

KUEHNE & NAGEL

Registration No. 1954/00603/07

STANDARD TRADING TERMS AND CONDITIONS

1. INTERPRETATION

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

2. MEMBERS OF THE GROUP RENDERING SERVICES TO THE CUSTOMER

The Company may at its election perform all or any business undertaken or provide advice, information or services, whether gratuitous or not, either itself or it may procure that any member of the Group undertakes such business or provides such advice, information or services upon and subject to the terms and conditions contained herein which shall apply mutatis mutandis to the Customer and any such member of the Group.

3. APPLICATION OF TRADING TERMS AND CONDITIONS

- 3.1 All and any business undertaken or advice, information or services provided by the Company, whether gratuitous or not, is undertaken or provided subject to these trading terms and conditions.
- 3.2 These trading terms and conditions shall prevail over those of any Customer or other party with whom the Company contracts, even if any applicable terms and conditions contain a clause similar in meaning and intention to this one.

4. APPLICABLE LEGISLATION

- 4.1 To the extent that any of these trading terms and conditions are repugnant to or in conflict with any law, they are deemed to be amended to comply with that law, and any such amendment shall not in any way affect the remaining provisions of these trading terms and conditions.
- 4.2 If any provision of these trading terms and conditions is unenforceable, then the Company shall be entitled to elect, at any time, that such provision shall be severed from the remaining provisions of these terms and conditions, so as to allow the remaining provisions to remain of full force and effect.

5. ISSUING TRANSPORT DOCUMENTS

- 5.1 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.

- 5.2 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.

6. **COMPANY NOT A COMMON NOR PUBLIC CARRIER**

The Company is neither a common carrier nor a public carrier.

7. **OWNERS RISK**

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

8. **CARRIAGE OF GOODS**

- 8.1 Upon receipt of specific written instructions by the Customer, the Company will arrange for the carriage and/or transport of Goods.
- 8.2 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.
- 8.3 The Company accepts no liability whatsoever and howsoever arising in respect of such carriage, provided that should it be found that the Company in any way retains any obligation or responsibilities with regard to the performance of the obligations by

the Carrier, then the usual limitations of liability set out in these trading terms and conditions will apply.

9. THE ACCEPTANCE OF DELIVERY

9.1 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:

9.1.1 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;

9.1.2 The provisions of clause 24.2 shall apply *mutatis mutandis*.

10. EXAMINATION OF LANDED GOODS

10.1 Where it is necessary for an examination to be held or other action to be taken by the Company in respect of any discrepancy in the Goods which are landed or discharged from any vessel, aircraft, vehicle, or transport unit, no responsibility shall attach to the Company for any failure to hold such examination or to take any other action unless the Company has been timeously advised by the landing or discharge agent that such Goods have been landed and that such a discrepancy exists.

10.2 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.

11. INSTRUCTIONS

- 11.1 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.
- 11.2 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.
- 11.3 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.

12. COMPANY'S OBLIGATIONS IN THE ABSENCE OF INSTRUCTIONS

- 12.1 Unless specific written instructions are timeously given to and accepted by the Company, the Company shall not be obliged to:
- 12.1.1 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;
- 12.1.2 Arrange for any particular Goods to be carried, stored or handled separately from other Goods.

13. DISCRETION OF THE COMPANY IN THE ABSENCE OF INSTRUCTIONS BY THE CUSTOMER

- 13.1 In the absence of specific instructions given timeously in writing by the Customer to the Company:

- 13.1.1 It shall be in the reasonable discretion of the Company to decide at what time to perform or to procure the performance of any or all of the acts which may be necessary or requisite for the discharge of its obligations to the Customer;
- 13.1.2 The Company shall have an absolute discretion to determine the means, route and procedure to be followed by it in performing all or any of the acts or services it has agreed to perform;
- 13.1.3 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, it shall be in the discretion of the Company as to what declaration, if any, shall be made and what liability, if any, shall be imposed on the Carrier, warehouseman, underwriter or other person.

14. **COMPANY'S GENERAL OVERRIDING DISCRETION**

- 14.1 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.
- 14.2 If events or circumstances come to the attention of the Company, its agents, servants or sub-contractors which, in the opinion of the Company in its sole discretion, make it wholly or partially impossible or impracticable for the Company to comply with 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.

15. INSURANCE

- 15.1 The Company shall endeavour to effect any insurance the Customer timeously and in writing instructs it to effect, but the Customer accepts that in doing so the Company shall be obliged to comply with the Financial Advisory and Intermediary Services Act No. 37 of 2002 and may have to engage the services of a licensed financial services provider as defined in that Act, and the Customer authorises the Company to instruct such a person on its behalf.
- 15.2 Any such insurance so effected will be subject to such exceptions and conditions as may be imposed by the insurance company or underwriter taking the risk and the Company shall not be obliged to obtain separate cover for any risks so excluded.
- 15.3 Unless otherwise agreed in writing, the Company shall not be under any obligation to obtain separate insurance in respect of separate consignments but may insure all or any of such consignments under any open or general policy held by the Company from time to time.
- 15.4 Should any insurer dispute its liability in terms of any insurance policy in respect of any Goods, the Customer concerned shall have recourse against such insurer only and the Company shall not have any responsibility or liability whatsoever in relation thereto notwithstanding that the premium paid on such policy may differ from the amount paid by the Customer to the Company in respect thereof.
- 15.5 Insofar as the Company agrees to arrange insurance, the Company acts solely as agent for and on behalf of the Customer.

