



STANDARD TERMS AND CONDITIONS

1. INTERPRETATION

- 1.1 In interpreting these standard trading conditions, the headings to the clauses shall not be used to interpret the clauses to which they relate.
- 1.2 References to one gender shall include the other gender, the singular includes the plural and vice versa, and all terms shall apply equally to natural persons, juristic persons and other associations, unless the context indicates otherwise.
- 1.3 The following terms shall have the meanings assigned to them hereunder, and cognate expressions shall have a corresponding meaning, namely:
 - 1.3.1 "Carrier" means any transporter of Goods, whether by road, rail, sea or air, with whom the Company contracts, whether as principal or agent, to move Goods or provide services.
 - 1.3.2 "Company" means Amfi Agencies CC, with registration number 1996/030307/23.
 - 1.3.3 "Conditions" mean the conditions contained in these Standard Terms and Conditions, as well as those referred to in all AMFI Freight notices, correspondence, receipts, emails or other electronic communications and other documents.
 - 1.3.4 "Container" means any container, transportable tank, bolster or flat rack, used to transport goods and constructed to ISO standards or recommendations or those of a similar recognised classification society.
 - 1.3.5 "Customer" means any person at whose request or on whose behalf the Company undertakes any business or provides any advice, information or services and shall include any agent or sub-contractor.
 - 1.3.6 "Goods" include the cargo and any container in respect of which the Company or its agents, servants or sub-contractors on the instructions of the Customer provides a service.

- 1.3.7 "Owner" means the owner of the Goods to which any business concluded under these Conditions relates and any other person who has an interest, financial or otherwise, therein, or who may acquire such interest therein.

2. **APPLICATION**

- 2.1 All and any business undertaken or advice, information or services provided by the Company at any time, is undertaken or provided subject to these Conditions.
- 2.2 In particular, it is recorded and agreed that these 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.
- 2.3 If any of these Conditions are found to be repugnant to or in conflict with any statutory law which statutory provision may not be amended by agreement between the parties, they are deemed to be amended to comply with that law, and any such amendment shall not affect the remaining provisions of these Conditions.

3. **SEVERABILITY**

If any provisions of these Conditions are unenforceable, then the Company may elect that such provision shall be severed from the remaining provisions of these Conditions, so as to allow the remaining provisions to remain of full force and effect.

4. **OWNER'S RISK**

All handling, packing, loading, unloading, warehousing and transporting of Goods by or on behalf of or at the request of the Company are carried out at the sole risk of the Customer and/or Owner, and the Customer hereby indemnifies the Company accordingly, on a full indemnity basis.

5. **ACTING CAPACITY**

- 5.1 Unless otherwise agreed in writing, the Company, in procuring the carriage, storage, packing or handling of Goods, shall be entitled to act either as agent for and on behalf of the Customer or as a principal, as it in its absolute discretion deems fit.

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- 5.2 The offer and acceptance of a fixed price for the accomplishment of any task shall not in itself determine whether such task is to be arranged by the Company acting as agents for and on behalf of the Customer or as a principal.
- 5.3 The Customer acknowledges that when the Company, as agent for and on behalf of the Customer, concludes any contract with a third party, such agreement is concluded between the Customer and the third party.
- 5.4 The Customer authorises the Company to act as its agent in clearing Goods through Customs, provided that a valid clearing instruction has previously been provided to the Company by the Customer.
- 5.5 Unless otherwise agreed in writing, the Company, when acting as agent for and on behalf of the Customer, shall be entitled to enter into any contract it reasonably deems necessary or requisite for the fulfilment of the Customer's instructions, including, without limitation, contracts for the:
- 5.5.1 Carriage of Goods by any route or means or person;
- 5.5.2 Storage, packing, transport, shipping, loading, unloading and/or handling of Goods by any person at any place whether on shore or afloat and for any length of time;
- 5.5.3 Carriage or storage of Goods in break-bulk form or in or on containers or other specially designed transport units or with or without other Goods of whatsoever nature.
- 5.6 The Company is neither a common carrier nor a public carrier.

