

SIMBA AFRICA MARITIME (PTY)LTD T/A  
**SIMBA AFRICA LOGISTICS**



## Standard Trading Terms

of

**Simba Africa Maritime Proprietary Limited**

t/a

**Simba Africa Logistics**



**Head Office Street Address**  
Sharaf House, 1<sup>st</sup> Floor, La Lucia Ridge Office  
Estate, Umhlanga, Durban – 4051, South Africa.  
Tel: +27(0)31 582-9475

**Branches**  
Cape Town +27(0)21 405-9575  
Durban +27(0)31 582-9475  
East London +27(0)43 726-5269  
Johannesburg +27(0)11 881-0075  
Port Elizabeth +27(0)41 398-0075

**Company Registration Number**  
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**Directors**  
Lühr, Hartmut (German)  
McCallum, David (South African) (Managing)  
Naicker, Alvin (South African)  
Sharaf, Ibrahim (UAE)  
Sharaf, Salah (UAE)  
von Rantzau, Dr. Eberhart (German)

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**Standard Trading Terms of Simba Africa Maritime Proprietary Limited**  
**t/a Simba Africa Logistics**

**Introduction**

- A The Company provides a variety of services in the logistics sector, including:
- A Ships Agency Services;
  - B Transport Services (whether by air, sea or rail);
  - C Warehousing Services;
  - D Container Depot Services; and
  - E Clearing and Forwarding Services.
- B All and any Business undertaken by the Company will be governed by these Trading Terms. Certain provisions of these Trading Terms apply to all Services provided by the Company and others are specific to the type of Service. These provisions are clearly indicated.
- C Depending on the nature of the Service, the Company may sub-contract the Service or perform it in its own right. When the Company subcontracts any Service, it may in certain circumstances act as a principal and in others act as an agent, contracting on behalf of the Customer. This relationship between the Company, the Customer and the Supplier is governed by clause 6.

**PART A - GENERAL**

**1 Definitions and interpretation**

1.1 In this Agreement:

- (1) **Abnormal Goods** means goods which by reason for their nature, weight (mass), dimensions or otherwise require special preparations to be made or unusual or special care, treatment or precautions to be taken for the storage, transport or movement thereof or such goods which the Company in its sole discretion regards as abnormal;
- (2) **Authority** means any duly constituted legal or administrative person, acting within its legal powers and exercising jurisdiction within any country, municipality or port;
- (3) **Agreement** means any agreement between the Company and the Customer to provide any Services which will always include these Trading Terms;
- (4) **Business** means all and any business undertaken by the Company, including but not limited to any advice, information or service provided, whether gratuitously or not, in connection with the Services;
- (5) **Booking Confirmation** means the Company's written confirmation of Services required by the Customer in the Customer Request, in a form acceptable to the Company;
- (6) **Cargo Services** means:
  - (a) Transport Services;

- (b) Warehousing Services;
- (c) Container Depot Services; and/or
- (d) Clearing and Forwarding Services;

and other ancillary services agreed between the Parties in writing;

- (7) **Clearing and Forwarding Services** means the clearing and forwarding services agreed between the Company and the Customer in the Booking Confirmation or otherwise in writing from time to time, which may include tracking inland transportation, preparation of shipping and export documents, booking cargo space, negotiating freight charges, cargo consolidation and deconsolidation, cargo insurance, filing of insurance claims, document delivery, deconsolidation, freight collection services and cargo broking services;
- (8) **Collection Point** means the point of collection of any Goods as specified in the Booking Confirmation;
- (9) **Company** means Simba Africa Maritime Proprietary Limited trading as Simba Africa Logistics;
- (10) **Container** means an article of transport equipment constructed to the specifications of the International Standards Organisation, including all its ancillary equipment, and includes any container (including an open top container) flat rack, platform, trailer, transportable tank, pallet or any other similar article used to consolidate the Goods and any connected equipment;
- (11) **Container Depot** means a container depot owned or operated by the Company or at which any Container Depot Services are provided;
- (12) **Container Depot Services** means the container depot services agreed between the Customer and the Company in the Booking Form or otherwise in writing from time to time and which may include storage of Containers or Goods vanned into Containers in a Container Depot, opening and attending inspections of Containers by relevant Authorities, packing and unpacking Containers;
- (13) **Conveyance** means any vehicle, truck, Vessel, aeroplane or any other applicable method of conveyance;
- (14) **Consignee** means the consignee or any party to which the Goods are delivered in terms of the Booking Confirmation;
- (15) **Consignor** means the consignor or any party from which Goods are collected in terms of the Booking Confirmation;
- (16) **Customer** means any person, whether acting as an agent or a principal, at whose request or on whose behalf the Company undertakes any Business or renders any Services, who:
  - (a) in relation to Cargo Services, will be the owner of the Goods or if not the owner of the Goods, warrants that it has the authority of the owner of the Goods to enter into any Agreement on behalf of the owner;
  - (b) in relation to the Ships Agency Services, will be the owner, operator or charterer of the Vessel or if not the owner, operator or charterer, warrants that it has the authority of the owner or charterer of the Vessel to enter into any Agreement on behalf of the owner or charterer;
- (17) **Customer Request** means a request for Services by the Customer, which if oral must be confirmed in writing by means of a written confirmation of the Booking Order or



otherwise, which will specify at least the information contemplated in clause 8 and any other information required by the Company from time to time;

- (18) **Delivery Point** means the point of delivery specified in the Booking Confirmation;
- (19) **Dangerous Goods** means goods that are or may become of a dangerous, hazardous, noxious, explosive, flammable, radio-active or damaging nature, including but not limited to;
  - (a) goods liable to taint or affect other goods; and/or
  - (b) goods likely to harbour or encourage vermin, insects or other pests;including without limitation any Goods described as such in the International Maritime Organisation Dangerous Goods Code, as amended from time to time;
- (20) **Goods** means any goods (including without limitation bulk, breakbulk, liquid or containerised goods) which are the subject of the Cargo Services or otherwise coming under the control of the Company on behalf of a Customer and including any Container or Transport Unit in which the Goods are packed, packaging or other covering not supplied by or on behalf of the Company and any documents relating to the goods;
- (21) **Legal Requirements** means any law, by-law, regulation (including without limitation any port, terminal, Warehouse or Container Depot regulations), ordinance, licence, approval, permit, consent, regulation or requirement or any relevant Authority;
- (22) **Party/ies** means either or both, as the context requires, the Customer and the Company;
- (23) **Prime Rate** means the publically quoted prime rate of interest of the Company's principal bankers, compounded monthly in arrears based on a 365 day year, irrespective of leap years, as certified by a manager of that bank, whose designation need not be proved;
- (24) **SDR** means a special drawing right as determined by the International Monetary Fund from time to time;
- (25) **Services** means Ships Agency Services and/or any of the Cargo Services;
- (26) **Ships Agency Services** means the ships agency and husbandry services agreed between Company and a Customer in any Booking Form or in writing from time to time, which may include, but are not limited to:
  - (a) services rendered to the Customer in the Customer's capacity as a Liner Company, Port Company, Charterers Company, Cargo Company;
  - (b) landside services;
  - (c) arranging berths for a Vessel, providing for the entry and clearance of a Vessel, providing for the payment of port charges and any dues payable in respect of a Vessel;
  - (d) arranging for the supply of fuel, water, provisions and deck and engine room stores;
  - (e) arranging for any repairs required to be done to a Vessel;
  - (f) issuing Transport Documents or other similar documents in the form prescribed by the Customer;

- (g) attending to all matters appertaining to the crew of a Vessel, in particular, engaging, the signing on, signing off and repatriation of crew;
  - (h) cargo broking; and
  - (i) other ancillary services agreed between the Parties in writing from time to time;
- (27) **Supplier** means any person with whom the Company transacts any business on behalf of a Customer and can include, without limitation ships chandlers, vendors of all types of goods, repairers, road, rail, air or sea transporters, owners or operators or warehouses, terminals or container depots, suppliers of services of whatever nature, other ships, agents or brokers, importers and exporters, stevedores and port and other Authorities;
- (28) **Trading Terms** means these standard trading terms and conditions of the Company, including any annexure hereto and any customer application completed by the Customer;
- (29) **Transport Document** means any bill of lading, waybill or other document defined as such in the Sea Transport Documents Act 65 of 2000 or evidencing the receipt, carriage or storage of Goods;
- (30) **Freight Ton** means a metric ton of 1,000 kilograms or one cubic metre whichever is the greater;
- (31) **Transport Services** means the transportation of Goods from the Collection Point to the Delivery Point in accordance with these Trading Terms as agreed between the Company and the Customer in the Booking Form or otherwise in writing;
- (32) **Transport Unit** means any Container, trailers, flats, tilts, railway wagons, tans, igloo or any other unit load devices used for the carriage of Goods by land, sea or air;
- (33) **Vessel** means:
- (a) in respect of Cargo Services any vessel on which the Goods are transported; and
  - (b) in respect of Ships Agency Services, any vessel, owned, operated, managed or chartered by a Customer or in respect of which the Customer requires the Company to perform the Ships Agency Services;
- (34) **Warehouse** means the warehouse owned or leased or operated by the Company in which the Goods may be stored;
- (35) **Warehouse Services** means warehousing and storage services agreed between the Company and the Customer in the Booking Form or otherwise in writing.

