



Co. Reg. No. 1975/001234/07

STANDARD TRADING CONDITIONS

- 1.1 In these terms, the COMPANY shall mean Courier Local and International (Pty) Ltd. trading as Airfreight Africa
- 1.2 Any reference to the CUSTOMER shall mean any person or persons on whose behalf, or for whose benefit, the COMPANY undertakes any business or commercial advice, information or service, or for whom the COMPANY renders services and/or disburses money, and/or does any work and/or executes any of the terms of this contract.
- 1.3 Any reference to goods, shall mean any goods of any nature whatsoever, coming under the control of the COMPANY, or in its possession, if the CUSTOMER executed its obligations in terms of this Agreement would in the ordinary course of events, come into the possession of the COMPANY or under its control, irrespective as to who is the owner of such goods, and without affecting the generality of the foregoing, it shall include any container, transportable tank, flat pallet, package or any other covering or form of packaging or containerisation, of any nature whatsoever, used in connection with or in relation to the goods.
- 1.4 The CUSTOMER acknowledges that, notwithstanding any matter herein contained which may be interpreted to the contrary, and notwithstanding any act, matter or thing done by the COMPANY, it is not a common carrier or public carrier, and any obligations that a common carrier or public carrier would have towards the CUSTOMER, shall not be part of the COMPANY'S responsibility to the CUSTOMER.
2. The COMPANY shall not be liable for any damage, or injury suffered by the CUSTOMER or any person whatsoever arising out of any cause whatsoever as a result of the COMPANY'S execution or attempted execution of its obligations pursuant to this Agreement and/or the CUSTOMER'S requirements or mandate or any matters relating hereto, whether allied or incidental thereto, or whether directly or indirectly related hereto. In particular and without affecting the generality of the foregoing, the COMPANY shall not be liable for any damages or injury suffered to the CUSTOMER, member of his family, agents, friends, servants, employees, and in these regards the CUSTOMER hereby indemnifies and holds the COMPANY harmless in respect of any such damages or injuries. This indemnity becomes immediately operative upon this Agreement becoming operative, and is not suspended pending the happening of some future event. This exclusion of liability applies notwithstanding that the COMPANY, its agent, servants or employees, have acted recklessly or negligently in regard to any aspect, matter or thing which forms part of the execution by the COMPANY of any obligations owed by it to the CUSTOMER pursuant hereto.
- 3.1 This is the whole agreement between the parties, and save and except for what is stated herein there exists no representations, warranties, guarantees, promises, undertakings or inducements of any nature whatsoever.
- 3.2 The CUSTOMER acknowledges that the COMPANY is not in any way bound by any verbal or written statement, representations, guarantees, promises, undertakings, inducements or otherwise, which may have been made at any time by any salesman, employee, representative or any person acting or purporting to act for and on behalf of the COMPANY, unless such statements, representations, guarantees, promises, undertakings, warranties or inducements are recorded in writing, clearly and unambiguously, and are specifically contained herein.
- 3.3 Any amendment to the terms of this agreement or the cancellation of this agreement in its entirety, shall be of no force or effect unless such amendment or cancellation is reduced to writing and signed by the parties.
4. The CUSTOMER acknowledges being aware that no person other than a Director of the COMPANY, or a person authorised in writing to represent the COMPANY (such writing, where the person concerned is not a Director of the COMPANY, to be evidenced by a Resolution of the COMPANY'S Board of Directors), shall have authority to amend, vary or cancel the terms of this agreement. Any purported variation, amendment or cancellation by any person other than a person envisaged in this clause, shall be of no force or effect whatsoever in general, and in particular it shall not be binding upon the COMPANY. Furthermore, where the person concerned is not a Director of the COMPANY and a Resolution as provided for herein has not been procured prior to such person acting or purporting to act on behalf of the COMPANY in amending, varying or cancelling the terms of this Agreement, so then such person shall by virtue of the provisions of this clause have no authority to bind or represent the COMPANY in this context and the COMPANY shall not be bound by such person's acts and/or omissions/s.
- 5.1 In the event that the COMPANY is obliged, in the execution of any of its duties and/or responsibilities in terms of this Agreement, to adhere to any legislation of any nature whatsoever, then the COMPANY by adhering to such legislation, shall not be deemed to waive nor abandon any of its rights in terms of this Agreement.
- 5.2 In addition thereto the COMPANY in executing its obligations subject to such legislation, shall not be deemed to have assumed any additional onus, obligation, responsibility or liability in favour of the CUSTOMER.
- 5.3 In the event that any of the terms governing the parties relationship as embodied herein, is repugnant to or in conflict with such legislation, then and in such event the conflicting term embodied herein shall be deemed to be amended and/or altered by such legislation, during the currency of such legislation, and such alteration shall not in any way affect the remaining provisions of this Agreement.
- 6.1 Should there be any dispute of any nature whatsoever between the parties in regard to any aspect, matter or thing relating to this agreement in general, and in particular as to whether the COMPANY has executed its obligations in terms hereof, whether in general or in a proper or workmanlike manner, whether in terms of this agreement or otherwise, then and in such event the CUSTOMER shall nevertheless be obliged to perform his obligations in terms of this agreement as though the COMPANY had performed properly and to the CUSTOMER'S entire and absolute satisfaction.
- 6.2 The CUSTOMER'S remedy, having performed such obligations, shall be limited to an action against the COMPANY for a repayment of either the whole or a portion of the amount which the CUSTOMER alleges constitutes either an over payment, or an amount which, but for the provisions of sub-clause 6.1 above, would not in the ordinary course have been payable, or due and owing at any time prior to the COMPANY having executed all its obligations in a proper and workmanlike manner.
- 6.3 Without affecting the generality of the matters aforesaid, or the intention of the parties or the spirit of the matters aforesaid, the CUSTOMER acknowledges that it shall not be entitled to call upon the COMPANY to furnish a guarantee as security, or any other form of security for the COMPANY'S performance in terms of this Agreement (in the circumstances referred to in this clause or otherwise), and until such time as the CUSTOMER has performed his obligations in favour of the COMPANY in its entirety, no right or cause of action against the COMPANY shall arise. It is only the making of payment by the CUSTOMER to the COMPANY, which shall suffice to enable the CUSTOMER thereafter to proceed against the COMPANY as envisaged in this Clause 5.
- 6.4 Without affecting the generality of the foregoing, or the intention of the parties or the spirit of the foregoing, the CUSTOMER shall not be entitled to withhold payments of any amounts, by reason of any dispute with the COMPANY, whether in relation to the COMPANY'S performance in terms of this agreement, or lack of performance or otherwise, after which payment the CUSTOMER'S rights of action against the COMPANY can be enforced. Until such payment is made, any rights that the CUSTOMER may have, shall be deemed not yet to have arisen, and it is only the payment to the COMPANY which releases such rights and makes them available to the CUSTOMER in respect of any claim that he may have against the COMPANY. Until such time as the COMPANY has received payment in full from the CUSTOMER, any cause or action that the CUSTOMER may have against the COMPANY shall be deemed not to have yet arisen. The provisions of this Clause 6.4 shall apply not only within the context of this Clause 6, but in relation to the Agreement as a whole, and shall apply notwithstanding that the CUSTOMER contends (rightly or wrongly) that the COMPANY has not executed all its obligations in the CUSTOMER'S favour, pursuant to this Agreement.
7. The CUSTOMER acknowledges that the COMPANY may, in its sole and absolute discretion, and without giving notice to the CUSTOMER, cede and/or assign and/or transfer and/or make over all, or any, or part of, its right, title and interest in and to this agreement or any claim hereunder to any third party.
