



CLEARING AND FORWARDING DIVISION - STANDARD TRADING TERMS AND CONDITIONS

These Terms and Conditions shall apply to all transactions between the Customer and TO and shall be deemed to be incorporated in the appointment of TO by the Customer.

1. INTERPRETATION

- 1.1 In these Terms and Conditions, unless clearly inconsistent with or otherwise indicated by the context:
 - 1.1.1 **"Agreement"** shall mean the Order read with these Terms and Conditions;
 - 1.1.2 **"Broker"** means the professional marine insurance broker appointed by TO from time to time;
 - 1.1.3 **"Business day"** means any day of the week excluding Saturdays, Sundays and/or public holidays in the Republic of South Africa;
 - 1.1.4 **"Clearing and Forwarding fees"** shall mean the fees charged by TO to the Customer for Clearing and Forwarding Services rendered by TO to the Customer;
 - 1.1.5 **"Clearing and Forwarding Services"** means such services as may from time to time be required by the Customer to be rendered by TO and shall include, without limitation, the undertaking or arranging the carriage of goods by air, sea, inland waterway, rail and/or road; and the Storage, loading, unloading, packing, unpacking, consolidation, de-consolidation, collection, delivery and/or other handling of goods; and performing all such other activities and duties in connection with the foregoing functions as may be necessary;
 - 1.1.6 **"Cargo supervision fee"** means the service fee charged by TO to supervise cargo operations on behalf of the Customer;
 - 1.1.7 **"Customer"** means any person, whether as an agent or principal, at whose request or on whose behalf TO undertakes any business or provides any advice, information or service or who places an Order for the provision of Clearing and Forwarding Services by TO, irrespective of whether the Order is placed by the person for whom Clearing and Forwarding Services are to be rendered, or by such person's employees, servants or agents and includes the shipper, the charterer, the consignee and/or the owner of the goods;
 - 1.1.8 **"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 by any entity or any code or regulations of, or published by any applicable authorities;
 - 1.1.9 **"Delivery date"** means the estimated date of delivery of the Goods;
 - 1.1.10 **"Facility fee"** means the fee charged to cover the costs of disbursing incurred by TO on behalf of the Customer;
 - 1.1.11 **"FIATA"** means the International Federation of Freight Forwarders Association;
 - 1.1.12 **"Finance fee"** means the fee charged to cover the costs of financing incurred by TO on behalf of the Customer;
 - 1.1.13 **"Goods"** means any goods handled, transported or dealt with by or on behalf of or at the instance of TO or which comes under the control of TO or its agents, servants or nominees on the instructions of the Customer, and includes any container, transportable tank, flat pallet, package or any other form of covering, packaging, container, machinery or equipment and/or related accessories used in connection with or in relation to any such goods required for TO's performance of the Clearing and Forwarding Services;
 - 1.1.14 **"Order"** shall mean any order, whether verbal or in writing, received by TO from the Customer its agents, representatives, servants or employees, for the provision of Clearing and Forwarding Services, which order has been accepted by TO and which order is governed by these Terms and Conditions;
 - 1.1.15 **"Owner"** shall mean the owner of the Goods to which any business concluded under these Terms and Conditions relates to, any person acting on their behalf and any other person who is or may have or acquire any interest, financial or otherwise, therein;
 - 1.1.16 **"Parties"** means the Customer and TO and **"Party"** means either of them as the context indicates;
 - 1.1.17 **"Prime Rate"** shall mean the prime rate of interest quoted publicly by Standard Bank of South Africa Limited from time to time, which rate may be proved by a certificate signed by any officer of that bank, whose appointment and authority it shall not be necessary to prove, and which certificate shall constitute *prima facie* proof of the contents thereof;
 - 1.1.18 **"Statutory Authority"** means any entity, body or organisation set up by law which is authorised to enact legislation on behalf of the relevant country;
 - 1.1.19 **"Standard tariff"** means TO's predetermined fees applicable to all services rendered by it, as revised annually and/or amended from time to time;
 - 1.1.20 **"Supplier"** shall mean any person with whom TO transacts any business for purposes of rendering the Clearing and Forwarding Services to the Customer, and shall include, but not be limited to: ship chandlers, vendors of all types of Goods, repairers, suppliers of Goods and services of whatsoever nature, other ships' agents or brokers, importers and exporters, and port and other authorities in the Republic of South Africa;
 - 1.1.21 **"Terms and Conditions"** shall mean the terms and conditions recorded herein;
 - 1.1.22 **"TO"** shall mean Trade Ocean Shipping Services (Proprietary) Limited (registration number 2006/023770/07) a private company with limited liability, duly incorporated in accordance with the company laws of the Republic of South Africa;
- 1.2 Where applicable, the provisions of 1.1 shall impose substantive obligations on the Parties as provided in the provision concerned.
- 1.3 In these Terms and Conditions words and expressions importing the masculine gender shall include the feminine and neuter genders and *visa versa*; the singular shall include the plural and *visa versa*, and natural persons shall include artificial persons and *visa versa*.
- 1.4 The clause headings in these Terms and Conditions have been inserted for convenience only and shall not be taken into account in its interpretation.
- 1.5 Words and expressions defined in any sub-clause shall, for the purposes of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 1.6 No provision of these Terms and Conditions shall be construed against or interpreted to the disadvantage of any Party hereto by reason of such Party having, or being deemed to have, structured or drafted such provision.
- 1.7 The *eiusdem generis* rule shall not apply and whenever the term "including" is used followed by specific examples, such examples shall not be construed so as to limit the meaning of that term.