1.2 Any reference in these Trading Terms to:

- (1) a **clause** is, subject to any contrary indication, construed as a reference to a clause of this Agreement;
- (2) "**in writing/written**" means by letter, facsimile or e-mail;
- (3) **person** is construed as a reference to any natural or juristic person, firm, company, corporation, government, state, agency or organ of a state, association, trust or partnership (whether or not having separate legal personality).

1.3 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

- 1.4 The headings do not govern or affect the interpretation of these Trading Terms.
- 1.5 If any provision in a definition confers rights, or imposes obligations on any Party, effect is given to it as a substantive provision of these Trading Terms.
- 1.6 Unless the context indicates otherwise an expression which denotes any gender includes both the others; reference to a natural person includes a juristic person; the singular includes the plural, and the plural includes the singular.
- 1.7 Any number of days prescribed in these Trading Terms excludes the first day and includes the last day and any relevant action or notice may be validly done or given on the last day.
- 1.8 Unless the context indicates otherwise if the day for payment of any amount or performance of any obligation falls on a day which is not a Business Day, that day will be the next Business Day.
- 1.9 The words "including" and "in particular" are without limitation.
- 1.10 Any reference to legislation is to that legislation as at the Signature Date, as amended or replaced from time to time.
- 1.11 Any reference to a document or instrument includes the document or instrument as ceded, delegated, novated, altered, supplemented or replaced from time to time.
- 1.12 A reference to a Party includes that Party's successors-in-title and permitted assigns.
- 1.13 A time of day must be construed as a reference to Harare time.
- 1.14 The rule of interpretation that, in the event of ambiguity, the contract must be interpreted against the party responsible for the drafting of the contract does not apply.
- 1.15 The termination of these Trading Terms does not affect those of its provisions which expressly provide that they will operate after termination, or which must continue to have effect after termination, or which must by implication continue to have effect after termination.

## **2 Application of these Trading Terms**

- 2.1 Subject to clause 2.5, all Business is undertaken by the Company subject to these Trading Terms which shall be deemed to be incorporated in and be a part of any Agreement concluded between the Company and its Customers.
- 2.2 The Company shall deal with Goods only on the basis set out in these Trading Terms and any other terms agreed in writing between the Parties.
- 2.3 Unless the Parties agree in writing specifically to the contrary, these Trading Terms shall prevail in the event of the Customer itself having standard trading conditions, even if the latter conditions are apparently incorporated after these Trading Terms, in terms of an accepted purchase order or otherwise.
- 2.4 Should the Customer amend or strike out any term of these Trading Terms before its signature hereof it must bring that amendment or striking out to the attention of the Company. Any such amendment or striking out amounts to a counter offer by the Customer and is only effective if the Company acknowledges and consents to the amendment or striking out in writing.
- 2.5 The Company shall be entitled to issue Transport Documents in respect of the whole or part of any Agreement for the movement or storage of Goods. Where a Transport Document is issued these Trading Terms shall continue to apply except insofar as they conflict with the Trading Terms applicable to the Transport Document. The issue of a Transport Document by the Company shall entitle it to raise an additional charge determined by the Company, to cover its additional obligations arising under the Transport Document.

- 2.6 The Company is entitled to amend these Trading Terms and Conditions and to publish supplementary terms and conditions, which amendments and supplements shall take effect 30 days from the date on which they are made by the Company. As and when any amendment or supplement is made it shall be available at the offices of the Company. Whilst the Company will take reasonable steps to publicise amendments by an indication to that effect on its email correspondence and/or on its website, its failure to do so shall not in any way prevent the amendment or supplement taking effect.
- 2.7 Subject to clause 2.6, no addition to or variation or consensual cancellation of this Agreement, including this clause, has effect unless in writing and signed by the Parties. Only directors or individuals authorised or ratified by the board of directors of the Company are authorised to alter, amend or vary these Trading Terms.
- 2.8 Where the Company provides:
- (1) Cargo Services, Parts A and B of these Trading Terms apply;
  - (2) Ships Agency Services, Parts A and C of these Trading Terms apply.

### **3 Quotations, estimates and binding Agreements**

- 3.1 Any quotations or estimates given by the Company shall only be open for acceptance for a period of 7 days of the date of the quotation or estimate. Failure to respond to any quotation in writing shall be deemed to be an acceptance of the quotation or estimate by the Customer.
- 3.2 Quotations or estimates as to costs, expenses and rates are non-binding estimates and the Company is only bound to perform on written acceptance of a Booking Form by the Customer or other written agreement between the Customer and an authorised senior manager of the Company as to the Services to be rendered. Prior to that acceptance by the Company, the Company is entitled to withdraw and/or amend its quotation or estimate. Acceptance of the Booking Form by the Customer constitutes an Agreement between the Parties for the performance of the Services set out in that Booking Form or specifically agreed in writing by the Parties, subject always to the terms and conditions of these Trading Terms.
- 3.3 Quotations, estimates and Booking Forms are calculated on information furnished by the Customer, such as dimensions, values or weights of Goods and Transport Units, details of any hazardous nature of Goods, the number of packages or Transport Units and are subject to alteration in the event of actual details of the Services being different to those stated.
- 3.4 Quotations, estimates and Booking Forms involving classes of Goods and destinations not covered by the Company's permit/s or licence/s issued under any applicable legislation are given on condition that a temporary or other appropriate permit can be obtained by the Company.
- 3.5 Unless specified otherwise within the body of any quotation, estimate or Booking Form given by the Company, reference to tonnage therein shall be deemed to be Freight Tons.

### **4 Rates**

- 4.1 The Company will charge the rates and charges agreed in the Booking Form or otherwise in writing. Charges quoted are valid only for the Services specifically set out in the Booking Form or otherwise agreed in writing.
- 4.2 If subsequent to the Company quoting for Services or the acceptance of the Booking Form:
- (1) the cost to the Company for performing the Services increases for any reason, the charge agreed with the Customer for such Service shall be automatically increased by that cost;

- (2) the Company is required to perform additional services and the Customer will be liable to pay for those additional services, at the Company's usual rate or if there is no usual rate at a reasonable market related rate in terms of clause 5.
- 4.3 All quotations and estimates and the rates and charges agreed between the Parties are confidential and may not be disclosed to any third parties without the prior written consent of the Company.
- 4.4 The rates and charges quoted by the Company for any Services shall not, unless otherwise specified, include any taxes, surcharges, fines, levies, deposits, or other government, provincial or municipal charges or duties which shall be payable by the customer on demand. If any of the aforementioned or any other variable taken into account by the Company increases before the Company performs any of the Services to which they relate, the increase shall be for the Customer's account and shall be paid by the Customer on demand. The Customer indemnifies and holds the Company harmless against all costs, expenses, liability, loss, damage or claims arising out of or in connection therewith.

