

GAVIC EXPRESS

KEEPING YOU ON TIME

VAT No: 4440182964 REG No: 1998/018263/23

The following are the Standard Trading Terms and Conditions of Gavic Express CC, herein referred to as "the company"

1. INTERPRETATION AND DEFINITIONS

In these Standard Trading Terms and Conditions:

- 1.1. the headings to the clauses are for reference purposes only and shall not aid in the interpretation of the clauses to which they relate;
- 1.2. unless the context clearly indicates a contrary intention, words importing any one gender include the other two genders, the singularly includes the plural and vice versa and natural persons include created entities (corporate unincorporated) and vice versa;
- 1.3. a reference to a party in a document includes that party's successors and permitted assigns;
- 1.4. any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time;
- 1.5. where the day on or by which anything is to be done is not a business day, it shall be done on or by the first business day thereafter;
- 1.6. any reference to days (other than a reference to business days), months or years shall be a reference to calendar days, months or years, as the case may be;
- 1.7. when any number of days are prescribed in this Standard Trading Terms and Conditions, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a weekend or Public Holiday, in which case the last day shall be the next succeeding day which is not a weekend day or Public Holiday;
- 1.8. where figures are referred to in numerals and words, if there is any conflict between the two, the words shall prevail;
- 1.9. if any provision in a definition is a substantive provision conferring a right or imposing an obligation on any party, notwithstanding that it is only a definition, effect shall be given to that provision as if it were a substantive provision in the body of this Standard Trading Terms and Conditions;
- 1.10. the use of the word *including* followed by specific example(s) shall not be construed as limiting the meaning of the general wording proceeding it and the *eiusdem generis* rule shall not be applied in the interpretation of the general wording or the specific example(s) used in this Standard Trading Terms and Conditions;
- 1.11. the expiration or termination of this Standard Trading Terms and Conditions shall not affect those provisions which expressly provide that they will operate after the expiration or termination or, which of necessity must continue to have effect after the expiration or termination of this Standard Trading Terms and Conditions, notwithstanding the fact that the clauses themselves do not expressly provide this;
- 1.12. the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply;
- 1.13. The following terms shall have the meanings assigned to the hereunder and cognate expressions shall have a corresponding meaning, namely:
 - 1.13.1. "the company" means Gavic Express close corporation, and includes the company's employees, servants and agents and any person/s carrying any goods forming the subject-matter of this contract under and in terms of a sub-contract with the company;

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- 1.13.2. "customer" means any person at whose request or on whose behalf the company undertakes any business or provides and advice, information or services. "customer" shall include the party that has completed an application for the grant of credit facilities from the company, referred to in the application for credit form as the "Applicant";
- 1.13.3. "dangerous goods" means any goods, including radio-active materials, which are or may become dangerous, explosive, 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;
- 1.13.4. "goods" means any goods handled, transported or dealt with by or on behalf of or at the instance of the company or which come under the control of the company or its agents, employees, servants or nominees on the instruction 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, whether consigned singly or in parcels or in bulk;
- 1.13.5. "the owner" means the owner of goods to which any business concluded under these Standard Trading Terms and Conditions relates and any other person who is or may acquire any interest, financial or otherwise, therein;
- 1.13.6. "Standard Trading Terms and Conditions" or "Terms and Conditions" means these Standard Trading Terms and Conditions and any additions, annexures, appendices hereto.

2. APPLICATION OF TRADING TERMS AND CONDITIONS

Subject to clause 4, all and any business undertaken or advice, information or services provided by the company, whether gratuitous or not, is undertaken or provided on these Standard Trading Terms and Conditions.

3. OWNER'S RISK

All handling, packing, loading, unloading, warehousing and transporting of goods by or on behalf of or at the request of the company are effected at the sole risk of the customer and/or the owner and the customer accordingly indemnifies and holds the company harmless in respect of all loss, damage or claims arising therefrom, howsoever caused.

4. APPLICABLE LEGISLATION

- 4.1. If the company is obliged, in the execution of any of its duties and/or responsibilities, to comply with any common law or legislative enactment ("the law") of any nature whatsoever, then the company by complying therewith shall not be deemed to waive or abandon any of its rights in terms of these Standard Trading Terms and Conditions.
- 4.2. In addition thereto, in complying with the law, the company shall not be deemed to have assumed any onus, obligation, responsibility or liability in favour of the customer.
- 4.3. If any of the terms of these Standard Trading Terms and Conditions are repugnant to or in conflict with the law, then the conflicting term embodied herein shall be deemed to be amended and/or altered to conform therewith, and such amendment and/or alteration shall not in any way affect the remaining provisions of these Standard Trading Terms and Conditions.

