

**STANDARD TRADING TERMS AND CONDITIONS  
OF  
MEGAFREIGHT SERVICES (PTY) LTD**

**Interpretation****1 Definitions and Interpretation**

1.1 In these Conditions the words set out in the Schedule or hereunder shall have the meanings assigned to them in the Schedule or hereunder, unless the context clearly indicates the contrary:

1.1.1 "AA" shall mean the Arbitration Act, 42 of 1965, as amended;

1.1.2 "Authorities" shall mean any duly constituted legal or administrative person charged with the administration of any law;

1.1.3 "The Clearing and Forwarding Agent" shall mean Megafreight Services Proprietary Limited trading as The Clearing and Forwarding Agent, and shall also include its cessionaries, assigns and/or successors in title;

1.1.4 "The Clearing and Forwarding Agent" shall mean The Clearing and Forwarding Agent and all of its subsidiary and associated companies, together with each of their successors in title or assigns;

1.1.5 "Business" shall mean all and any business undertaken, including any advice, information or Service provided, whether gratuitously or not, by The Clearing and Forwarding Agent;

1.1.6 "COIDA" shall mean the Compensation for Occupational Injuries and Diseases Act, 130 of 1993, as amended;

1.1.7 "Conditions" shall mean these standard trading terms and conditions;

1.1.8 "Customer" shall mean any person, whether an agent or a principal, at whose request or on whose behalf The Clearing and Forwarding Agent undertakes or renders any Business;

1.1.9 "Dangerous Goods" shall mean goods, including without limitation radio-active materials, which are or may become dangerous, inflammable or noxious, or which by their nature may injure, damage, taint or contaminate, or in any way whatsoever adversely affect any person, goods or property, including Goods likely to harbour or attract vermin or other pests, or any Goods defined as hazardous and/or dangerous in the Tariff or rules for carriage of Transnet Limited, the NRTA and/or SANS 10228, or classified as such in the IMDG Code or any other code or regulations of, or published by, any Authorities;

1.1.10 "Goods" shall mean any goods handled, transported or dealt with by or on behalf of or at the instance of The Clearing and Forwarding Agent or which come under the control of The Clearing and Forwarding Agent or its agents, servants or subcontractors on the instructions of the Customer, and includes any container, transportable tank, flat pallet, package or any other form of covering, packaging, container or equipment used in connection with or in relation to such goods;

1.1.11 "INCOTERMS®" shall mean the latest official rules for the interpretation of trade terms published by the International Chamber of Commerce from time to time;

1.1.12 "NCA" shall mean the National Credit Act, 34 of 2005 as amended;

1.1.13 "NRTA" shall mean the National Road Traffic Act, 93 of 1996, as amended;

1.1.14 "OHSA" shall mean the Occupational Health and Safety Act, 85 of 1993 as amended;

1.1.15 "Owner" shall mean the owner of the goods and any other person who may have or who acquires any interest, financial or otherwise, therein;

1.1.16 "Parties" shall mean The Clearing and Forwarding Agent and the Customer collectively, and "Party" shall mean either one of them;

1.1.17 "Services" shall mean the services provided or to be provided by The Clearing and Forwarding Agent to the Customer, which services may include, but not be limited to, forwarding, clearing, consulting, information services, warehousing and/or the distribution of Goods and any services allied thereto;

1.1.18 "Waste" shall mean waste as defined in the National Environmental Management: Waste Act, 59 of 2008, as amended.

1.2 Headings of clauses shall be deemed to have been included for purposes of convenience only and shall not modify or affect the interpretation of these Conditions.

1.3 Unless inconsistent with the context, words relating to any gender shall include the other genders, words relating to the singular shall include the plural and vice versa and words relating to natural persons shall include associations of persons having corporate status by statute or common law.

1.4 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of these Conditions.

1.5 In so far as the provisions of any written agreement between the Parties are inconsistent with these Conditions, the provisions of these Conditions shall prevail.

1.6 The rule of construction that the contract shall be interpreted against the Party responsible for the drafting or preparation of these Conditions shall not apply.

1.7 The rule which serves to restrict the meaning of general words to things or matters of the same kind as the preceding particular words (*eiusdem generis*) shall not apply, and whenever a term is followed by the word

"including" which is then followed by specific examples, such examples shall not be construed as to limit the meaning of that term.

1.8 These Conditions shall be interpreted and applied in accordance with South African law.

### **Application and Legal Standing**

#### **2 Application of Standard Trading Terms and Conditions**

2.1 All and any Business undertaken or provided by The Clearing and Forwarding Agent is subject to these Conditions as updated from time to time.

2.2 The Clearing and Forwarding Agent may at its election perform all or any Business undertaken either itself or it may procure that any member of The Clearing and Forwarding Agent undertakes such Business, in which event these Conditions shall apply equally (*mutatis mutandis*) to the relationship between the Customer and any such member of The Clearing and Forwarding Agent. The Clearing and Forwarding Agent stipulates in favour of each member of The Clearing and Forwarding Agent that it shall have the benefit of these Conditions, which stipulation shall be deemed to be accepted by the relevant member of The Clearing and Forwarding Agent at the time of accepting any instruction to perform any such Business.

2.3 If The Clearing and Forwarding Agent is obliged, in the execution of any of its duties and / or responsibilities to comply with any common law or legislation, The Clearing and Forwarding Agent shall by complying therewith not be deemed to waive or abandon any of its rights in terms of these Conditions or assume any onus, obligation, responsibility or liability in favour of the Customer.

#### **3 Agent**

3.1 Unless otherwise agreed in writing, The Clearing and Forwarding Agent in procuring the carriage, storage, packing or handling of Goods shall be entitled to act either as an agent for and on behalf of the Customer or as a principal.

3.2 The offer and acceptance of a fixed price for the accomplishment of any task shall not itself determine whether such task is to be arranged by The Clearing and Forwarding Agent acting as agent for and on behalf of the Customer or as a principal.

3.3 The Customer acknowledges that when The Clearing and Forwarding Agent, as agent for and on behalf of the Customer, concludes any contract with a third party, such agreement is concluded between the Customer and the third party. The Clearing and Forwarding Agent shall have no responsibility or liability to the Customer for any act or omission of such third party, even though The Clearing and Forwarding Agent may be responsible for the payment of such third party's charges. Notwithstanding the foregoing, The Clearing and Forwarding Agent undertakes to cede any right of action which it may have against such third parties to the Customer upon demand, the Customer hereby indemnifying The Clearing and Forwarding Agent against any loss, damage or expense which might arise from the Customer prosecuting such claims or right of action.

3.4 Unless otherwise agreed in writing, The Clearing and Forwarding Agent, when acting as agent for and on behalf of the Customer, shall be entitled to enter into any contract it reasonably deems necessary or requisite for the fulfilment of the Customer's instructions.

3.5 The relationship between the Parties is a contract of service and does not constitute a contract of employment or partnership.

