

## GENERAL TERMS AND CONDITIONS OF CONTRACT

### 1. DEFINITIONS AND INTERPRETATION

1.1. The following terms shall bear the meanings ascribed to them below –

- 1.1.1. "**Border Countries/ies**" – The Countries which border the Republic of South Africa, and may include Zimbabwe, Mozambique, Namibia, Botswana, Swaziland, Zambia, Democratic Republic of Congo and Lesotho;
  - 1.1.2. "**Business day**" - any day other than a Saturday, Sunday or public holiday in the Republic of South Africa;
  - 1.1.3. "**Carrier**" - Transcor Truck Hire (Proprietary) Limited (registration number 1976/003497/07) and/or Transcor (Proprietary) Limited (registration number 1988/002615/07), both private companies with limited liability incorporated in the RSA with registration no. 1976/003497/07 together with any company which is a controlled company or a subsidiary thereof, both as defined by the Companies Act No. 61 of 1973 and /or the Companies Act No. 71 of 2008 as amended from time to time;
  - 1.1.4. "**Client Advice**" means the placement of an order, or request to order in any written form whatsoever which is delivered by a Customer to the Carrier from time to time pursuant to which a Quote will be given;
  - 1.1.5. "**Contract**" – the agreement concluded between the Carrier and the Customer in respect of the Services, which is subject to these General Terms and Conditions of Contract, as evidenced by a Quote (and its annexures, if any);
  - 1.1.6. "**Customer**" – the person which submits a Client Advice, or to whom the Quote is addressed and to whom the Services are to be rendered as more fully indicated in the Quote;
  - 1.1.7. "**Dangerous Goods**" - those goods classified as such by Transnet Limited, or those goods declared as dangerous by the Department of Transport (which are listed in the standard specification of the South African Bureau of Standards SABS 0228, which is available on the website [www.sabs.co.za](http://www.sabs.co.za) against the payment of a certain fee), or goods which are considered by the Carrier (in its sole discretion) to be dangerous and/or abnormal and/or hazardous;
  - 1.1.8. "**Goods**" – the products and/or goods and/or machinery of the Customer and/or such other goods as may be more fully indicated in the Quote or a Client Advice, whether consigned singly, in parcels, or in bulk, in respect of which the Services are to be rendered;
  - 1.1.9. "**Incoterms**" – the standard international trade definitions, as devised and published by the International Chamber of Commerce from time to time;
  - 1.1.10. "**RSA**" – the Republic of South Africa;
  - 1.1.11. "**SASRIA**" - South African Special Risk Insurance Association
  - 1.1.12. "**Service(s)**" – the carriage, transportation, handling and/or haulage services to be rendered by the Carrier to the Customer in respect of the Goods, as more fully referred to in clause 4;
  - 1.1.13. "**Quote**" - the written document from the Carrier setting out *inter alia* the price for which the Carrier is willing to provide Service(s) to the Customer; and
  - 1.1.14. "**VAT**" - value-added tax levied in terms of the Value Added Tax Act No. 89 of 1991, as amended from time to time.
- 1.2. Where any term is defined in a particular clause other than in clause 1.1, that term shall bear the meaning ascribed to it in that clause wherever it is used in this Contract.
- 1.3. The rule of construction that, in the event of ambiguity, the Contract shall be interpreted against the party responsible for the drafting thereof, shall not apply in the interpretation of this General Terms and Conditions of Contract.

### 2. ACCEPTANCE OF GENERAL TERMS AND CONDITIONS OF CONTRACT

- 2.1. By submitting an account/credit application form to the Carrier, or by accepting a Quote in writing, verbally or the provision of the Goods and/or otherwise making available the Goods for collection by the Carrier, the Customer accepts these General Terms and Conditions of Contract of the Carrier.
- 2.2. Any other terms and conditions wheresoever contained (including but not limited to the Customer's own terms and conditions) are expressly excluded.

### 3. COMMENCEMENT

- 3.1. This Contract commences upon the Carrier providing a Quote to the Customer ("the Commencement Date").

