

RÖHLIG-GRINDROD (PTY) LTD

REGISTRATION NUMBER 1998/025820/07

STANDARD TRADING TERMS AND CONDITIONS – WAREHOUSING AND DISTRIBUTION

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, a limited liability private company incorporated in accordance with the laws of the Republic of South Africa with registration number 1998/025820/07, 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 Depot**" means the Company's warehouse situated at 2 Price Lane, Extension 127, Meadowview, Business Estate, Linbro Park, Johannesburg, Gauteng, the Republic of South Africa or any other warehouse which the Company may nominate from time to time or use to store or otherwise deal with the Goods.
- 1.7 "**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 or Company, and includes 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.

1.8 **"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.

1.9 **"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 trading terms and conditions, whether or not inconsistent with the trading terms and conditions stipulated by any Carrier, government department, authority or other party (whether acting as principal, 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**

Where the Company arranges services for Goods which are or will be carried in accordance with a contract contained in or evidenced by a bill of lading or waybill, all services are arranged by the Company as agents only. The provision of such services shall be subject to the Company's trading terms and conditions styled 'Standard Trading Terms and Conditions – Clearing and Forwarding', a copy whereof may be inspected on written request to do so.

5. **ACTING CAPACITY**

- 5.1 The Company in, *inter alia*, procuring the packing, handling, storage and transport 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 to in writing.
- 5.2 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.
- 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 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.

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, 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. **SERVICES BY THE COMPANY**

7.1 Subject to these trading terms and conditions, the Company may provide, *inter alia*, the following services:

7.1.1 In respect of import Goods:

7.1.1.1 Receipt of the Goods; container inspection, checking and recording of seals; container storage; unpacking, loading and handling of Goods and containers; delivery of Goods at the Depot; delivery of Goods to the Carrier; storage of Goods; receiving, handling and checking of documents; completion of discrepancy and damage reports; provision of facilities for inspection of Goods; repair of damaged packaging.

7.1.2 In respect of export Goods:

7.1.2.1 Receipt of shipping instructions; receipt, handling and checking of documents; receipt of Goods in compliance with export Goods delivery instructions; outward examination and reporting of the condition of Goods; packing, handling and loading of Goods and containers; closing and sealing of containers; preparing load lists; obtaining receipts from the Carrier.

7.1.3 In respect of containers:

7.1.3.1 The handling, storing, cleaning, repairing and inspection of containers; compliance with such provisions and obligations as are imposed on a depot operator in terms of section 44(5(B)) of the Customs and Excise Act, no. 91 of 1964; tracking and stock monitoring; pre-trip inspections of refrigerated containers.

8. **TRANSPORTATION**

8.1 Subject to these trading terms and conditions, the Company also provides transportation services in respect of the Goods, which services shall include transportation procured by the Company to and/or from the Depot and/or other destinations as may be required by the Customer from time to time.

8.2 Upon receipt of specific written instructions by the Customer, the Company shall arrange for the transport of Goods.

8.3 Any such transport 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.

8.4 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.

9. VALUABLE GOODS, LIVESTOCK AND BLOOD STOCK

9.1 The Company shall not accept, store, 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 the Company's specific written consent is first obtained by the Customer.

9.2 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.

9.3 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.

10. HAZARDOUS OR DANGEROUS GOODS

10.1 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.

10.2 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 requirements 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.

10.3 If any such Goods are delivered to the Company, whether or not in breach of the provisions of clause 10.1, 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.

10.4 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 10.1 to 10.3.

11. **PERISHABLE GOODS**

11.1 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:

11.1.1 Such Goods have begun to deteriorate or are likely to deteriorate or are insufficiently addressed or marked.

- 11.1.2 The Customer cannot be identified.
- 11.1.3 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.

12. **CUSTOMER'S INSTRUCTIONS**

- 12.1 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.
- 12.2 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.
- 12.3 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.

13. **ABSENCE OF INSTRUCTIONS**

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

- 13.1.1 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.
- 13.1.2 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, 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, 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, underwriter or other such person.
- 13.1.3 The Company shall not be obliged to arrange for any Goods to be carried, stored or handled separately from other Goods.
- 13.1.4 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.

14. **GENERAL DISCRETION**

- 14.1 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.
- 14.2 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.