6. CUSTOMER UNDERTAKINGS

- 6.1 The Customer shall, for all purposes hereunder, be deemed to have reasonable knowledge of all matters directly and indirectly relating to the Customer's business, the Goods and services to be rendered by the Company in respect thereof, which includes, but is not limited to, terms of sale and purchase and all matters incidental thereto.
- 6.2 The Customer warrants that:

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- 6.2.1 It is authorised to agree to these Conditions on behalf of any person or entity that it represents;
- 6.2.2 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;
- 6.2.3 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 costs, penalties, fines, damages and expenses arising as a result of any breach of this undertaking;
- 6.2.4 The Goods concerned are suitable for the type and mode of carriage contemplated in or on the transport device concerned, and that the transport device is in a proper condition to carry the Goods safely and complies with the requirements of all relevant transport authorities and Carriers;
- 6.2.5 It has the requisite International Maritime Dangerous Goods Code (IMDG) certification to handle hazardous Goods (as defined in clause 16.1 below) where applicable.
- 6.2.6 The Goods are accompanied by all necessary completed documents, save to the extent that the Company has undertaken to prepare or procure this, failing which the Company shall be entitled to withhold delivery until the document has been provided;
- 6.2.7 If the Customer is a Close Corporation or limited liability company, then its members and/or directors personally guarantee, jointly and severally, the due performance of all the obligations of the Customer to the Company and the representative of the Customer warrants that he is duly authorised to bind such members and/or directors and act as the Customer's agent in all his dealings with the Company;
- 6.2.8 Time is of the essence for the performance by the Customer of all obligations owed to the Company in terms of any agreement with it governed by these Conditions.
- 6.2.9 Its annual turnover exceeds the thresholds set out in the Consumer Protection Act 68 of 2008 and National Credit Act 34 of 2005 and, in any event, warrants that its

annual turnover exceeds ZAR2million per annum. The onus is on the Customer to notify the Company in the event that its annual turnover does not exceed these thresholds, it being understood that any failure to notify the Company may prejudice the basis on which the Company contracts with the Customer

7. CUSTOMER'S INSTRUCTIONS

- 7.1 The Customer's instructions to the Company shall be in writing and be precise, clear and comprehensive and in particular, but without limitation, shall cover any valuation or determination issued by any Customs & Excise authority in respect of any Goods to be dealt with by or on behalf of or at the request of the Company.
- 7.2 Instructions given by the Customer shall be recognised by the Company as valid only if timeously given specifically in relation to a particular matter in question.
- 7.3 Oral instructions, standing or general instructions, or instructions given late, even if received by the Company without comment, shall not in any way be binding upon the Company, but the Company may act thereupon in the exercise of its absolute discretion.
- 7.4 Unless specific written instructions are timeously given to and accepted by the Company, the Company shall not be obliged to:
 - 7.4.1 Make any declaration for the purpose of any statute, convention or contract as to the nature or value of any Goods or as to any special interest in delivery. In particular, the Company shall be under no obligation to 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;
 - 7.4.2 Arrange for any particular Goods to be carried, stored or handled separately from other Goods.

8. GENERAL DISCRETION

- 8.1 The Company, in the absence of specific instructions given timeously in writing by the Customer:

- 8.1.1 Shall decide, in its reasonable discretion, at what time to perform or to procure the performance of any or all of the acts which may be necessary or requisite for the discharge of its obligations to the Customer;
- 8.1.2 Shall have an absolute discretion to determine the means, route and procedure to be followed by it in performing all or any of the acts or services it has agreed to perform;
- 8.1.3 In all cases where there is a choice of tariff rates or premiums offered by any Carrier, warehouseman, underwriter or other person depending upon the declared value of the relevant Goods for the extent of the liability assumed by the Carrier, warehouseman, underwriter or other person, shall decide what declaration, if any, shall be made and what liability, if any, shall be imposed on the Carrier, warehouseman, underwriter or other person.
- 8.2 If at any time the Company should consider it to be in the Customer's interest or for the public good to depart from any of the Customer's instructions, the Company shall be entitled to do so and shall not incur any liability in consequence of doing so.
- 8.3 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 a Customer's instructions, the Company shall take reasonable steps to inform the Customer of such events or circumstances and to seek further instructions. If such further instructions are not timeously received by the Company in writing, the Company shall, at its sole discretion, be entitled to detain, return, store, sell, abandon or destroy all or part of the Goods concerned at the risk and expense of the Customer, and the Customer shall indemnify the Company and hold it harmless for any claims arising therefrom.