## **5 Payment terms**

- 5.1 Unless otherwise agreed in writing between duly authorised representatives of the Company and the Customer respectively, the Customer shall pay to the Company, in cash or as agreed, all sums upon presentation of an invoice, without deduction or deferment on account of any claim, counterclaim or set-off.
- 5.2 Notwithstanding clause 5.1, the Company reserves the right to require payment in advance before the performance of any Services.
- 5.3 The Customer shall pay to the Company upon demand in advance such amounts as the Company may from time to time request in respect of anticipated disbursements.
- 5.4 The Company shall be entitled to be paid interest by the Customer at the Prime Rate plus 5% on all amounts overdue provided that should the law limit the maximum rate permitted at any stage, the maximum rate shall be levied. Such interest will run from the date the applicable invoice was payable or the date agreed in writing (if credit terms were extended) to date of payment, both days inclusive.
- 5.5 The Company is entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by or paid to shipping and forwarding agents and insurance brokers and shall not be obliged to disclose or account to its Customers or principals for any such remuneration received by it from third parties.
- 5.6 The Company is entitled to allocate any payments received by the Company in its discretion.
- 5.7 The Company may raise further invoices against the Customer in respect of any amount of any nature whatsoever erroneously omitted from earlier invoices or received late from Sub-contractors or third parties.
- 5.8 The Company is entitled to suspend or refuse to provide the agreed Services while any amount due and payable to the Company remains outstanding.
- 5.9 The Customer is not entitled to withhold payment of any amounting owing to the Company from time to time despite any dispute it may have in relation to the amount owing, including without limitation arising out of damage to or loss of cargo, dispute on any invoice or any claim for compensation.

## **6 Terms and conditions of credit**

- 6.1 The granting of credit to a Customer and the extent of that credit is entirely within the discretion of the Company. The Customer agrees that credit is only advanced on acceptance of the credit application by the Company in writing.

6.2 Any credit advanced by the Company is subject to:

- (1) the Customer delivering to the Company an approved guarantee issued by a financial institution in favour of Company; and/or
- (2) such other security required by the Company;

for such amount as may be determined by Company. Any advance of credit to the Customer will not be of any force or effect until such time as the Company has approved and accepted the security in writing. The Company may waive the fulfilment of this condition in writing.

6.3 In the event that the Company agrees (in writing) to advance credit to the Customer, the following provisions will apply:

- (1) the credit limit requested by the Customer is for application purposes only and the Company will determine the Customer's credit limit from time to time by notice to the Customer;
- (2) the Company may, on notice to the Customer, adjust the Customer's credit limit from time to time and for this purpose the Customer agrees to provide the Company with all information and documents reasonably requested by it in order to assess the Customer's credit worthiness or otherwise;
- (3) the Customer may not exceed its credit limit without the prior written consent of the Company;
- (4) the Company may from time to time debit amounts payable to any third party in respect of services rendered to or at the request of the Customer against the credit advanced to the Customer and the Customer will be liable for all amounts so debited;
- (5) the Customer is entitled to terminate the credit facility by giving the Company 30 (thirty) day's notice in writing of the intention to so terminate the account; as well as full payment of any outstanding balance;
- (6) the amount outstanding and payable by the Customer to the Company from time to time will be determined by and prima facie proved by way of a certificate under the hand of any director of the Company, whose signature and authority it will not be necessary to prove;
- (7) in the event of the Customer exceeding the credit limit at any time, or in the event of any amount not being paid on due date, the Company is entitled to at its discretion, to refuse to render any further Services to the Customer, without incurring any liability to any party in respect of such refusal, any or all amounts outstanding will become immediately due and payable;
- (8) the Customer must query in writing any incorrect debits raised on invoices within 5 working days of invoice date;
- (9) for all cash deposits made by the Customer, a cash deposit fee of 2.5% on the invoice value or amount deposited is chargeable by the Company; and
- (10) the Company is entitled to summarily terminate the credit advanced to the Customer at any time and without providing reasons in which event the full amount of the Customer's indebtedness to the Company will immediately become due and payable.

## **7 Status of the Company and Sub-contracting**

7.1 The Company is entitled to sub-contract any or all of the Services without the consent of the Customer. In doing so, the Company 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, unless otherwise agreed in writing.



- 7.2 The quoting of a fixed price for the performance of any Services shall not itself determine whether such task is to be arranged by the Company acting as agent for and on behalf of the Customer or as a principal.
- 7.3 Where the Company acts as an agent for and on behalf of the Customer:
- (1) any contract concluded with a third party, is concluded between the Customer and the third party; and
  - (2) unless otherwise agreed in writing, the Company is entitled to enter into any such contract subject to such terms and conditions as the third party may stipulate.
- 7.4 Where the Company acts a principal any Business to be undertaken may in the absolute discretion of the Company be fulfilled by the Company itself, by its own servants performing part or all of the relevant services, or by the Company employing or instructing or entrusting Goods to third parties on such conditions as may be stipulated by or negotiated with such third parties for the purposes of such services, or such part thereof as they may be employed to carry out.
- 7.5 Without limiting clause 14, every such sub-contractor or other person will have the benefit of every right, defence and limitation of whatsoever nature provided for in these Trading Terms or otherwise available to the Company, as if such provisions were expressly for its benefit, and in entering into these Trading Terms, the Company, to the extent of this clause 7.5, does so not only on its behalf but also as an agent or trustee for such persons.
- 7.6 To the extent that the Company in fulfilling its obligations to the Customer is subject to rights and obligations whether contractual or otherwise with third parties (whether acting as agents or subcontractors to the Company or not) which are more onerous to the Company than those contained in these Trading Terms and any other terms and/or conditions agreed between the Parties, those more onerous rights and obligations shall be incorporated herein and so be passed on to the Customer in its relationship with the Company, whether or not inconsistent with these Trading Terms and any other terms and/or conditions agreed between the Parties.

## **8 Instructions**

- 8.1 Wherever it is necessary for instructions to be given to the Company, the Customer shall do so in writing and such instructions shall be recognised by the Company as valid only if timeously given specifically in relation to the matter in question and in a form acceptable to the Company, setting out the details of all of the Services required of the Company, including without limitation and where applicable given the nature of the Services:
- (1) which Services are required by the Customer;
  - (2) the dates and times of collection and delivery;
  - (3) the Collection Point and the Delivery Point;
  - (4) the names, contact details and other relevant details of the Consignee and Consignor;
  - (5) any information required in order to comply with clauses 34 to 38 (if any);
  - (6) a description of the Goods in compliance with clause 28;
  - (7) any relevant Transport Unit details, including without limitation the Transport Unit and seal numbers;
  - (8) the point of entry and exit for customs purposes;
  - (9) the estimated time of arrival and departure of any Vessel;
  - (10) what (if any) necessities are to be supplied to any Vessel;



- (11) any specific requirements for handling the Vessel;
  - (12) any specific requirements for the Vessel while in Port, such as repairs, bunkering, crew changes, etc;
  - (13) any other information relating to the Goods, the Vessel or the Services which the Company will require in order to render the Services in terms of these Trading Terms, any Booking Confirmation and all Legal Requirements.
- 8.2 The Customer's standing or general instructions or instructions given late, even if received by the Company without comment, shall not be binding upon the Company. In addition, in order to render any instructions valid, they shall either be given in writing or, if owing to the urgency of the situation it is not practicable to give same in writing they shall be given orally and thereafter confirmed in writing as soon as reasonably practicable.
- 8.3 The Company is entitled but not obliged to adhere to any instructions not in accordance with the requirements of clause 8.1 and/or not contained in Booking Form confirmed in writing.
- 8.4 If at any stage during the provision of any Services the Company should consider that there is good reason, making it advisable in the Customer's interest to depart from any of the Customer's instructions, the Company shall be permitted to do so, at the Customer's cost, without incurring any additional liability.
- 8.5 In the absence of written instructions the Company reserves the right to determine, in its absolute discretion, the means, route and procedure to be followed when carrying out any Business.
- 8.6 The Company is entitled to adhere to instructions received from an Authority without liability to and at the risk and expense of the Customer.
- 8.7 The Company shall have no obligation to take any action in respect of any Goods or Vessel which may be recognisable as belonging to or under the control of a Customer, unless and until it receives suitable, written instructions relating to those Goods, together with all necessary documents.
- 8.8 The Company shall be entitled at any time, to require the Customer to furnish further information relating to the Services or to any other subject matter of the Business between them and shall be entitled to postpone performance of any obligation or Services in terms hereof, until such information is received in writing.
- 8.9 The Company shall not be obliged to make any declaration for the purpose of any statute or convention or contract as to the nature of Goods or as to any special interest in delivery or otherwise or to transport or any other matter relating to any Service or store any Goods separately unless expressly instructed by the Customer in writing.