- 14.3 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.

15. **SPECIAL INSTRUCTIONS**

- 15.1 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, storage, handling or otherwise to deal with any Goods that require specific temperature control.

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

15.2.1 The container has been appropriately pre-cooled or pre-heated.

15.2.2 The Goods have been properly packed into the container.

15.2.3 The container's thermostatic controls have been properly set.

- 15.3 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 15.1 and 15.2, 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.

16. **WARRANTIES**

- 16.1 The Customer warrants that:

- 16.1.1 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.
- 16.1.2 It is authorised to agree to these trading terms and conditions on behalf of any person or company that it represents.
- 16.1.3 In the event that the Customer acts as the authorised agent of the Owner of the Goods, that the Owner is bound by these trading terms and conditions.
- 16.1.4 Its annual turnover exceeds the thresholds set out in the Consumer Protection Act, no. 68 of 2008 and the National Credit Act, no. 34 of 2005, and, in any event, warrants that its annual turnover exceeds R3million per annum.
- 16.1.5 **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 warrant that he/she is duly authorised to bind such members and/or directors and act as the Customer's agent in all his/her dealings with the Company.**
- 16.1.6 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.
- 16.1.7 The Goods comply with all relevant laws and regulations.
- 16.1.8 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.

- 16.1.9 It has reasonable knowledge of matters affecting the conduct of its business, including knowledge of all laws applicable to the sale and purchase of the Goods.
- 16.1.10 Except where the Company has been instructed to pack, package and label the Goods itself, the Goods are properly packed, packaged and labelled for transportation.
- 16.1.11 The description and details of the Goods, including the weight of the Goods, are correct and complete.
- 16.2 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.

17. **DELIVERY**

- 17.1 If delivery of the Goods or any part thereof is not accepted by the Customer at a time and place to which they are to be delivered, the Company, or any person whose services the Company makes use of, is entitled to call upon the Customer to take delivery thereof, and the Company or such other person may store the Goods under shelter, or in the open, at the Customer's sole expense, without the Company bearing any liability in respect of such.
- 17.2 Goods shall be deemed to have been delivered by the Company at the earlier of the time when:
- 17.2.1 They are placed at the disposal of the person in possession of a document which, in the sole opinion of the Company, entitles that person to possession of the Goods, at the Depot; or,
- 17.2.2 The Goods exit through the Depot gate.

17.3 The Company accepts no liability and shall not be held responsible for the loading and offloading of Goods at the Depot.

18. **LIEN AND PLEDGE**

18.1 All Goods and documents relating to Goods 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.

18.2 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.

19. **ABANDONED GOODS**

19.1 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.

19.2 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.

19.3 The Customer hereby consents to the Company selling, abandoning 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 19.2 if, *inter alia*:

- 19.3.1 The Customer fails to timeously pay any sums which it owes to the Company for the services provided in respect of the abandoned Goods.
- 19.3.2 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.

20. **QUOTES**

- 20.1 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.
- 20.2 Any quote given by the Company to the Customer shall only be valid if it is in writing.
- 20.3 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.
- 20.4 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.
- 20.5 Without in any way limiting the provisions of clause 20.4, 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, which charges and upward movements take place after quote.
- 20.6 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 Company's

auditors, who in such determination shall act as experts and not as arbitrators and whose decision shall be final and binding on the parties.

21. PAYMENT

- 21.1 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.
- 21.2 In the event that payment is made by way of cheque or other negotiable instrument sent to the Company through the post, such payment shall be deemed not to have been received until it has cleared into the Company's bank account.
- 21.3 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.
- 21.4 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.
- 21.5 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.
- 21.6 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.
- 21.7 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.
- 21.8 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.
- 21.9 Notwithstanding this clause 21, should any sum owing by the Customer to the Company become due and payable and remain unpaid, the Company shall be entitled, as determined by it in its sole discretion, 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.
- 21.10 The net proceeds of the sale referred to in clause 21.9, 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.

22. **INSURANCE**

- 22.1 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.
- 22.2 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.
- 22.3 Where the Company endeavours to arrange insurance for the Goods, the Company does so as agent only, for and on behalf of the Customer.
- 22.4 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.
- 22.5 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.
- 22.6 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.
- 22.7 In the event that any insurer disputes 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.