3.6 Neither Party shall incur any liability whatsoever for or on behalf of the other Party.

#### **4 Subcontracting**

4.1 Any Business entrusted by the Customer to The Clearing and Forwarding Agent may, in the absolute discretion of The Clearing and Forwarding Agent, be fulfilled by The Clearing and Forwarding Agent itself, by its own servants performing part or all of the relevant Business, or by The Clearing and Forwarding Agent employing, or entrusting such Business to third parties on such conditions as may be stipulated by, or negotiated with, such third parties for the purposes of such Business, or such part thereof as they may be employed to carry out.

### **Remuneration and Payment**

#### **5 Quotations, estimates and rates**

5.1 Any quotations or estimates given by The Clearing and Forwarding Agent shall be valid for a period of 30 days only.

5.2 Notwithstanding 5.1 above, The Clearing and Forwarding Agent shall be entitled at any time by reasonable notice to the Customer to cancel, amend or resile from any quotation or estimate in circumstances where it becomes impracticable or uneconomical for The Clearing and Forwarding Agent to carry out the services at the quoted or estimated rate and the Customer shall have no claim whatsoever against The Clearing and Forwarding Agent for any loss that the Customer might incur as a result of The Clearing and Forwarding Agent cancelling, amending or resiling from the quotation or estimate.

5.3 Without in any way limiting the provisions of this clause, all quotations, estimates and agreements as to rates are subject to amendment without notice, having regard to, among other things, change in the cost to The Clearing and Forwarding Agent of performing any Service that occurs after quotation, estimate or agreement, as the case may be, or variations in the dimension/ weight, changes in currency exchange rates and upward movements in amounts payable by or on behalf of, or at the instance of The Clearing and Forwarding Agent to third parties, including, without limitation, freight, taxes and duties, surcharges, insurance premiums, equipment rental and labour which charges and upward movements take place after quotation . Any amendment as aforesaid will be commensurate with the increase in the cost of performing that Service, and, in the event of a dispute between the Parties, shall be determined by the then auditors of The Clearing and Forwarding Agent or any other auditors jointly nominated by The Clearing and Forwarding Agent the Parties, who in such determination shall act as experts and not as arbitrators and whose decision shall be final and binding on the Parties.

5.4 In all cases where there is a choice of tariffs, rates or premiums offered by any third party depending on the declared value of the Goods or the extent of liability assumed by the third party, it shall be in the discretion of The Clearing and Forwarding Agent what declaration, if any, shall be made and what liability, if any, shall be imposed.

## **6 Payment**

6.1 Unless otherwise specifically agreed by The Clearing and Forwarding Agent in writing the Customer shall pay to The Clearing and Forwarding Agent in cash immediately upon presentation of account all sums due to The Clearing and Forwarding Agent. All payments shall be made without deduction or set-off and payments shall not be withheld or deferred on account of any claim or counterclaim which the Customer may allege.

6.2 In the absence of any written agreement to the contrary, Payment of all amounts due to The Clearing and Forwarding Agent shall be made in South African Rands at the address or into the bank account nominated by The Clearing and Forwarding Agent.

6.3 The Customer shall pay The Clearing and Forwarding Agent Value Added Tax at the then prescribed rate in respect of the exclusive amount reflected in any invoice.

6.4 All and any moneys received by The Clearing and Forwarding Agent from the Customer shall be appropriated by The Clearing and Forwarding Agent in its sole and absolute discretion to any indebtedness owing by the Customer to The Clearing and Forwarding Agent, notwithstanding that the Customer might, when making payment, seek to appropriate the payment so made to any particular debt or portion of a debt accordance with the Customer's remittance.

6.5 All documents, cash, cheques, bank drafts or other remittances, sent to The Clearing and Forwarding Agent through the post or electronically transmitted shall deemed not to have been received by The Clearing and Forwarding Agent unless and until they are actually received by The Clearing and Forwarding Agent. In the event that any payment to The Clearing and Forwarding Agent is effected electronically, then the Customer bears the risk in respect of such payment until such time as the payment is received and cleared into The Clearing and Forwarding Agent's bank account.

6.6 Notwithstanding that The Clearing and Forwarding Agent may seek recovery of any amount due to it, from any person other than the Customer; the Customer shall remain liable to make payment of the said amount to The Clearing and Forwarding Agent upon demand, at any stage.

6.7 The Clearing and Forwarding Agent shall be entitled to set off any refunds, repayments, claims and other recoveries received by it on behalf of the Customer against any amounts due by the Customer to The Clearing and Forwarding Agent.

6.8 When goods are accepted or dealt with by The Clearing and Forwarding Agent upon instructions to collect freight, duties, charges or other expenses from the consignee or any other person, the Customer shall remain responsible therefor if they are not paid by such consignee or any other person immediately when due.

6.9 If accepted by The Clearing and Forwarding Agent, instructions to collect payment on delivery shall be subject to the condition that The Clearing and Forwarding Agent will be entitled to assume that the recipient will effect payment and in regard to the collection will not be liable for any negotiable instrument which is not met on due date for payment. Such payment is collected by The Clearing and Forwarding Agent at the Customer's risk.

6.10 The Clearing and Forwarding Agent shall under no circumstances be precluded from raising a debit in accordance with the standard operating procedure and obtaining payment in respect of any fee or disbursements due to it notwithstanding the fact that a previous debit or debits, whether excluding or partly excluding the items subsequently requiring to be charged or recovered, had been raised and whether or not any notice had been given that further debits were to follow.

6.11 The Customer acknowledges that The Clearing and Forwarding Agent shall be entitled to provide invoices, statements and supporting documents in electronic form, and accepts electronic invoices for the purposes of claiming Value Added Tax.

## **7 Default and Debt Collection**

7.1 The Clearing and Forwarding Agent may charge interest at the maximum rate allowed by law, calculated on daily balance and compounded monthly in arrears on any amount not paid to The Clearing and Forwarding Agent by the Customer on due date.

7.2 In the event of the Customer being in default of payment of any one or more amount, or being in breach of any other term or condition to which a credit facility is subject, or if the Customer's creditworthiness has, in The Clearing and Forwarding Agent's reasonable opinion, deteriorated, then The Clearing and Forwarding Agent shall be entitled forthwith to revoke such credit facility and declare all amounts immediately due and payable.

7.3 If The Clearing and Forwarding Agent institutes legal proceedings against the Customer to recover amounts due to The Clearing and Forwarding Agent, the Customer shall be liable for all legal costs incurred by The Clearing and Forwarding Agent on the scale as between attorney and own client, as well as collection commission and tracing agent's fees, if any. The Customer indemnifies and holds harmless The Clearing and Forwarding Agent accordingly.