### 4. SERVICES

- 4.1. The Carrier shall, subject to the Incoterms governing a particular consignment of Goods, if applicable, arrange for, plan, implement and control the loading, collection and transportation of the Goods, from their point of origin to a designated destination as required by the Customer from time to time, which shall *inter alia* include -
  - 4.1.1. if applicable, attending to the preparation of all necessary documentation required for cross-border transportation of the Goods, including, *inter alia*, documents required for customs clearance purposes, booking of cargo space for the Goods and ancillary services;
  - 4.1.2. ensuring the use of appropriate materials to ensure the safe and lawful transportation of the Goods;
  - 4.1.3. transporting consignments of Goods;
  - 4.1.4. groupage services, i.e. arranging for the collection and subsequent transport by the Carrier of consignments of the Goods comprising of loose loads of Goods collected as designated by the Customer and consolidating the same into a single full container or load for their delivery to such destination(s) as is/(are) directed by the Customer;
  - 4.1.5. collection of the Goods (or its constituent parts) from their originating source as directed by the Customer in writing;
  - 4.1.6. inland transportation and/or road haulage of the Goods, subsequent to the collection of the same from the relevant port of entry and the delivery thereof to such addresses within the RSA (or elsewhere as agreed to in writing by the parties) as the Customer may direct from time to time;
  - 4.1.7. complying with all applicable statutory obligations in rendering the Services;
  - 4.1.8. marking the Goods appropriately and in accordance with all technical aspects of transporting the Goods, both nationally and internationally, if applicable, as may be required and/or necessary;
  - 4.1.9. subject to the terms hereof, safely store the Goods during their transit;
  - 4.1.10. subject to the terms hereof, Goods handling including the loading and unloading, as the case may be, of Goods (or its constituent parts) into or out of the relevant transportation vehicles from the relevant points of collection to the designated destination;
  - 4.1.11. arranging and completing all necessary documentation in regard to the transportation of Goods, required pursuant hereto and the delivery of copies thereof to the Customer from time to time, provided that the Customer shall sign all such documents and do all such things as may be required to be done and/or assigned by it for due and proper

Signed by \_\_\_\_\_ for the Customer duly authorised

Signature \_\_\_\_\_

- performance of the Services by the Carrier; and
- 4.1.12. any other service commonly performed as road haulage/carrier services, as the parties may from time to time agree upon in writing.

**5. CLIENT ADVICE**

- 5.1. The Customer may from time to time deliver a Client Advice to the Carrier. Upon receipt by the Carrier of each Client Advice the Carrier shall be entitled to elect, in its sole and absolute discretion, whether to issue a Quote to the Customer based on the information contained in the Client Advice.
- 5.2. Each Client Advice shall, *inter alia*, -
- 5.2.1. identify and/or describe the Goods in detail;
  - 5.2.2. identify the place of origin and/or for collection of the Goods;
  - 5.2.3. stipulate the quantity of Goods in respect of which the Services are to be rendered including for example their physical measurements such as weight;
  - 5.2.4. identify the destination and/or point of delivery of the Goods; and
  - 5.2.5. contain such other salient terms as the Carrier may require in the circumstances.
- 5.3. The Carrier may, upon receipt of a Client Advice, issue a Quote to the Customer based upon the information contained in the Client Advice. Should the Quote be acceptable to the Customer the Customer may inform the Carrier thereof in writing or verbally or the Customer may be deemed to have accepted the Quote by the provision of the Goods and/or otherwise making available the Goods for collection by the Carrier. The Carrier shall render the Services pursuant to the instructions of the Client Advice in accordance with this Contract.

**6. CONDITION OF GOODS**

- 6.1. The onus of proving the quantity, type, physical properties and composition and the condition of the Goods and/or the condition of any container at the time of receipt thereof by the Carrier shall at all times remain with the Customer, and no delivery note, receipt or other document furnished or signed at such time by or on behalf of the Carrier shall constitute conclusive proof thereof.
- 6.2. In the event that the Customer (its duly appointed agent and/or employee) is negligent in any way, the Customer shall be liable for any and/or all reasonable losses or damage (whether direct or indirect) caused to the Carrier and/or third parties by all Goods handled and hereby indemnifies the Carrier against any claims (of whatsoever nature) arising in connection therewith. In no way, manner or form does the indemnity set out in this clause limit the extent of the indemnity provided for in clause 19 herein below.

**7. DANGEROUS GOODS**

- 7.1. Unless otherwise agreed in writing, the Customer warrants that all Goods handled are fit to be so handled in the ordinary way and are not dangerous.
- 7.2. Unless otherwise agreed in writing, the Carrier will not handle any Dangerous Goods, or Goods that are corrosive, noxious, hazardous, inflammable or explosive Goods or any Goods which in its opinion are likely to cause damage.
- 7.3. Should the Carrier agree to handle any Dangerous Goods for any purpose -
- 7.3.1. the Customer shall furnish to the Carrier with the Goods a written declaration detailing the trade name, chemical composition, if applicable and characteristics of the Goods; and
  - 7.3.2. such declaration shall define the precise respects or circumstances in which the Goods are dangerous; and
  - 7.3.3. the Customer shall ensure that the Goods bear the warning labels and declarations required in terms of the laws and regulations applicable to the transportation of dangerous goods.
- 7.4. If, in the opinion of the Carrier, any Goods (whether they have been declared as dangerous or not) become a danger to any person or property, the Carrier shall be entitled with reasonable notice to the Customer to dispose of the Goods in question or take such other steps as it in its sole discretion deems prudent to avert danger. In such event the Carrier shall, unless the Carrier was grossly negligent, -
- 7.4.1. not be liable under any circumstances for the value of the Goods or for any other loss or damage whether directly or indirectly sustained by the Customer or owner as a result of such disposal or other steps; and
  - 7.4.2. shall still be entitled to recover from the Customer its remuneration for the handling of the Goods together with any costs incurred by it in disposing of them or taking other steps.
- 7.5. Unless written instructions are given to the Carrier, it shall be under no obligation to make any declaration or to seek any special protection or cover from Transnet Limited, in respect of any Goods. The Customer hereby agrees to be bound in respect of all rail transport by the tariffs, terms and exclusions of liability contained in the provisions of Spoornet, a division of Transnet Limited, or its successor in title's tariff and terms of trade, save that nothing therein contained shall increase the Carrier's liability as limited in terms hereof.