- 1.8 When these Terms and Conditions prescribe any number of days, such days must be reckoned exclusively of the first and inclusively of the last day. If the last day falls on a day that is not a business day, it will be deemed to fall on the next business day.
- 1.9 These Terms and Conditions shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa and the Customer consents to the jurisdiction of the High Court.

2. APPOINTMENT

- 2.1 The Customer hereby appoints TO to act as its agent in the Republic of South Africa for purposes of performing the Clearing and Forwarding Services, and TO hereby accepts such appointment, on the Terms and Conditions contained herein.
- 2.2 The Order and these Terms and Conditions constitute a binding agreement between the Customer and TO, and this Agreement shall terminate upon both parties having discharged all their obligations in terms of this Agreement, unless otherwise provided for in terms hereof.
- 2.3 The Customer accepts and agrees to be bound by these Terms and Conditions on placing an Order with TO for the Clearing and Forwarding Services.

3. SCOPE OF TO's AUTHORITY

- 3.1 TO shall provide such Clearing and Forwarding Services as are required by the Customer in terms of the Order and TO may provide such additional Clearing and Forwarding Services as TO in its sole and absolute discretion deems necessary, expedient and in the interests of the Customer.
- 3.2 All Clearing and Forwarding Services provided by TO as contemplated by 3.1, and the terms and conditions upon which such Clearing and Forwarding Services are provided, shall, at all times, be deemed to have been specifically authorised and approved by the Customer.
- 3.3 The Customer's instructions to TO shall be precise, unambiguous and comprehensive in all respects. Instructions given by the Customer to TO shall be recognised by TO as valid only if given timeously and in writing. Oral, standing and general instructions and instructions which are not given timeously, even if such instructions are received by TO without comment, shall not, in any way, be binding upon TO, provided that TO may act on such instructions as TO, in its sole and absolute discretion, deems fit.
- 3.4 Notwithstanding anything to the contrary contained in these Terms and Conditions, if at any time TO considers it to be in the Customer's interests, or in the public interest, to depart from any of the Customer's instructions (or any part thereof), TO shall be entitled, insofar as such departure is reasonable, to depart therefrom and shall not incur any liability in consequence of doing so.
- 3.5 TO shall be entitled to engage the services of a Supplier to perform the Clearing and Forwarding Services (or any part thereof) and any such Supplier shall be deemed to be an independent contractor appointed by the Customer, and not a servant of TO.

4. DURATION

The agreement recorded in these Terms and Conditions shall commence on the date of acceptance of the Order by TO and shall, unless terminated earlier in accordance with the provisions of 2.2, 40 or 42, endure indefinitely.