## **9 Licences and Legal Requirements**

- 9.1 The Company shall be excused from performing Services in terms of any Agreement concluded with the Customer if any licence, permit or similar Legal Requirement required for it to do so is revoked, terminated, not issued or not renewed for any reason whatsoever or the execution thereof would contravene any Legal Requirement.
- 9.2 The Company, by complying with any Legal Requirements shall not be deemed to waive or abandon any rights in terms of any Agreement and shall not be deemed to have assumed any obligation, onus, responsibility or liability in favour of the Customer or any other party.

## **10 No Warranties, representations or guarantees by Company**

- 10.1 Unless specifically agreed to and signed by a director of the Company, the Company gives no warranties or representations in relation to the Services and all warranties whether express, implied or in terms of common law or otherwise are excluded.

- 10.2 All Customers acknowledge 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, the information required.
- 10.3 A Customer may not, under any circumstances, require the Company to furnish a guarantee or to provide security for the performance of any obligations by a Customer or the Company on behalf of a Customer. In the event of the Company, by reason of a Legal Requirement, being obliged to guarantee the obligations of a Customer or secure the fulfilment of the Company's obligations on behalf of a Customer, a Customer indemnifies the Company against any cost, expense, loss, liability or claim arising from or in connection with the guarantee or security and in addition agrees to pay to the Company the commission stipulated by the Company, calculated on the maximum amount of any loss the Company may sustain were any such guarantee or security to be acted upon.

## **11 Liability and claims against the Company by the Customer**

- 11.1 The Company shall not be liable for any cost, expense, demurrage, claim, liability, loss or damage unless:
- (1) the Customer establishes that such loss or damage was caused by a breach of any Agreement the negligence of:
    - (a) the Company; or
    - (b) any person for whose acts or omissions the Company is in law responsible; or
  - (2) the Company is liable in terms of section 61 of the Consumer Protection Act 2008, if applicable, but subject always to the exceptions set out in that section.
- 11.2 In all such events, the burden of proving such negligence shall, at all times rest upon the Customer or such other party alleging it.
- 11.3 In no circumstances whatsoever will the Company be liable for any consequential or indirect damages or loss of profits of the Customer or any third party.
- 11.4 The Company shall not be liable under any circumstances for claims arising from or in any way connected with:
- (1) an act or omission of the Customer or any person acting on its behalf, including without limitation any incorrect, incomplete or misleading instructions,
  - (2) the Company complying with instructions given by or on behalf of the Customer;
  - (3) any act, order or omission of any Authority, including without limitation any rail authorities;
  - (4) the handling, storage or transporting of Goods by the Customer itself or any person other than the Company, its servants, sub-contractors or agents;
  - (5) the fact that there may be a change in the rates 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 of tariff, or by virtue of the fact that a saving may have been effected in some other way had any act been performed at a different time;
  - (6) the insufficiency of the packing or labelling of Goods where such service was not provided by the Company;

- (7) the inaccuracy of marks, weights, measurements, numbers, brands, contents, quality or description of Goods, unless due to the Company's negligence;
- (8) any deficiency in the weight of Goods existing at the time of delivery of the Goods by or on behalf of the Company to the Customer or its agent, which totals less than 1.5% of the weight of the Goods received by the Company in bulk or liquid, it being acknowledged by the Customer that there may be losses and wastages in the handling process of such Goods;
- (9) the nature of Goods;
- (10) damage to Goods caused by natural events such as rain, lightening, hailstorms and inclement weather and any other events beyond the reasonable control of the Company;
- (11) subject to clause 11.1(2), the defective or overweight condition of Containers or vehicles, unless due to the Company's gross negligence;
- (12) riots, civil commotions, strikes, lockouts, stoppage or restraint of labour;
- (13) explosion, fire, flood or storm;
- (14) the breakdown of or failure of any handling equipment of the Company, provided that the Company has complied with such testing and maintenance standards for the equipment as are customary in the Company's business;
- (15) the breakdown of, accident to, failure or interruption of or reduction in the mains electrical supply to any Warehouse, Container Depot or premises from which Services are performed, it being agreed that Company is under no obligation to have available any auxiliary power supply;
- (16) any failure to examine or certify the Goods or any Vessel's hold or an error or omission in any such examination or certification;
- (17) any incorrect blending of Goods;
- (18) any non-compliance with the Legal Requirements by the Customer, shipper or any of their employees, agents or sub-contractors; or
- (19) any cause which the Company could not avoid and the consequences whereof it could not prevent by the exercise of reasonable diligence.

11.5 Without limiting the provisions of this clause 9 and subject always to the maximum limits in clause 11.7, the liability of the Company in respect of:

- (1) Containers (excluding contents, if any), shall be limited to SDR 1,500 per refrigerated Container and otherwise to SDR500 per Container;
- (2) physical loss of or damage to the Goods, shall be limited the lesser of the market value of the Goods and the cost of the Goods to the Customer;
- (3) contamination of Goods, shall be limited to the lesser of the market value of the Goods and the reasonable cost of restitution of the Goods;

provided that the liability of the Company contemplated in clauses (1) to (3) never exceeds the greater of a rate of SDR2 per kilogram, or SDR 15 000; and

- (4) in any other respect, shall be limited to SDR15 000 per event or events arising from a common cause, subject to an overall limit of SDR120 000 in aggregate in any one year.

- 11.6 The "market value" of the Goods as contemplated in clause 11.5 shall be the value at the place where the Company handled the Goods that would be agreed between a willing buyer and willing seller on an arms length basis, as determined by assessors acting on behalf of the Company.
- 11.7 If Goods of more than one Customer are affected by such a cause and the aggregate of the proven claims of such Customers exceeds the said sum of [SDR 15,000] notwithstanding the application of the limitation provisions contained elsewhere in this clause 9, such claims shall be pro-rated according to their respective (limited) values and the liability of the Company in respect of each claim shall be limited accordingly.
- 11.8 The Company reserves the right to appoint assessors to inspect all Goods or other property subject to the dispute, whose decision shall constitute prima facie proof of the condition of the Goods.

## **12 Time bar**

The Company will be discharged from all liability whatsoever arising out of or in connection with the Services unless summons or other process initiating legal proceedings is issued and served on the Company within twelve months of the date upon which the incident giving rise to any such liability occurred or upon which the Services were or should have been rendered, whichever is the earlier and immediate notice is given to the Company in writing of such legal proceedings having been brought.

## **13 General indemnities**

- 13.1 The Customer shall defend, indemnify and hold harmless the Company against all loss, damage, liability, costs (including but not limited to all legal costs on an attorney and own client scale), expenses or claims (whether by the Customer or any third party) whatsoever arising from:
- (1) any breach of warranty or obligation by the Customer;
  - (2) any negligence on the part of the Customer or any person acting on its behalf;
  - (3) any act or omission of the Customer or any person acting on its behalf;
  - (4) any claims of a general average nature which may be made against the Company and the Customer agrees to timeously provide such security as may be required by the Company in this regard;
  - (5) the Company complying with the instructions given by or on behalf of the Customer;
  - (6) the Company complying with any, Legal Requirements or the requirements of any Authority;
  - (7) any advice or information given by the Company and passed on to any third party without the Company's prior written consent;
  - (8) any cost, expense, loss, liability, damage or claim:
    - (a) in excess of the Company's limits of liability contemplated in these Trading Terms; and/or
    - (b) for which the Company has excluded liability in terms of clause 11 or otherwise in terms of these Trading Terms.
- 13.2 The Customer furthermore indemnifies the Company against any claim for customs duties, value-added tax, sales tax, penalties, amounts raised in forfeiture, and any other fines, levies

or charges whatsoever in respect of any Services, unless such claim arises as a result of a negligent act or omission on the part of the Company.