8. Without affecting the provisions of any other clause of this agreement, and without derogating there from (but in addition thereto), the CUSTOMER acknowledges that the COMPANY shall under no Circumstances be responsible for any damage or consequential loss occasioned to the CUSTOMER, by any act or omission committed by the COMPANY. Without endeavouring to limit what is envisaged by damage or consequential loss, and without affecting the generality of the foregoing, it shall, for the purposes of this Agreement, include loss of profits, inconvenience, the cost relating to rental paid by the CUSTOMER in respect of any premises (leased or not by the CUSTOMER), and all and any prejudice or damages the CUSTOMER may suffer of any nature whatsoever, whether direct or indirect, which may, would or does flow from any act or omission committed by the COMPANY pursuant to any obligation owed by it in terms of this Agreement whether such act or omission was reckless or negligent or not.
9. Time is of the essence for the performance by the CUSTOMER of all obligations owed to the COMPANY in terms hereof. Should the CUSTOMER breach any obligation owed to the COMPANY in terms hereof, the COMPANY shall not be obliged to place the CUSTOMER in mora. Upon the CUSTOMER breaching any obligation owed in terms hereof to the COMPANY, the COMPANY shall be deemed to have performed all obligations owed by it to the CUSTOMER together with all the consequences that attach thereto. Without affecting the generality of the foregoing, the CUSTOMER shall be obliged immediately upon demand, to make payment to the COMPANY of monies which would be payable by the CUSTOMER to the COMPANY upon the latter performing all its obligations in terms of this contract.
- 10 Any extension of time, or latitude granted by the COMPANY to the CUSTOMER shall under no circumstances be deemed to be a waiver or an abandonment by the COMPANY of any rights it has. Without affecting the generality of the foregoing and in addition thereto, no act or omission committed by the COMPANY subsequent to any act or omission committed by the CUSTOMER (which act or omission constitutes a breach of any obligation owed by the CUSTOMER to the COMPANY in terms hereof, and whether such obligation arose as a result of any deeming provision herein, or otherwise), shall prejudice the COMPANY, in general or otherwise, nor shall it be interpreted as a waiver or an abandonment or of any right the COMPANY has to proceed against the CUSTOMER, or to do any other act, matter or thing consequent upon the CUSTOMER'S breach, irrespective as to when the breach took place, and irrespective as to when the COMPANY wishes to exercise such right. Any waiver or abandonment of any right the COMPANY has, whether in whole or in part, must be in writing and signed by a Director of the COMPANY, prior to same becoming binding upon the COMPANY.
11. Should the COMPANY not receive written notice from the CUSTOMER of any complaint of any nature whatsoever, within 7 (SEVEN) days of the cause of the complaint becoming apparent (and in this regard the cause for the complaint shall be deemed to have become apparent upon the CUSTOMER having taken possession of the goods in question, alternatively upon the COMPANY having addressed an invoice or statement to the CUSTOMER, or the CUSTOMER enjoying (whether in whole or in part) the benefit of the COMPANY'S performance of its contractual obligations, whichever event shall happen first), the CUSTOMER shall be deemed to have waived and abandoned all and any rights that he may have against the COMPANY as a result of and flowing from such complaints or cause for complaints, and as a result of and flowing from the COMPANY'S action or omission pursuant to which the complaint arises. The inclusion of this clause shall be without prejudice to any other rights the COMPANY has against the CUSTOMER, nor shall it be interpreted as replacing any rights that the CUSTOMER has waived or abandoned or contracted out of, by virtue of any other provisions contained in this agreement.

- 12 Without derogating from any matter herein contained, a Certificate under the hand of a Director (or the Credit Manager) of the COMPANY indicating:
- 12.1.1 any amount due and/or owing by the CUSTOMER; and/or
 - 12.1.2 the existence of a breach by the CUSTOMER; and/or
 - 12.1.3 the date any monies become due and owing by the CUSTOMER to the COMPANY, and/or
 - 12.1.4 the date upon which any breach was committed by the CUSTOMER, and the nature and/or extent thereof; and/or
 - 12.1.5 the interest payable in terms of Clause 17 hereof, and the period during which the interest is payable, and the relevant interest rate from time to time; and/or
 - 12.1.6 the nature and extent of any of the COMPANY'S obligations in terms of this agreement, or whether such obligations have been performed or not, whether in whole or in part.
 - 12.1.7 any matter referred to in Clause 49 or any other clause in this Agreement whether read with Clause 49 or not, shall be deemed to be conclusive proof as to the correctness of its contents and the CUSTOMER agrees to be irrevocably bound thereby.
- 12.2 The aforesaid Certificate shall be sufficient inter alia, proof of the CUSTOMERS indebtedness to the COMPANY, and for the other matters referred to in Clause 12.1 above, and shall be capable of being used by the COMPANY for the purposes of procuring Provisional Sentence, and/or Summary Judgment, and/or such other relief to which the COMPANY might be entitled, as a result of any court proceedings of any nature whatsoever.
- 12.3 The person who signs the Certificate shall not be obliged to prove his authority or his status in the COMPANY.
- 13.1 Where part, or the whole, of the COMPANY'S performance consists of the supply of any goods or material (hereinafter referred to as the "goods") (whether manufactured by the COMPANY or not), it is specifically recorded that ownership of the goods supplied shall at all times remain vested in the COMPANY until such time as the CUSTOMER has performed all obligations owed by him to the COMPANY in terms hereof, this notwithstanding any other provision contained in this Agreement which may be interpreted to the contrary, in general and in particular notwithstanding that any credit facilities which might have been granted by the COMPANY to the CUSTOMER. In this regard the CUSTOMER acknowledges that the goods sold are intended by the COMPANY to be movables, and the fact that they may be attached to certain immovable property does not derogate from that intention and that purpose. The CUSTOMER furthermore records that he intends the goods sold in terms of this agreement to be movable.
- 13.2.1 In the event that the CUSTOMER fails to make payment to the COMPANY in respect of the goods, then and in such event the COMPANY shall be entitled to proceed to court to repossess the goods, and that the goods may have been delivered to and/or installed in the CUSTOMER'S premises shall not derogate from any of these rights.
- 13.2.2 The parties record that their intention is that the COMPANY shall be entitled to the return of the goods, and to retain them until such time as the CUSTOMER executes all and any obligations owed by him to the COMPANY. In this context and for the purposes of this Clause 13, the CUSTOMER'S obligations that are owed to the COMPANY shall be deemed to be all those obligations that the customer would owe to the COMPANY as though the COMPANY had executed in favour of the CUSTOMER all its obligations in their entirety. In this regard and without affecting the generality of any provision contained in this Clause 13, the provisions of
- 13.2.3 Clause 5 hereof shall be of application in the context of the COMPANY executing its rights in terms of this clause, consequently, and having regard to the provisions of Clause 5 hereof, the customer acknowledges that his obligations in favour of the COMPANY shall arise not only once the COMPANY has actually executed all its obligations in favour of the CUSTOMER, but also in the circumstances referred to in Clause 5.