16. WARRANTIES BY CUSTOMER

The Customer warrants that:

- 16.1 It is either the Owner of the Goods or the authorised agent of the Owner of any Goods in respect of which the Customer instructs the Company;
- 16.2 It is authorised to agree to these trading terms and conditions on behalf of any person or company that it represents;

- 16.3 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;
- 16.4 All information provided is accurate and comprehensive and no necessary or pertinent information has been withheld, and the Customer indemnifies the Company against all claims, penalties, fines, damages and expenses arising as a result of any breach of this undertaking;
- 16.5 That 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;
- 16.6 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;
- 16.7 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 terms and conditions.
- 16.8 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 R3million per annum.

17. **WARRANTIES BY THE CARRIER**

The Carrier warrants that:

- 17.1 The person who represents the Carrier in entering into any agreement with the Company is duly authorised to do so and to bind the Carrier to these terms and conditions;

- 17.2 Any truck, trailer, ship, boat or aircraft used by it to convey the goods is in sound mechanical condition and will be operated only by duly licensed persons who are not under the influence of alcohol or other drug which tends to or does impair the performance of that person;
- 17.3 It has adequate insurance to cover any claim for loss or damage to any goods and any consequential losses which may be brought against it by a person with an interest in goods carried by it;
- 17.4 It will indemnify the Company for any claim against the Company for loss, damage and/or consequential loss arising from or in connection with any services rendered by the Carrier, or by any person to whom it sub-contracts its obligations.

18. WARRANTIES AND REPRESENTATIONS BY THE COMPANY

No warranties or representations 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.

19. COMPANY ENTITLED TO ACT AS AGENT OR PRINCIPAL IN CONTRACTING

- 19.1 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.
- 19.2 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.
- 19.3 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.
- 19.4 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.

19.5 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:

19.5.1 Carriage of Goods by any route or means or person;

19.5.2 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;

19.5.3 Carriage or storage of Goods in breakbulk form or in or on containers or other specially designed transport units or with or without other Goods of whatsoever nature.

20. **SUB-CONTRACTING**

20.1 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.

20.2 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.

21. **TERMS AND CONDITIONS OF AGENTS AND SUB-CONTRACTORS**

The Customer agrees that all Goods shall be dealt with by the Company on the terms and conditions, whether or not inconsistent with these trading terms and 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.

22. VALUABLE GOODS, LIVESTOCK AND BLOOD STOCK

Unless prior express written agreement has been given on its behalf by a duly authorised representative, 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. 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 trading terms and conditions will apply.

23. HAZARDOUS OR DANGEROUS GOODS

23.1 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. 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.

23.2 If any such Goods are delivered to the Company, whether or not in breach of the provisions of clause 23.1, such Goods may for good reason as the Company in its discretion deems fit including, without limitation, the risk to other Goods, property, life or health be destroyed, disposed of abandoned or rendered harmless or otherwise

dealt with at the risk and expense of the Customer and without the Company being liable for any compensation to the Customer or any other party, and without prejudice to the Company's rights to recover its charges and/or fees including the costs of such destruction, disposal, abandonment or rendering harmless or other dealing with the Goods. 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.

24. PERISHABLE GOODS

24.1 Without limiting or affecting any other terms of these trading terms and 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 -

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

24.1.2 such Goods are insufficiently addressed or marked;

24.1.3 the Customer cannot be identified;

24.1.4 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.

24.2 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.

25. WAREHOUSING

- 25.1 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.
- 25.2 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.
- 25.3 In both circumstances, set out in clauses 25.1 and 25.2 above, and subject to clause 36, 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.
- 25.4 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.

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. RECOVERY OF CHARGES INCORRECTLY PAID

27.1 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:

27.1.1 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

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

27.2 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.

28. PAYMENT BY THE CUSTOMER

28.1 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.

28.2 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.

28.3 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.

28.4 The Company reserves the right to 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.

29. **AGENT OF CUSTOMER LIABLE IF CUSTOMER FAILS/ REFUSES OR NEGLECTS TO PAY**

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.

30. **LIEN**

30.1 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.

30.2 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 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.

31. **QUOTATIONS**

31.1 The Company shall be entitled by notice to the Customer to cancel or resile from any quotation within 10 days in circumstances where it becomes either impracticable or uneconomical for the Company to carry out the contract at the quoted rate and the Customer shall have no claim whatsoever against the Company for any loss that the Customer might incur as a result of the Company cancelling or resiling from the quotation.

31.2 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.