#### **14 Claims against the servants and agents of the Company by the Customer or third parties**

The Customer undertakes that, where the Company acts a principle as contemplated in clause 6:

- 14.1 no claim shall be made against any servant, agent or independent contractor of the Company in connection with the Services;
- 14.2 the undertaking in this clause 14 is also hereby given by the Customer to each and every servant, agent and independent contractor of the Company and is hereby accepted by the Company acting on their behalf as their agent;
- 14.3 the Company hereby stipulates in favour of each and every one of its servants, agents and independent contractors that the Customer shall have no right of action whatsoever against any such servant, agent and independent contractor in connection with its dealings with Goods, which stipulation is hereby accepted by the Customer and is open for acceptance by the said servants, agents and independent contractors for an indefinite period of time; and
- 14.4 the Customer indemnifies the Company against any cost, expense, loss, liability or claim suffered on incurred by the Company arising out of or in connection with any breach by the Customer of its undertakings in this clause 14.

#### **15 Claims against the Company by third parties**

- 15.1 Any contracts relating to the Services concluded by the Customer with third parties shall include a provision prohibiting the making of any claim against the Company, its servants, agents and independent contractors, and a provision that the Company, its servants, agents and independent contractors shall have the benefit of any rights, defences or liberties in such contracts excluding or limiting the liability of the Customer in respect of Goods as if such provisions were expressly for their benefit.
- 15.2 The Company hereby authorises the Customer to contract on its behalf with third parties so as to limit the liability of the Company to such parties.
- 15.3 To the extent that a Customer contracts with third parties to stipulate in favour of the Company so as to limit the liability of the Company to those third parties such stipulations are hereby accepted.
- 15.4 The Customer warrants that no claim shall be made against the Company by any third party in connection with Goods or dealings with them by any third party, and shall indemnify the Company for any loss suffered by the latter in respect of any such claim.

#### **16 Collection of payment by the Company for the Customer**

- 16.1 Where any Services are provided by the Company upon instructions to collect freight, duties, charges or other expenses on delivery (C.O.D) in cash or otherwise, the Customer shall remain responsible therefor if they are not paid by such consignee or any other person immediately when due.
- 16.2 If accepted by the Company, instructions to collect payment on delivery or from a third party shall be subject to the condition that the Company will be entitled to assume that the recipient or third party will effect payment and will not be liable for any negotiable instrument which is not met on due date for payment.

## **17 Choice of tariffs**

In all cases where there is a choice of tariff, rates, premiums the extent of the liability assumed offered by any carrier, warehouseman, underwriter, or other person it shall be in the discretion of the Company as to the choice of tariff, rate or premium, declaration of the value of Goods, if any and what liability, if any, shall be imposed on the carrier, warehouseman, underwriter or other person.

## **18 Recovery of duties incorrectly paid**

18.1 Without limiting any other term of these Trading Terms, where as a result of any act or omission by or on behalf, or at the instance of the Company whether negligent or otherwise, any duty, tax, levy, railage, wharfage, freight, cartage or any other impost or charge has been paid or levied in an incorrect amount, then any responsibility or liability to a Customer which the Company may otherwise have will cease and fall away if a Customer does not -

- (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
- (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 a 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 a reasonable time for the purpose of clause 18.1(1) is. Should any act or omission by a Customer, whether or not such act or omission was due to ignorance on the part of a Customer, and whether or not such ignorance was reasonable or justified in the circumstances, prejudice the Company's right of recovery, a Customer shall be deemed not to have complied with the provisions of clauses 18.1(1) and 18.1(2).

## **19 Benefit of Discount**

Irrespective of whether the Company acts as an agent or a principal, the Company is entitled to benefit of discounts obtained and to retain and/or be paid all brokerages, commissions or allowances and other remuneration of whatsoever nature and will not be obliged to disclose or account for any amounts received or receivable by it. In particular the rates quoted or charged by the Company will not be amended to reflect any discounts, brokerages, commissions or other allowances received.

## **20 Lien**

20.1 The Company shall have a particular and general lien over all Goods and/or documents (including any Contract of Carriage, import permits or other refunds, payments or recoveries and any other Transport Documents) relating to those Goods or other property of the Customer in its possession or under its control (**Property**) for all sums of whatsoever kind and nature due at any time by the Customer (including without limitation in respect of the Services, legal and collection costs, demurrage and interest) and, in the event of non-payment of any moneys due by the Customer to the Company, and on giving 7 days notice in writing to the Customer, the Company shall be entitled, without prejudice to any other rights which the Company may have, including without limitation those in clause 40:

- (1) to open and examine any Property, and
- (2) to sell or dispose of all or part of such Property, either by public auction or by private treaty, and to apply the proceeds of any such sale, after deducting all the expenses thereof, in payment of or towards any sum due by the Customer to the Company.



- 20.2 The Company shall pay over the surplus (if any) of the proceeds of such sale, after application thereof in terms of 20.1(2) to the Customer, but shall otherwise be released from all liability whatsoever in respect of the Goods. Should the Company not have sufficient information regarding the Customer to pay over the surplus, the surplus will only be paid over to the Customer within a reasonable period of the Customer providing the Company with the necessary details.
- 20.3 Where the Company has, in accordance with the provisions of 20.1, sold only a part of the Property in its possession, and the proceeds of such sale are sufficient to pay to the Company the amounts referred to in 20.1(2), the Customer shall be entitled to take delivery of the remainder of the Property, provided that if any storage charges remain unpaid by the Customer, such shall be recoverable by the Company in accordance with 20.1 above.
- 20.4 The Customer indemnifies the Company against any claims which may be instituted against the latter arising out of or as a result of any sale in terms of this clause.
- 20.5 The exercise by the Company of its rights in terms of this clause 20 will be without prejudice to any other rights it may have under these Trading Terms or otherwise.

## **21 Force majeure**

- 21.1 To the extent that it becomes impossible for either Party to perform any obligation (other than a payment obligation) in terms of these Trading Terms or any transaction entered into by the Parties because of an event or circumstance that was neither foreseeable nor reasonably foreseeable when these Trading Terms or any transaction between the Parties was entered into or which could not be guarded against or avoided by reasonable care (including without limitation including strikes, lock-outs, acts of God, fire, war or warlike acts, civil insurrection, government interference or restrictions, overburdening of any port, storm, adverse weather conditions, embargo, high-jacking, boycott, government intervention, machinery breakdown, fire, imposition, or restrictions of embargo on imports or exports, or any circumstance beyond the control of the Company), the Party may:
- (1) notify the other Party within 5 business days of the nature, effect, extent and likely duration of the event or circumstance and keep the other party updated as may reasonably be required by that other Party; and
  - (2) resume performance of its obligations when performance becomes possible.
- 21.2 Notwithstanding the provisions of clause 21.1, a labour dispute, strike or lockout which could be resolved by the affected party acceding to the demands made of it shall, be deemed to be an event of force majeure.
- 21.3 Performance of such obligation is suspended for as long as the event or circumstance continues to make performance impossible and the Party prevented from performing is not liable for any cost, expense, loss, damage or liability arising out of or in connection with its inability to perform.
- 21.4 If the event or circumstance endures for a period of longer than 30 days, either Party is entitled to cancel the effected Agreement.

## **22 Time for performance**

- 22.1 Time is of the essence for the performance by a Customer of all obligations owed to the Company in terms of any Agreement.
- 22.2 Unless otherwise agreed in writing by the Company, time is not of the essence for the performance by the Company of all obligations owed to the Customer in terms of any Agreement. Nevertheless, the Company shall use all reasonable endeavours to ensure that any agreed times and dates set out in the instructions are adhered to, but cannot guarantee such performance.



## **23 Deliveries to the Company by post**

Notwithstanding any prior dealings between the Company and the Customer, all documents and other matter (including cash, cheques, bank drafts and 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 delivered to the Company or placed in the Company's post office box, if so addressed.