**8. LOADING AND OFF-LOADING**

- 8.1. The Customer shall ensure that -
- 8.1.1. the Goods shall be ready for loading on the date specified;
  - 8.1.2. all documentation necessary in connection with the Goods and the transportation thereof shall be fully and correctly prepared;
  - 8.1.3. at all places where the Carrier is to collect and/or off-load the Goods there will be safe, suitable and adequate access and loading and off-loading facilities, and that it is possible for the Carrier to do so by means of ordinary equipment, without need for any special or additional tackle, plant, power, labour or equipment;
  - 8.1.4. the Goods will be appropriately and sufficiently packed and prepared for carriage, it being the responsibility of the Customer to ensure same;
  - 8.1.5. the Customer shall sign such certificates and receipts on loading and off-loading as the Carrier may require evidencing that it has satisfied itself with the loading and offloading of the Goods.
- 8.2. The Carrier shall not be under any obligation to provide any plant, power or labour which in addition to its vehicle's crew is required for the loading or off-loading of any Goods. Any assistance given by the Carrier in such loading or off-loading shall be at the sole risk of the Customer.
- 8.3. Any Customer (or owner) conducting any packing or other operation or activity in any area or premises provided by the Carrier shall do so at its own risk, and the Customer hereby indemnifies the Carrier against all claims or losses arising out of the presence of the Customer in such area or premises. In no way, manner or form does this clause limit the extent of the indemnity provided for in clause 19 herein below.

Signed by \_\_\_\_\_ for the Customer duly authorised

Signature \_\_\_\_\_

## 9. ROUTE

- 9.1. When carrying Goods, the Carrier shall in its sole discretion decide what route to follow.
- 9.2. Should there be unsuitable roads over which the Carrier's vehicles must traverse either for the collection or delivery of Goods, the Customer shall forthwith notify the Carrier of the same and the Carrier shall be entitled to either refuse to collect and/or deliver the Goods or to deliver the Goods to an alternative place, in either event such action shall be deemed to be proper performance of the Carrier's obligations in terms hereof.
- 9.3. In the event of the Carrier being obliged to deviate from the route selected by it, or to carry the Goods over another route, for any reason whatsoever including but not limited to adverse weather conditions, impassable or dangerous roads, bridges, pontoons and ferries, or the instructions of any competent authority, the Carrier will be entitled, subject to reasonable notice to the Customer, to increase (and the Customer shall be obliged to pay such increase) the remuneration stated in the Quote in proportion to the resulting extra distance travelled.
- 9.4. In the event of any fine being levied on or costs accruing to the Carrier as a result of the route taken or a change in route required by any authority, the Customer shall be liable for the cost of that fine and/or costs, as the case may be, provided that such fine and/or costs are resultant from the Customer's conduct and/or representation (i.e.: in respect of the dimensional mass and/or weight of the Goods).

## 10. QUOTES

- 10.1. Quotes are given having regard to the Goods, the existing scale of wages and air, railway or shipping rates in force at the date upon which the Quote is given and any other relevant matter contained in a Client Advice, if any.
- 10.2. Quotes exclude any VAT, duties, other taxes, imposts, fines or outlays of whatsoever nature levied by any competent authority(ies) at any port or place in connection with the Goods and the Customer shall on demand reimburse the Carrier for any such amount disbursed or losses sustained by the Carrier in connection therewith.
- 10.3. The Carrier shall not be bound by any Quote which is older than 30 (thirty) days, calculated from the date reflected on the face thereof.
- 10.4. All Quotes are subject to amendment until such time as loading of the Goods shall actually have commenced.
- 10.5. The Carrier will furthermore be entitled to increase the remuneration stated in a Quote in the event of the Customer increasing the quantity of the Goods to be carried, in proportion to such increase.

## 11. FEES

- 11.1. In consideration for rendering the Services, the Customer shall pay to the Carrier an all-inclusive fee as detailed in the Quote, exclusive of VAT.
- 11.2. In addition thereto the Customer shall, on demand, pay the additional charges and/or costs levied in accordance with the Terms and Conditions of this Contract.
- 11.3. The Carrier is entitled to the benefit of any discounts obtained and to retain and to be paid all brokerages, commissions, allowances and other remunerations of whatsoever nature and kind, and shall not be obliged to disclose or account to the Customer, for any such remuneration received by it.