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5. **EXCLUSION OF OBLIGATIONS OF COMMON OR PUBLIC CARRIER**
The company deals with goods only on the basis that it is neither a common carrier nor a public carrier.
6. **COMPANY'S GENERAL DISCRETION**
 - 6.1. Notwithstanding anything to the contrary herein contained, if at any time the company should consider it to be in the customer's interest or for the public good, to depart from any of the customer's instructions, the company shall be entitled to do so and shall not incur any liability in consequence of doing so.
 - 6.2. If events or circumstances come to the attention of the company, its agents, servants or nominees which, in the opinion of the company, make it in whole or in part impossible or impracticable for the company to comply with a customer's instructions, the company may take reasonable steps to inform the customer of such events or be entitled to detain, return, store, sell, abandon, or destroy all or part of the goods concerned, at the sole risk and expense of the customer.
7. **COMPANY'S DISCRETION IN THE ABSENCE OF INSTRUCTIONS**
In the absence of specific instructions given timeously in writing by the customer to the company (which instructions shall only be binding on the company if the company acknowledges same to be binding, in writing):
 - 7.1. it shall be in the reasonable discretion of the company to decide at what time to perform or to procure the performance of any or all of the acts which may be necessary requisite for the discharge of its obligations to the customer;
 - 7.2. the company shall have an absolute discretion to determine the means, route and procedure to be followed by it in performing all or any of the acts or services it has agreed to perform;
 - 7.3. in all cases where there is a choice of tariff rates or premiums offered by any carrier, warehouseman, underwriter, or other person depending upon the declared value of the relevant goods or the extent of the liability assumed by the carrier, warehouseman, underwriter or other person, it shall be in the discretion of the company as to what declaration, if any, shall be made, and what liability, if any, shall be imposed on the carrier, warehouseman, underwriter or other person.
8. **COMPANY'S OBLIGATIONS IN THE ABSENCE OF INSTRUCTIONS**
Unless specific written instructions are timeously given to and accepted, in writing by the company, the company shall not be obliged to:
 - 8.1. make any declaration for the purpose of any statute, or contract, as to the nature or value of any goods or as to any special interest in delivery. In particular, the company shall be under no obligation to make any declaration or to seek any special protection or cover from any carrier in respect of any goods which are, or fall within the definition ascribed thereto by that body of dangerous goods or other goods which require special conditions of handling or storage;
 - 8.2. arrange for any particular goods to be carried, stored or handled separately from other goods;
 - 8.3. enquire or to make any reasonable enquiry as to the nature, condition, state or the value of the goods.

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9. INSURANCE

- 9.1. Insurance of the goods shall at all times be and remain the obligation of the customer.
- 9.2. The company shall be under no obligation to effect insurance in respect of any goods, unless timeously requested to do so in writing by the customer, which instruction the company accepts in writing, in which event the company will endeavour to effect such insurance.
- 9.3. Such insurance will be subject to such exceptions and conditions as may be imposed by the insurance company or underwriter taking the risk, and the company shall not be obliged to obtain separate cover for any risks so excluded.
- 9.4. Unless otherwise agreed in writing the company shall not be under any obligation to obtain separate consignments but may insure all or any of such consignments under any open or general policy held by the company from time to time.
- 9.5. Such insurance will be subject to such exceptions and conditions as may be imposed by the insurance company or underwriter taking the risk, and the company shall not be obliged to obtain separate cover for any risks so excluded.
- 9.6. Unless otherwise agreed in writing the company shall not be under any obligation to obtain separate consignments but may insure all or any of such consignments under any open or general policy held by the company from time to time.
- 9.7. Should any insurer dispute its liability in terms of any insurance policy in respect of any goods, the customer concerned shall have recourse against such insurer only and the company shall not have any responsibility or liability whatsoever in relation thereto notwithstanding that the premium paid on such policy may differ from the amount paid by the customer to the company in respect thereof. In the circumstances the customer indemnifies and holds the company harmless in respect of any claim for loss or damage of or in any way relating to the goods including claims for death or personal injury, where such claims are disputed, rejected or repudiated by any insurer.
- 9.8. Insofar as the company agrees to arrange insurance, the company acts solely as agent for and on behalf of the customer.
- 9.9. In the event that the company has effected insurance as contemplated above, the company reserves the right to reject any insurance claim about which it is not notified within 24 (twenty four) hours of either delivery of the goods forming the subject-matter of this agreement or the date upon which the goods forming the subject matter of this agreement should have been delivered

10. CUSTOMER'S UNDERTAKINGS

- 10.1. For all purposes hereunder the customer shall be deemed to have, in relation to the customer's business, the goods and the services to be rendered by the company in regard thereto, reasonable knowledge of all matters directly or indirectly relating thereto or arising therefrom including, without limitation, terms of sale and purchase and all matters relating thereto and the customer undertakes to supply all pertinent information to the company.

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- 10.2. The onus of providing the condition, state, nature or value of any goods at the time that they are delivered to the company shall at all times rest with the customer. Any receipt given by the company to the customer in respect of the goods shall constitute only *prima facie* proof of the condition of the goods.
- 10.3. The customer warrants that:
- 10.3.1. it is either the owner or the authorised agent of the owner of any goods in respect of which the customer instructs the company and that each such person is bound by these Standard Trading Terms and Conditions;
- 10.3.2. in authorising the customer to enter into any contract with the company and/or in accepting any document issued by the company in connection with such contract, the owner, sender or consignee is bound by these Standard Trading Terms and Conditions for itself and its agents and for any parties on whose behalf it or its agents may act, and in particular, but without derogating from the generality of the foregoing, it accepts that the company shall have the right to enforce against them jointly and severally any liability of the customer under these trading terms and conditions or to recover from them any sums to be paid by the customer which, upon proper demand, have not been paid;
- 10.3.3. all information and instructions supplied and to be supplied by it to the company is and shall be accurate, true and comprehensive, and in particular, but without derogating from the generality of the foregoing, the customer shall be deemed to be bound by and warrants the accuracy of all descriptions, value and other particulars furnished to the company for customs, consular and other purposes, and the customer warrants that it will not withhold any necessary or pertinent information, and indemnifies the company against all claims, losses, penalties, damages, expenses and fines whatsoever, whensoever and howsoever arising as a result of a breach of the foregoing whether negligently or otherwise, including, without derogating from the generality of the foregoing, any assessment or reassessment;
- 10.3.4. all goods will be properly, adequately and appropriately prepared and packed, stored, labeled and marked, having regard to, *inter alia*, the implementation by or on behalf of the company or at its instance of the contract involved, and the characteristics of the goods involved, which the customer warrants are capable of withstanding the normal hazards inherent in the implementation of such contract;
- 10.3.5. 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 (each such device hereinafter individually referred to as "the transport unit") then, save where the company has been given in writing and has in writing accepted specific instructions to load the transport-unit:

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- 10.3.5.1. that the transport unit has been properly and competently loaded; and
 - 10.3.5.2. that the goods involved are suitable for carriage in or on the transport unit; and
 - 10.3.5.3. that the transport is itself in a suitable condition to carry the goods loaded therein and complies with the requirements of all relevant transport authorities and carriers.
- 10.4. The customer must ensure that:
- 10.4.1. the goods shall be ready for loading on the date specified;
 - 10.4.2. all documentation necessary in connection with the goods and the transportation thereof shall be fully and correctly prepared, except if otherwise agreed;
 - 10.4.3. at all places where the company is to collect and off-load the goods there will be safe, suitable and adequate access and loading and off loading facilities, and that it is possible for the company to do so by means of ordinary staircases and/or doorways, without need for any special or additional tackle, plant, power, labour or equipment;
 - 10.4.4. the goods will be sufficiently packed and prepared for carriage;
 - 10.4.5. the customer shall sign such certificates and receipts on loading and off-loading as the company may require. The company shall not be under any obligation to provide any plant, power or labour which in addition to its vehicle's crew is required for the loading or unloading of any goods. Any assistance given by the company in such loading or unloading shall be at the sole risk of the customer and may incur extra costs.
- 10.5. In the event of the condition in 10.4 not being fulfilled, the company shall have the election either to resile from the agreement, in which event the company shall not be liable for any loss or damages suffered by the customer in consequence thereof (but in which circumstances the customer shall be liable for all of the company's losses, damages and the like), or to accept the agreement, in which event the company shall have the right to use such additional tackle, plant, power, equipment or labour as it may in its sole and absolute discretion deem fit, in which event the customer shall be liable for all reasonable expenses incurred by the company in regard to such use, including the hiring thereof, and any such expenses shall be presumed to be reasonable until the contrary is proved by the customer. In addition, the company shall not be liable to the customer in respect of any loss or damage to the goods arising out of the use of any such additional tackle, plant, power, equipment and labour, and the customer shall indemnify the company against any loss or damage howsoever arising including any loss or damage arising out of any death or injury to the employees or to the property of the company or any third person by reason of any defect in such tackle, plant, power, equipment or the negligence-of-such-labour.

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- 10.6. Any customer (or owner) conducting any packing or other operation or activity in any area or premises provided by the company shall do so at its own risk, and the customer indemnifies the company against all claims or losses arising out of the presence of the customer in such area or premises.
- 10.7. In the event of any default by the customer of any provision of this Standard Trading Terms and Conditions, the customer hereby consents and authorizes the company to furnish the name, credit record and repayment history of the customer to any credit bureau as a delinquent debtor. It is also agreed that the company may use any means to verify the information contained in this document.
- 10.8. In the event of any dispute arising in regard to the actual weight and/or dimensions of any goods the determination of the company shall be final and binding on the customer.

11. RECOVERY OF DEBTS DUE TO THE COMPANY

The company shall be entitled to recover any amounts due to it by the customer in respect of instructions relating to or in terms of any contract in respect of particular goods from the customer, or if the customer acts as agent for a disclosed or undisclosed principal from the customer or the principal, as the company in its absolute discretions deems fit.

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

- 12.1. Unless otherwise agreed in writing, the company, in procuring the carriage, storage, packaging or handling of goods shall be entitled to act either as an agent for and on behalf of the customer or as a principal, as the company in its absolute discretion deems fit.
- 12.2. 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 company acting as agent for and on behalf of the customer or as principal.
- 12.3. The customer acknowledges that when the company as agent for and on behalf of the customer concludes any contract with a third party, such agreement is concluded between the customer and the third party.
- 12.4. Unless otherwise agreed in writing, the company, when acting as agent for and behalf of the customer, shall be entitled to enter into any contract it reasonably deems necessary or requisite for the fulfillment of the customer's instructions, including, without limitation, contracts for the:
 - 12.4.1. carriage of goods by any route or means or person;
 - 12.4.2. storage, packing, transport, shipping, loading, unloading and/or handling of goods by any person at any place whether on shore or afloat and for any length of time;
 - 12.4.3. carriage or storage of goods in break-bulk form or in or on transport units as defined in clause 10.3.5 or with or without other goods of whatsoever nature.

13. SUB-CONTRACTING

- 13.1. Any business entrusted to the company by the customer may, in the absolute discretion of the company, be fulfilled by the company itself, by its own servants performing part of all of the relevant services, or by the company employing or entrusting the goods or services to third parties on such conditions as may be stipulated by, or negotiated with, such third parties.