5. REMUNERATION OF TO

5.1 Fees

- 5.1.1 The Customer shall pay to TO the Clearing and Forwarding fees (and/or Facility fees and/or Finance fees and/or Cargo Supervision fees, whichever is applicable) as set out in TO's Standard Tariff (as amended from time to time) or otherwise agreed between TO and the Customer, for the Clearing and Forwarding Services rendered by TO. In the event of there being no written confirmation as to the Clearing and Forwarding fees to be charged by TO, or in the event of a particular Clearing and Forwarding Service not being provided for in these Terms and Conditions or otherwise, the Customer shall pay to TO the fees contained in TO's Standard Tariff, as amended from time to time.
- 5.1.2 The Customer shall be liable for, and shall pay to TO, all costs and expenses incurred by TO, including the fees referred to in 5.1.1, in providing the Clearing and Forwarding Services at the request or on the instruction of the Customer itself, the office of the Customer or its agents, nominees, representatives or servants, howsoever communicated to TO and notwithstanding the fact that any such persons may have exceeded their authority in requesting or instructing the provision of the Clearing and Forwarding Services.
- 5.1.3 The Customer shall reimburse TO for all costs and expenses incurred by TO in respect of the receipt of currency from the Customer, or the remittance of currency to, or on behalf of, the Customer.
- 5.1.4 TO shall be entitled to withhold performance of the Clearing and Forwarding Services for as long as the Customer is in default of the provisions of these Terms and Conditions.

5.2 Disbursements

TO shall not be obliged to make any disbursement whatsoever on behalf of the Customer until such time as TO has been paid all amounts then due by the Customer to TO in respect of the provision of the Clearing and Forwarding Services by TO; and TO has received sufficient funds for purposes of paying the particular disbursement, and shall not be in default of its obligations by failing to make such payment.

5.3 Security

TO may, at any time, require the Customer to furnish security for the payment of such amounts as are, or will become, due to TO by the Customer in connection with the performance of the Clearing and Forwarding Services, and for the due reimbursement of disbursements made, or to be made, by TO on behalf of the Customer.

5.4 Credit Facilities

TO reserves the right, at any time, to summarily cancel any credit facilities granted to the Customer pursuant to the performance of the Clearing and Forwarding Services. In the event of TO exercising its rights in terms of this 5.4, all amounts then due and owing to TO by the Customer shall immediately become due and payable on demand.

6. PAYMENT BY CUSTOMER

6.1 Unless otherwise specifically agreed between the Customer and TO in writing, the Customer shall pay to TO in cash and immediately upon presentation of invoice, all sums due to TO.

6.2 Notwithstanding the provisions of 6.1 above, TO shall at its sole discretion be entitled to request the Customer to make an advance payment(s) to TO for the provision of any Clearing and Forwarding Services, such which TO may at its sole discretion set off against any invoices subsequently issued to the Customer.

6.3 All payments made by the Customer to TO in terms of these Terms and Conditions shall be made free of set-off, bank charges, bank exchange charges, foreign bank charges when effecting payment to TO from a foreign bank account, commission or any other deduction, and the Customer shall not have the right to defer, adjust or withhold any payment due to TO in terms of or arising out of these Terms and Conditions, or to obtain deferment of judgment for such amounts or any execution of such judgment by reason of any set-off or counterclaim of whatsoever nature or howsoever arising.

6.3.1 Any interest accrued on (pre-paid) funds is not for Customers benefit.

6.4 All and any monies received by TO from the Customer shall be appropriated by TO, in its sole and absolute discretion, to any indebtedness owing by the Customer to TO, notwithstanding that the Customer may, when making payment, seek to appropriate the payment so made to any particular debt or portion of a debt.

6.5 Notwithstanding the provisions of 6.1 and 6.2 above, TO shall at its sole discretion be entitled to extend credit terms to the Customer.

6.6 Save to the extent otherwise provided, all amounts due by the Customer to TO (including damages) in terms of or arising out of the Order and/or these Terms and Conditions shall, unless paid on due date, bear interest from the due date to date of final payment. Such interest shall be calculated at the Prime Rate plus 6% (six per centum) per annum; and capitalised monthly in arrears on the balance due.

7. QUOTATIONS AND ESTIMATES

7.1 TO shall be entitled, at any time and on 48 (forty-eight) hours written notice to the Customer, to cancel or resile from the Agreement in circumstances where it becomes impracticable or uneconomical for TO, in its sole and absolute discretion, to perform in terms of the Agreement at the quoted or estimated rate, and the Customer shall have no claim whatsoever against TO for any loss that the Customer may incur as a result of TO cancelling or resiling from the Agreement.