32. **NO CLAIMS AGAINST INDIVIDUALS IN THEIR PERSONAL CAPACITIES**

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 trading terms and conditions or any act or omission arising during the course and scope of their employment and hereby waives all and any such claims.

33. **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.

34. **INDEMNITY BY THE CUSTOMER**

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.

35. **GENERAL AVERAGE**

The Customer indemnifies the Company and holds it harmless 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.

36. **EXCLUSION OF COMPANY'S LIABILITY**

36.1 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.

- 36.2 The Company shall not be liable for any claim relating to a contractually agreed date or delivery time.
- 36.3 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.
- 36.4 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:
- 36.4.1 An 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;
 - 36.4.2 Compliance with the instructions of any person entitled to give instructions;
 - 36.4.3 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;
 - 36.4.4 Inherent vice of the Goods;
 - 36.4.5 Fire;
 - 36.4.6 A nuclear incident;
 - 36.4.7 Any cause or event which the Company could not avoid or prevent by the exercise of reasonable diligence;
 - 36.4.8 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);
 - 36.4.9 Piracy, capture, seizure, arrest, restraint or detainment or consequences arising therefrom;

- 36.4.10 Confiscation, expropriation, nationalisation, requisition, destruction or damage caused by the order of any Government, public or local authority;
- 36.4.11 Mines, torpedoes, bombs, weapons of explosion or of war whether derelict or not;
- 36.4.12 Strikes, lockouts, labour disturbances, stoppages, riots or civil commotions.

37. MONETARY LIMITATION OF LIABILITY OF THE COMPANY AND TIME WITHIN WHICH TO COMMENCE PROCEEDINGS

- 37.1 If, in spite of the exclusion of liability in these trading terms and conditions, the Company is found to be liable, its liability shall not exceed whichever is the least of the following respective amounts:
 - 37.1.1 The value of the Goods evidenced by the relevant documentation or declared by the Customer for Customs purposes or for any purpose connected with their transportation, including the value of the Goods declared for insurance purposes;
 - 37.1.2 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;
 - 37.1.3 ZAR 20,000.00 for any one occurrence.
- 37.2 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 one year 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.
- 37.3 If it is desired that the liability of the Company should not be governed by the limits in these trading terms and conditions, written notice thereof must be received by the Company before any Goods or documents are entrusted to or delivered to or into the control of the Company or its agents or sub-contractors, together with a statement of the value of the Goods. Upon receipt of such notice, the Company may in the exercise of its absolute discretion agree in writing to its liability being increased to a maximum amount equivalent to the amount stated in the notice, in which case it will be

entitled to effect special insurance to cover its maximum liability and the party giving the notice shall be deemed, by so doing, to have agreed and undertaken to pay the Company the amount of the premium payable by the Company for such insurance. If the Company does not so agree, the normal limits contained in these trading terms and conditions shall apply.

38. **BREACH**

If the Company breaches any of these trading terms and conditions or any agreement between it and the Customer and fails to remedy such breach within 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 trading terms and conditions and any agreement between the Customer and the Company.

39. **SUBMISSION TO JURISDICTION**

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

40. **ARBITRATION**

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

40.2 For the purpose of arbitration, the parties shall jointly nominate and agree upon an arbitrator who shall be an Advocate of the High Court of South Africa of no less than 10 (ten) years standing. Should the parties fail to agree on the arbitrator to be appointed, he shall be appointed by the President from time to time of the Maritime Law Association of South Africa whose decision in this regard shall be final and binding on the parties.

- 40.3 The arbitration shall be subject to and conducted in accordance with the Rules for the Conduct of Arbitration ("the Rules") published from time to time by the Association of Arbitrators (Southern Africa) and then enforced.
- 40.4 Subject to any rights of appeal contained in the Rules or the Arbitration Act No. 42 of 1955, all arbitration awards shall be final and binding upon the parties and capable of being made an order of any competent court of law.

41. VARIATION OF THESE TRADING TERMS AND CONDITIONS

No variation of these trading terms and 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 trading terms and conditions otherwise than as set out above shall be of no force and effect, whether such purported variation or alteration is written or oral, or takes place before or after receipt of these trading terms and conditions by the Customer.

42. NON WAIVER

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

43. GOVERNING LAW

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

44. DOMICILIUM AND NOTICES

- 44.1 The Customer's physical address as set out in the credit application form or, failing which, on the Customer's most recently reviewed letterhead or, failing which, the Customer's registered or physical address, shall constitute the Customer's *domicilium citandi et executandi* for all purposes in connection with any agreement entered into by the Customer and the Company, unless the Customer provides an alternative *domicilium* by written notice to the Company.
- 44.2 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.
- 44.3 Notices given to the above addresses or by facsimile or electronic mail to the correct fax number or electronic mail addresses shall be deemed to have been duly given:
- 44.3.1 14 days after posting, if sent by registered post;
 - 44.3.2 on delivery, if delivered by hand;
 - 44.3.3 on dispatch, if sent by facsimile or electronic mail.