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- 13.2. Where the company employs or engages third parties to perform all or any of the functions which it has agreed to perform, the customer agrees that the company shall have no responsibility or liability to the customer arising from any act or omission of such third party, even though the company may be responsible for the payment of such third party's charges; but the company may, if suitably indemnified against all costs (including attorney and client costs) which may be incurred by or awarded against the company, take such action against the third party on the customer's behalf as the customer may direct.
14. **GOODS REQUIRING SPECIAL ARRANGEMENTS**
Except under special arrangements previously made in writing, the company will not accept or deal with coins, jewellery, , pictures, paintings, human remains, livestock, plants, alcohol, liquor and alcoholic beverages, antiques or antiquities of any description, arms, ammunition, artworks, live animals of any description, bank and treasury notes, cash, travellers cheques, bullion, platinum, cobalt, copper, other non-ferrous metals, deeds, designs, documents of any description, explosives, furs, jewellery, patterns, plans, precious metals or stones, specie, stamps, tickets, tobacco and tobacco products, brass and scrap metal, exotic sea foods including caviar, prawns, calamari and crayfish, aircraft and their parts and accessories. Should the customer nevertheless deliver 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 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. A claim, if any, against the company in respect of the goods referred to in this clause shall be governed and limited by the provisions of this Standard Trading Terms and Conditions.
15. **GOODS REQUIRING PRIOR CONSENT OF COMPANY**
- 15.1 The company shall be under no obligation to accept into its possession or control, or into the possession or control of any of its servants, agents or employees, dangerous goods. Unless otherwise declared timeously in writing by the customer to the company, the customer warrants that all goods are fit to be carried in the ordinary course, and do not include dangerous goods.
- 15.2. If the customer has requested the company to accept dangerous goods into its possession or control, or into the possession or control of any of its servants, agents or employees, the customer shall obtain in advance the company's specific written consent thereto.
- 15.3. If the company consents to accept dangerous goods into its possession or control, or into the possession or control of servants, agents or employees then:
- 15.3.1. the customer shall timeously furnish to the company a full written declaration of the nature of the dangerous goods;
- 15.3.2. the customer warrants that such goods, or the case, crate, box, drum, canister, tank, flat, pallet, package or other holder or covering of such goods will comply with any applicable laws, regulations or requirements 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;

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15.3.3. the customer indemnifies and holds the company harmless against all claims, loss, damage, injury (howsoever caused) including death and personal injury and cost arising out of the carriage of any dangerous goods, whether the dangerous goods have been declared as such by the customer or not.

15.4. If any dangerous goods are delivered to the company, whether or not in breach of the provisions of this clause, such goods may for good reason as the company in its discretion deems fit including, without limitation, the risk to other goods, property, life or health, be destroyed, disposed of, abandoned or rendered harmless or otherwise dealt with by the company, its servants, agents or employees, at the sole risk and expense of the customer and without the company being liable for any compensation to the customer or any other party, and without prejudice to the company's rights to recover its charges and/or fees (notwithstanding the non-delivery of such goods), as well as the costs of such destruction, disposal or abandonment. The customer indemnifies and holds the company harmless in respect of all such claims and costs against or incurred by the company.

16. **TERMS AND CONDITIONS OF AGENTS AND SUBCONTRACTORS**

Notwithstanding anything to the contrary contained herein, the customer agrees that all goods shall be dealt with by the company on the terms and conditions stipulated by the carriers, warehouseman, 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, provided that the company's liability as defined herein shall in no way be extended by any such terms and/or conditions.

17. **PERISHABLE GOODS**

17.1. Without limiting or affecting any other terms of these Standard Trading Terms and Conditions, goods (whether perishable or otherwise) in the care, custody or control of the company may at the customer's expense be sold or disposed of by the company without notice to the customer, sender, owner or consignee, if:

17.1.1. such goods have begun to deteriorate or are likely to deteriorate;

17.1.2. such goods are insufficiently addressed or marked;

17.1.3. the customer cannot be identified;

17.1.4. the goods have not been collected or accepted by the customer or any other person after the expiration of 7 (seven) days from date of the company notifying the customer in writing to collect or accept such goods, provided that if the company has no address for the customer such notice period shall not be necessary, and payment or tender of the net proceeds, if any, of the sale thereof after deduction of those charges and expenses incurred by the company in respect thereof shall be equivalent to delivery of such goods.

17.2. Should any amount owing by the customer to the company in respect of any matter referred to in this clause become due and payable and remain unpaid, the company shall be entitled and the customer hereby authorises the company, without first obtaining an order of court, to sell all or any of the goods by public auction or on reasonable notice not exceeding 14 (fourteen) days by private treaty. The net proceeds of any such sale, after deducting therefrom all costs, charges and expenses incurred by the company, shall be applied in

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reduction or discharge, as the case may be, of the customer's obligations to the company in respect of such goods without prejudice to the company's rights to recover from the customer any balance which may remain owing to the company after the exercise of such rights. Should the total amount collected by the company, after deducting therefrom all costs, charges and expenses incurred by the company in respect thereof, exceed the full amount of the customer's obligations to the company in respect of such goods, the company shall be obliged to refund such excess to the customer.