7.2 Without in any way limiting the provisions of 7.1, all quotations or estimates in respect of enquiries by the Customer or a prospective Customer are subject to revision on 48 (forty-eight) hours' written notice, having regard to changes in currency exchange rates and increases in amounts payable by, or on behalf of, or at the instance of TO to third Parties including, without limitation: freight, surcharges, insurance premiums, equipment rental and labour charges, where such changes and increases take place after quotation. Any revision of a quotation or estimate in respect of enquiries by the Customer or a prospective Customer shall be commensurate with the change in the currency exchange rate or the increase in the amounts payable (as the case may be). Any such change and/or increase shall, failing agreement between the Parties, be determined by the auditors for the time being of TO, or any other suitably qualified auditors nominated by TO, who, in such determination, shall act as experts and not as arbitrators, and whose decision shall be final and binding on the Parties.

8. APPLICABLE LEGISLATION

8.1 If TO is obliged, in the execution of any of its duties and/or responsibilities to comply with any common law or statutory law ("the law") of any nature whatsoever, then TO by complying therewith, shall not be deemed to waive nor abandon any of its rights in terms of these Terms and Conditions. In addition thereto, in complying with the law, TO shall not be deemed to have assumed any onus, obligation, responsibility or liability in favour of the Customer. The Customer agrees to abide by TO's Safety, Health and Environmental Rules, if applicable.

8.2 If any of the terms of these Terms and Conditions are in conflict with the law, then and in such event 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 Terms and Conditions.

9. TRANSPORTATION OF GOODS

9.1 TO deals with all Goods only on the basis that it is neither a common carrier nor a public carrier. Every undertaking by TO to convey Goods is subject to the condition that TO has available a suitable vehicle or vehicles at the appropriate time.

9.2 TO 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 TO or another as the carrier in terms thereof).

9.3 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.

9.4 TO 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 ("BL") in a form that shall be within TO's discretion, including a FIATA combined/multimodal 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 TO or another as the carrier in terms thereof), provided that where a BL is issued these Trading Terms and Conditions shall continue to apply as between TO 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 BL, in which event the provisions of the BL shall to the extent of such conflict only, have precedence). The issue of the BL by TO shall entitle it to raise an additional charge determined by TO, to cover any additional obligations arising under the BL.

10. COMPANY'S DISCRETION IN THE ABSENCE OF INSTRUCTIONS

In the absence of specific instructions given timeously in writing by the Customer to TO:

10.1. It shall be in the reasonable discretion of TO to decide at what time to perform or to procure the performance of any or all of the acts which may be necessary or requisite for the discharge of its obligations to the Customer;

10.2. TO 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;

10.3. 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 sole discretion of TO 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.

11. COMPANY'S GENERAL DISCRETION

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

11.2. If events or circumstances come to the attention of TO, its agents, servants, or nominees which, in the sole opinion of TO, make it in whole or in part, impossible or impracticable for TO to comply with a Customer's instructions, TO 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 TO in writing, TO shall, at its sole discretion, be entitled to detain, return, store, sell, abandon, or destroy all or part of the Goods concerned at the risk and expense of the Customer. In the event that TO sells the Goods, the provisions of clause 21.2 shall apply *mutatis mutandis*.

12. COMPANY'S OBLIGATIONS IN THE ABSENCE OF INSTRUCTIONS

Unless specific written instructions are timeously given to and accepted by TO, TO shall not be obliged to –

12.1. make any declaration for the purpose of any statute, convention, or contract, as to the nature or value of any Goods or as to any special interest in delivery. In particular, TO 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 as Dangerous Goods or other Goods which require special conditions of handling or storage;

12.2. arrange for any particular Goods to be carried, stored or handled separately from other Goods

13. CUSTOMER'S UNDERTAKINGS

13.1. For all purposes hereunder the Customer shall be deemed to have in relation to the Customer's business and the Goods and the services to be rendered by TO in respect thereto, reasonable knowledge of all matters directly or indirectly relating thereto or arising there from including, without limitation, terms of sale and purchase and all matter relating thereto and the Customer undertakes to supply all such pertinent information to TO.