7.4 A certificate under the hand of any director or manager of The Clearing and Forwarding Agent (whose authorisation and appointment as such need not be proved), to the Customer or in respect of any fact, including but without limiting the generality of the foregoing, the fact that services were rendered and/or the goods delivered and/or the amount or rate of interest payable by the Customer, shall be *prima facie* evidence of the Customer's indebtedness to The Clearing and Forwarding Agent and *prima facie* evidence of such fact, the rendering of such services, disbursement of such monies or delivery of such goods or amount or rate of interest payable or accumulated

## **8 Duties, Taxes, Imposts, Levies, Deposits and Discounts**

8.1 The Customer, whether or not the cause of payment was due to an act, instruction or omission of the sender, owner and/or consignee and their agents, if any shall be liable for any duties, taxes, imposts, levies deposits or out-lays of whatsoever nature levied by or payable to the authorities, intermediaries or other parties at any port or place for or in connection with the Goods and whether at the time of entry and/or at any subsequent time and for any payments, fines, penalties, expenses, loss or damage or whatsoever incurred or sustained by The Clearing and Forwarding Agent in connection therewith or arising therefrom.

8.2 The Clearing and Forwarding Agent shall bear no liability in consequence of the fact that there may be a change in the rate of duty, wharfage, cargo dues, freight, railage or cartage or any other tariff, before or after the performance by The Clearing and Forwarding Agent 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. The Clearing and Forwarding Agent shall notify the Customer promptly of any such change.

8.3 Where as a result of any act or omission by or on behalf or at the instance of The Clearing and Forwarding Agent and whether or not such act or omission was negligent, any duty, tax, levy, railage, wharfage, cargo dues, freight, cartage or any other impost or charge has been paid or levied in an incorrect amount, then any responsibility or liability to the Customer which The Clearing and Forwarding Agent may otherwise have will cease and fall away if the Customer does not within a reasonable time of becoming aware of situation and having regard to all the circumstances, and in particular to the time allowed for the recovery from the payee of any amount overpaid, advise The Clearing and Forwarding Agent that an incorrect amount has been paid

or levied and do all such acts as are necessary to enable The Clearing and Forwarding Agent to effect recovery, where applicable, of the amount incorrectly paid or levied.

8.4 The Clearing and Forwarding Agent is entitled to the benefits of any discounts obtained and to retain and be paid all brokerages, commissions, allowances and other remunerations of whatsoever nature in relation to the Goods or Services, and shall not be obliged to disclose or account to the Customer, or principal for any such amounts received or receivable by it.

## **Legal and Insurance**

### **9 Limitation of Liability**

9.1 Risk in and to the Goods shall remain at all times with the Customer.

9.2 Subject to the provisions of these Conditions, The Clearing and Forwarding Agent shall not be liable for any claim of whatsoever nature (whether in contract or in delict) and whether for damages or otherwise, howsoever arising unless:

9.2.1 such claim arises from a grossly negligent act or omission on the part of The Clearing and Forwarding Agent, its servants, or agents; and

9.2.2 in respect of a claim relating to Goods, such claim arises at a time when the Goods in question are in the actual custody of The Clearing and Forwarding Agent, its servants, or agents and under their actual control; and

9.2.3 the claim is not time barred by virtue of the provisions of these Conditions or otherwise.

9.3 Notwithstanding anything to the contrary contained in these Conditions or elsewhere, The Clearing and Forwarding Agent shall not be liable for any loss of profit, consequential loss, indirect or special damages whatsoever and howsoever arising.

9.4 In the event that The Clearing and Forwarding Agent is liable to the Customer in terms of these Conditions or otherwise, in no case whatsoever shall any liability of The Clearing and Forwarding Agent, howsoever arising, exceed whichever is the least of the following respective amounts:

9.4.1 the value of the goods evidenced by the relevant documentation or declared by the Customer for customs purposes or for any purpose connected with their transportation;

9.4.2 the value of the goods declared for insurance purposes;

9.4.3 double the amount of the fees raised by the Company for its services in connection with the goods, but excluding any amount payable to sub-contractors, agents and third parties.

9.5 The Customer agrees that no claim shall be made against any director, servant or employee of The Clearing and Forwarding Agent in his personal capacity, which imposes, or attempts to impose any liability upon him in connection with the provision of the Services, and the Customer waives all and any such claims.

### **10 Claims**

10.1 No claim of any nature whatsoever and howsoever arising may be brought against The Clearing and Forwarding Agent unless The Clearing and Forwarding Agent has received written notice of the claim on the prescribed form from the Customer specifying full details thereof, within:

10.1.1 in the case of loss of or damage to Goods, howsoever caused, 14 days of the date of delivery of the Goods or the date the Goods should have been delivered, as the case may be; and

10.1.2 in any other case, 14 days of the date of the event giving rise to the claim.

10.2 The Clearing and Forwarding Agent shall in any event be discharged from all liability whatsoever and howsoever arising in respect of any Service provided to the Customer or which The Clearing and Forwarding Agent has undertaken to provide, unless summons or other process initiating legal proceedings is issued and served on The Clearing and Forwarding Agent within 12 months after the cause of action in respect of any such alleged liability arose.

### **11 Insurance**

11.1 The Clearing and Forwarding Agent shall have no obligation to effect any insurance on the Goods except upon express written instructions given by the Customer and accepted in writing by The Clearing and Forwarding Agent.

11.2 Such insurance will be on the terms specified by the insurance company or underwriter taking the risk in relation to the Goods, and will be subject to such exceptions and conditions as may be imposed by the insurer. The Clearing and Forwarding Agent shall be under no obligation whatsoever to obtain separate cover for any risks so excluded. The Clearing and Forwarding Agent shall not be liable for the consequences of any failure to obtain insurance cover.

11.3 Unless otherwise agreed in writing The Clearing and Forwarding Agent shall not be under any obligation to obtain separate insurance in respect of separate consignments of Goods but may insure all or any of such consignments under any open or general policy.

11.4 Should any insurer dispute its liability in terms of any insurance policy in respect of any Goods, the Customer shall have recourse against such insurer only and The Clearing and Forwarding Agent shall not have any responsibility or liability whatsoever in relation thereto notwithstanding that the premium paid on such policy may differ from the amount paid by the Customer to The Clearing and Forwarding Agent in respect thereof.

11.5 Insofar as The Clearing and Forwarding Agent agrees to arrange insurance The Clearing and Forwarding Agent acts solely as agent for and on behalf of the Customer.

11.6 Subject to 11.1, if the Goods are transported, or are to be transported, by rail, it shall be the obligation of the Customer to instruct The Clearing and Forwarding Agent prior to receipt of the goods into its or the rail carrier's custody or control, as to whether The Clearing and Forwarding Agent is to accept the rail carrier's standard or any offer of insurance of the goods, on behalf of the Customer, or to request The Clearing and Forwarding Agent to endeavour to place such insurance cover with such other underwriter as directed by the Customer. In any event the Customer acknowledges that it is aware of the terms and conditions under which the rail carrier (currently Spoornet, but which includes any successor thereof, or that entity operating under a new name) undertakes the rail carriage of containerised goods, the terms and conditions of the insurance cover offered by the rail carrier and their limitations of liability in the event of such insurance cover not being accepted and under no circumstances whatsoever shall The Clearing and Forwarding Agent be liable for any loss suffered by the Customer and howsoever caused, while the goods are in the custody of the rail carrier.