18. THE CONTROL OF DELIVERY

If delivery of any goods is not accepted by the customer, consignee or party nominated by the customer at the appropriate time and place, then:

- 18.1. the company shall be entitled to store the goods or any part thereof at the sole risk and expense of the customer;
- 18.2. the provisions of clause 17.2 shall apply *mutatis mutandis*.

19. WAREHOUSING AND DEMURRAGE

- 19.1. Pending forwarding and/or delivery by or on behalf of the company, goods may be warehoused or otherwise held at any place as determined by the company in its absolute discretion at the customer's sole risk and expense.
- 19.1. The company shall not be liable for demurrage or storage charges of any nature whatsoever and howsoever arising.
- 19.2. Where any such demurrage and/or storage charges are paid by the company, such charges shall be refunded to the company by the customer on demand.
- 19.3. The customer hereby appoints the company irrevocably and *in rem suam* as its agent and in its name, place and stead, to contract for the storage of the goods upon such terms and conditions as the company may, in its sole discretion elect, and without any liability whatsoever attaching to the company to attend to such storage.

20. COLLECTION OF EXPENSES AND C O D

- 20.1. When goods are accepted in writing or dealt with by the company 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.
- 20.2. If accepted by the company in writing, instructions to collect payment on delivery shall be subject to the condition that the company will be entitled to assume that the recipient will effect payment and in the matter of such collection will not be liable for any negotiable instrument which is not met on the due date for payment.
- 20.3. Notwithstanding the foregoing, the company shall at its discretion be entitled to require payment of such charges in full by the customer before delivery by the company.

21. SUNDRY GOODS RECOGNISABLE AS THE CUSTOMER'S

The company 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 written instructions (which it accepts in writing) from the customer relating to those goods together with all necessary documents.

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22. **EXAMINATION OF LANDED GOODS**

- 22.1. Where it is necessary for an examination to be held or other action to be taken by the company in respect of any discrepancy in the goods which are landed or discharged from any vessel, aircraft, vehicle, or transport unit, no responsibility shall attach to the company for any failure to hold such examination or to take any other action unless the company has been timeously advised in writing by the landing or discharging agent that such goods have been landed and that such discrepancy exists. Where any such examination is undertaken or performed by the company, it shall incur no liability in respect thereof or in respect of any error or inaccuracy in respect thereof and the customer indemnifies and holds the company harmless in respect of any claim arising therefrom.
- 22.2. The company will never be responsible for examining or counting any goods received by it where such goods are bundled, palletised or packed in any other manner such that their number cannot be quickly and easily counted (in the discretion of the company). Should the company undertake to count goods so received, it shall incur no liability in respect of any error or inaccuracy in such counting, whether such error or inaccuracy is the result of negligence on the part of the company or otherwise and the customer indemnifies and holds the company harmless in respect of any claim arising therefrom. The company shall be entitled to levy a charge on the customer for the counting of goods in such circumstances.

23. **DUTIES, TAXES, IMPOSTS, LEVIES AND DEPOSITS**

- 23.1. 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, imports, levies, deposits or outlays of whatsoever nature levied 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 company in connection therewith or arising there from.
- 23.2. The company shall bear no liability in consequence 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 of tariff or by virtue of the fact that a saving might have been effected in some other way if any act had been performed at a different time.

24. **RECOVERY OF DUTIES INCORRECTLY PAID**

- 24.1. Where as a result of any act or omission by or on behalf or at the instance of the company and whether or not such act or omission was negligent, any duty, tax, levy, railage, wharfage, freight, cartage or any other impost or charge has been paid or levied in an incorrect amount, then any responsibility or liability to the customer which the company may otherwise have will cease and fall away if the customer does not:
- 24.1.1. within a reasonable time having regard to all circumstances, and in particular to the time allowed for the recovery from the payee of the amount overpaid, advise the company that an incorrect amount has been paid or levied; and

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- 24.1.2. do all such acts as are necessary to enable the company to effect recovery of the amount incorrectly paid.
- 24.2. The fact that the customer may not be aware that any such incorrect payment has been made shall not constitute a circumstance to be taken into account in calculating, what is a reasonable time for the purposes of this clause. Should any act or omission by the customer, whether or not such act or omission was due to ignorance on the part of the customer and whether or not such ignorance was reasonable or justified in the circumstances, prejudice the company's right to recovery, the customer shall be deemed not to have complied with the provisions of this clause.

25. PAYMENT BY THE CUSTOMER

- 25.1. Unless otherwise specifically agreed by the company in writing the customer shall make payment to the company in cash or by electronic funds transfer, in immediately available funds within 30 (thirty) days of the date of the company's statement, all sums due to the company 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.
- 25.2. The company's statement shall be deemed unless the contrary is proved by the customer, to have been received on the 1st day of each month.
- 25.3. All and any moneys 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.
- 25.4. Any amount not paid by the customer on due date shall bear interest at the prime rate plus 2% (two percent) thereon, compounded monthly in arrear, from the date on which such amount falls due until the date of final payment of that amount. In this regard and for the purpose of this Standard Trading Terms and Conditions "prime rate" shall mean the publicly quoted prime rate of interest per annum, as certified by any manager of the company's bankers from time to time, whose appointment and authority it shall not be necessary to prove, at which that bank lends on secured overdraft to its most favoured customers in the private sector, nominal annual compounded monthly in arrear and calculated on a 365 (three hundred and sixty five) day year factor, irrespective of whether the year is a leap year or not.
- 25.5. A certificate signed by any director or manager of the company showing the amount owing by the customer at any time and reflecting the amount thereon as due and unpaid, shall be *prima facie* proof of the amount owing by the customer for the purpose of any proceedings [whether for the purpose of provisional sentence, summary judgment or otherwise].
- 25.6. Where the company so requires, the customer undertakes to provide the company with an acceptable bank guarantee sufficient to cover their usage of the company account for a 2 (two) month period. This guarantee will be reviewed on an ongoing basis to ensure that the customer's usage is always covered by its guarantee/s. As an alternative hereto:
- 25.6.1. the customer shall be obliged to pay to the company a deposit in an amount to be determined by the company ("the deposit") if so requested;
- 25.6.2. the Customer hereby irrevocably authorises the company to invest the deposit in an interest bearing account, interest to accrue for the benefit of the customer;
- 25.6.3. if the customer fails at any time to pay any amount due in