13.2. The Customer warrants that:

13.2.1. it is either the owner or the authorised agent of the owner of any Goods in respect of which the Customer instructs TO and that each such person is bound by these Trading Terms and Conditions;

13.2.2. in authorising the Customer to enter into any contract with TO and/or in accepting any document issued by TO in connection with such contract, the owner, sender or consignee is bound by these 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 prejudice to the generality of the foregoing, it accepts that TO shall have the right to enforce against them jointly and severally any liability of the Customer under these Terms and Conditions or to recover from them any sums to be paid by the Customer, which upon proper demand have not been paid;

13.2.3. all information and instructions supplied or to be supplied by it to TO 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 TO for Customs, consular and other purposes, and the Customer warrants that it will not withhold any necessary or pertinent information, and indemnifies TO 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, without derogating from the generality of the foregoing, any assessment or reassessment;

13.2.4. all Goods will be properly, adequately and appropriately prepared and packed, stowed, labelled and marked, having regard, *inter alia*, to the implementation by or on behalf of TO or at its instance of the contract involved, and the characteristics of the Goods involved and are capable of withstanding the normal hazards inherent in the implementation of such contract;

13.2.5. 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 TO has been given and has accepted specific written instructions to load the transport unit that the transport unit has been properly and competently loaded; and that the Goods involved are suitable for carriage in or on the transport unit; and that 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.

14. TO ENTITLED TO ACT AS AGENT OR PRINCIPAL IN CONTRACTING

14.1 Unless otherwise agreed in writing, TO 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, as it in its sole and absolute discretion deems fit.

- 14.2 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 TO acting as agent or as a principal.
- 14.3 The Customer acknowledges that when TO, 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.
- 14.4 Unless otherwise agreed in writing, TO, 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 Customers instructions, including, without limitation, contracts for the carriage of Goods by any route or means or person; and contracts for the 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; and the carriage or storage of Goods in break-bulk form in or on transport units as defined in clause 13.2.5 or with or without other Goods of whatsoever nature.

15. SUBCONTRACTING

- 15.1 Any business entrusted by the Customer to TO may, in the absolute discretion of TO, be fulfilled by TO itself, by its own servants performing part or all of the relevant services, or by TO employing, or entrusting the Goods or services to third parties on such conditions as may be stipulated by, or negotiated with, such third parties for the purposes of such services, or such part thereof as they may be employed to carry out.
- 15.2 Where TO employs third parties to perform all or any of the functions which it has agreed to perform, the Customer agrees that TO shall have no responsibility or liability to the Customer for any act or omission of such third party, even though TO may be responsible for the payment of such third party's charges; but TO shall, if suitably indemnified by the Customer against all costs, (including attorney and client costs) which may be incurred or awarded against TO, take such action against the third party on the Customer's behalf as the Customer may direct.

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 TO on the terms and conditions, whether or not inconsistent with these Terms and Conditions, stipulated by the carriers, warehousemen, government departments, and all other parties (whether acting as agents or subcontractors to TO or not) into whose possession or custody the Goods may pass, or subject to whose authority they may at any time be, and the Customer indemnifies TO accordingly.

17. INSURANCE

In terms of the Financial Advisory and Intermediary Services Act 37 of 2002, TO may not facilitate any insurance transaction at the instruction of the Customer nor give insurance advice to the Customer as it is not a licenced Financial Services Provider. There is a Mandate agreement in place between TO and their Broker, whereby the Broker has mandated TO to operate as its Mandatary for the specific purposes of performing an insurance premium collection service on its behalf. This service will accompany certain other administrative or clerical services performed for and on behalf of the Broker relative to the short-term marine insurance policies that are managed by the Broker. Should the Customer require marine insurance, they will be directed to the Broker by TO, the Broker being the correct party to provide marine insurance advice and intermediary services.

18. OWNER'S RISK

All handling, packing, loading, unloading, warehousing and transporting of Goods by or on behalf of or at the request of TO are effected at the sole risk of the Customer and/or the owner, and the Customer indemnifies TO accordingly.

19. GOODS REQUIRING SPECIAL ARRANGEMENTS

Except under special arrangements previously made in writing with TO, TO will not accept or deal with bullion, coin, precious stones, jewellery, valuables, antiques, pictures, human remains, livestock or plants. Should the Customer nevertheless deliver such Goods to TO or cause TO to handle or deal with any such Goods otherwise than under special arrangements previously made in writing, TO 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 TO in respect of the Goods referred to in this clause 19 shall be governed by the provisions of clauses 36 and 37.