## 12 Indemnity

12.1 Without prejudice to The Clearing and Forwarding Agent's rights under these Conditions, any agreement between the Parties and/or at law, the Customer indemnifies and holds The Clearing and Forwarding Agent harmless against all liabilities, damages, costs and expenses whatsoever incurred or suffered by The Clearing and Forwarding Agent arising directly or indirectly from or in connection with:

12.1.1 The Clearing and Forwarding Agent complying with the requirements of any Authority with regard to the Goods;

12.1.2 the Customer's express or implied instructions or their implementation by or on behalf of or at the instance of The Clearing and Forwarding Agent in relation to any Goods or Services;

12.1.3 any warranty given to The Clearing and Forwarding Agent by the Customer being untrue or incorrect;

12.1.4 any act or omission of the Customer or any person acting on its behalf, whether negligent or not;

12.1.5 the breach by the Customer of these Conditions or any agreement between the Parties;

12.1.6 the loading or offloading of the Goods by any person other than The Clearing and Forwarding Agent, its servants, agents or subcontractors;

12.1.7 the defective condition of, or overweight, containers or vehicles (unless provided by The Clearing and Forwarding Agent);

12.1.8 defective packaging of the Goods (unless supplied by The Clearing and Forwarding Agent);

12.1.9 the nature of the Goods;

12.1.10 any claim made directly or indirectly against any haulier, carrier, warehouseman or other person whatsoever at any time involved with such Goods by the Customer;

12.1.11 any claim made by a consignor, consignee or owner of the Goods or by any person having an interest in the Goods or by any other person whatsoever;

12.1.12 any claim made by any owner or consignee of the Goods who is not the Customer of The Clearing and Forwarding Agent where The Clearing and Forwarding Agent performs the service of a de-consolidation agent, or any other service;

12.1.13 any claim made by any carrier of the goods if The Clearing and Forwarding Agent is the consignor or consignee of the Goods;

12.1.14 any loss, damage or expense arising from or in any way connected with the marking, labelling, numbering, non-delivery or mis-delivery of any goods (unless done by The Clearing and Forwarding Agent);

12.1.15 any loss, damage or expense arising from or in any way connected with the weight, measurements, contents, quality, inherent vice, defect or description of any goods;

12.1.16 any Goods referred to in clause 21; and / or

12.1.17 any claim made by an third party in connection with the Services or Goods, and The Clearing and Forwarding Agent stipulates in favour of each of its servants, agents and subcontractors, existing and future, that the Customer gives such indemnity to them, which stipulation is open for acceptance by the said servants, agents and subcontractors for an indefinite period of time.

12.2 The Customer further indemnifies and holds harmless The Clearing and Forwarding Agent against any claims of a general average nature which may be made against The Clearing and Forwarding Agent in connection with the Goods and the Customer shall provide such security as may be required by The Clearing and Forwarding Agent in connection therein.

### **13 Lien**

13.1 Subject to the standard operating procedure being complied with, The Clearing and Forwarding Agent shall have a special and general lien over all Goods and any documents including without limitation bills of lading, permits and customs documentation in its possession along with any reports and such Goods, documents and reports shall be deemed to be pledged to The Clearing and Forwarding Agent as security for all moneys whatsoever due to The Clearing and Forwarding Agent by the Customer, sender, Owner, consignee, or their agents, if any, whether relating to the Goods or not.

13.2 In delivering the Goods into the custody of The Clearing and Forwarding Agent or its agents for any purpose whatsoever, such delivery shall for the purpose hereof be deemed to be delivery of the same in pledge and as security for all amounts owed to The Clearing and Forwarding Agent at that time or which become payable in the future. In the event of The Clearing and Forwarding Agent utilising the services or premises of any third party for any purposes including the transportation or storage of any Goods, such third party shall be the agent of The Clearing and Forwarding Agent for purposes of exercising The Clearing and Forwarding Agent's right of retention under the said lien and/or pledge.

13.3 The Customer shall not be entitled to effect or allow to be effected any security in respect of the Goods or the documents relating to the Goods, including without limitation, any general or special notarial bond, pledge, hypothec, right of retention, or lien and pledge, without the prior written consent of The Clearing and Forwarding Agent. The lien and pledge in favour of The Clearing and Forwarding Agent referred to in this clause shall operate as a first and prior charge against the Goods and the documents relating to the Goods and no other security shall rank prior to The Clearing and Forwarding Agent's lien or pledge.

### **Customer**

#### **14 Instructions**

14.1 The Customer's instructions to The Clearing and Forwarding Agent shall be precise, clear, comprehensive and in writing. Oral instructions, standing or general instructions or instructions given late, even if received by The Clearing and Forwarding Agent without comment, shall not in any way be binding upon The Clearing and Forwarding Agent, but The Clearing and Forwarding Agent may act thereupon in the exercise of its absolute discretion.

14.2 Unless specific written instructions are timeously given to and accepted by The Clearing and Forwarding Agent, The Clearing and Forwarding Agent shall not be obliged to make any declaration for the purpose of any statute, convention, or contract, as to the nature or value of any Goods or as to any special interest in delivery. The Clearing and Forwarding Agent shall in particular not be under any obligation to make any declaration or to seek any special protection or cover from any carrier in respect of any Dangerous Goods or other Goods which require special conditions of handling or storage, or to arrange for any particular Goods to be carried, stored or handled separately from other Goods.

14.3 In the absence of specific instructions given timeously in writing by the Customer to The Clearing and Forwarding Agent, the latter shall, in its reasonable discretion, decide at the means, route, procedure and time to perform or to procure the performance of any or all of the acts which may be necessary or requisite for the discharge of its obligations to the Customer.

14.4 Notwithstanding anything to the contrary herein contained, if at any time The Clearing and Forwarding Agent should reasonably consider it to be in the Customer's interests or for the public good to depart from any of the Customer's instructions, The Clearing and Forwarding Agent shall be entitled to do so and shall not incur any liability in consequence of doing so.

14.5 If events or circumstances come to the attention of The Clearing and Forwarding Agent, its agents, servants, or subcontractors which, in the opinion of The Clearing and Forwarding Agent, make it in whole or in part, impossible or impracticable for The Clearing and Forwarding Agent to comply with a Customer's instructions The Clearing and Forwarding Agent shall take reasonable steps to inform such Customer of such events or circumstances and to seek further instructions. If such further instructions are not timeously received by The Clearing and Forwarding Agent in writing, The Clearing and Forwarding Agent shall, in its sole discretion, be entitled to detain, return, store, sell, abandon, or destroy all or part of the Goods concerned at the risk and expense of the Customer.

14.6 In any event it shall always be in The Clearing and Forwarding Agent's sole discretion as to whether to accept any instruction for Services to be provided, even if credit terms have previously been granted expressly or by implication.