## 12. DEMURRAGE

- 12.1. The Carrier shall not be liable for demurrage or storage charges of any nature whatsoever and howsoever arising.
- 12.2. The Customer, subject to reasonable notice and its approval, hereby appoints the Carrier irrevocably and *in rem suam* as its agent and in its name, place and stead and hereby authorise the Carrier to contract and bind the Customer for the storage of the Goods upon such terms and conditions as the Carrier may, in its sole discretion elect, and without any liability whatsoever attaching to the Carrier to attend to such storage.
- 12.3. Where any such demurrage and/or storage charges are paid by the Carrier in respect of the Goods and/or on behalf of the Customer, such charges shall be refunded to the Carrier by the Customer on demand.

## 13. INVOICES AND PAYMENT

- 13.1. The Carrier shall issue a tax invoice to the Customer for payment by the Customer upon completion of the services forming the subject of such invoice.
- 13.2. Invoices shall be payable by the Customer within the terms as stated in the invoice issued by the Carrier.
- 13.3. The invoices shall *inter alia* detail -
  - 13.3.1. the point of origin/collection of the Goods, a description of the Goods and their quantities, and the point of delivery / collection;
  - 13.3.2. the consideration referred to in clause 11.1 and charges referred to in clause 11.2 incurred by the Carrier on behalf of the Customer; and
  - 13.3.3. all such information as may be necessary so as to render the invoice a valid tax invoice in terms of RSA tax laws.
- 13.4. The Carrier shall in its absolute discretion be entitled to appropriate all payments made by the Customer towards the payment of any debt or obligation of whatsoever nature owing by the Customer to the Carrier, irrespective of when such debt or obligation arose.
- 13.5. Interest will accrue on all payments not made on due date at the rate of 15.5% per annum from the due date to the date on which payment in full is effected.
- 13.6. The Customer may not raise any claim, dispute or counter-claim as a reason for deferring payment and the Customer may not withhold any payment or set off any claim or counter-claim which it may wish to raise against the amount invoiced by the Carrier.

## 14. ROLE AND CAPACITY OF CARRIER

- 14.1. The Carrier acknowledges and agrees that it renders the Services as an independent contractor and is not a legal representative of the Customer. Accordingly, this Contract shall, unless the context expressly indicates the contrary, not be construed as creating a wider relationship of principal and agent between the Carrier and the Customer nor any partnership (in the legal sense) nor a joint venture between them.
- 14.2. Save as may be stated to the contrary herein, the Carrier does not have any power or authority, (whether express or implied) to bind the Customer, and the Carrier shall not represent or hold itself out as having any such power or authority, to make any commitment or enter into any contract or agreement binding or purporting to bind the Customer, unless such power or authority is expressly stated in writing, and is signed on behalf of the Customer or by an authorised person. No employee of the Carrier is, nor shall he/she be deemed to be an employee of the Customer.

## 15. CONTRACTS WITH THIRD PARTIES

Signed by \_\_\_\_\_ for the Customer duly authorised

Signature \_\_\_\_\_

- 15.1. The Carrier may engage third parties to provide any element of the Services on behalf of the Carrier.
- 15.2. The Carrier shall however, remain fully responsible to the Customer for all its obligations under the terms of the Contract; provided that the Carrier shall have cooperative liability to the Customer for any acts or omissions of such third parties;
- 15.3. Should the Carrier be suitably indemnified against all costs (including attorney and own client costs) by the Customer, the Carrier shall take such action against the third party concerned on the Customer's behalf as the Customer may direct.

**16. UNDERTAKINGS OF THE CARRIER**

- 16.1. Subject to the terms hereof, the Carrier hereby undertakes in favour of the Customer, that in rendering the Services it shall, subject to the terms hereof -
  - 16.1.1. conduct itself with such skill and timing as may reasonably be expected of a professional transporter;
  - 16.1.2. keep and be responsible for all consignments of Goods in its custody or control;
  - 16.1.3. comply with all relevant laws and regulations of the RSA and all other countries, if any, through which any consignment of Goods is to pass pursuant hereto; and
  - 16.1.4. use its best endeavours to perform in a timely manner, bearing in mind that should a delay in the transport of the Goods occur, which delay shall not be the result of the Carrier's gross negligence, the Carrier shall not be liable therefore and the Customer hereby indemnifies the Carrier accordingly from any losses or damages (direct and/or indirect) as a result thereof. In no way, manner or form does the indemnity set out in this clause limit the extent of the indemnity as set out in clause 19 herein below.