23. **RECEIPT**

23.1 Goods shall be deemed to have been received by the Company at the later of the time when:

23.1.1 The Goods enter through the Depot gate; or

23.1.2 The Goods have been offloaded from the delivery vehicle at the Depot.

23.2 An acknowledgement of receipt of any Goods by the Company shall not constitute an acknowledgement or admission in regard to the quantity, condition or state of such Goods, nor as to the correctness of any statement on the relevant container terminal order form or other transport document.

24. **OWNER'S RISK**

All handling, packing, loading, unloading, warehousing and transporting of Goods by or on behalf of or at the request of the Customer are undertaken at the sole risk of the Customer and/or Owner, and the Customer indemnifies and holds the Company harmless accordingly.

25. **GENERAL INDEMNITIES**

25.1 The Customer indemnifies, defends 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 Company complying 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.

25.2 Under no circumstances shall the Company be liable to any Customer for any penalty which a Customer attempts to impose against or on the Company for any reason which is alleged by the Customer to be as a result of wrongdoing or negligence by the Company.

- 25.3 In particular, and without limiting the generality of clause 25.1, the Customer shall defend, indemnify and hold harmless the Company against any loss, liability, costs or expense arising from:
- 25.3.1 Any breach of warranty or obligation by the Customer or Owner.
- 25.3.2 The negligence of the Customer or Owner.
- 25.3.3 The nature of the Goods or the defective condition of containers (including overweight containers) or vehicles not provided by the Company.
- 25.3.4 Any storage or handling of the Goods by the Customer or any third party on its behalf.
- 25.3.5 The Company's compliance with the Customer's instructions or requirements of any relevant authority.
- 25.3.6 Any penalties, duties, VAT, taxes or amounts raised in forfeiture or otherwise by any customs or other authority in respect of the Goods.
- 25.4 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.

26. **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.

27. DUTIES, TAXES, IMPOSTS, LEVIES AND DEPOSITS

- 27.1 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.
- 27.2 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 27, and whether these are charged or levied at the time of entry and/or any subsequent time.
- 27.3 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.

28. LIABILITY

- 28.1 The period of liability in respect of the Goods for which the Company provides services exists only while the Goods are in the actual control, and actual custody of the Company. This runs from when the Goods are received at the Depot by the Company to the time that they are delivered.
- 28.2 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 subject to clause 28.5.
- 28.3 The Company shall not be liable for any claim relating to a contractually agreed date or delivery time, as well as for loss or non-delivery of any separate package which forms part of a consignment.
- 28.4 In no circumstances shall the Company be liable for indirect or consequential loss or damage caused by delay or any other cause whatsoever and howsoever caused.

- 28.5 Except to the extent that it is proved that the claim arises from the Company's gross negligence, under no circumstances shall the Company be liable for a claim for any damage, liability or loss arising out of or caused directly or indirectly by or contributed by one or more of the following:
- 28.5.1 Any 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.
 - 28.5.2 The contents, quality, weight, measurements, description or defect of any Goods.
 - 28.5.3 Compliance with the instructions of any person entitled to give instructions.
 - 28.5.4 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, except where such service has been provided by the Company.
 - 28.5.5 Inherent vice of the Goods.
 - 28.5.6 Flood, fire, explosion or storm.
 - 28.5.7 A nuclear incident.
 - 28.5.8 Any cause or event which the Company could not avoid or prevent by the exercise of reasonable diligence.
 - 28.5.9 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).
 - 28.5.10 Piracy, capture, seizure, arrest, restraint or detainment or consequences arising therefrom.

- 28.5.11 Confiscation, expropriation, nationalisation, requisition, destruction or damage caused by the order of any Government, public or local authority;
- 28.5.12 Mines, torpedoes, bombs, weapons of explosion or of war whether derelict or not.
- 28.5.13 Strikes, lockouts, labour disturbances, stoppages, riots or civil commotions.
- 28.5.14 The malfunction and/or failure of the Company's computer programmes (whether provided/operated by the Company and/or a person with whom it conducts business and/or any third party), including "Information Systems Services" as defined in the Electronic Communications and Transactions Act, no. 25 of 2002, as amended from time to time, for whatever reason.
- 28.5.15 The provision to the Customer by the Company of incorrect information, regardless of the form, including "Data" as defined in the Electronic Communications and Transactions Act, no. 25 of 2002, as amended from time to time, where such incorrect information has been generated by and provided to the Company by any person with whom it does business, and/or any other third party.
- 28.5.16 Death or injury suffered by the Customer or any person arising from any cause as a result of the Company's performance or attempted performance of its obligations to the Customer and/or Customers' mandate.