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terms of 25.1, the company shall have the right to appropriate the whole or a part of the deposit and the interest to the amount due.

- 25.7. Notwithstanding the foregoing, where the customer is in breach of any of the terms of these Standard Trading Terms and Conditions, the company shall be entitled, on notice to the customer, to convert the payment terms to payment in full prior to delivery.

26. DEBITING FEES AND DISBURSEMENTS

The company shall under no circumstances be precluded from raising a debit 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 has been given that further debits were to follow.

27. RISK OF POSTED ITEMS

Notwithstanding any prior dealings between the company and the customer, all documents, cash, cheques, bank drafts or other remittances sent to the company through the post shall be deemed not to have been received by the company unless and until they are actually received by the company.

28. QUOTATIONS

- 28.1 The company shall be entitled at any time by notice to the customer to cancel or resile from any quotation or executory agreement in circumstances where it becomes impracticable or uneconomical for the company to carry out the contract at the quoted rate and the customer shall have no claim whatsoever against the company cancelling or resiling from the quotation or executory agreement.
- 28.2. Without in any way limiting the provisions of this clause, all quotations and agreements are subject to revision without notice having regard to changes in currency exchange rates and upward movements in amounts payable by or on behalf of or at the instance of the company to third parties including, without limitation, freight, surcharges, insurance premiums, equipment rental and labour, which charges and upward movements take place after quotation. Any revision of rates as aforesaid will be commensurate with the change in the currency exchange rate or the increase in such amounts payable. Any such increase shall, failing agreement between the parties, be determined by the then auditors of the company or any other auditors nominated by the company, who in such determination shall act as experts and not as arbitrators and whose decision shall be final and binding on the parties.
- 28.3. In the event of the company being obliged to deviate from the route selected by it, or to carry the goods over another route, as a result of adverse weather conditions, or unpassable or dangerous roads or bridges, the company shall be entitled to charge an additional charge in proportion to the resulting extra mileage.

29. NO CLAIMS AGAINST COMPANY DIRECTORS AND EMPLOYEES

The customer undertakes that no claim shall be made against the director, servant or employee of the company which imposes or attempts to impose upon him, any liability in connection with the rendering of any services which are the subject of these Standard Trading Terms and Conditions and the customer hereby waives all and any such claims. The customer accordingly indemnifies and holds the company's directors, employees, servants harmless in respect of any claim arising therefrom.

30. CUSTOMER'S ORAL INSTRUCTIONS

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The customer's instructions to the company shall be precise, clear and comprehensive and in particular, but without limitation, shall cover any valuation or determination issued by the customer in respect of any goods to be dealt with by or on behalf of or at the request of the company. Instructions given by the customer shall be recognised by the company as valid only if timeously given specifically in relation to a particular matter in question. Oral instructions, standing or general instructions or instructions given late, even if received by the company without comment, shall not in any way be binding upon the company, but the company may act thereupon in the exercise of its absolute discretion.

31. VARIATION OF THESE TRADING TERMS AND CONDITIONS

31.1. No variation or alteration of these Standard Trading Terms and Conditions, including in respect of this clause, shall be binding on the company unless embodied in a written document signed by a duly authorised member of the company. Any purported variation or alteration of these trading terms and conditions otherwise than as set out above shall be of no force or effect, whether such purported variation or alteration is written or oral, or takes place before or after the receipt of these trading terms and conditions by the customer.

31.2. No agent or persons employed by the company shall have any authority to alter or vary, in any way, these Standard Trading Terms and Conditions, unless he is expressly authorised in writing to do so by the company.

32. NON WAIVER

No extension of time or waiver or relaxation of any of these Standard Trading Terms and Conditions, including in respect of this clause shall operate as an estoppel against any party in respect of its rights under these Standard Trading Terms and Conditions.

33. GOVERNING LAW

These Standard Trading Terms and Conditions and all agreements entered into between the company and the customer pursuant thereto and on the terms thereof shall be governed by and construed in accordance with the laws of the republic of South Africa.

34. CONSENT TO JURISDICTION AND COSTS

34.1. The parties agree that any legal action or proceedings arising out of or in connection with these Standard Trading Terms and Conditions shall be brought in the magisterial district, or the division of the Supreme Court of South Africa, as the case may be, where the company's head office is situated at the commencement of the proceedings, and the customer irrevocably submits to the non-exclusive jurisdiction of such court.