14.7 The Clearing and Forwarding Agent shall have no obligation to take any action in respect of any Goods which may be recognisable as belonging to the Customer unless and until it receives suitable instructions and all necessary documentation relating to the Goods.

## **15 Customer's Undertakings**

15.1 The Customer undertakes to supply to The Clearing and Forwarding Agent all information relating to its business and/or the Goods that is relevant to the provision by The Clearing and Forwarding Agent of the Services. The Customer shall be deemed to have reasonable knowledge of all matters directly or indirectly relating to its business and Goods.

15.2 The Customer warrants that:

15.2.1 it is either the Owner or the authorised agent of the Owner of any Goods in respect of which the Customer instructs The Clearing and Forwarding Agent and that each such person is bound by these Conditions;

15.2.2 in authorising the Customer to enter into any contract with The Clearing and Forwarding Agent, the Owner, sender or consignee is bound by these Conditions for itself and its agents and for any parties on whose behalf it or its agents may act, and in particular, but without prejudice to the generality of the foregoing, it accepts that The Clearing and Forwarding Agent shall have the right to enforce against them jointly and severally any liability of the Customer under these Conditions and/or to recover from them any sums to be paid by the Customer which upon proper demand have not been paid;

15.2.3 all information and instructions supplied or to be supplied by it to The Clearing and Forwarding Agent is and shall be accurate, true and comprehensive, and in particular, without derogating from the generality of the foregoing, the Customer shall be deemed to be bound by and warrants the accuracy of all descriptions, values and other particulars furnished to The Clearing and Forwarding Agent for customs, consular and other purposes, and the Customer warrants that it will not withhold any necessary or pertinent information;

15.2.4 the Goods will be properly, adequately and appropriately prepared and packed, stowed, labelled and marked, having regard, among other things, to the Services to be provided by or on behalf of The Clearing and Forwarding Agent and the characteristics of the Goods involved, and are capable of withstanding the normal hazards inherent in the provision of such Services;

15.2.5 if any Goods require special storage, packaging or labelling by reason of their nature or properties or in accordance with any regulation, convention or statute, that all such requirements shall be complied with.

15.2.6 where Goods are carried in or on containers, trailers, flats, tilts, railway wagons, tanks, igloos or any other unit load devices specifically constructed for the carriage of Goods by land, sea or air, that:

15.2.6.1 save where The Clearing and Forwarding Agent has been given and has accepted specific written instructions to load the transport unit, the transport unit has been properly and competently loaded;

15.2.6.2 the Goods involved are suitable for carriage in or on the transport unit; and

15.2.6.3 the transport unit is itself in a suitable condition to carry the Goods loaded therein and complies with the requirements of all relevant transport Authorities and carriers;

15.2.7 no claim shall be made by any third party in connection with the Services or the Goods against The Clearing and Forwarding Agent or any servant, agent or subcontractor or The Clearing and Forwarding Agent and any contracts relating to the Goods concluded by the Customer with third parties shall include a provision that The Clearing and Forwarding Agent, its servants, agent and subcontractors shall have the benefit of any rights, defences or liberties in such contracts excluding or limiting the liability of the Customer in respect of the Goods as if such provisions were expressly for their benefit.



15.3 Without prejudice to The Clearing and Forwarding Agent's rights to claim damages from the Customer arising out of a breach by the Customer of any of the warranties in clauses 15.2.1 to 15.2.7 above, such breach shall result in the Goods being handled by The Clearing and Forwarding Agent at the sole risk of the Customer.

15.4 The Customer undertakes that no claim shall be made by it against any servant, agent or subcontractor of The Clearing and Forwarding Agent, which imposes, or attempts to impose upon him or her any liability in connection with the Goods or the rendering of any Services and the Customer hereby waives all and any such claims. The Clearing and Forwarding Agent stipulates in favour of each of its servants, agents and subcontractors, existing and future, that the Customer gives such undertaking and waiver to them and shall have no right of action whatsoever against any of them in connection with the Services or the Goods, which stipulation is open for acceptance by the said servants, agents and subcontractors for an indefinite period of time.

## **Services**

### **16 Transport**

16.1 The Clearing and Forwarding Agent deals with Goods only on the basis that it is neither a common carrier nor a public carrier.

16.2 Every undertaking to convey Goods is subject to the condition that The Clearing and Forwarding Agent has available a suitable vehicle or vehicles at the appropriate time.

16.3 The Clearing and Forwarding Agent shall be entitled to issue in respect of the whole or part of any contract for the movement of Goods, a warehouse and/or forwarding receipt, a consignment or delivery note, or a container terminal or transport order, (any of which may reflect The Clearing and Forwarding Agent or another as the carrier in terms thereof).

16.4 Where the vehicle is loaded at the Customer's premises or under the Customer's supervision, the Customer shall be liable for all costs, fines and/or penalties arising from the overloading of any vehicle or incorrect weight distribution of Goods on a vehicle.

16.5 The Clearing and Forwarding Agent shall be entitled to issue in respect of the whole or part of any contract for the movement of goods, a combined transport document or bill of lading ("CTBL") in a form that shall be within The Clearing and Forwarding Agent's discretion, including a FIATA combined transport bill of lading, a warehouse and/or forwarding receipt, an air or sea waybill, a consignment or delivery note, a container movement or transport order, a Groupage or house bill of lading or a received for shipment or despatch bill of lading, (any of which may reflect The Clearing and Forwarding Agent or another as the carrier in terms thereof) provided that where a CTBL is issued these trading terms and conditions shall continue to apply as between The Clearing and Forwarding Agent on the one part and the Customer and/or the owner on the other part, (save with regard to the owner, to the extent that they conflict with the terms and conditions applicable to the CTBL, in which event the provisions of the CBTL shall to the extent of such conflict only, have precedence). The issue of the CTBL by The Clearing and Forwarding Agent shall entitle it to raise an additional charge determined by The Clearing and Forwarding Agent, to cover any additional obligations arising under the CTBL.

### **17 Collection and Delivery**

17.1 Unless the Parties have agreed to the contrary in writing, The Clearing and Forwarding Agent shall not be responsible for the loading or offloading of vehicles, save at its own premises; provided that The Clearing and Forwarding Agent may give assistance in that regard where such assistance is customary and practicable, but any assistance so given shall be without liability on the part of The Clearing and Forwarding Agent.

17.2 The Clearing and Forwarding Agent may refuse to receive any Goods if it has reasonable cause to do so, including, but not limited to circumstances where The Clearing and Forwarding Agent is not satisfied that arrangements have or will be made for the removal of such Goods from its premises.

17.3 The Customer shall accept all responsibility for damage or loss of whatsoever nature within its or any consignee's premises to:

- 17.3.1 vehicles or Goods, due to unsuitability of means of access to the loading or offloading points;
- 17.3.2 roads, manholes, covers, kerbs, mains, pipes, bridges, weighbridges or approaches, and anything of a like nature, en route to the loading or offloading point, due to the weight or nature of the vehicle or its load.