**17. AUTHORITIES**

- 17.1. It shall be the sole responsibility of the Carrier to procure and maintain in force all authorities including, without limitation, licences and other permissions required by the Carrier for purposes of carrying out its obligations in terms hereof.
- 17.2. For the avoidance of doubt it is recorded that the Carrier's obligations or duties in terms of this Contract shall only take effect at such time as the relevant authorities, permits, approvals or the like required in terms of any law, by-law or regulation for the import, clearing, and/or transport of the Goods have been obtained. The Customer shall provide all assistance and information reasonably required by the Carrier for the purpose of applying for or obtaining any such authorisation, permit, consent or approval.
- 17.3. In the event of the Carrier being obliged to take out or obtain any licences or permits, or to comply with the requirements of any lawful authority, the Carrier will be entitled to make (and the Customer shall on demand pay) an additional charge to cover any expenses resulting therefrom not already included in the Quote.

**18. UNDERTAKINGS OF THE CUSTOMER**

- 18.1. The Customer hereby undertakes and warrants in favour of the Carrier -
  - 18.1.1. that it shall provide the Carrier timeously with all data and/or information as requested for the safe transport of the consignment of Goods in question. In particular, the Customer shall advise the Carrier of the marks, numbers, quantities, nature, contents of packages of Goods, their weight, dimensions, value, as well as other information reasonably required by the Carrier;
  - 18.1.2. the correctness of the declared weight of the Goods and hereby indemnifies the Carrier against all expenses, claims, fines, costs or damages howsoever arising from any inaccuracy in the weight of the Goods declared by the Customer regardless of whether the inaccuracy was negligent or not;
  - 18.1.3. that it shall ensure that all consignments of Goods are appropriately marked and packed properly and adequately, in compliance with all relevant laws and practices, and so as to withstand handling, storage and transportation without damage to the Goods or damage, injury or death to any other person(s) or property;
  - 18.1.4. the accuracy and correctness of all descriptions, values and other particulars furnished to the Carrier in relation to the Goods for customs, railage and other purposes. In this regard, the Customer hereby indemnifies the Carrier against all expenses, claims or fines arising from any inaccuracy or omission of descriptions, values or other particulars in relation to the Goods (even if the inaccuracy or omission of descriptions, values or other particulars occurs without negligence);
  - 18.1.5. that the carriage of the Goods will not violate or infringe any Act, regulation or law and the Customer hereby indemnifies and holds the Carrier harmless against any claims and/or damages which the Carrier may suffer by virtue of the Customer's breach of this warranty;
  - 18.1.6. are marked both on the Goods and/or containers in full compliance with all the laws, conventions and practices applicable in any country to which or through which the Goods are to be transported and that such marks enable the Goods to be readily identified; and
  - 18.1.7. that the Goods are the Customer's sole property, alternatively, the Customer is authorised by the owner of the Goods to enter into this Contract subject to these terms and conditions, and the Customer hereby indemnifies the Carrier against any claim of any nature made by the owner.
- 18.2. In no way, manner or form do the indemnities set out in clause 18 limit the extent of the indemnity provided for in clause 19 herein below.

**19. INDEMNITY AND LIMITED LIABILITY OF CARRIER FOR DAMAGE OR LOSS**

- 19.1. The Goods shall be carried at the sole risk of the Customer (or owner). The Customer hereby exempts the Carrier from and indemnifies the Carrier against all liability of whatsoever nature, arising directly or indirectly from the handling of the Goods, unless the Carrier is grossly negligent in its handling of the Goods. This exemption and indemnity includes, but is not restricted to, any liability for direct and/or consequential and/or indirect and/or inconsequential loss, personal injury, death or damages (of whatsoever nature) arising from, but not limited to, loss of the Goods, damage to the Goods, the failure to collect or deliver the Goods timeously, adequately or at all, or from or to the correct address, or from any other cause arising, whether any such liability, loss or damage is caused by or arises from, *inter alia*, breach of contract, negligence or gross negligence, on the part of the Carrier, its agents, sub-contractors or employees, or otherwise.
- 19.2. If it is desired that the liability of the Carrier should not be governed by these limits, written notice thereof must be given to the Carrier before any Goods or documents are entrusted to the Carrier together with a statement of the value of the Goods. Upon receipt of such notices, the Carrier may agree in writing to its liability being increased to maximum liability equivalent to the amount stated in the notice in which case, it shall be entitled to effect special insurance to cover its maximum liability and the party giving the notice shall be deemed by doing so to have agreed and undertaken to pay to the Carrier the amount of the premium payable by the Carrier for such insurance and any other incidental costs.
- 19.3. Notwithstanding anything to the contrary contained in these conditions, the maximum liability of the Carrier in respect of any cause of action shall be limited to the value of the Goods or the value declared by the Customer for insurance,

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Signature \_\_\_\_\_

customs or carriage purposes, or double the amount of the Carrier's fee (excluding disbursements) whichever amount is the lesser.