- 13.3 In the event that the COMPANY repossesses the goods in the circumstances referred to in Clause 13.2 hereof, then and in such event the goods shall be stored by the COMPANY at the CUSTOMER'S sole and absolute risk, and at the CUSTOMER'S cost. Once the CUSTOMER has made payment to the COMPANY of all monies due and owing by the CUSTOMER to the COMPANY, or of all monies which are deemed to be due and owing by the CUSTOMER to the COMPANY whether in terms of Clause 5 hereof, Clause 11 hereof or otherwise, then and only then shall the CUSTOMER be entitled to the return of the goods, provided however that the COMPANY shall still not be obliged to return the goods to the CUSTOMER until such time as the CUSTOMER has made payment to the COMPANY of:
- 13.3.1 the attorney and one's own client legal costs incurred by the COMPANY in exercising any of its legal rights in terms of this Agreement; and
- 13.3.2 the COMPANY'S costs in exercising any of its rights in terms of Clause 13.2 (and in this regard, costs shall mean and include but not be limited to the costs of taking possession of the goods, storing them and returning them to the CUSTOMER).
- 13.4 In the event that there exists a dispute as to the extent of the costs referred to in Clauses 13.3.1 and 13.3.2, then and in such event, insofar as portion of those costs relate to legal costs, they shall be deemed to be due and payable notwithstanding that taxation thereof has not taken place, but upon receipt of a certificate as envisaged in Clause 12 hereof.
- 13.5 In determining the costs referred to in Clause 13.3.2 above, the CUSTOMER acknowledges that the COMPANY is entitled to make a profit on such costs, and shall also be entitled to be fully and adequately compensated in respect of the costs to which it, the COMPANY, has been put, which compensation shall mean and include not only the COMPANY'S actual disbursements (where applicable) and actual costs, but also interest on the costs incurred by the COMPANY from the time the costs have been incurred, and a reasonable profit shall be deemed to be the COMPANY'S actual costs (including but not limited to interest on monies disbursed and/or costs incurred, administration costs, and all other costs incurred by the COMPANY, plus 100%).
- 13.6 The provision of Clause 5 hereof shall apply to the provisions of this Clause 13 in their entirety and in particular (but without affecting the generality of the foregoing) where there is a dispute of any nature whatsoever between the parties in regard to the extent of the monies to be paid by the customer to the COMPANY in terms of Clauses 13.3.1 and 13.3.2 above.
- 13.7 This clause shall be read in conjunction with Clause 14 hereunder; the parties record that their intention is that the provisions of this Clause 13 are not intended to conflict with Clause 14, but are intended to afford additional rights to the COMPANY. To the extent that any of the rights afforded the COMPANY as embodied in Clause 13 overlap or are similar to any rights afforded the COMPANY in terms of Clause 14, so the parties record that their intention is generally to protect the COMPANY. In the event that there does exist a conflict, and then and in such event it shall be interpreted as separate and distinct rights afforded the COMPANY, and nothing contained in this Clause 13 shall preclude the COMPANY proceeding to Court in the circumstances envisaged in Clause 13, and visa versa.
- 14.1 With out prejudice to any other rights that the COMPANY has consequent upon the CUSTOMER'S breach (and in particular without derogating from the matters referred to in clause 13 above) the COMPANY shall be entitled to retake possession of any goods supplied in terms of this Agreement, and which are in the CUSTOMER'S possession, whether installed, either in whole or otherwise, or not. To this end the CUSTOMER agrees and consents to the COMPANY being given access to the premises where the goods are installed or stored, and shall do such things and take such steps as may be necessary to procure any consent that may be required by the COMPANY (from any person other than the CUSTOMER) to obtain such access.
- 14.2 The provisions of this clause shall apply, notwithstanding that the goods supplied may have been installed (e.g. wall to wall carpeting or office furniture which is part and parcel of an office interior decorating scheme), and notwithstanding that the goods supplied may in fact be connected or attached to immovable property, and notwithstanding that the CUSTOMER may be put to inconvenience and/or expense and/or prejudice as a result of the COMPANY exercising its rights in terms of this clause.
- 14.3 The COMPANY shall be entitled to hold such goods, pending the CUSTOMER discharging all and any obligations owed to the COMPANY, and in the event that the COMPANY exercises any rights in terms of this clause, it shall be without prejudice to any other rights of any nature whatsoever it has against the CUSTOMER. Whilst the COMPANY is holding the goods, it shall be entitled to charge storage costs.
15. The CUSTOMER shall not be entitled to deal with the goods supplied to it in terms of this Agreement, until such time as ownership of the goods vests in it. Deal in this context shall mean and include sell, lend, part with possession, hypothecate, encumber or cause the goods to be subject to a hire purchase agreement, a lease agreement, an instalment sale agreement or any other financial agreement of any nature whatsoever.
16. In the event that the CUSTOMER fails to make payment to the COMPANY of any monies that are or become due and owing at any time (whether as a result of any deeming provision in terms of this Agreement, or as a result of the COMPANY having performed its obligations, whether in whole or in part), then and in such event the CUSTOMER shall pay to the COMPANY interest on such monies computed from the date the monies became due and payable, until the date the monies are actually paid, at an interest rate of 3% above the COMPANY'S banker's prime lending rate, or the maximum amount that is recoverable in respect of a money lending transaction equal to the amount owing or due by the CUSTOMER to the COMPANY, whichever is the higher.
- 17.1 Without derogating from any provision contained elsewhere in this Agreement, whilst the CUSTOMER is in breach of any obligation owed to the COMPANY in terms of this Agreement, the CUSTOMER shall have no right to proceed against the COMPANY in respect of any claim that, but for the provisions of this clause or any other clause embodied herein, the CUSTOMER may have had.
- 17.2 Breach in the context referred to in clause 17.1 above, shall mean and include an alleged breach; the parties record that the CUSTOMER contends that the CUSTOMER is in breach of any obligation which precludes or prevents it from proceeding against the COMPANY in terms of Clause 16.1, until such time as the issue or dispute in regard to that alleged breach is resolved, the CUSTOMER agrees and undertakes that he will not proceed against the COMPANY in respect of any relief to which the CUSTOMER contends he is entitled, whether by way of action or motion proceedings instituted simultaneously with action or motion proceedings in relation to the dispute as to whether the CUSTOMER is in breach or not, or included in the same action or motion proceedings the parties record that their intention is that the issue of the breach by the CUSTOMER (where there is an issue) is determined separately and distinctly from any other issue between the parties, and once that issue has been finally determined, only then and in such event shall the CUSTOMER be entitled to institute any action or motion proceedings against the COMPANY, in respect of such relief to which the CUSTOMER contends it is entitled, and the delays occasioned to the CUSTOMER shall not give rise, directly or indirectly, to any claim of any nature whatsoever against the COMPANY.
- 17.3 Nothing contained in this clause shall detract from nor derogate from any other provision contained in this Agreement, in general and in particular it shall not be construed as conflicting with any other provision in general, and in particular it shall not be construed as affording the CUSTOMER any rights to proceed where some other provision of this Agreement detracts or derogates from any such right the CUSTOMER may have.
18. Where measurements or specifications form part of the goods sold or services rendered in terms hereof, and/or where in order to determine the size and/or specifications of the goods, it is necessary that measurements be taken, it shall be the CUSTOMER'S obligation to take such measurements and specifications, and to ensure that they are in all respects correct. Where the COMPANY or its representative and/or agent and/or employees take such measurements and specifications it does so without incurring any liability as to the correctness or otherwise thereof, and does so purely in order to assist the CUSTOMER, and on ex gratia basis. That any measurement or specification may not be accurate or correct, shall not constitute a cause of complaint by the CUSTOMER, and the CUSTOMER shall have no claim of any nature whatsoever against the COMPANY, its agents, representatives or employees, in respect of such incorrect measurement or specification. The CUSTOMER specifically acknowledges that it is his obligation to satisfy himself that the measurements and specifications given to the COMPANY or taken by the COMPANY in the circumstances referred to herein, are in all respects accurate and correct; the CUSTOMER shall not be entitled to complain to the COMPANY in respect of any incorrect measurements, and where there are incorrect measurements, this shall not constitute a cause of action against the COMPANY nor a basis for complaint.