17.4 The Clearing and Forwarding Agent shall be entitled to deliver Goods to the bearer of any delivery order or other document relating to such Goods, notwithstanding that such delivery order or other document provides for delivery to a named party or to his order. The Clearing and Forwarding Agent shall be entitled to assume that the person presenting such delivery order or other document is the person lawfully entitled to take delivery and is not required to verify signatures appearing on such delivery order or other document. Customer will advise The Clearing and Forwarding Agent of authorised recipients of Goods.

17.5 If the Customer, consignee or party nominated by the Customer fails to uplift or take delivery of any Goods at the appropriate time and place then The Clearing and Forwarding Agent's liability in respect of such Goods shall cease forthwith and The Clearing and Forwarding Agent shall be entitled to store the Goods or any part thereof at the sole risk and expense of the Customer.

17.6 Unless otherwise agreed in writing between the Parties, time shall not be of the essence in respect of deliveries made by The Clearing and Forwarding Agent on behalf of the Customer.

## **18 Warehousing**

18.1 All Goods delivered to The Clearing and Forwarding Agent for warehousing are stored at the sole risk of the Customer and shall be properly packed and labelled and in the event of any such Goods requiring special storage, packaging or labelling by reason of its nature or properties or in accordance with any regulation, convention or statute, all such requirements shall be complied with; and notice of any special storage requirements of any such Goods shall be given to The Clearing and Forwarding Agent in writing prior to the delivery of the Goods into the custody of The Clearing and Forwarding Agent or its agents.

18.2 The Clearing and Forwarding Agent shall not be obliged to take delivery of any Goods in the event of it reasonably being of the view that such Goods or the handling and storage thereof are for any reason whatsoever undesirable.

18.3 Every undertaking to warehouse Goods is subject to the condition that The Clearing and Forwarding Agent has available a suitable storage facility at the appropriate time.

18.4 Notwithstanding anything else to the contrary herein contained, the Customer and the owner of the goods indemnify The Clearing and Forwarding Agent against any consequences (including all damages and losses) howsoever resulting from the storage of any goods tendered for transport or warehousing, unless the consequence has come about due to the gross negligence of The Clearing and Forwarding Agent.

## **19 Packing**

19.1 In the event that The Clearing and Forwarding Agent agrees to undertake the packing of the Goods into any container or the packaging or unitisation of the Goods for any purpose, it shall be the obligation of the Customer to provide The Clearing and Forwarding Agent with full packing and labelling instructions in writing, including but not limited to any requirements as to internal or other securing, mass distribution, maximum aggregate mass restrictions, labelling, temperature control or other restrictions, information as to the properties of the Goods and any noxious or other possible hazardous or dangerous properties they might possess, failing which such packing shall be effected by The Clearing and Forwarding Agent at the sole risk of the Customer.

## **Goods**

### **20 Landed Goods**

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

20.2 Should The Clearing and Forwarding Agent undertake to The Clearing and Forwarding Agent shall not examine or count Goods received by it that are bundled, palletised or packed in any manner such that their number cannot be quickly and easily counted, The Clearing and Forwarding Agent shall incur no liability in respect of any error or inaccuracy in such counting, whether as a result of negligence on the part of The Clearing and Forwarding Agent or otherwise. The Clearing and Forwarding Agent shall be entitled to levy a charge on the Customer for the counting of Goods in such circumstances.

### **21 Special Goods**

Except under special arrangements previously made in writing The Clearing and Forwarding Agent will not accept or deal with bullion, coins, banknotes, stamps, deeds, cheques, securities or other currency, precious stones, jewellery, valuables, personal effects, household goods, antiques, pictures, human remains, livestock, plants, tobacco products, spirits, wine, mobile telephones and their components, or computers and their components or parts. Should the Customer nevertheless deliver such Goods to The Clearing and Forwarding Agent or cause The Clearing and Forwarding Agent to handle or deal with any such Goods otherwise than under special arrangements previously made in writing The Clearing and Forwarding Agent shall incur no liability whatsoever in respect of such Goods, and in particular, shall incur no liability in respect of its negligent acts or omissions in respect of such Goods. The provisions of clauses 9, 10 and 12 shall govern a claim, if any, against The Clearing and Forwarding Agent in respect of the goods referred to in this clause 21.

## **22 Dangerous Goods**

22.1 The Customer shall obtain in advance The Clearing and Forwarding Agent's specific written consent to accept any Dangerous Goods into its possession or control or into the possession or control of any of its servants, sub-contractors, agents or employees.

22.2 The Customer shall, at all material times, provide The Clearing and Forwarding Agent with current Material Safety Data Sheets in respect of Dangerous Goods as required by law.

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

22.4 The Customer furthermore warrants that any consignee in respect of Dangerous Goods will be authorised and/or qualified to uplift, receive and/or handle such Goods.

22.5 If any Dangerous Goods are delivered to The Clearing and Forwarding Agent, such Goods may for any good reason as The Clearing and Forwarding Agent in its discretion deems fit including, without limitation, the risk to other Goods, property, life or health, be destroyed, disposed of abandoned or rendered harmless or otherwise dealt with at the risk and expense of the Customer and without The Clearing and Forwarding Agent being liable for any compensation to the Customer or any other party, and without prejudice to The Clearing and Forwarding Agent's rights to recover its charges and/or fees including the costs of such destruction, disposal, abandonment or rendering harmless or other dealing with the Goods.

22.6 The Customer indemnifies The Clearing and Forwarding Agent against all loss, liability or damage caused to The Clearing and Forwarding Agent arising out of or relating to Dangerous Goods, unless such loss is due to The Clearing and Forwarding Agent's gross negligence.

## **23 Abnormal loads**

23.1 The Clearing and Forwarding Agent shall not transport abnormal loads unless an agreement to that effect is concluded in writing between the Parties relating to, among other things:

23.1.1 route surveys

23.1.2 the cost of any traffic escorts required by the Authorities and any charges for raising overhead wires, switching off power, removing obstacles along the route, and/or any other work that might be necessary for the passage of such loads;

23.1.3 access to loading and off-loading sites;

23.1.4 an indemnity from the Customer with regard to the costs of repairing any damage caused by the passage of the load over private property (unless caused by the negligence of The Clearing and Forwarding Agent, its servants, agents or subcontractors).

23.2 Any agreement to transport abnormal loads shall be subject to the condition that:

23.2.1 the relevant permits are timeously obtained from the Authorities; and

23.2.2 the Authorities approve a suitable and direct route and do not subsequently vary such route.