## **24 Breach**

24.1 Without prejudice to any other rights which it may have, including without limitation any right to claim damages or specific performance, the Company shall be entitled to cancel any or all Agreements between it and the Customer by written notice if:

- (1) the Customer commits any breach of its obligations under these Trading Terms or any other terms and conditions agreed between the Parties;
- (2) the Customer commits an act of insolvency in terms of any applicable insolvency legislation;
- (3) the Customer is deemed to be unable to pay its debts in terms of any deeming provision of any applicable legislation relating to companies or insolvency;
- (4) the Customer compromises or attempts to compromise with its creditors;
- (5) any provisional or final order is granted for the sequestration, winding up, bankruptcy, business rescue or judicial management of the Customer, or any equivalent order is made in terms of any applicable law with regard to the status of the Customer;
- (6) the Customer fails to satisfy any default or other judgment granted against it, within 10 days.

## **25 Arbitration**

25.1 For the purpose of this clause, "Dispute" includes, without limiting the generality of that term, any dispute arising out of or in connection with any Agreement (including without limitation these Trading Terms) and/or the interpretation and/or implementation, enforcement and/or termination thereof.

25.2 The Company may at its election refer any dispute or difference between the Parties to arbitration in terms of this clause 25.

25.3 The arbitration shall be held under the provisions of the arbitration laws for the time being in force in the Republic of South Africa.

25.4 The arbitrator shall be, if the question in issue is:

- (1) primarily an accounting matter, an independent practising accountant of not less than fifteen years standing;
- (2) primarily a legal matter, a practising advocate or attorney of not less than fifteen years standing;
- (3) any other matter, a suitably qualified and experienced independent person;

agreed upon by the Parties, and failing agreement within 14 (fourteen) days after the date on which the arbitration is demanded, shall be appointed by the chairman for the time being of the Law Society of KwaZulu-Natal who may be instructed by either Party to make that nomination at any time after the expiry of the 14 (fourteen) day period.

25.5 Unless otherwise determined by the Company, the arbitration shall be held in English, in Durban, South Africa in accordance with the formalities and/or procedures determined by the Arbitration Foundation South Africa unless the arbitrator decides otherwise, in which event it shall be in accordance with the formalities and/or procedures determined by the arbitrator.

25.6 The arbitrator shall be entitled:

- (1) to investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with the dispute and for that purpose shall have the widest powers of investigating all the books and records of any Party, and the right to take copies or make extracts therefrom and the right to have them produced and/or delivered at any reasonable place required by him for the aforesaid purposes;
- (2) to interview and question under oath any of the Parties, and/or any director or officer of the Parties;
- (3) to make such award, including an award for specific performance, an interdict, damages or a penalty or otherwise as he in his discretion may deem fit and appropriate.

## **26 Notices and domicilium address**

26.1 All notices in terms of these Trading Terms shall be given in English, in writing and delivered by hand or sent by telefax or email.

26.2 Any notice served by the Company by telefax or email shall be deemed to have been given on the first business day in the Customer's country following the day on which it was telefaxed to the Customer's telefax number last known to the Company.

26.3 The Customer appoints as its domicilium citandi et executandi for all purposes under these Trading Terms its physical address provided by the Customer to the Company on any document generated or completed by the Customer.

## **27 General**

27.1 This Agreement is the whole agreement between the Parties in regard to its subject matter.

27.2 If any legislation is compulsorily applicable to any business undertaken by the Company these Trading Terms shall, as regards such business, be read as subject to such legislation which shall be incorporated herein and if any part of these Trading Terms be repugnant to such legislation such part shall as regards such business be void to that extent but no further.

27.3 The defences and limits of liability provided for by these Terms and Conditions shall apply in any action against the Company whether such action be founded in contract or delict (tort) or otherwise.

27.4 The Company shall only be deemed to have received electronic data and/or or messages when such data and/or messages have been retrieved, processed and read by the addressee.

27.5 No indulgence by a Party to another Party, or failure strictly to enforce the terms of this Agreement, is to be construed as a waiver or be capable of founding an estoppel.

27.6 The Parties undertake to do everything reasonable in their power necessary for or incidental to the effectiveness and performance of this Agreement.

27.7 Save as is specifically provided in these Trading Terms the Customer is not entitled to cede any of its rights or delegate any of its obligations under any Agreement without the prior written consent of the Company.

- 27.8 Any illegal or unenforceable provision of any Agreement, including without limitation these Trading Terms, may be severed and the remaining provisions of any Agreement continue in force.
- 27.9 All Agreements are governed by South African law.
- 27.10 The Parties unconditionally consent and submit to the non-exclusive jurisdiction of the KwaZulu-Natal High Court, Durban in regard to all matters arising from this Agreement.

## **PART B – CARGO SERVICES**

### **28 Description and condition of Goods delivered to the Company**

- 28.1 The Customer shall prior to delivery of Goods to the Company provide the Company with written confirmation of:
- (1) the full description of the Goods as contemplated in clause 28.3, including without limitation, weight, quality, dimensions, quantity and condition;
  - (2) whether the Goods are new or second hand; and
  - (3) any other information relevant to their safe and proper handling, storage or carriage.
- 28.2 The Customer is deemed to have reasonable knowledge of all matters directly or indirectly relating to the to the Customer's business, Goods, and the Services, including without limitation terms of sale and purchase, the nature of the Goods any requirements for their safe handling, carriage and routing and any applicable Legal Requirements.
- 28.3 The Customer warrants the accuracy of that description and all other descriptions, weights, condition, quality, marks, numbers and values and other particulars in respect of Goods furnished to the Company for all purposes, including customs, consular and other purposes, and indemnifies the Company against all losses, damages, expenses and fines arising from any inaccuracy or omission in that respect.
- 28.4 The Customer warrants that all Goods will at all relevant times, comply with all Legal Requirements, including without limitation all customs, tax, health and safety, environmental and other requirements, regulations, permits, licences and/or approvals;
- 28.5 Where the Company does not receive a full accurate written description of all Goods prior to their delivery to the Company, those Goods shall be handled by the Company, its servants, agents and independent contractors entirely at the Customer's risk.

### **29 Transport Units, packing and marking**

- 29.1 The Customer warrants that where Goods are carried in or on a Transport Unit, then save where the Company has been given and has accepted specific written instructions to pack and load the Transport Unit:
- (1) the Transport Unit has been properly and competently packed;
  - (2) the Goods involved are suitable for carriage in that particular Transport Unit; and
  - (3) the Transport Unit itself is in a suitable condition to carry the Goods and complies with all Legal Requirements and the requirements of all relevant transport authorities and carriers.
- 29.2 Except where the Company is instructed to pack Goods, whether or not into a Transport Unit, the Customer warrants that all Goods have been properly and sufficiently packed, packaged, stowed, stored and/or prepared in a manner adequate to withstand the ordinary incidents of handling and storage, and in compliance with all Legal Requirements.
- 29.3 The Company does not own, lease or operate Containers and is not under any obligation to provide Containers to the Customer.
- 29.4 The Customer is responsible for returning Transport Units to the owner or party with the right of possession over the Transport and indemnifies the Company against any cost, expense or claim arising out of or in connection with any failure to do so on time or at all.

29.5 The Customer warrants that all Goods have been properly and sufficiently marked and labelled, including without limitation in accordance with all Legal Requirements and the Customer indemnifies the Company against all losses, damages, expenses and fines arising from any inaccuracy or omission in that respect.

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

### **30 Exclusion of obligations of common or public carrier, bailee or deposittee**

Where the Company carries any Goods (including Transport Units), it does so subject to the applicable Agreement and not as a bailee, deposittee or common or public carrier, whether for reward or gratuitously.

### **31 Inspection**

31.1 The Company shall at all times be entitled but not obliged to unpack and inspect any Goods to establish the nature and sufficiency of the packing. The cost of repacking Goods shall be borne by the Customer.

31.2 The Company shall at all times be entitled but not obliged to inspect any Goods and reject any Goods whether packed or not, which appear to the Company in its sole discretion to be in any way damaged or unsafe for handling, storage or carriage.

31.3 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, Conveyance 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 Customer or its landing or discharge agent that such Goods have been landed and that such a discrepancy exists.

31.4 The Company will not be responsible for examining or counting any Goods received by it where such Goods are bundled, palletised or packed such that their number cannot be quickly and easily counted. Should the Company undertake to count Goods so received, it shall incur no liability in respect of any error or inaccuracy in such counting, unless the error or inaccuracy is the result of gross negligence on the part of the Company. The Company shall be entitled to levy a charge on a Customer for the counting of Goods in such circumstances.