9. CARRIAGE OF GOODS

- 9.1 The Company will arrange for the carriage and/or transport of Goods, upon receipt of specific written instructions by the Customer.

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- 9.2 Any such carriage and/or transport, including storage and handling of the Goods, shall be arranged by the Company as agents for and on behalf of the Customer and shall be subject to the conditions stipulated by the Carrier contracted to carry the Goods.
- 9.3 The Company accepts no liability whatsoever and howsoever arising in respect of such carriage, provided that should it be found that the Company in any way retains any obligation or responsibilities with regard to the performance of the obligations by the Carrier, then the usual limitations of liability set out in these Conditions will apply.
- 9.4 Where the Company, in its own capacity, undertakes any carriage and/or transport, including storage and handling of the Goods, such services will be rendered subject to these Conditions.

10. **ACCEPTANCE OF DELIVERY**

- 10.1 If delivery of any Goods is not accepted by the Customer, consignee or party nominated by the Customer at the appropriate time and place then:
- 10.1.1 The Company shall be entitled to store the Goods or any part thereof at no risk to the Company and at the expense of the Customer;
- 10.1.2 The provisions of clause 19.2 shall apply *mutatis mutandis*.

11. **EXAMINATION OF GOODS**

- 11.1 Where it is necessary for an examination to be held or other action to be taken by the Company in respect of any discrepancy in the Goods which are landed or discharged from any vessel, vehicle, or transport unit, no responsibility shall attach to the Company for any failure to hold such examination or to take any other action unless the Company has been timeously advised by the landing or discharge agent that such Goods have been landed and that such a discrepancy exists.
- 11.2 The Company will not be responsible for examining or counting any Goods received by it where such Goods are bundled, palletised or packed in any manner 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, whether such error or inaccuracy is the result of negligence on the

part of the Company or otherwise. The Company shall be entitled to levy a charge on the Customer for the counting of Goods in such circumstances.

12. TRANSPORT DOCUMENTS

- 12.1 The Company shall be entitled to issue in respect of the whole or part of any contract for the movement of Goods, a bill of lading (combined transport, through transport, port-to-port) or waybill. Where a bill of lading or waybill has been issued, these trading terms and conditions shall continue to apply except insofar as they conflict with the trading terms and conditions of the bill of lading or waybill concerned. The Company shall be entitled to raise an additional charge as determined by the Company to cover potential additional obligations and administration arising from the issuance of the bill of lading or waybill concerned.
- 12.2 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 including cargo booking services and forwarding services are arranged by the Company as agents only. The provision of such services shall be subject to the terms and conditions of the bill of lading or waybill, which may be inspected on request.

13. QUOTES

- 13.1 By way of notice to the Customer, the Company shall be entitled to resile from or cancel any quotation within 10 days, in circumstances where it becomes either uneconomical or impracticable for the Company to carry out the contract at the quoted rate and the Customer shall have no claim whatsoever against the Company for any loss that the Customer might incur as a result of the Company cancelling or resiling from the quotation.
- 13.2 All quotations and agreements are subject to revision without notice having regard to changes in currency exchange rates and upward movements in amounts payable by or on behalf of or at the instance of the Company to third parties including, without limitation, freight, surcharges, insurance premiums, equipment rental and labour, which charges and upward movements take place after quotation. Any revision of rates as aforesaid will be commensurate with the change in the currency exchange rate or the increase in such amounts payable. Any such increase shall, failing

agreement between the parties, be determined by the then auditors of the Company or any other auditors nominated by the Company, who in such determination shall act as experts and not as arbitrators and whose decision shall be final and binding on the parties.