#### **20. INSURANCE**

- 20.1. The Customer shall at its own cost insure the Goods and Goods-in-transit (including hijack cover) against such customary risks as may be determined by the Customer in its discretion from time to time.
- 20.2. The Customer shall at its own cost insure the Goods and Goods-in-transit with SASRIA, or such replacement association/institution as may be determined from time to time, against *inter alia* riots, strikes and /or protest action in RSA, as well as all Border Countries.
- 20.3. The Customer shall, upon the request of the Carrier, make available to the Carrier full details of any insurance in respect of the Goods, including copies of the policy document.
- 20.4. Where the Customer specifically requests the Carrier to effect insurance over and above the customary risk referred to in clause 20.1, the Carrier shall, if requested to do so in writing by the Customer, effect insurance on any Goods being handled by it. Any such insurance effected by the Carrier shall be subject to the usual exceptions and conditions of the policies of the insurer or underwriter taking the risk. The insurance contract will be between the Customer and the insurer. The Carrier shall not be under any obligation to effect a separate insurance on each consignment but may declare it on any open or general policy. Should the insurer dispute liability for any reason, the insured shall have recourse against the insurer only and the Carrier shall not be under any liability in relation thereto. The costs of any such insurance shall be for the account of the Customer, unless otherwise agreed.
- 20.5. The Carrier shall not be obliged to advise the Customer of any risks excluded from any policy undertaken pursuant hereto.
- 20.6. The Carrier shall provide at its own cost and keep in force suitable public indemnity insurance.

#### **21. STORAGE OF GOODS**

- 21.1. The Carrier shall not be held liable for any damage, theft and/or loss of whatsoever nature, which may occur whilst the Goods, including but not limited to cargo and/or machinery, are stored at the Carrier's premises.
- 21.2. Storage of the Goods, including but not limited to cargo and/or machinery, shall only be permitted subsequent to the receipt of a written request by the Customer, which request is subject to the final acceptance by the Carrier.
- 21.3. The fees in respect of the storage of the Goods, including but not limited to cargo and/or machinery may be agreed to between the Carrier and the Customer from time to time.
- 21.4. In the event that the Goods, including but not limited to cargo and/or machinery is stored at the Carrier's premises in excess of 3 (three) months, the Customer is obliged to notify the Carrier, and obtain its written consent, failing which, the Carrier shall be entitled to sell the Goods, including but not limited to cargo and/or machinery, in order to recover, *inter alia*, storage fees.

#### **22. LIEN AND OTHER SECURITY**

- 22.1. As security for all monies (whether past or present) owing for the handling of Goods, whether forming the subject matter of this Contract or otherwise, the Carrier shall have a lien over all Goods, documents, bills of lading, import permits as well as all repayments, refunds, claims or recoveries in its possession or under its control.
- 22.2. In addition to the lien referred to in clause 22.1, the Carrier shall be entitled to hold in pledge all Goods in its possession and/or control as security for any other monies which may be owing to it by the Customer from any cause whatsoever.
- 22.3. In the event of the Carrier retaining possession of the Goods in terms hereof, the Carrier shall be entitled to store or warehouse the Goods at such place as it deems fit, at the Customer's expense pursuant to clause 12.
- 22.4. If any monies owing to the Carrier are not paid by the Customer within 30 (thirty) days after they have become due, the Carrier shall be entitled with reasonable notice to the Customer:
  - 22.4.1. to open and examine the Goods, if applicable; and/or
  - 22.4.2. to sell the whole or any part of the Goods in such a manner and on such terms and conditions as it deems fit; and/or
  - 22.4.3. to apply the proceeds of any sale after deducting all expenses thereof in payment or reduction of any amount due by the Customer to the Carrier (including the storage charges envisaged herein), provided that any surplus shall be paid over to the Customer without interest immediately after the sale, if the Customer's address is known, and if not, upon demand made by the Customer within 90 (ninety) days of the sale.
- 22.5. The Carrier shall not be liable for any loss, damage or deterioration of Goods attributable to the implementation of this clause 22.
- 22.6. The Carrier's rights under this clause 22 are not exhaustive and are in addition to any other rights which it may have against the Customer.

#### **23. DELAY – POLICE INSTRUCTION**

- 23.1. The Carrier shall not be liable for any delay occasioned by compliance with any instructions issued by the police or any other competent authority, but any extra costs incurred by the Carrier as a result of compliance with any such instructions shall be added to its charges payable by the Customer.

#### **24. FORCE MAJEURE**

- 24.1. If either party ("the disabled party") is prevented from complying, either totally or in part, with any of the terms or provisions of this Contract by reason of fire, flood, storm, riot, war, armed conflict, rebellion, accident or other acts of God or legal restraints of any relevant government, or any other event or circumstances beyond their reasonable control, then upon written notice to the other party, the provisions of the Contract shall be suspended during the period of such disability.
- 24.2. The disabled party shall make all reasonable efforts to remove such disability within 30 (thirty) days of giving notice thereof.
- 24.3. If any of the obligations of the Carrier are suspended as aforesaid, then during such period of suspension the Carrier shall use its best endeavours to assist the Customer in arranging to have any affected consignments of Goods transported by other means and/or other persons.