### **32 Collection and delivery**

32.1 The Company is deemed to have received Goods in all other cases, when those Goods have been accepted by the Company at the Collection Point, after delivery to and inspection by the Company and the Company has expressly agreed to accept the Goods in writing, provided that:

(1) liquid bulk Goods are deemed to be delivered to the Collection Point, when they cross the flange connecting the pipeline from the Customers tank or Conveyance to the Company's tank at the Warehouse in the case of Warehouse Services or the Company's Conveyance in the case of Transport Services;

(2) unless the Company has agreed in writing to load the Goods into the Conveyance at the Collection Point in the case of Transport Services or the unload the Goods at the Collection Point in the case of Warehouse or Container Depot Services, it will only accept receipt of the Goods once it is satisfied that they have been suitably loaded or unloaded, as the case may be.

32.2 The Company may reject any Goods where in its discretion it considers it has cause to do so, including but not limited to where the Company is not satisfied that:

(1) arrangements have or will be made for the removal of such Goods;

- (2) the Goods meet the requirements of any applicable Legal Requirements or are not suitable for the Services using the equipment and procedures usually used by the Company, provided that the Company is entitled but not obliged to take whatever measures it deems fit (at the cost and risk of the Customer) to cause the Goods to comply with the Legal Requirements or to be suitable for the Services.
- 32.3 The Company is deemed to have delivered the Goods to the Customer (and its obligations in respect of the Goods cease) when the Goods enter into or are made available at (whichever is applicable) the Delivery Point, provided that:
  - (1) bulk liquid Goods will be deemed to be made available to the Customer when the Goods pass the flange connecting the Company's tank at the Warehouse in the case of Warehouse Services or the Company's Conveyance in the case of Transport Services to the pipeline connecting it to the Customer's tank or Conveyance (whichever is applicable); and
  - (2) if the Company has agreed in writing to unload the Goods at the Delivery Point in the case of Transport Services or load the Goods at the Delivery Point in the case of the Warehousing or Container Depot Services, the Goods will be deemed to be delivered when unloaded or loaded by the Company, as the case may be.
- 32.4 On delivery of the Goods in terms of clause 32.3, the party to whom the Goods are delivered must inspect the Goods and immediately notify the Company of any loss or damage in writing, failing which the Goods are deemed to be delivered in good order and condition.
- 32.5 Unless otherwise agreed in writing by the Company, the Company will not be responsible for loading and unloading Goods.
- 32.6 Where the Company has agreed in writing to uplift or deliver Goods, the Customer is responsible for and indemnifies the Company against all damage or loss of whatsoever nature within its or any consignee's premises to:
  - (1) any Conveyance or loads, due to unsuitability of means of access to the loading or unloading points;
  - (2) any Conveyance, manholes and covers, mains, pipes, bridges, weighbridges or approaches, and anything of a like nature, leading to the loading or unloading point, due to the weight or nature of the Conveyance or its load.
- 32.7 Where the Company has not been appointed to provide Transport Services, the Customer warrants the suitability and safety of every Conveyance used to collect and/or deliver such Goods.
- 32.8 The Company shall be entitled to deliver Goods to the bearer or holder of any Transport Document, notwithstanding that such Transport Document provides for delivery to a named person or party or to the order of the named party. The Company is entitled to assume that the person or party presenting such Transport Document is the person or party lawfully entitled to take delivery and is not required to verify signatures appearing on such Transport Document.
- 32.9 Should the Customer or the Consignee fail to uplift or take delivery of Goods at the Delivery Point, the Company's liability in respect of such Goods shall cease immediately and the Company shall be entitled to nevertheless deliver the Goods at the Delivery Point, or to store Goods, or any part thereof, at the sole risk of the Customer. A communication from any agent or independent contractor of the Company or from any third party having knowledge of the matter to the effect that the Goods cannot be delivered for any reason shall be conclusive evidence of that fact. All costs incurred by the Company as a result of any such storage and/or the Customer's failure to uplift or take delivery shall be payable by the Customer to the Company upon demand.



- 32.10 Unless otherwise agreed in writing by the Company, delivery and collection of the Goods by the Customer must occur at the time set out in the Booking Confirmation, being during the usual working hours of the relevant Container Depot or Warehouse, where applicable.
- 32.11 Any damages to or loss of Goods must be notified to the Company in writing within five days of delivery to the Customer in terms of this clause 32, failing which the Goods are deemed to be delivered in good order and condition and in full, unless otherwise proved by the Customer.

### **33 Terms specific to Transport Services**

- 33.1 Every Agreement or undertaking to transport Goods is subject to the condition that the Company has available a suitable Conveyance(s) at the appropriate time.
- 33.2 In the event of any emergency arising over which the Company has, in its opinion, no reasonable control, the Company reserves the right to cancel the Agreement to transport and should any such emergency arise during transit the Company shall have the right to terminate the transit and to deliver the Goods to the nearest reasonable destination or to make use of any reasonable alternative route to that agreed to by the Company.
- 33.3 The Company reserves the right at any time and for any reason to transfer the Goods at its sole expense, from any Conveyance to any other Conveyances owned and operated by the Company on giving prior notice to the Customer and receiving the Customer's consent, except in cases of emergency, where neither prior notice nor the Customer's consent will be required.
- 33.4 In the case of delivery to the nearest reasonable destination the Company shall inform the Customer accordingly, and such delivery shall be compliance by the Company with its obligations under the Agreement to convey and risk in and to the Goods shall pass to the Customer on such delivery.
- 33.5 In the case of the Company making use of any reasonable alternative route instead of that route agreed to by the Company and in so doing travelling additional distance, the Company shall be entitled to reasonable payment in respect thereof. In absence of any agreed route, the Company may determine the route in its sole discretion.

### **34 Abnormal loads**

- 34.1 The Company is not obliged to carry Abnormal Goods unless:
- (1) it has specifically agreed to in writing;
  - (2) the provincial and local Authorities concerned have granted all necessary approvals and in that regard the Customer shall give the Company adequate notice to obtain abnormal permits (exemptions);
  - (3) the roads' and bridges' Authorities approve a suitable and direct route and do not subsequently vary that route;
  - (4) the Customer ensures that all Legal Requirements have or will be complied with.
- 34.2 Where necessary, the Company may delay the collection of Abnormal Goods until abnormal permits have been obtained or amended accordingly.
- 34.3 The Customer indemnifies the Company against all liability for the cost of repairing any damage which may be caused by the passage of the Abnormal Goods over public or private property, unless such damage is solely and directly attributed to the Company's gross negligence.
- 34.4 Unless otherwise agreed, the Customer shall bear the cost of any traffic escorts required by the Authorities and any charges for raising overhead wires, switching off power, removing obstacles along the route, or any other work which might be necessary for the passage of the Abnormal Goods.



- 34.5 Access to off-loading sites shall be prepared by the Customer prior to the arrival of Abnormal Goods, in order to enable safe passage to off-loading points.

### **35 Precious Goods and Goods requiring special arrangements**

- 35.1 The Company shall not accept liability for the handling of any bullion, coins, precious stones, jewellery, valuables, antiques, pictures, bank notes, other currency, securities and other valuable documents or articles, livestock, plants, tobacco products, spirits, wine, mobile telephones and their components, or computers and their components or parts, unless special arrangements have previously been made in writing.
- 35.2 Should any Customer nevertheless deliver any 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, whether or not it is aware of the nature of the Goods, shall bear no liability whatsoever, for or in connection with any loss of or damage to the Goods and shall not be obliged to put in place any particular security measures.

### **36 Dangerous Goods**

- 36.1 Subject to clause 36.2 and except under special arrangements previously made in writing the Company will not accept or deal with any Dangerous Goods. Any person delivering such Goods to the Company or causing the Company to handle or deal with any such Goods (except under special arrangements previously made in writing):
- (1) shall be liable for all loss or damage caused thereby and shall be deemed to have indemnified the Company against all penalties, claims, damages (including consequential damages), costs and expenses arising in connection therewith;
  - (2) agrees that the Goods may be destroyed or otherwise dealt with at the sole discretion of the Company or any other person or entity in whose custody they may be at the relevant time, at the cost and risk of the Customer;
  - (3) warrants that the Goods comply with all Legal Requirements and Warehouse or Container Depot requirements and all Transport Units, packing, covering or other holder bear all necessary labels and warnings;
  - (4) without limiting the provisions of this clause 36, will ensure that the Company is provided with detailed instructions to enable the Company to properly and safely handle the Dangerous Goods.
- 36.2 If such Goods are accepted under arrangements previously made in writing they may nevertheless be so destroyed or otherwise dealt at the cost and risk of the Customer if they become dangerous to people, other Goods or property.