19. The CUSTOMER acknowledges that:
- 19.1 The date for performance by the COMPANY of its obligations is an approximate date.
- 19.2 Time for the performance by the COMPANY of its obligations shall not be of the essence. To the extent that the CUSTOMER may have a right to place the COMPANY in mora, the CUSTOMER shall be obliged to give the COMPANY 30 (THIRTY) days written notice to perform any obligation that it has, and where the COMPANY fails to perform such obligation, then and in such event, the CUSTOMER shall only have the right to compel performance by the COMPANY of its obligations in terms of this Agreement, and shall not have the right to cancel this Agreement. Nothing herein contained shall derogate or detract from any other provision of this Agreement in general, and in particular the provision of Clause 13 hereof (where the thirty day period commences between 1 November in any one year and 15 January in the following year, the period of thirty days shall be deemed to be increased to ninety days)
- 19.3 Any notice or placing in mora in terms of this clause, in order to be effective, must come to the attention of both the COMPANY'S Managing Director and Credit Manager, and the onus of establishing that the notice came to the notice of such persons, shall rest with the CUSTOMER.
- 19.4 This clause shall not be interpreted as affording the CUSTOMER any rights that are excluded or limited elsewhere in this Agreement. Without affecting any provision contained elsewhere in this Agreement, should the COMPANY fail to perform timeously, such failure on its part shall not afford the CUSTOMER any claim for damages of any nature whatsoever, including but not limited to loss of profits, consequential damages or the cost of procuring alternative performance from a third party.
20. If the CUSTOMER wishes to institute action against the COMPANY, or proceed by way of motion proceedings, he shall be obliged to institute such proceedings in the Magistrate's Court (where the amount in issue falls within the Magistrate's Courts jurisdiction) and where the amount in issue is beyond the jurisdiction of the Magistrate's Court, in the Supreme Court of South Africa Witwatersrand Local Division. This clause shall be deemed to constitute an agreement between the parties for the aforesaid division of the Supreme Court and the Magistrate's Court, to hear any dispute between the parties.

21. The CUSTOMER acknowledges and is aware that the COMPANY requires the CUSTOMER to pay in cash (as opposed to a cheque or other negotiable instrument) in respect of any monies due and/or owing by him to the COMPANY. Where the COMPANY accepts a cheque, it does so without prejudice to any of its rights, and the CUSTOMER is aware of, and shall be deemed to have warranted, represented and guaranteed the COMPANY that the aforesaid cheque will be paid upon presentation, and the customer will not do any act or omission which would preclude the aforesaid cheque being paid upon presentation. The only exception hereto is where the CUSTOMER has arranged with the COMPANY in writing, signed by both parties, credit facilities. A verbal arrangement in regard to credit facilities shall be deemed to be of no application, and of no force or effect what so ever, but for the provisions of this clause, the CUSTOMER acknowledges that the COMPANY will not have accepted a cheque, and will not have permitted the goods in question to leave its possession and custody, without payment have been made in full. The only exception hereto is where the CUSTOMER has arranged with the COMPANY in writing, signed by both parties, credit facilities. A verbal arrangement in regard to credit facilities shall be deemed to be of no application, and of no force or effect whatsoever.
- 22.1 Whilst the CUSTOMER is indebted to the COMPANY, whether the CUSTOMER has arranged for credit facilities or not, the COMPANY shall be deemed to have a pledge and/or hypothec over the goods in question.
- 22.2 The CUSTOMER acknowledges that by agreement between him and the COMPANY, even though the COMPANY may permit the CUSTOMER to take possession of the goods, it does so on the clear and absolute understanding that the CUSTOMER is then holding the goods as the COMPANY'S agent, and not for its own personal benefit. That the CUSTOMER may derive some or other benefit, substantial or otherwise, material or not, from holding or being in possession of the goods in these circumstances, shall not derogate from any matter referred to herein. The parties record that their intention is that the COMPANY'S pledge and/or hypothec over the goods shall at all times remain intact and that this shall apply notwithstanding that credit facilities, properly arranged in terms hereof, might apply in any particular instance. The pledge and/or hypothec that the COMPANY has in terms of this clause shall terminate once the COMPANY has received payment in full.
- 22.3 The provision of this Clause 22 shall not derogate nor detract from any other provisions contained in this Agreement. It shall be interpreted as being complementary to any other provision contained in this Agreement and affording the COMPANY rights additional to such rights afforded to the COMPANY elsewhere in this Agreement.
23. The CUSTOMER shall be responsible for all acts and omissions committed by its servant and/or agent and/or employee and/or representative whether on its behalf or not, and to this end indemnifies the COMPANY, and holds it free and harmless for the consequences of such acts and omissions.
24. The COMPANY shall at all times be deemed to have performed its obligations in a proper and workmanlike manner, and strictly in accordance with any obligations owed by it to the CUSTOMER. The CUSTOMER acknowledges that the onus of establishing otherwise, shall rest with him.
25. Where the COMPANY has caused any advertisement to be published in any media, whether in the written word or otherwise, then and in such event any representation and/or warranty and/or guarantee and/or promise and/or inducement contained in such advertisement shall be deemed not to form part of the contract between the parties, and shall not in any manner whatsoever be binding upon the COMPANY unless specifically contained herein.
26. Without affecting the generality of any exclusion of liability afforded the COMPANY referred to elsewhere in this Agreement, the COMPANY shall not be liable for the theft or loss of any of the CUSTOMER'S Property (or any property in respect of which the CUSTOMER is liable or responsible or in respect of which it has an interest, direct or not, and irrespective as to the extent of such interest) howsoever such loss or theft took place, and whether it took place as a result of the COMPANY'S reckless or negligent conduct, or any reckless or negligent conduct attaching to the COMPANY'S staff members, its servants, employees or agents. In this Agreement:
- 27.1 Words relating to the singular shall mean and include the plural, and vice versa, where the context permits or desires;
- 27.2 Words relating to natural persons shall mean and include associations or persons having corporate status by Statute or common law, and close corporations, and vice versa where the context permits or desire;
- 27.3 Words referring to any gender shall include the other gender and the neuter gender. He shall include she and it, and vice versa.
28. The CUSTOMER chooses as its domicilium citandi et executandi for all purposes under this Agreement, including for the giving of any notices and the service of any Summons, motion proceedings or otherwise at the address appearing on the Credit Application Form completed by it. If for any reason whatsoever an address does not appear on the form, or if no form is completed, then and in such event where the CUSTOMER is a company, or Close Corporation, its chosen domicilium citandi et executandi shall be its registered office as appearing from time to time in the records retained by the Registrar of Companies or the Registrar of Close Corporations (as the case may be), but where the CUSTOMER is neither a close corporation nor a COMPANY, it shall be deemed to be its principal place of business, or if there is no principal place or business, the address where the goods and/or services supplied by the COMPANY have been delivered and/or executed, as the case may be.