#### **25. LABOUR RELATIONS**

- 25.1. The Carrier shall furnish its own labour in order for it to render the Services and in order to comply with its obligations as contained in this Contract.
- 25.2. Should the Carrier at any time encounter difficulties with its employees of any nature whatsoever including without limitation strikes or stoppages of any kind or should it have reason to anticipate any such difficulties then the Carrier

Signed by \_\_\_\_\_ for the Customer duly authorised

Signature \_\_\_\_\_

hereby undertakes to use its best endeavours to have all such labour relations difficulties resolved at the earliest reasonable opportunity.

## 26. ASSIGNMENT

26.1. The rights and obligations of the Customer hereunder may not be ceded, transferred or assigned by operation of law or otherwise without the prior written consent of the Carrier. The Carrier is entitled at any time to cede, transfer and/or assign this Contract to its successors-in-title or any other third party, provided that notice thereof is furnished to the Customer.

## 27. CONFIDENTIALITY

27.1. Notwithstanding the cancellation or termination of this Contract, neither party ("**receiving party**") shall at any time after the conclusion of this Contract, disclose to any person or use in any manner whatever the other party's ("**disclosing party**") confidential information or the existence and contents of this Contract; provided that -

27.1.1. the receiving party may disclose the disclosing party's confidential information and the existence and contents of this Contract -

27.1.1.1. to the extent required by law (other than in terms of a contractual obligation of the receiving party);

27.1.1.2. to, and permit the use thereof by its sub-contractors, its employees, representatives and professional advisers to the extent strictly necessary for the purpose of implementing or enforcing this Contract or obtaining professional advice or conducting its business, it being specifically agreed that any disclosure or use by any such sub-contractor, employee, representative or adviser of such confidential or other information for any other purpose shall constitute a breach of this clause 27 by the receiving party; and

27.1.1.3. the provisions of this clause 27 shall cease to apply to any confidential information of disclosing party which -

27.1.1.3.1. is or becomes generally available to the public other than as a result of a breach by the receiving party of its obligations in terms of this clause 27;

27.1.1.3.2. is also received by the receiving party from a third party who did not acquire such confidential information subject to any duty of confidentiality in favour of disclosing party; or

27.1.1.3.3. was known to the receiving party prior to receiving it from disclosing party.

27.2. For purposes hereof, the term "**confidential information**" shall mean any information disclosed by disclosing party to the receiving party prior to the conclusion of this Contract, in terms of this Contract or otherwise in connection with this Contract.

## 28. DOMICILIUM AND NOTICES

28.1. The parties choose as its *domicilium citandi et executandi* ("**domicilium**") for all purposes relating to the Contract, including the giving of any notice, the payment of any sum, the serving of any process, as follows -

28.1.1. The Carrier:

Physical: Corner 3rd Street and Setter Street, Midrand Industrial Park, Commercia, Midrand, Gauteng, South Africa

Postal: P O Box 3708, Halfway House, 1685

Fax: +27 (0)11 310-1598

Attention: Operations Director

The Customer: the physical address, postal address and fax number as set out in the Account Application form/Credit Application form or the Client Advice.

28.2. Either party shall be entitled from time to time, by giving written notice to the other, to vary its physical domicilium to any other physical address (not being a post office box or poste restante) within the RSA, to vary its postal domicilium to any other postal address within the RSA and to vary its facsimile and/or email domicilium to any other facsimile number and/or email address.

28.3. Any notice given or payment made by either party to the other ("**addressee**") which is -

28.3.1. delivered by hand between the hours of 09:00 and 17:00 on any business day to the addressee's physical domicilium for the time being shall be deemed to have been received by the addressee at the time of delivery;

28.3.2. posted by prepaid registered post to the addressee's postal domicilium for the time being shall be deemed to have been received by the addressee on the 14 (fourteenth) day after the date of posting,

28.3.3. unless the contrary is proved by the addressee.

28.4. Any notice given by either party to the other which is successfully transmitted by facsimile to the addressee's facsimile domicilium for the time being shall be deemed (unless the contrary is proved by the addressee) to have been received by the addressee on the day immediately succeeding the date of successful transmission thereof.

28.5. Any notice given by either party to the other which is successfully transmitted by electronic mail to the addressee's electronic mail domicilium for the time being shall be deemed (unless the contrary is proved by the addressee) to have been received by the addressee on the day immediately succeeding the date of successful transmission thereof.

28.6. This clause 28 shall not operate so as to invalidate the giving or receipt of any written notice which is actually received by the addressee other than by a method referred to in this clause 28, including by way of electronic mail, which shall be deemed to have been received by the addressee on the date of successful transmission thereof, provided that where transmission takes place after business hours on any particular day, it shall be deemed to have been received on the business day immediately succeeding the date of successful transmission thereof.

28.7. Any notice in terms of or in connection with this Contract shall be valid and effective only if in writing and if received or deemed to be received by the addressee.