### **37 Containers subject to temperature control**

- 37.1 In the case of a temperature-controlled Container stuffed by or on behalf of the Customer by a third party, the Customer undertakes that:
- (1) the Container has been properly pre-cooled or preheated as appropriate;
  - (2) Goods have been properly stuffed in the Container; and
  - (3) the Container's thermostatic controls have been properly set by the Customer or the third party.
- 37.2 If the Customer is in breach of any of the provisions of 37.1, the Company may refuse receipt of the Goods and in any event shall bear no liability whatsoever for or in connection with any loss of or damage to the Goods.

- 37.3 The Company is not obliged to set temperature controls unless it agrees to do so in writing. Should the Company agree to set temperature controls in writing, the Customer shall provide the Company with timeous written notice of the required temperature and the Company shall be entitled to rely on those instructions without further investigation.

### **38 Bulk liquid Goods**

- 38.1 Unless otherwise expressly agreed in writing, where the Company agrees to provide Transport or Warehouse Services in respect of bulk liquid Goods it shall procure the use of tanks and pipelines constructed of plain unlined welded or riveted steel, having the usual pumps, valves and accessories required for the storage of bulk liquids at ambient temperature.
- 38.2 If any additional or special equipment or any alteration of the Company's or the Supplier's existing equipment will be required for the storage of the Goods, the Customer shall give sufficient notice thereof to the Company to enable the Company to assess whether it is necessary to install such equipment and carry out any necessary alterations, should it chose to do so. Should the Customer fail to give such notice or should the Company advise the Customer that it will not procure the equipment or make the alterations, the Company shall not be responsible for any loss of or damage to the Goods or for any delay whatsoever arising from the lack of equipment or alteration. All alterations or additional work or special equipment shall be carried out or fitted at the Customer's expense and shall become the sole property of the Company or its Supplier on expiration of any agreement between the parties, unless otherwise agreed in writing.
- 38.3 If any inter-tank transfers are carried out at the Customer's instance and request, such inter-tank transfers shall be at the Customer's risk and expense.
- 38.4 The Customer must ensure that:
- (1) the Goods to be received into any Warehouse, tank or Conveyance owned or procured by the Company, from a vessel or other Conveyance shall be free flowing and capable of being pumped at a rate of 150 Freight Tons per hour at ambient temperature;
  - (2) any vessel delivering the Goods to the tanks shall be capable of pumping the Goods at the said rate of 150 Freight Tons per hour.
- 38.5 Weights and/or volumes of Goods delivered into and/or from the Company shall be ascertained by measurement in the tanks.
- 38.6 Upon request by the Customer, the Company may appoint an independent surveyor to attend on board a Vessel, Conveyance or Warehouse immediately prior to the commencement of loading or discharging, for the purpose of taking ullages and samples, and the said surveyor's certificate of quantity and/or quality shall be accepted as binding by the Parties.
- 38.7 Weights and/or volumes of the Goods collected or delivered in terms of clause 32 shall be established by a weighbridge approved by the Company in the Company's sole discretion. The Customer shall accept for all purposes the accuracy of any of the Company's statement of weights and/or volumes so calculated.

### **39 Disputes as to Ownership**

- 39.1 If the ownership or the right to take delivery of the Goods, as the case may be, is in dispute, or if a third party claims to be entitled to the Goods, or if Goods have been attached by order of court, the Company shall have the right to retain the Goods in question in its possession and charge for the storage thereof at rates that are in accordance these Trading Terms, until the identity of the party who is entitled to take delivery of the Goods has been determined by an enforceable order of court, alternatively, if the Company is satisfied that the party who is in entitled to take delivery has been agreed in writing by all the Parties concerned.

- 39.2 The Company shall have the right to protect its interests in connection with the dispute or attachment, as referred to in this clause, by seeking legal assistance and/or by instituting defending legal proceedings, in which case the reasonable costs thereof on an attorney and own client scale shall be for the account of the Customer.
- 39.3 The fact that the Goods are subject to dispute shall not limit the Company's rights to dispose of the Goods in accordance with these Trading Terms.

#### **40 Disposal of Goods**

- 40.1 The Company shall be entitled to sell or dispose of any Goods if:
- (1) a Customer, the Consignee, the person contemplated in clause 32.8 cannot be identified at the Delivery Point; or
  - (2) the Goods cannot be delivered due to insufficient instructions as to the Delivery Point or the Consignee; or
  - (3) without limiting clause (1), the Goods have not been collected or accepted by the Customer or any other person after the expiry of 7 days written notice to the Customer sent to its address nominated in terms of clause 26.3; or
  - (4) in the Company's opinion the Goods are likely to constitute a risk to other goods, property, life or health; or
  - (5) the Goods have begun to deteriorate or are likely to deteriorate.
- 40.2 All charges and expenses arising in connection with the sale or disposal of the Goods (including storage costs) shall be for the account of the Customer.
- 40.3 The Company shall be entitled to store the Goods or any part thereof at the risk and expense of the Customer.
- 40.4 In respect of clauses 40.1 and 40.3, the provisions of clause 39 shall apply mutatis mutandis.

## **PART C –AGENCY SERVICES**

### **41 Re-imbursement of expenses and amounts owing to Suppliers and remuneration of the Company**

41.1 The provisions of this clause 41 apply to Agency Services in addition to and without limiting the provisions of clause 4 and 5.

41.2 A Customer is liable for and will pay to the Company:

(1) all amounts owing to any Supplier;

(2) all costs and expenses incurred in the performance of the Agency Services,

regardless of whether the Agency Services were performed at the request or on the instructions of a Customer, the Master of the Vessel, the office of a Customer or his nominees, representatives, howsoever communicated to the Company and despite the fact that any such persons may have exceeded their authority in requesting or instructing the provision of the particular Agency Services.

41.3 The Company is not obliged to make any disbursement whatsoever on behalf of a Customer until the Company has been paid all amounts due by a Customer to the Company and has sufficient funds from a Customer for the purposes of making the particular disbursement.

41.4 Despite anything to the contrary herein contained, all disbursements made by the Company on behalf of a Customer are immediately due and repayable by a Customer to the Company.

41.5 The Company is entitled to, immediately after they become due, deduct from the sums held by the Company for a Customer's account any amounts due to the Company by a Customer.

41.6 In the case of any charter party providing that the Company nominated by the charterer shall be the Vessel's agent, the charterer and owner of the Vessel shall be jointly and severally liable to the Company for the payment of the Company's charges and any costs and expenses incurred by the Company on their behalf.

### **42 Signing of Transport Documents**

If the Company is authorised by a Customer to sign and issue Transport Document on behalf of a Customer, a Customer indemnifies the Company against any cost (including without limitation legal costs on a attorney and own client scale), expense (including without limitation demurrage), fine, penalty, loss, damage (including without limitation loss of life, injury and loss of or damage to property) or claim, whether in contract or delict, of any nature, that may arise out of or in connection with the Company issuing the Transport Document on behalf of a Customer.

### **43 Pre-arrival and pre-entry information**

Any information provided by the Company to the Customer and/or the Vessel in connection with compliance with the requirements for the reporting of pre-arrival and pre-entry information in terms of the Merchant Shipping (Maritime Security) Regulations 2004 (ISPS Code), is provided by the Company for information purposes only.

The signatory here by warrants that he or she has read and understood these Trading Terms, is authorised to bind the Customer to these Trading Terms and agrees that all Business undertaken by the Company on behalf of the Customer is subject to these Trading Terms.

Signed at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 2017.  
For and on behalf of  
**The Customer**

\_\_\_\_\_  
Name:  
Capacity:  
Who warrants authority