14. INSURANCE (Clause 14.1 to 14.6 to be signed indicating acceptance or deleted)

- 14.1 The Company has concluded a contract of insurance with certain Insurers pursuant to which the goods are the subject matter of the contract (between the Company and the cargo owner) are insured against marine cargo risks. The insurance has been procured through the intermediation of JLT Marine (Pty) Limited. A copy of the contract of insurance will be made available to the cargo owner on request.
- 14.2 The insurers and the Company have agreed that, should the cargo owner accept the benefit of insurance, the cargo owner shall become entitled to the benefit of the insurance, subject to all of the terms and conditions of the policy, including those imposed on the insured by law. This is save for the obligation to pay the premium, which shall remain that of the Company.
- 14.3 Upon acceptance of the benefit of insurance the cargo owner shall become a party to the contract of insurance and shall be entitled to claim thereunder in its own name but following the procedure set out in Clause 17 of the policy.
- 14.4 The cargo owner shall notify the Company of its acceptance of the benefit of the insurance by a duly authorised representative by indicating and signing the relevant section in the Company's Application to Trade or Credit Application, or signing Clause 14 (14.1 to 14.6) in the STCs'. By furnishing such notification the cargo owner irrevocably authorises the Company to communicate the cargo owner's acceptance to JLT Marine who in turn shall be authorised to communicate such acceptance to the insurers.
- 14.5 Should the cargo owner require any advice or assistance in relation to the insurance, such advice or assistance will be provided by the intermediary, JLT Marine (Pty) Limited. Details of the manner in which such advice or assistance may be obtained will be provided by the Company on request.

- 14.6 Should an Insurer dispute its liability in terms of any contract of insurance to which the cargo owner has accepted the benefits, the cargo owner acknowledges that it has recourse against the Insurer only and the Company has no liability to indemnify the cargo owner under the contract of insurance. The cargo owner acknowledges that the Company's only obligation is to advise JLT Marine of the cargo owner's acceptance of the benefit of the insurance.

15. GENERAL AVERAGE

The Customer holds the Company harmless and indemnifies it in respect of any claims arising under General Average against the Company, and the Customer undertakes to provide such security as and when the Company requests it to do so.

16. WARRANTIES AND REPRESENTATIONS

No warranties or representations, whether express or implied, by the Company to the Customer shall be valid or binding unless expressly contained in writing and made in response to a written enquiry specifying accurately and in complete detail what information is required.

17. VALUABLE GOODS, LIVESTOCK AND BLOOD STOCK

The Company will not accept, deal with or handle bullion and precious metal objects, precious stones, bank notes, coins, cheques, credit notes, bonds, negotiable documents and securities, jewellery, works of art or antiques (except where part of a household and personal effects movement), blood stock and livestock, unless prior express written agreement has been given on its behalf by a duly authorised representative. If such Goods are dealt with without prior written agreement, the Company shall incur no liability whatsoever for these Goods, even if any loss or damage is caused by its gross negligence. If, for any reason, the Company is nevertheless found liable, the usual limitations of liability set out in these Conditions will apply.

18. DANGEROUS GOODS

- 18.1 The Customer shall obtain in advance the Company's specific written consent to accept into its possession or control or into the possession or control of any of its servants, agents or employees any Goods, including radio-active materials, which may be or become dangerous, inflammable or noxious, or which by their nature may injure, damage, taint or contaminate, or in any way whatsoever adversely affect any person,

Goods or property, including Goods likely to harbour or attract vermin or other pests and all such Goods that fall within the definition of "hazardous and dangerous goods" in terms of South African Transport Services Regulations (published in terms of section 73 of Act 65 of 1981) and the International Maritime Dangerous Goods Code, as amended from time-to-time.

18.2 The Customer warrants that such Goods, or the case, crate, box, drum canister, tank, flat, pallet, package or other holder or covering of such Goods will comply with any applicable laws, regulations or requirement of any authority or carrier and that the nature and characteristics of such Goods and all other data required by such laws, regulations or requirements will be prominently and clearly marked on the outside cover of such Goods.