## **24 Sale of Goods**

24.1 Without limiting or affecting any of The Clearing and Forwarding Agent's other rights under these Conditions, The Clearing and Forwarding Agent may, in its sole discretion, dispose of or sell, by private treaty or

public auction or otherwise, all or part of the Goods in the care, custody or control of The Clearing and Forwarding Agent, if:

- 24.1.1 such Goods have begun to deteriorate or are likely to deteriorate;
- 24.1.2 such Goods are insufficiently addressed or marked;
- 24.1.3 the Customer cannot be identified;
- 24.1.4 the Goods have not been collected or accepted by the Customer or any other person; or
- 24.1.5 any amount owing by the Customer to The Clearing and Forwarding Agent becomes due and payable and remain unpaid; provided that, if The Clearing and Forwarding Agent has an address for the Customer, then, in the circumstances referred to in clauses 24.1.2, 24.1.3, 24.1.4 and 24.1.5 above, such sale or disposal shall be effected only after the expiration of 21 days from The Clearing and Forwarding Agent posting a notice to the Customer at that address to collect or accept such Goods and/or pay all outstanding amounts.

24.2 The Customer hereby authorises The Clearing and Forwarding Agent to effect such a sale by either public auction or private treaty, on reasonable notice not exceeding 14 days. The net proceeds of any such sale, after deducting therefrom all costs, charges and expenses incurred by The Clearing and Forwarding Agent, shall be applied in reduction or discharge as the case may be, of the Customer's obligations to The Clearing and Forwarding Agent in respect of such Goods without prejudice to The Clearing and Forwarding Agent's rights to recover from the Customer any balance which may remain owing to The Clearing and Forwarding Agent after the exercise of such rights. Should the total amount collected by The Clearing and Forwarding Agent, after deducting therefrom all costs, charges and expenses incurred by The Clearing and Forwarding Agent in respect thereof, exceed the full amount of the Customer's obligations to The Clearing and Forwarding Agent in respect of such Goods, The Clearing and Forwarding Agent shall be obliged to refund such excess to the Customer.

## **25 Waste**

25.1 If Waste is generated at any premises controlled by The Clearing and Forwarding Agent, whether as a result of the leakage of the Goods or otherwise:

- 25.1.1 The Clearing and Forwarding Agent shall be responsible for the management, clean-up and/or disposal of such waste in an environmentally sound manner and with no harm to health, in accordance with the relevant legislation;
- 25.1.2 the Customer shall approve the manner of transport and place of disposal of such waste in writing within a reasonable time if required by The Clearing and Forwarding Agent; and
- 25.1.3 the Customer shall be responsible for any costs incurred as a result of any actions taken by The Clearing and Forwarding Agent in terms of this sub-clause, unless and to the extent that the Waste was caused by the gross negligence or wilful default of The Clearing and Forwarding Agent.

25.2 If The Clearing and Forwarding Agent stores Waste on behalf of a Customer and such Waste has not been uplifted within 90 days of The Clearing and Forwarding Agent receiving same, despite a request therefor by The Clearing and Forwarding Agent, The Clearing and Forwarding Agent shall, without further notice, be entitled to dispose of such Waste forthwith in accordance with the relevant legislation at the Customer's cost.

## **General**

### **26 Compliance with Legislation**

26.1 If The Clearing and Forwarding Agent is obliged, in the execution of any of its duties and/or responsibilities to comply with any common law or legislative enactment of any nature whatsoever, then The Clearing and Forwarding Agent by complying therewith, shall not be deemed to waive nor abandon any of its rights in terms of these Conditions; or to have assumed any onus, obligation, responsibility or liability in favour of the Customer.

26.2 The Customer agrees to abide by The Clearing and Forwarding Agent's Safety, Health and Environmental Rules.

26.3 The Clearing and Forwarding Agent and the Customer, as well as their agents, servants, subcontractors and intermediaries, must comply with any anti-corruption legislation applicable to either or both Party. This includes not giving or offering to give, receiving or offering to receive any bribe, facilitation payment, political contribution, gift or other advantage, which violates this anti-corruption legislation.

26.4 The Clearing and Forwarding Agent and the Customer, as well as their agents, servants, subcontractors and intermediaries, hereby warrant that they have not and will not engage in any anti-competitive behaviour in relation to these Conditions or any contract between the Parties. Anti-competitive behaviour means any communication (by any means, whether electronic, written, verbal or otherwise), agreement (by any means,

whether formal, informal, contractual, non-contractual, written or verbal) or other form of co-ordination or co-operation with any competitor (whether past, present or potential) that is unlawful or otherwise restricted or prohibited under applicable competition laws.

## **27 Confidentiality**

27.1 Each Party agrees to treat as strictly confidential the operations, business and affairs of the other Party and not to divulge any information relating thereto to any third party, agent or employee, save as required by law, in respect of the execution of these Conditions or agreement between them, whether prior to, during or after the currency of these Conditions or the said agreement.

27.2 All documentation furnished by one Party to the other Party pursuant to these Conditions or any agreement between them will remain the property of that Party and upon the request of that Party will be returned to it.

27.3 Each Party acknowledges that all right, title and interest in and to any information which the other Party has an interest in being kept confidential vests in that Party and that neither Party has any claim of any nature in and to the confidential information of the other Party.

## **28 Breach and Termination**

28.1 If The Clearing and Forwarding Agent breaches any of these Conditions or any agreement between it and the Customer and fails to remedy such breach within 30 days of the date of receipt of written notice requiring it to do so then the Customer shall be entitled to compel performance by The Clearing and Forwarding Agent of the obligations it has defaulted in, but shall not be entitled to cancel these Conditions or any agreement between the Customer and The Clearing and Forwarding Agent.

28.2 Without prejudice to its rights under these Conditions, any agreement between the Parties and/or at law, The Clearing and Forwarding Agent either Party shall be entitled to cancel any agreement between it and the Customer other Party by written notice if:

28.2.1 the other Party/Customer commits any breach of its obligations under these Conditions or the said agreement and fails to remedy that breach within 30 days of its being given written notice to do so;

28.2.2 the other Party/Customer commits any act of insolvency in terms of any applicable insolvency legislation;

28.2.3 the other Party/Customer commences business rescue proceedings;

28.2.4 the other Party/Customer is deemed to be unable to pay its debts in terms of any deeming provision of any applicable legislation relating to companies or insolvency;

28.2.5 the other Party/Customer compromises or attempts to compromise with its creditors;

28.2.6 any provisional or final order is granted for the sequestration, winding up, bankruptcy or judicial management of the other Party/Customer, or any equivalent order is made in terms of any applicable law with regard to the status of the other Party/Customer;

28.2.7 the other Party/Customer fails to satisfy any default or other judgement granted against it, within 10 days.

28.3 If the Customer is a consumer to which the NCA applies, and has breached any terms or conditions herein, then The Clearing and Forwarding Agent shall be entitled to any remedies provided in the NCA, which may include cancellation of the agreement or as provided in any other legislation or common law.