## 29. BREACH AND TERMINATION

29.1. Should any party ("the guilty party") commit a breach of this Agreement and fail or refuse to rectify that breach within 7 (seven) days after receipt of a written notice from the other party ("the innocent party"), calling upon the guilty party to rectify that breach, the innocent party shall be entitled, without prejudice to any other of his rights, to forthwith cancel the Contract by given the guilty party 7 (seven) days' written notice thereof.

29.2. Notwithstanding anything to the contrary herein contained and without prejudice to any other rights to which it may be entitled, either party may at any time terminate the Contract -

29.2.1. by giving to the other 7 (seven) days' written notice to that effect; or

29.2.2. if the other has served notice pursuant to clause 24 suspending performance of the Contract for Force Majeure and a period of more than 30 (thirty) days has elapsed without such party being able to recommence performing its obligations hereunder; or

Signed by \_\_\_\_\_ for the Customer duly authorised

Signature \_\_\_\_\_

29.2.3. with immediate effect on written notice if either party becomes insolvent or wound-up or sequestrated or subject to any winding up procedure, or makes any arrangements with its creditors, or if a receiver or administrator or equivalent is appointed of all or any of its assets or undertaking, or any reorganisation takes place for the purposes of amalgamation or reconstruction, or is placed under business rescue or a debt review; provided that in such event the Carrier shall use its reasonable endeavours to assist the Customer in arranging to have any consignments of Goods then in transit, transported by other means and/or other persons.

**30. SEVERABILITY**

30.1. Each provision in this Contract is severable from all others and if any provision, phrase, sentence, paragraph or clause is found to be defective or unenforceable for any reason, the remaining provisions, phrases, sentences, paragraphs and clauses shall nevertheless continue to be of full force.

**31. GOVERNING LAW AND JURISDICTION**

31.1. The Contract shall be governed by and construed in accordance with the laws of the RSA and the parties hereto irrevocably submit to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg.

31.2. Notwithstanding the foregoing, the Customer hereby agrees in terms of section 45 of the Magistrates' Courts Act No. 32 of 1944, as amended, that the Carrier shall at its discretion, be entitled to institute any legal proceedings which may arise out of or in connection with this Contract in any Magistrates' Court having jurisdiction in respect of such proceedings in terms of section 28 of that Act, notwithstanding the fact that the value of the claim or the matter in dispute may otherwise exceed the jurisdiction of such Magistrates' Court.

**32. GENERAL**

32.1. The Contract constitutes the sole record of the agreement between the parties in relation to the subject matter thereof. Neither party shall be bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded in the Contract. The Contract supersedes and replaces all prior commitments, undertakings or representations, whether oral or written, between the parties in respect of the subject matter thereof.

32.2. No addition to, variation, novation or agreed cancellation of any provision of the Contract or these General Terms and Conditions of Contract shall be binding upon the parties unless reduced to writing and signed by or on behalf of the parties.

32.3. No indulgence or extension of time which either party may grant to the other shall constitute a waiver of or, whether by estoppel or otherwise, limit any of the existing or future rights of the grantor in terms hereof, save in the event and to the extent that the grantor has signed a written document expressly waiving or limiting such right.

32.4. Without prejudice to any other provision of the Contract, any successor-in-title, including but not limited to any executor, heir, liquidator, judicial manager, curator or trustee, of either party shall be bound by the Contract and these General Terms and Conditions of Contract.

32.5. The parties agree that they will do all things and sign all documents necessary to give effect to the terms of the Contract and to all transactions deriving therefrom.

**33. COSTS**

33.1. The Carrier shall bear and pay the costs incurred in respect of the negotiation, drafting, preparation and execution of these General Terms and Conditions of Contract up to the date of presentation hereof to the Carrier. Should the Customer require any amendments hereto, the Customer shall bear and pay all costs incurred by it in instructing appropriate legal advisors (on an attorney and own client scale) which costs shall be payable on demand.

33.2. All reasonable costs, charges and expenses of every nature whatever which may be incurred by the Carrier in enforcing its rights in terms of the Contract, including, without limiting the generality of the foregoing, reasonable fees of an appointed professional debt collector registered with the Council for Deb Collectors and/or any legal costs on the scale as between attorney and own client, including collection commission, irrespective of whether any action has been instituted, shall be recoverable from the Customer when such rights are successfully adjudicated and/or enforced.

33.3. If or when an account is handed over to an Attorney or Professional debt collector registered with the Council for Debt Collectors, due to non-payment of an account, all charges incurred by Transcor will be for the account of the Client: 18% collection fee of the amount handed over, interest at 18% per Annum, as well as all legal charges incurred through Summons, Application for Default Judgement, Warrant of Execution, as well as Art65 proceedings.

I/we acknowledge that I/we have read the application form and the terms and conditions of the Carrier and that I/we understand the contents thereof, including the terms and conditions, and agree to be bound thereto.

Signed by \_\_\_\_\_ for the Customer duly authorised

Signature \_\_\_\_\_