18.3 If any such Goods are delivered to the Company, whether or not in breach of the provisions of clause 16.1 and 16.2, 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. The Customer indemnifies the Company against all loss, liability or damage caused to the Company as a result of the tender of Goods to the Company and/or out of the foregoing.

19. **PERISHABLE GOODS**

19.1 Without limiting or affecting any other terms of these Conditions, Goods (whether perishable or otherwise) 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 -

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

19.1.2 such Goods are insufficiently addressed or marked;

- 19.1.3 the Customer cannot be identified;
- 19.1.4 the Goods have not been collected or accepted by the Customer or any other person after the expiration of 21 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.
- 19.2 Should any amount owing by the Customer to the Company become due and payable and remain unpaid, the Company shall be entitled and the Customer hereby authorises the Company and without first obtaining an Order of Court, to sell all or any of the Goods by public auction or on reasonable notice not exceeding 14 days by private treaty. The net proceeds of any such sale, after deducting therefrom 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 without prejudice to the Company's rights to recover from the Customer any balance which may remain owing to the Company after the exercise of such rights. Should the total amount collected by the Company, after deducting therefrom all costs, charges and expenses incurred by the Company in respect thereof, exceed the full amount of the Customer's obligations to the Company in respect of such Goods, the Company shall be obliged to refund such excess to the Customer.

20. **WAREHOUSING**

- 20.1 Pending forwarding and/or delivery by or on behalf of the Company, the Goods may be warehoused or otherwise held at any place as determined by the Company in its absolute discretion, at the Customer's expense.
- 20.2 Alternatively, the Goods may be stored at the Company's warehouse, bonded or otherwise, or a warehouseman with whom the Company has contracted, at the special instance and request of the Customer.

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- 20.3 In both circumstances, set out in clauses 18.1 and 18.2 above, and subject to clause 25 and 26, the Company shall not be liable for physical loss or damage to the Goods whilst in the care, custody and control of the Company or the warehouseman with whom the Company has contracted, nor for any consequential loss arising therefrom, nor for delay, incorrect or mis-delivery.
- 20.4 The Company shall not be liable for any penalties, duties, VAT, taxes or amounts raised in forfeiture by Customs in respect of Goods stored at a bonded warehouse by the Company for and on behalf of the Customer and the Customer hereby indemnifies and holds the Company harmless for all such amounts.
- 20.5 The Company may abandon any Goods that are not Customs cleared from a Customs Warehouse within the statutory time periods and the Customer consents to such abandonment and agrees to hold the Company and the South African Revenue Service harmless if such Goods are so abandoned.

21. **PAYMENT**

- 21.1 Unless otherwise specifically agreed by the Company in writing, the Customer shall pay to the Company in cash 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 or counterclaim which the Customer may allege.
- 21.2 In the event of the Customer breaching any of its obligations and/or failing to timeously make payment of any amount 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 amount from the Customer.
- 21.3 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.

21.4 The Company reserves the right to:

21.4.1 Charge an additional finance fee on the principle arrear amount owed by the Customer at a rate not exceeding Prime + 4 per annum, calculated from the following day after the arrear amount becomes due until such time as the arrear amount has been settled in full; and

21.4.2 Withdraw any credit facilities afforded to the Customer at any time without prior notice and the nature and extent of such facilities shall at all times be at the Company's sole discretion.

22. RECOVERY OF DUTIES

22.1 Where as a result of any act or omission by or on behalf of or at the instance of the Company, and whether or not such act or omission was negligent, any duty, tax, levy, railage, wharfage, freight, cartage or any other charge has been paid or levied in an incorrect amount, then any responsibility or liability to the Customer which the Company may otherwise have will cease and fall away if the Customer does not:

22.1.1 Within a reasonable time having regard to all the circumstances, and in particular to the time allowed for the recovery from the payee of the amount paid, advise the Company that an incorrect amount has been paid or levied; and

22.1.2 Do all such acts as are necessary to enable the Company to effect recovery of the amounts incorrectly paid.

22.2 The fact that the Customer may not be aware that any such incorrect payment has been made shall not constitute a circumstance to be taken into account in calculating what is a reasonable time contemplated in this clause. Should any act or omission by the Customer, whether or not such act or omission was due to ignorance on the part of the Customer, and whether or not such ignorance was reasonable or justified in the circumstances, prejudice the Company's right of recovery, the Customer shall be deemed not to have complied with the provisions hereof.