29. All and any monies received by the COMPANY from the CUSTOMER shall be appropriated by the COMPANY in its sole and absolute discretion in respect of any indebtedness owing by the CUSTOMER to the COMPANY, notwithstanding that the CUSTOMER might when making payment, seek to appropriate the payment so made to any particular debt or portion of a debt. The COMPANY shall not be obliged to advise the CUSTOMER in respect of which indebtedness or portion of indebtedness it, the COMPANY is appropriating the payment so made by the CUSTOMER. Furthermore the COMPANY shall be entitled to appropriate the monies so received, at anytime, whether at the time of receipt of the monies or thereafter, notwithstanding any earlier appropriation. In the event that there is any dispute or uncertainty as to the manner in which the COMPANY sought to appropriate the monies, then and in such event a Certificate as envisaged in Clause 13.1 above, shall apply mutatis mutandis to the appropriation referred to herein. The parties furthermore specifically record and agree that the COMPANY shall be entitled to vary the relevant appropriation as and when it so desires, and it is only once the COMPANY has issued a certificate identifying the manner in which the appropriation has been made (which Certificate shall be under the hand of a Director of the COMPANY), that the COMPANY shall be deemed to have finally appropriated the payment thus made by the CUSTOMER and allocated it to a particular indebtedness. Until such time as the Certificate is issued, any appropriation is an interim appropriation, and subject to the COMPANY'S right to appropriate finally in the circumstances referred to herein.
- 30.1 Notwithstanding that this Agreement maybe concluded between the COMPANY and the CUSTOMER, should the COMPANY at anytime, in its sole and absolute discretion, require from the CUSTOMER a performance guarantee, it shall be entitled to call upon the CUSTOMER to deliver same to the COMPANY.
- 30.2 Such performance guarantee shall be identified by the COMPANY, and the CUSTOMER shall then be obliged to deliver the same to the COMPANY within seven calendar days of being called upon to deliver such performance guarantee.
- 30.3 The performance guarantee may take the form of an irrevocable bankers guarantee in such terms as the COMPANY may reasonably require, or such other guarantee as the COMPANY may find acceptable.
- 30.4 Where the COMPANY calls for such guarantee and it is not forthcoming within the aforesaid seven day period, the COMPANY shall be entitled to cease executing any of its obligations in terms hereof, and shall be deemed, for the purposes of this Agreement and for the purposes of payment by the CUSTOMER to the COMPANY, to have completely executed all its obligations in a proper and workmanlike manner, and the CUSTOMER shall be obliged to make payment to the COMPANY prior to the COMPANY proceeding any further in accordance with any obligations assumed by it in terms of this Agreement.
31. This Agreement is not subject to retention monies being held or withheld by the CUSTOMER, for any purpose or reason whatsoever.
32. Should it transpire, for any reason whatsoever and howsoever caused (whether caused by the COMPANY directly or indirectly, or whether as a result of the COMPANY'S act or omission, negligent, reckless or otherwise) that it becomes impracticable or unprofitable or undesirable (all from the COMPANY'S point of view) to proceed with this Agreement, or its performance thereunder then and in such event the COMPANY shall be entitled to determine not to so proceed, or perform, and the CUSTOMER shall be deemed to have agreed to the COMPANY not so proceeding or performing. In these circumstances the CUSTOMER acknowledges that it has no claim of any nature whatsoever against the COMPANY, and in this regard the provisions elsewhere in this Agreement with regard to the CUSTOMER acknowledging that it has no claim of any nature whatsoever shall apply mutatis mutandis in these circumstances the intention being that all other exclusions of liability as provided for in this Agreement, insofar as any claim that the CUSTOMER might have had against the COMPANY, shall apply herein mutatis mutandis.
- 33.1 Every CUSTOMER engaging the COMPANY to undertake business shall do so and shall be deemed to do so in every respect and in relation to all the terms of the transaction including these conditions not only on his own behalf but also as agent and on behalf of:
- 33.1.1 every person then owning or otherwise interested in any goods the subject of the transaction taken and
- 33.1.2 every person acquiring ownership of or any other interest in any such goods subsequent to the engagement of the COMPANY and prior to the completion of the transaction undertaken.
- 33.2 Every CUSTOMER engaging the COMPANY shall be deemed to have warranted that he either has the authority to engage the COMPANY as owner of such goods or as the authorised agent and on behalf of the persons referred to in 33.1.1 and 33.1.2 above.
34. Without prejudice to Clause 33 above the COMPANY shall have the right to enforce any liability of the CUSTOMER under these conditions or to recover any sums to be paid by the CUSTOMER under these conditions not only against or from the CUSTOMER but also if it thinks fit against or from the consignor and/or consignee and/or owner of the goods.
- 35.1.1 No goods including radio-active materials which are or may become dangerous, inflammable or noxious or which by their nature are or may become liable to cause injury or damage to any person, goods or property what so shall be tendered to the COMPANY without its express consent in writing. The goods or the container package or other covering in which the goods are to be tendered to the COMPANY or its agents shall be prominently marked on the outside so as to indicate the nature and character of the goods and so as to comply with any applicable laws, regulations or requirements of any authority or carrier.
- 35.1.2 if any such goods are tendered to the COMPANY without its written consent or without being marked as aforesaid the same may at any time be destroyed, disposed of, abandoned or rendered harmless at the sole and absolute discretion of the COMPANY and at the entire risk and expense of the CUSTOMER without compensation to him or to any other party and without prejudice to the COMPANY'S rights to its charges or fees including the cost of destruction or disposal.
- 35.1.3 notwithstanding the acceptance of the goods with its express consent the COMPANY may nevertheless for good reason such as the risk to other goods, property, Life or health, destroy or otherwise deal with the goods at the entire risk and expense of the CUSTOMER without compensation to him or to any other party and without prejudice to the COMPANY'S rights to its charges or fees including the cost of destruction or disposal.
- 35.1.4 whether or not the CUSTOMER was aware of the nature of the goods and whether or not the COMPANY'S written acceptance thereof was obtained the CUSTOMER shall be deemed to have indemnified the COMPANY against all loss damage or liability caused to the COMPANY as a result of the tender of the goods to the COMPANY.
- 35.1.5 the expression "goods liable to cause damage" shall include goods likely to harbour or encourage vermin or other pests.
- 35.2 The CUSTOMER shall be responsible for compliance with all regulations relating to such goods as aforesaid in force in any country or its territorial waters. In this context regulations shall mean all and any provisions of any law, be it statutory or otherwise.
- 36.1 The COMPANY shall not accept liability for the handling of any bullion, coins, precious stones, jewellery, valuables, antiques, pictures, banknotes, securities and other valuable documents or articles, livestock or plants unless special arrangements have previously been made in writing. Should any CUSTOMER nevertheless deliver any such goods to the COMPANY or cause the COMPANY to handle or deal with any such goods otherwise than under special arrangements previously made in writing the COMPANY whether or not it is aware of the nature of the goods shall bear no liability whatsoever for or in connection with any loss of or damage to the goods.
- 36.2 The COMPANY'S excluded liability in these circumstances shall be over and above any other exclusion of liability contained herein, and shall be read in conjunction therewith. The parties specifically record that the provisions of sub-paragraph 36.1 shall not be deemed to limit nor derogate from the COMPANY'S general exclusion of liability.
- 37.1 Where the COMPANY has been, or has been deemed to be indemnified by the CUSTOMER, such indemnity shall be an ongoing one
- 37.2 The indemnity shall be widely interpreted and shall exist from inception of the COMPANY and the CUSTOMER doing business.
- 37.3 The indemnity shall furthermore be interpreted on the basis that the COMPANY shall not be obliged to make payment to any person, and seek to recover such payment from the CUSTOMER. The CUSTOMER shall ensure that it does all things and makes all payments that might be necessary to ensure that the COMPANY is completely and utterly indemnified, in such circumstances that the COMPANY is not obliged, prior to looking to the CUSTOMER for compensation and/or protection and indemnification, to make payment or to perform any act, matter or thing which is the subject matter of the indemnification.