34.2. The company shall be entitled to institute any proceedings against the customer arising out of any contract between them in a Magistrate's Court even if the quantum of the proceedings in question exceeds the jurisdiction of the Magistrate's Court, provided that this condition shall not preclude the company from being able to institute any proceedings against the customer in any competent division of the Supreme Court.

34.3. If the company institutes legal proceedings against the customer arising out of any contract between them, the customer shall be liable for all costs incurred by the company pursuant to such proceedings on the scale as between attorney and client including collection commission.

35. BENEFITS OF DISCOUNTS

The company is entitled to the benefits of any discounts obtained and to retain

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and be paid all brokerages, commissions, allowances and other remunerations of whatsoever nature and kind and shall not be obliged to disclose or account to the customer or principal for any such amounts received or receivable by it.

36. LIEN

- 36.1. The company shall have a lien over all goods handed to it by or on behalf of the customer as security for the payment of all amounts payable to it by the customer howsoever arising, whether or not arising directly from such goods and the customer pledges such goods to the company as security for payment as aforesaid.
- 36.2. The company may in its discretion retain possession of any goods handed to it by or on behalf of the customer pending the payment of all amounts payable by the customer to the company whether or not payment is due in accordance with the credit terms agreed by the parties and whether or not the customer's indebtedness arises out of the contract.
- 36.3. If any amount is not received by the company from the customer within 7 (seven) days after the due date, the company shall be entitled without prejudice to any other right it has and without further notice to the customer:
 - 36.3.1. to open any consignment and examine any goods;
 - 36.3.2. to sell the goods or any part thereof in such manner and on such terms and conditions as it deems fit;
 - 36.3.3. to apply the net proceeds of any such sale after deducting all expenses incurred in connection with such sale to the customer's indebtedness. Any surplus shall be paid, without interest, to the customer at its last known address provided that, in the event of the company being unaware of the address of the customer, the company shall be released from all liability whatsoever in respect of the goods;
 - 36.3.4. upon the sale of the goods in terms of this clause the company shall have no further liability to the customer in respect of the goods save for the obligation to pay the surplus proceeds derived from the sale to the customer.

37. INDEMNITY BY THE CUSTOMER

Without prejudice to any of the company's rights and securities under these Standard Trading Terms and Conditions, the customer indemnifies and holds harmless the company against all liabilities, damages, costs and expenses whatsoever incurred or suffered by the company arising directly or indirectly from or in connection with the customer's express or implied instructions of their implementation by or on behalf of or at the instance of the company in relation to any goods and in particular, but without limitation to the generality of the foregoing, in respect of any liability whatsoever which may be incurred:

- 37.1. to any haulier, carrier, warehouseman or other person whatsoever at any time involved with such goods arising out of any claim made directly or indirectly against any such person by the customer or by an consignor, consignee or owner of such goods or by any person having an interest in such goods or by any other person whatsoever; and/or
- 37.2. to any owner or consignee of such goods who is not the customer of the company where the company performs the service of a deconsolidated agent, or any other service; and/or
- 37.3. to any carrier of the goods if the company is the consignor or consignee of the goods; and/or

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37.4. in respect of any dangerous goods.

38. **LIMITATION OF COMPANY'S LIABILITY**

38.1. Subject to the provisions of clause 38.2 and clause 39, the company shall not be liable for any claim of whatsoever nature (whether in contract or in delict) and whether for damages or otherwise, howsoever arising including but without limiting the generality of the aforesaid:

38.1.1. any negligent act or omission or statement by the company or its servants, employees, agents and nominee, which shall include gross negligence; and/or

38.1.2. any act or omission of the customer or agent of the customer with whom the company deals; and/or

38.1.3. any loss, damage or expense arising from or in any way connected with the marking, labeling, numbering, non-delivery late delivery or mis-delivery of any goods; and/or

38.1.4. any loss, damage or expense arising from or in any way connected with the weight, measurement, contents, quality, inherent vice, defect or description of any goods; and/or

38.1.5. any loss, damages or expense arising from or in any way connected with any circumstances, cause or event beyond the reasonable control of the company, including but without limiting the generality of the aforesaid strike, lock-out, stoppage or restraint of labour; and/or

38.1.6. damages arising from loss of market or attributable to delay in forwarding or in transit or failure to carry out any instructions given to the company; and/or

38.1.7. any loss from non-delivery or late delivery of any separate package forming part of a consignment or for loss from a package or an unpacked consignment or for damage or mis-delivery or late delivery; and/or

38.1.8. damage or injury suffered by the customer or any person whatsoever as a result of the company's execution or attempted execution of its obligations to the customer and/or the customer's requirements or mandate;

38.1.9. any loss, damage or events arising out of the failure on the part of the company to timeously or properly lodge any claim against an insurer with whom insurance has been effected in terms of these Standard Trading Terms and Conditions;

38.1.10. any loss or damage or injury from any circumstances beyond the company's control including, without limiting the generality of a foregoing, fire, flood, earthquake, wind, storm, inclement weather, or other natural disaster, act of God, strike, riot, war and acts of State; and/or

38.1.11. any loss, damage or injury suffered by the customer or any person whatsoever as a result of the company's execution or attempted execution of its obligations to the customer and/or the customer/s requirements or mandate.

38.2. Notwithstanding anything to the contrary contained in these Standard Trading Terms and Conditions, the company shall not be liable for the loss of a particular market, or for any indirect and/or consequential loss, loss of profit arising from any act or omission or statement by the company, its agents, employees, servants and nominees, whether negligent or otherwise.