22.3 If any Customer acted as agent on behalf of another party, and that other party fails to pay any amounts due to the Company, the Company may recover such amounts directly from the Customer.

23. LIEN AND PLEDGE

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

24. INDEMNITY

The Customer indemnifies and holds harmless the Company against all liability, damages, costs and expenses incurred or suffered by the Company arising directly or indirectly from or in connection with the Customer's express or implied instructions or the implementation by or on behalf of or at the instance of the Company, or any act or omission within the discretion of the Company, in relation to any Goods and in respect of any liability whatsoever.

25. BENEFIT OF DISCOUNTS

The Company is 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 amounts received or receivable by it.

26. DUTIES, TAXES, IMPOSTS, LEVIES AND DEPOSITS

- 26.1 The Customer shall be liable for any duties, taxes, imposts, levies, deposits or outlays of whatsoever nature levied by or payable to the authorities, intermediaries or other parties at any port or place for or in connection with the Goods, and whether at the time of entry and/or at any subsequent time, for any payments, fines, penalties,

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

- 26.2 The Company shall bear no liability for any increase in the rate of duty, wharfage, freight, railage or cartage or any other tariff, before or after the performance by the Company of any act involving a less favourable rate or tariff, or by virtue of the fact that a saving might have been effected had any act been performed at a different time.

27. **LIABILITY**

- 27.1 All handling, packing, loading, unloading, warehousing and transporting of Goods by or on behalf of or at the request of the Company are effected at the sole risk of the Customer, and the Customer indemnifies the Company accordingly, even if any resultant loss or damage was caused by breach of contract or negligence of the Company, its servants or agents or any other party for whose conduct the Company would otherwise in law be responsible.
- 27.2 The Company shall not be liable for any claim relating to a contractually agreed date or delivery time.
- 27.3 The Company shall in no circumstances be liable for indirect or consequential loss or damage caused by delay or any other cause whatsoever and howsoever caused.
- 27.4 The Company shall not under any circumstances be liable for a claim for any loss, damage or liability arising out of or caused directly or indirectly by or contributed by one or more of the following:
- 27.4.1 A negligent act or omission of the Customer or any person acting on behalf of the Customer other than the Company, its servants, agents or sub-contractors;
 - 27.4.2 Compliance with the instructions of any person entitled to give instructions;
 - 27.4.3 The lack or insufficiency of or defective condition of packing in the case of Goods which, by their nature, are liable to wastage or to be damaged when not packed or when not properly packed;
 - 27.4.4 Inherent vice of the Goods;

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- 27.4.5 Fire;
- 27.4.6 A nuclear incident;
- 27.4.7 Any cause or event which the Company could not avoid or prevent by the exercise of reasonable diligence;
- 27.4.8 War (whether war be declared or not), hostilities, military or usurped power, acts of a foreign enemy or power, civil war, revolution, rebellion, insurrection, civil strife, riots, civil commotion, terrorist act (or act by any person acting from political motives);
- 27.4.9 Piracy, capture, seizure, arrest, restraint or detainment or consequences arising therefrom;
- 27.4.10 Confiscation, expropriation, nationalisation, requisition, destruction or damage caused by the order of any Government, public or local authority;
- 27.4.11 Mines, torpedoes, bombs, weapons of explosion or of war whether derelict or not;
- 27.4.12 Strikes, lockouts, labour disturbances, stoppages, riots or civil commotions.
- 27.4.13 Any cybercrime event that directly impacts the Company's IT infrastructure or that of 3rd party Service Provider which the Company is dependent on, and consequentially interrupts, limits or prevents the Company's providing an agreed service or actioning the Customer's verbal or written instruction.

28. **LIMITATION OF LIABILITY**

- 28.1 If, in spite of the exclusion of liability in these Conditions, the Company is found to be liable, its liability shall not exceed whichever is the least of the following respective amounts:
- 28.1.1 Double the amount of fees raised by the Company for its services in connection with the Goods, but excluding any amount payable to sub-contractors, agents and third parties;
- 28.1.2 ZAR 100,000.00 for any one occurrence.