38. The CUSTOMER shall be deemed to be bound by and to warrant the accuracy of all descriptions, values and other particulars furnished to the COMPANY for customs, consular and other purposes and shall be deemed to have indemnified the COMPANY against all claims, losses, penalties, damages, expenses, prejudice and fines whatsoever arising from any inaccuracy or omission even if such inaccuracy or omission is due to any negligence.
39. Except where the COMPANY is instructed in writing to pack the goods and the COMPANY has agreed in writing so to do, the CUSTOMER warrants that all goods have been properly and sufficiently packed and/or prepared.

- 40.1 Any instructions or business accepted by 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 instructing or entrusting the goods to third parties on such conditions as maybe 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. The negotiations referred to herein shall be between the COMPANY and the third party.
- 40.2 Where the COMPANY employs independent third parties to perform all or any of the functions required of the COMPANY, the COMPANY shall have no responsibility or liability to its CUSTOMER for any act or omission of such third party, even through the COMPANY may be responsible for the payment of such third party's charges.
- 40.3 All goods are dealt with by the COMPANY subject to the conditions whether or not inconsistent with these conditions, stipulated by the carriers, warehousemen, Government Departments, and all other parties (whether acting as agents or subcontractors 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.
- 41.1 Wherever it is necessary for the purpose of these conditions or any other purpose whatsoever for instructions to be given to the COMPANY, such instructions shall be recognised by the COMPANY as valid only if timeously given specially in relation to the matter in question. Standing or general instructions or instructions given late even if received by the COMPANY without comment shall not be binding upon the COMPANY.
- 41.2 If at any stage in any transaction the COMPANY should consider that there is good reason making it advisable in the CUSTOMER'S interest to depart from any of the CUSTOMER'S instructions, the COMPANY shall in its sole and absolute discretion be permitted to do so and shall not thereby incur any additional liability.
- 41.3 In the event that it should transpire at any stage that the COMPANY'S deviation or failure to carry out the CUSTOMER'S instructions, or any decision made by the COMPANY to deviate from such instructions, was not in the CUSTOMER'S interest (whether by way of hindsight or not) the CUSTOMER shall not have any claim of any nature whatsoever against the COMPANY, and all and any exclusions of liability in favour of the COMPANY contained in this agreement shall apply in these circumstances.
- 42.1 In the absence of special instructions accepted in writing by the COMPANY'S Managing Director and Chairman, as in 44.1 hereunder, it shall be in the entire discretion of the COMPANY to decide at what time to perform any or all of the various acts which may be necessary for the completion of its services in relation to any particular matter. The COMPANY shall have no liability or responsibility by virtue of the fact that there may be a change 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 in some other way had any act been performed at a different time. In the absence of written Instructions the COMPANY reserves to itself the absolute discretion as to the means, out and procedure to be followed in performing all or any of the acts or services required, in the event that written instructions are received by the COMPANY in the circumstances referred to herein, the COMPANY shall nevertheless be entitled in its sole and absolute discretion, to deviate there from, without assuming any onus or obligation to the CUSTOMER.
43. It shall not be obligatory upon the COMPANY to effect insurance except upon detailed instructions given in writing by the CUSTOMER and all insurance effected by the COMPANY pursuant to such instructions will be subject to such exceptions and conditions as may be imposed by the Insurance Company or the underwriters taking the risk and the COMPANY shall not be obliged to obtain separate cover for any risks so excluded. The COMPANY 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 Insurers dispute their liability for any reason, the CUSTOMER shall have recourse against the Insurer only and the COMPANY shall not be under any responsibility or liability whatsoever in relation thereto notwithstanding that the premium upon the policy may not be at the same rate as that charged by the COMPANY or paid to the COMPANY by its CUSTOMER.
- 44.1 Where any written instruction is given to the COMPANY then and in such event unless the COMPANY accepts such written instruction in writing (and it shall only be the COMPANY'S Chairman and Managing Director who shall have authority so to do, and any other purported acceptance shall be of no force or effect), the COMPANY shall nevertheless be entitled in its sole and absolute discretion, to deviate from such instructions, if it, the COMPANY, considers it expedient and/or desirable (having regard to its own interest) to do so.
- 44.2 In these circumstances, the CUSTOMER shall have no claim of any nature whatsoever against the COMPANY, and the general exclusion of liability in favour of the COMPANY embodied elsewhere in this Agreement, shall apply herein. In addition thereto, should the COMPANY commence executing such written instructions (whether it has accepted the same properly in writing or not) the COMPANY shall nevertheless be entitled, even thereafter, but prior to the complete execution of such written instructions, to deviate there from in the circumstances referred to herein.
45. The COMPANY shall not be obliged to make any declaration for the purpose of any statute or convention or contract as to the nature of any goods or as to any special interest in delivery or otherwise unless expressly instructed by the CUSTOMER in writing. In particular in the Republic of South Africa the COMPANY shall be under no obligation — unless written instructions to that effect are given to the COMPANY — to make any declaration or to seek any special protection or cover from the South African Railways and Harbours or from any other carrier in respect of any goods which are or fall within the definition by that body of:
- 45.1 dangerous or very dangerous goods: or
45.2 goods liable to be stored in the open.
46. In all cases where there is a choice of tariff, rates or premiums offered by carriers, warehousemen, underwriters or others, depending upon the value declared or the extent of the liability assumed by the carrier, warehouseman, underwriter or other person, it shall be in the entire 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 unless express instructions in writing are timeously given by the CUSTOMER. The CUSTOMER shall not be entitled to complain that any choice made by the COMPANY was not the correct choice, or not in its, the CUSTOMER'S, best interests.
47. Pending forwarding and delivery, goods may be warehoused or otherwise held at any place at the sole and absolute discretion of the COMPANY at the CUSTOMER'S risk and expense.
48. The COMPANY shall have no obligation to take any action in respect of any goods which may be recognised as belonging to its CUSTOMER, or in respect of which its CUSTOMER has any interests, unless it has received suitable written instructions relating to such goods together with all necessary documents and indemnity in a form that the COMPANY finds acceptable. Without affecting the generality of the foregoing, the COMPANY shall not be obliged to notify the CUSTOMER of the existence or whereabouts of the goods or to examine the them or to take any other steps or their identification, protection or preservation or for the identification, protection or preservation of any claim by its CUSTOMER or any other party against the carrier, Insurer, or any third party of any nature whatsoever.
49. Where it is necessary for an examination to be held, or any other action to be taken by the COMPANY, in respect of any discrepancy in the goods which are landed from any vessel, aircraft, vehicle or container, no responsibility shall attach to the COMPANY, for any failure to hold such examination or to take other action unless the COMPANY has been timeously advised by the landing agent that such goods have been landed which reflect any discrepancy.
- 50.1 Where any provision of this Agreement provides that the COMPANY shall have no obligation to do any act, matter or thing, so then it shall not be interpreted that any failure in this Agreement to record that the COMPANY has no obligation to do any act, matter or thing, shall be interpreted as implying or averring that in the absence of a specific exclusion, the COMPANY did have an obligation to do any act, matter or thing.
- 50.2 The CUSTOMER acknowledges that if there exists any dispute of any nature whatsoever as to the scope of the COMPANY'S obligations to the CUSTOMER, or the mandate received and accepted by the COMPANY, a Certificate by the COMPANY as provided for in clause 11 above shall be deemed to be final, binding and conclusive as to that issue.