29. LIABILITY WHERE THE COMPANY CONTRACTS AS AGENT

- 29.1 Where the Company acts as an agent, it acts solely on behalf of the Customer in establishing contracts with third parties for the carriage, storage or handling of the Goods, or for any other service in respect of them, so that direct contractual relationships are established between the Customer and such third parties; the Company does not make or purport to make any contract with the Customer in respect thereof.
- 29.2 The Company shall not be liable for the acts and omissions of such third parties referred to in clause 29.1.

29.3 When acting as an agent, the Company has the authority of the Customer to enter into contracts on behalf of the Customer, and to perform so as to bind the Customer by such contracts and all acts notwithstanding any departure from the instructions of the Customer.

30. **LIMITATION OF LIABILITY AND TIME BAR**

30.1 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:

30.1.1 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.

30.1.2 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.

30.1.3 ZARR100,000.00 for any one occurrence.

30.2 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.

30.3 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.

- 30.4 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.

31. **BREACH**

- 31.1 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.

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

32. **DISPUTE RESOLUTION**

- 32.1 Should any dispute arise between the Company and Customer from or in connection with these trading terms and conditions which they cannot resolve within 5 days, the Company may in its sole discretion refer the dispute to an expert for determination.

- 32.2 For the purpose of determining the dispute, the parties will jointly nominate, within a further 5 days, a suitably qualified expert with appropriate skills and knowledge in relation to the matter in dispute, to make a decision, who will determine the matter as an expert and not as an arbitrator.

- 32.3 If the parties are unable to agree on the identity of the expert, then the President from time to time of the Maritime Law Association of South Africa will appoint a suitably qualified expert with appropriate skills and knowledge in relation to the matter in dispute who must be a Senior Advocate who specialises as a practitioner in the field of maritime law, within 5 days after the failure to agree on an expert.
- 32.4 Within 5 days of the appointment of the expert, the parties will be entitled to make written representations to the expert and submit documents in support of the representations regarding the dispute.
- 32.5 The expert will be entitled, but not required, to call for any specific written submissions that he/she in his/her sole discretion deems necessary.
- 32.6 The expert will not be entitled to hear oral evidence from the parties or from anyone else.
- 32.7 The parties will be jointly liable for the expert's costs up until the expert has made his/her decision, however the expert will determine ultimate liability for his/her costs, which determination will form part of his/her decision.
- 32.8 The expert will further determine, which determination will also form part of his/her decision, if a party is liable for the other party's legal costs incurred in connection with preparing the submissions to the expert (if applicable), as well as the total sum of these costs.
- 32.9 The expert will thereafter make his/her decision within 10 days of the dispute being referred to the expert, on the basis of such written representations and documents, which decision will be final and binding and with no right of appeal.
- 32.10 This dispute resolution process will not preclude:
- 32.10.1 Either party from approaching any appropriate court for urgent relief, where the circumstances require it.

32.10.2 The Company from approaching any court or other appropriate forum or body to resolve any dispute arising between the parties, where it elects not to refer the dispute to an expert for determination in accordance with this clause 32.

33. NON-VARIATION

33.1 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.

33.2 Any purported variation or alteration of these trading terms and conditions otherwise than described in clause 33.1 shall be of no force and effect.

34. 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.

35. LAW AND JURISDICTION

35.1 These trading terms and conditions and all agreements entered into between the Company and 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.

35.2 The Customer hereby consents to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg.

36. DOMICILIUM AND NOTICES

36.1 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.

36.2 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.

36.3 Notices given to the above addresses or by electronic mail to the correct electronic mail addresses shall be deemed to have been duly given:

36.3.1 14 days after posting, if sent by registered post.

36.3.2 On delivery, if delivered by hand.

36.3.3 On dispatch, if sent by electronic mail.