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39. **MONETARY LIMITATION OF COMPANY'S LIABILITY**

- 39.1. In those cases where the company is liable to the customer in terms of clause 38, in no such case whatsoever shall any liability of the company, howsoever arising, exceed an amount which is double the amount of the fees raised by the company for its services in connection with the goods, but excluding any amounts payable to sub-contractors, agents and third parties.

40. **GENERAL AVERAGE**

The customer indemnifies and holds harmless the company in respect of any claims of a General Average nature which may be made against the company and the customer shall provide such security as may be required by the company in this connection.

41. **PRESCRIPTION OF CLAIMS AGAINST THE COMPANY AND BREACH**

- 41.1. Notice of any claim by the customer against the company shall be received by the company in writing not later than 7 (seven) days after such claim arose, failing which such claim shall *ipso facto* lapse and become unenforceable.
- 41.2. If the company breaches any of these Standard Trading Terms and Conditions or any written agreement between it and the customer and fails to remedy such breach within 30 (thirty) days of receipt of the written notice required in terms of clause 41.1, then the customer shall be entitled to compel performance by the company of the obligations it has defaulted in, but shall not be entitled to cancel these Standard Trading Terms and Conditions and/or any agreement between the customer and the company.
- 41.3. In the event of the customer breaching any of its obligations under this Standard Trading Terms and Conditions and failing to remedy such breach within 7 (seven) days of receiving written notice from the company requiring it to do so, the company may, without prejudice to any other right which it may have in law, including the right to claim damages, in the case of:
- 41.3.1. a material breach, which breach is not capable of being remedied, cancel this Standard Trading Terms and Conditions; or
 - 41.3.2. any other breach, claim specific performance or cancel this Standard Trading Terms and Conditions.
- 41.4. The company shall be entitled to cancel this Standard Trading Terms and Conditions and rescind the credit facility granted to the customer immediately:
- 41.4.1. upon the company ascertaining that any information supplied by the customer in the credit application form is false, and/or
 - 41.4.2. if the customer fails to comply with any of the conditions contained herein, and/or
 - 41.4.3. if the customer is placed under provisional or final liquidation, judicial management, business rescue or sequestration or commits an act of insolvency as defined in the Insolvency Act or ceases to carry on business, and/or
 - 41.4.4. if the customer fails to adhere to any condition of repayment contained herein and/or in any other subsequent agreement reached between the company and the customer; and/or
 - 41.4.5. if the customer fails to pay any amount due in terms hereof or any other agreement subsequently reached between the company and the customer; and/or
 - 41.4.6. if the customer takes any action which, in the opinion of the company, may prejudice the company's rights in any way.

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41.5. In the event that the company cancels this Standard Trading Terms and Conditions as a result of a breach by the customer, the company shall be entitled to retain any payments already made by the customer in terms of this Standard Trading Terms and Conditions, including any deposit paid, either as rouwkoop, or by way of penalty, or as liquidated damages, or as payment in respect of the prejudice which the parties hereby agree will be suffered by the company as a result of the customer's breach as aforementioned.

42. WARRANTIES AND REPRESENTATIONS BY THE COMPANY

The company makes no warranties and representations to the customer save as may be specifically provided herein or as notified in writing by the company to the customer from time to time. The customer acknowledges that the company is not in any way bound by any oral statement, representation, guarantee, promise, undertaking, inducement 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, whether negligently or otherwise, unless such statements, representations, guarantees, promises, undertakings, warranties or inducements are supplied or made in writing by an employee duly authorised by a director of the company who has the authority to do so in response to a written enquiry specifying accurately and in complete detail what information is required.

43. DISPUTE

43.1. The customer shall not be entitled to withhold payments of any amounts by reason of any disputes with the company, whether in relation to the company's performance in terms of any agreement or lack of performance or otherwise, after which payment the customer's right 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 the customer may have against the company.

43.2. In any dispute between the company and the customer the company shall be deemed to have performed its obligation in a proper and workmanlike manner and strictly in accordance with any agreement it and the customer, until such time as the customer proves the contrary.

44. TIME FOR PERFORMANCE BY THE CUSTOMER

Time is of the essence for the performance by the customer of all obligations owed to the company in terms of any agreement governed by these Standard Trading Terms and Conditions.

45. SEVERABILITY

If any provision of these Standard Trading Terms and Conditions is unenforceable, then the company shall be entitled to elect (which election may be made at any time) that such provision shall be severed from the remaining provisions of these Standard Trading Terms and Conditions, which remaining portions shall not be affected and shall remain of full force and effect.

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46. **DOMICILIUM CITANDI ET EXECUTANDI**

46.1. The parties choose their *domicilia citandi et executandi* for the purpose of giving any notice, the serving of any process or for any purpose arising from this Standard Trading Terms and Conditions at the addresses reflected on the first page of the credit application form.

46.2. Each of the parties shall be entitled from time to time, by giving written notice to the other, to vary the chosen *domicilium* to any other address in the Republic which is not a post office box or post restante, provided that such change shall become effective on the 7th day after the receipt of such notice by the other party.

SIGNATURES

Customer Name _____ Telephone Number _____

Signature _____ Date _____

Customer Name _____ Telephone Number _____

Signature _____ Date _____

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