51. Perishable goods in the care, custody or control of the COMPANY which have begun or are likely to deteriorate or which are insufficiently addressed or marked or otherwise not readily or easily identifiable may be sold or otherwise wise disposed of (on any terms that the COMPANY deems in its sole and absolute discretion, desirable, without having regard to the CUSTOMER'S interests) without any notice to the CUSTOMER, owner or consignee and payment or tender of the nett proceeds of any sale after deduction of charges and expenses shall be equivalent to delivery. All charges and expenses arising in connection with the sale or disposal of the goods shall be for the account of the CUSTOMER and may be deducted.
52. The COMPANY shall be entitled to sell or dispose of all non-perishable goods in any circumstance:
- 52.1 Where a CUSTOMER cannot be easily or readily identified;
52.2 Where the goods cannot be easily or readily delivered because they are insufficiently or inappropriately addressed; or
52.3 Where the goods have not been collected or accepted by the CUSTOMER or any other person where the COMPANY has an address for the CUSTOMER then such sale or disposal shall be effected only after the expiration of 21 (TWENTY-ONE) days from the posting to that address of written notice to do so.
52.4 Where the COMPANY deems it, from its own point of view, desirable, or practicable.
53. Quotations where given shall be on the basis of immediate acceptance and shall be subject to withdrawal or revision by the COMPANY. Further unless otherwise agreed in writing the COMPANY shall notwithstanding acceptance be at liberty to revise quotations or charges with or without notice in the event of changes occurring in currency exchange rates, rates of freight, surcharges, insurance premiums, equipment rental rates, labour rates or any other charges applicable to the handling of the goods.
54. The COMPANY 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 its CUSTOMERS or principals for any such remuneration received by it.
- 55.1 When goods are accepted or dealt with upon instructions to collect freight duties, charges or other expenses from the consignee or any other person, the CUSTOMER shall remain responsible for the same if they are not paid by such consignee or other person immediately when due.
- 55.2 If accepted by the COMPANY instructions to collect payment on delivery (C.O.D.) in cash or otherwise shall be subject to the condition that the COMPANY in the matter of such collection will be liable for the exercise of reasonable diligence and care only.
56. The CUSTOMER, sender, owner and/or consignee and their agents, if any, shall be liable for any duties, taxes, imposts, levies, deposits or outlays of whatever nature levied by the authorities at any port or place for or in connection with the goods and for any payments, fines, expenses, loss or damage whatsoever incurred or sustained by the COMPANY in connection therewith.
- 57.1 Notwithstanding any prior dealings between the COMPANY and its CUSTOMER, all documents and other matter including cash, cheques, bank drafts and other remittances sent to the COMPANY through the post shall be deemed not to have been received by the COMPANY unless they are actually delivered to the COMPANY by the Postal authorities.
- 57.2 In addition to the aforesaid, payment to the COMPANY, where paid otherwise than in cash, shall only be made upon payment of the negotiable instrument in question, by the drawer's bankers, into the COMPANY'S bank. The receipt by the COMPANY of the negotiable instrument and/or the depositing thereof, or the dealing therewith, shall not be deemed to be payment. All the aforesaid is conditional upon the negotiable instrument being paid into the COMPANY'S bank account, and payment in this context shall only mean and include the irrevocable crediting of the COMPANY'S bank account, with payment thereof.
58. The COMPANY shall under no circumstances be precluded from raising a debit and obtaining payment in respect of any fee or disbursements lawfully due to it, notwithstanding the fact that a previous debit or debits whether excluding or partly including the items now sought to be charged had been raised and whether or not any notice was given that further debits were to follow.
- 59.1 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 any other claim of any nature whatsoever and howsoever arising which the COMPANY may have against the CUSTOMER, sender, owner, consignee, importer or the holder of the Bill of Lading or their Agents, whether arising out of this Agreement or otherwise, the other monies due to the COMPANY from the CUSTOMER, sender, owner, consignee, importer, or the holder of the Bill of Lading or their agents, it any.
- 59.2 From whom the monies are due, whether it be the CUSTOMER or not, then and in such event such goods and documents over which the COMPANY has a lien or pledge, may be sold by auction or private treaty or otherwise, in the sole and absolute discretion of the COMPANY.
60. Notwithstanding anything hereinbefore contained the COMPANY shall not in any circumstances be liable for damages arising from loss of market or attributable to delay in forwarding or in transit or failure to carry out the instructions given to it or any other consequential loss, however caused. In particular shall not be responsible for any loss of goodwill or credibility that the CUSTOMER or any other person may suffer as a result of any act,
- 61.1 Notwithstanding any matter referred to elsewhere in this Agreement and without derogating there from, and in particular without the COMPANY assuming any onus or obligation, should it transpire that the COMPANY is on any basis whatsoever liable to the CUSTOMER, such liability shall not exceed the value of the goods or the value declared by the CUSTOMER for insurance customs or carriage purposes, or the following respective amounts (whichever is the lowest):
- 61.1.1 inward and outward consignments received or to be forwarded by airfreight — R50 per consignment;
61.1.2 inward and outward consignments received or to be forwarded by seafreight or other surface carriage excluding parcel post — R100 per ton of 1 000 kilos;
61.1.3 inward and outward parcel post consignments — R25 per consignment.
- 61.2 it is desired that the liability of the COMPANY should not be governed by these limits, written notice thereof must be given to the COMPANY before any goods or documents are entrusted to the COMPANY, together with a statement of the value of the goods. Upon receipt of such notice the COMPANY may agree to its liability being increased to a maximum amount equivalent to the amount stated in the notice in which case it should 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 to the COMPANY the amount of the premium payable by the COMPANY for such insurance.

62. Where as a result of any act or omission by the COMPANY, duty, railage, wharfage, freight, cartage or any other impost or charge has been paid or levied which should not have been paid or levied or has been paid or levied in an incorrect amount then any responsibility or liability to procure a refund thereof shall be the CUSTOMERS and the CUSTOMER shall not be entitled to look to the COMPANY for any such refund.
63. In addition to any other exclusion of liability, the COMPANY shall not be liable under any circumstances for any loss, damage or expense arising from or in anyway connected with marks, weights, measurements, numbers, brands, contents, quality or description of any goods.
64. In addition to and without prejudice to all the foregoing the CUSTOMER shall be deemed to have indemnified the COMPANY against all Liabilities whatsoever suffered or incurred by the COMPANY arising directly or indirectly from or in connection with the CUSTOMER'S instructions or their implementation in relation to the goods and in particular in respect of any liability whatsoever it may under to:
- 64.1 Any servant, agent or sub-contractor or any hauler, carrier, warehouseman or other person whatsoever at any time involved with the goods arising out of any claim made directly or indirectly against any party by the CUSTOMER or by any consignee or owner of the goods or by any person interested in the goods by any other person whatsoever, or
- 64.2 Any owner or consignee of the goods who is not the CUSTOMER of the COMPANY where the COMPANY performs the service of a deconsolidation agent or any other service, or
- 64.3 Any carrier of the goods if the COMPANY is the consignee or consignee of the goods, or
- 64.4 Any other person in any circumstances whatsoever.
65. These conditions and agreements made by the COMPANY with its CUSTOMERS wherever made shall be governed and construed according to the laws of the Republic of South Africa and shall be subject to the exclusive jurisdiction of the Courts of the Republic of South Africa.