## **29 Force Majeure**

29.1 A Party shall not be liable for a failure to perform any of its obligations hereunder due to a *force majeure* event (which includes but is not limited to war, civil war, civil violence, riots, revolutions, acts of piracy, acts of sabotage, terrorism, sabotage, natural disasters, destruction by lightning, explosions, fires, destruction of installations, industrial action or strike, changes of law, acts of Authority, whether lawful or unlawful) that is beyond its control and that it could not reasonably be expected to have taken into account at the time of the conclusion of these Conditions or any agreement between the Parties, provided that the Party subject to the *force majeure* event shall give prompt notice to the other Party of its nature and estimated duration.

29.2 Relief from liability for non-performance by reason of the provisions of this clause shall commence on the date upon which the Party seeking relief gives notice of the *force majeure* event relied upon and shall terminate upon the date which such event ceases to exist.

29.3 The Parties hereto shall co-operate and collaborate together and use all reasonable efforts to overcome the *force majeure* event concerned and/or nullify its effect.

29.4 If the *force majeure* event substantially or permanently prevents the continued performance by either Party of its obligations in terms of these Conditions or any agreement between them for a period exceeding 30 consecutive days, then either Party shall be entitled, by giving notice in writing, to terminate the said agreement with effect from 7 days after giving of such notice.

### **30 Notices and domicilia**

30.1 Each Party chooses as its *domicilium citandi et executandi* for all purposes under these Conditions and any agreement between them, the physical address most recently provided by it to the other in writing.

30.2 Either Party shall be entitled to change its *domicilium* by way of written notice to the other specifying its new *domicilium* provided that such new address shall be a street address within the Republic of South Africa.

30.3 All notices by one Party to the other shall be delivered or emailed to the chosen *domicilium citandi et executandi* of the addressee and shall be deemed to have been received on the date of delivery or dispatch unless the contrary is proved.

### **31 Electronic Data**

31.1 Notwithstanding the provisions of any legislation or other law regulating electronic communications and transactions, The Clearing and Forwarding Agent shall only be deemed to have received electronic data and/or messages when such electronic data and/or messages have been retrieved, processed and read by the addressee.

31.2 Under no circumstances whatsoever and howsoever arising shall The Clearing and Forwarding Agent be liable for any loss or damage arising from or consequent upon the provision by The Clearing and Forwarding Agent to the Customer in whatever manner and/or form, of incorrect information, including electronically communicated information or data, where such incorrect information or data has been generated by and provided to The Clearing and Forwarding Agent by any person with whom The Clearing and Forwarding Agent conducts business, and/or any other third party, unless such loss or damage is due to The Clearing and Forwarding Agent's negligence.

31.3 The Clearing and Forwarding Agent shall furthermore under no circumstances whatsoever be liable for any loss or damage arising from or consequent upon any failure and/or malfunction, for whatever reason, and regardless of negligence in whatever degree on the part of The Clearing and Forwarding Agent, of The Clearing and Forwarding Agent's computer systems and/or software programmes provided and/or operated by The Clearing and Forwarding Agent and/or by any person with whom The Clearing and Forwarding Agent conducts business and/or any third party, which systems shall include The Clearing and Forwarding Agent's electronic automated information service provided to the Customer.

### **32 Licences**

The Clearing and Forwarding Agent shall be excused from performing Services in terms of any agreement between it and the Customer if any licence, permit or similar authorisation lawfully required for it to do so is revoked, terminated, not issued or not renewed for any reason whatsoever.

### **33 INCOTERMS®**

Any INCOTERM which might be made applicable to any contract between The Clearing and Forwarding Agent and the Customer or between The Clearing and Forwarding Agent acting on behalf of the Customer and any third party, shall be interpreted in accordance with the published guidelines issued from time to time by the International Chamber of Commerce and particularly the Introduction to the official publication containing the latest INCOTERMS® published and in force as at the time of the incorporation of INCOTERMS® into such contract. In the event that any specific Incoterm as published, is in the view of The Clearing and Forwarding Agent inappropriate for the transaction to be undertaken, or is unclear, then The Clearing and Forwarding Agent shall, within its sole discretion on reasonable notice to the Customer, have the right to amend or vary that term, or add rules or provisions for the interpretation thereof.

### **34 Dispute Resolution**

34.1 The Parties shall negotiate in good faith with a view to settling any dispute arising out of or relating to this agreement. For the purposes of this clause, a dispute will not include an unpaid account where there is no valid reason therefor.

34.2 If the dispute cannot be resolved, it will be referred to the managing director or chief executive officer (or such other director as designated by the foregoing) of each Party for determination, who will meet within 14 days of the referral.

34.3 If the dispute cannot be resolved within 14 days of this meeting, it may be referred for resolution by arbitration in terms of the AA.

34.4 The arbitrator or arbitrators shall be appointed by agreement by both Parties, and failing such agreement, by the President of relevant Law Society of South Africa. The arbitrator or arbitrators shall be, if the matter in dispute is principally:

34.4.1 an accounting matter, an impartial practising chartered accountant of not less than ten years' standing; or

34.4.2 a legal or any other matter an impartial practising senior advocate or attorney of not less than ten years' standing.

34.5 If the parties to the dispute cannot agree whether the dispute is of a legal, accounting or other nature, then it shall be considered a legal matter.

34.6 The decision of the Arbitrator is final and binding on the parties and may be made an order of court at the instance of any party to the arbitration.

34.7 Nothing herein contained shall be deemed to prevent or prohibit the Parties from seeking urgent relief in a court of competent jurisdiction.

### **35 General**

35.1 No amendment or variation of these Conditions or any agreement between the Parties shall be of any force or effect unless reduced to writing and signed by the managing director of The Clearing and Forwarding Agent or two duly authorised directors of The Clearing and Forwarding Agent.

35.2 No failure, refusal or neglect by a Party to exercise any rights under these Conditions or any agreement between the Parties, or to insist upon strict compliance with or performance of another Party's obligations under these Conditions or such agreement, shall constitute a waiver of the provisions of these Conditions or such agreement or of any of that Party's rights. A Party may at any time require strict compliance with the provisions of these Conditions or any agreement between the Parties, and shall not be prejudiced or estopped from exercising any of its rights, which may have arisen in the past or may arise in the future.

35.3 Each of the provisions of these Conditions and any agreement between the Parties shall be considered as separate terms and conditions. In the event that these Conditions or any such agreement are affected by any legislation or any amendment thereto, or if their provisions are by virtue of such legislation or otherwise held to be illegal, invalid, prohibited or unenforceable, then any such provisions shall be ineffective only to the extent of the illegality, invalidity, prohibition or unenforceability and each of the remaining provisions shall remain in full force and effect as if such illegal, invalid, prohibited or unenforceable provision was not a part of these Conditions or any agreement between the Parties.

35.4 Neither Party may cede or assign any of its interest in, or its rights and obligations deriving from, these Conditions or any agreement to any third party without the other party's prior written consent, except for a cession or assignment made as part of an internal reorganization of either party, which will not affect their shareholding.

35.5 The Clearing and Forwarding Agent makes no warranties and representations to the Customer save as may be specifically provided herein or as notified in writing by The Clearing and Forwarding Agent to the Customer.