxation of any of the trading terms and conditions by any party will be binding or effectual for any purpose unless expressed in writing and signed by the parties hereto, and any such waiver will be effective only in the specific instance and for the purpose given. No failure or delay on the part of any party hereto in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

**36. APPLICABLE LAW**

These trading terms and conditions and all agreements entered into between the company and the customer pursuant thereto shall be governed and construed in accordance with the applicable laws of the Republic of South Africa.

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