- 66.1 Where the COMPANY enjoys a lien over anything, in terms of this Agreement, the COMPANY shall be entitled immediately upon the CUSTOMER'S breach or at any time thereafter, at the COMPANY'S sole discretion and when suitable to the COMPANY, to levy private execution against the thing subject to the lien, by realising the same in such manner, by such means and for such price and on such terms as the COMPANY may in its sole and absolute and unfettered discretion deem fit and to convey valid title of the thing in question to whoever it is disposed of, and to apply the net proceeds of such realisation, after deducting there from all costs and expenses to which the COMPANY has been put in and about such realisation (both direct and indirect costs) and in or about the exercise of any of the COMPANY'S other rights against the CUSTOMER in reduction, or as the case may be, in satisfaction of the CUSTOMER'S indebtedness to the COMPANY, which may thereafter remain outstanding; provided that should the net proceeds of such realisation exceed the total amount of the CUSTOMERS indebtedness to the COMPANY from all causes for the time being the CUSTOMER shall thereupon pay the amount of such excess to the COMPANY.
- 66.2 The CUSTOMER hereby constitutes the COMPANY irrevocably and in reissue, with power of substitution, as its agent to execute all such documents and do all such other things as the COMPANY may in its sole and absolute discretion deem necessary and/or desirable to give due and proper effect to the terms hereof.
- 66.3 The CUSTOMER undertakes to reimburse the COMPANY, on demand, with all costs of and incidental to the COMPANY exercising any of its rights in terms of this paragraph, as well as all and any other costs and expenses which the COMPANY may incur in or about the exercise of any of its rights hereunder or otherwise against the COMPANY, including but not limited to all and any legal costs as between Attorney and one's own client.
- 67.1 Where the CUSTOMER has made payment to the COMPANY of any debit, either in whole or in part, then and in such event the CUSTOMER shall have no right to query, test, quarrel or dispute the correctness of the debt which has been paid by it. That debit shall be deemed to have been properly incurred and raised, and the payment in respect thereof, shall be payment in respect of an admitted and acknowledged liability.
- 67.2 Where however the CUSTOMER has not made payment of any particular debit raised by the COMPANY (whether included in one or more statements of account), then and in such event, the CUSTOMER shall have the right to query the correctness thereof. Such query however shall be deemed not to have been raised, unless and until the CUSTOMER has lodged with the COMPANY an amount of R100,00 (ONE HUNDRED RAND) per item queried, which amount shall be utilised by the COMPANY as an administrative fee in investigating the matters raised by the CUSTOMER, and shall be deemed to be an agreed amount, payable by the CUSTOMER to the COMPANY, in respect of the cost incurred in such investigation.
- 67.3 In the event that, following upon the investigations the query raised by the CUSTOMER is not correct in that the debit has either been properly raised (either in whole or in part), the sum of R100,00 (ONE HUNDRED RAND) shall be deemed as between the COMPANY and the CUSTOMER to represent an agreed administration fee incurred by the COMPANY in relation to investigating the CUSTOMER'S queries and/or complaints, and shall not be refundable, whether in whole or in part, even if a portion of the item or debit queried by the CUSTOMER is proven to be a well founded query.
- 67.4 Where the CUSTOMER'S queries are valid in their entirety, and the debit should not have been raised at all (in other words, the COMPANY had no right to raise any debit), the COMPANY shall refund to the CUSTOMER the R100,00 (ONE HUNDRED RAND) paid in respect of the query.
- 67.5 In the event that any query or dispute is raised in regard to an amount already paid by the CUSTOMER, and should the COMPANY be prepared to investigate the same, it does so:
- 67.5.1 solely and entirely on an ex gratia basis, and
- 67.5.2 without waiving abandoning or compromising any of the rights that it has as embodied in the sub-paragraph 67.1 above, and
- 67.5.3 without granting the CUSTOMER any indulgence and
- 67.5.4 without prejudice to its rights to abandon the investigation at any time (even prior to completion thereof), but nevertheless to retain the sum of R100,00 (ONE HUNDRED RAND).
- 67.6 In determining what constitutes "an item", or "a debit" for investigation, the parties record that the COMPANY'S accounts consist of a number of separate or individual debits, which may relate to one contract or transaction. Each and every debit (even though it may be part of a series of debits relating to one transaction), shall constitute a separate item for the purposes of this clause 67, "an item" and "a debit" shall mean for all practical purposes one and the same thing and shall be interchangeable.
- 67.7 Without prejudice to any other right enjoyed by the COMPANY, or any other term embodied in this Agreement, where any query, is raised by the CUSTOMER in regard to any item, the CUSTOMER shall be obliged to pay the disputed and/or queried item, together with the sum of R100 00 (ONE HUNDRED RAND) referred to above, the CUSTOMER'S rights being limited to a refund (either in whole or in part) of the disputed item, should it transpire that the COMPANY has incorrectly debited the CUSTOMER or over-debited the CUSTOMER. Until such time as the amount queried and/or disputed has been paid, the COMPANY shall have no obligation to test the correctness thereof.
- 68.1 In the event that the CUSTOMER appoints, or intends to appoint a third party (whether such third party is a competitor of the COMPANY or not) to perform any of the functions and/or services rendered or to be rendered by the COMPANY in terms of this Agreement, the CUSTOMER shall be obliged to advise the COMPANY thereof in writing. The provision of this, clause 68, shall apply even where the COMPANY is still to continue rendering services and/or performing functions on behalf of the CUSTOMER, and the third party only performs a certain or limited function or performs certain or limited services. The provisions of this clause 68 shall apply where the nature of the services rendered or to be rendered, or the functions of the third party are the sort of services and functions that the COMPANY is able to perform.
- 68.2 Such writing shall indicate, the full, precise and exhaustive reasons as to why such third party has been appointed (whether the appointment is a general one or an ad hoc appointment), and whether the appointment of the third party arose as a result of an introduction of the CUSTOMER to the third party, by any person or set of circumstances, and such person and set of circumstances must be fully identified, including but not limited to places, dates, personalities and circumstances.
- 68.3 The CUSTOMER acknowledges that it is essential from the COMPANY'S point of view to know and understand why its services and functions are being dispensed with, (whether permanently or temporarily, and whether on a limited basis or not) and this notwithstanding that the CUSTOMER may have elected to continue to do business, or further business with the COMPANY. Should the CUSTOMER have terminated the COMPANY'S mandate in any respects whatsoever the COMPANY is nevertheless entitled to have the CUSTOMER perform in terms of this clause, and shall be entitled to proceed to court to obtain specific performance by the CUSTOMER in regard hereto, this in addition to any other rights that the COMPANY may have against the CUSTOMER.
69. The provisions of this Agreement shall apply notwithstanding that the CUSTOMER might have terminated any relationship it has or had with the COMPANY, and the COMPANY shall still be entitled to seek to enforce its rights in terms of this Agreement, the terms whereof shall continue to apply between the parties, whilst the CUSTOMER is indebted to the COMPANY, on any basis whatsoever and irrespective as to the manner and circumstances in which such indebtedness arose, including where the CUSTOMER'S indebtedness is not only as a principal debtor, but as a surety and/or co-principal debtor.
70. In the event that the COMPANY institutes proceedings of any nature whatsoever against the CUSTOMER, for any relief, the CUSTOMER does hereby waive and abandon any right it may have, whether in terms of the Companies Act, No 61 of 1973 (as amended), the Magistrates court Act, No 32 of 1944 (as amended) together with any rules or regulations promulgated there under, or the Supreme Court, Act No. 59 of 1959 (as amended) including any rules or regulations promulgated there under, to call upon the COMPANY to furnish security for the costs of such proceedings.