29. BREACH

If the Company breaches any of these 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, but shall not be entitled to cancel these Conditions and any agreement between the Customer and the Company.

30. JURISDICTION

30.1 The parties agree that any legal action or proceedings arising out of or in connection with these Conditions shall be brought in the Kwazulu-Natal High Court, Durban, and the Customer hereby irrevocably submits to the non-exclusive jurisdiction of such court.

30.2 These Conditions and all agreements entered into between the Company and the Customer pursuant thereto and on the terms thereof shall be governed by and construed in accordance with the laws of the Republic of South Africa.

31. TIME-BAR

The Company shall be discharged from all liability whatsoever in respect of any claim of whatsoever nature unless summons or other proper process originating action is served on the Company within 9 months of the date on which the incident giving rise to such cause of action occurred. The Company may, on written request, extend such period in writing.

32. NON-WAIVER

No extension of time or waiver or relaxation of any of these Conditions shall operate as an estoppel against any party in respect of its rights under these Conditions, nor shall it operate so as to preclude such party thereafter from exercising its rights strictly in accordance with these Conditions.

33. TRANSPORT DOCUMENTS

- 33.1 The Company shall be entitled to issue in respect of the whole or part of any contract for the movement of Goods, a bill of lading (combined transport, through transport, port-to-port) or waybill. Where a bill of lading or waybill has been issued, these Conditions shall continue to apply except insofar as they conflict with the trading terms and conditions of the bill of lading or waybill concerned. The Company shall be entitled to raise an additional charge as determined by the Company to cover potential additional obligations and administration arising from the issuance of the bill of lading or waybill concerned.
- 33.2 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 including cargo booking services and forwarding services are arranged by the Company as agents only. The provision of such services shall be subject to the terms and conditions of the bill of lading or waybill, which may be inspected on request.

34. SUB-CONTRACTING

- 34.1 Any business entrusted by the Customer to the Company may, in the absolute discretion of the Company, be fulfilled by the Company itself, by its own servants performing part or all of the relevant services, or by the Company employing or entrusting the Goods or services to third parties on such conditions as may be stipulated by, or negotiated with, such third parties for the purposes of such services, or such part thereof as they may be employed to carry out.
- 34.2 Where the Company employs third parties to perform all or any of the functions which it has agreed to perform, the Customer agrees that the Company shall have no responsibility or liability to the Customer for any act or omission of such third party, even though the Company may be responsible for the payment of such third party charges; but 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 direct.

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- 34.3 The Customer agrees that all Goods shall be dealt with by the Company on the terms and conditions, whether or not inconsistent with these Conditions, stipulated by the Carriers, warehousemen, Government departments and all other parties (whether acting as agents or sub-contractors to the Company or not) into whose possession or custody the Goods may pass, or subject to whose authority they may at any time be.

35. DIRECTORS AND EMPLOYEES

The Customer undertakes that 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 Conditions or any act or omission arising during the course and scope of their employment and hereby waives all and any such claims.

36. NON-VARIATION

No variation of these Conditions, including this clause, shall be binding on the Company unless embodied in a written document signed by a duly authorised director of the Company. Any purported variation or alteration of these Conditions otherwise than as set out above shall be of no force and effect, whether such purported variation or alteration is written or oral, or takes place before or after receipt of these Conditions by the Customer.

37. DOMICILIUM AND NOTICES

- 37.1 The Customer's physical address as set out in the credit application form or, failing which, 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.
- 37.2 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.

- 37.3 Notices given to the above addresses or by facsimile or electronic mail to the correct fax number or electronic mail addresses, notwithstanding the provisions of the Electronic Communications and Transactions Act 25 of 2002, as amended from time to time, shall be deemed to have been duly given:
- 37.3.1 10 days after posting, if sent by registered post; on delivery, if delivered by hand; on dispatch, if sent by facsimile; if sent by electronic mail, when such has been retrieved, processed and read by the addressee.