20. GOODS / DANGEROUS GOODS REQUIRING PRIOR CONSENT OF TO

- 20.1 The Customer shall obtain in advance TO's specific written consent to accept into its possession or control or into the possession or control of any of its servants, agents or employees any Dangerous Goods and any Goods, including radio-active materials, which may be or become dangerous, inflammable or noxious, or which by their nature may injure, damage, taint or contaminate, or in any way whatsoever adversely affect any person, goods or property, including goods likely to harbour or attract vermin or other pests. The Customer shall, at all material times, provide TO with current Material Safety Data Sheets in respect of Dangerous Goods as required by law.
- 20.2 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 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.
- 20.3 The Customer furthermore warrants that any consignee in respect of any such Goods will be authorised and/or qualified to uplift, receive and/or handle such Goods.
- 20.4 If any such Goods are delivered to TO, whether or not in breach of the provisions of clause 20.1, such Goods may for good reason as TO in its sole 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 TO being liable for any compensation to the Customer or any other party, and without prejudice to TO'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.
- 20.5 The Customer indemnifies TO against all loss, liability or damage caused as a result of the tender of Goods to TO and/or out of the foregoing.

21. SALE OF PERISHABLE AND OTHER GOODS

- 21.1 Without limiting or affecting any other terms of these Trading Terms and Conditions, all Goods (whether perishable or otherwise) in the care, custody or control of TO may at the Customer's expense be sold or otherwise disposed of by TO without notice to the Customer, sender, owner or consignee, if such Goods have begun to deteriorate or are likely to deteriorate; and/or such Goods are insufficiently addressed or marked; or the Customer cannot be identified; and/or the Goods have

not been collected or accepted by the Customer or any other person after the expiration of twenty one (21) calendar days from TO notifying the Customer in writing to collect or accept such Goods, provided that if TO 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 TO in respect thereof shall be equivalent to delivery of such Goods.

- 21.2 Should any amount owing by the Customer to TO in respect of any Goods referred to in clause 21.1 become due and payable and remain unpaid, TO shall be entitled and the Customer hereby authorises TO and without first obtaining an order of court, to sell all or any of the Goods by public auction, private treaty or otherwise on reasonable notice to the Customer, such notice which need not exceed 14 (fourteen) calendar days. The net proceeds of any such sale, after deducting there from all costs, charges and expenses incurred by TO, shall be applied in reduction or discharge as the case may be, of the Customer's obligations to TO in respect of such Goods, without prejudice to TO's rights to recover from the Customer any balance which may remain owing to TO after the exercise of such rights. Should the total amount collected by TO, after deducting there from all costs, charges and expenses incurred by TO in respect thereof, exceed the full amount of the Customer's obligations to TO in respect of such Goods, TO shall be obliged to refund such excess to the Customer.

22. ABNORMAL LOADS

- 22.1 TO shall not transport abnormal loads unless an agreement to that effect is concluded in writing between the Parties relating to, among other things, route surveys; and/or the cost of any traffic escorts required by the applicable 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; and/or access to loading and off-loading sites; or 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 TO, its servants, agents or subcontractors).
- 22.2 Any agreement to transport abnormal loads shall be subject to the condition that the relevant permits are timeously obtained from the applicable authorities; and/or the applicable authorities approve a suitable and direct route and do not subsequently vary such route.

23. COLLECTION AND DELIVERY

- 23.1 Unless the Parties have agreed to the contrary in writing, TO shall not be responsible for the loading or offloading of vehicles, save at its own premises; provided that TO 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 TO.
- 23.2 TO may refuse to receive any Goods if it has reasonable cause to do so, including, but not limited to circumstances where TO is not satisfied that arrangements have or will be made for the removal of such Goods from its premises.
- 23.3 The Customer shall accept all responsibility for damage or loss of whatsoever nature within its or any consignee's premises to vehicles or Goods, due to unsuitability of means of access to the loading or offloading points; and/or roads, manholes, covers, kerbs, mains, pipes, bridges, weighbridges or approaches, and/or 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.
- 23.4 TO 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. TO 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. The Customer is obliged to advise TO of the authorised recipients of the Goods.
- 23.5 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 TO shall be entitled to store the Goods or any part thereof at no risk to TO and at the expense of the Customer and the provisions of clause 21.2 shall apply *mutatis mutandis*.

24. WAREHOUSING

- 24.1 Pending forwarding and/or delivery by or on behalf of TO, Goods may be warehoused or otherwise held at any place as determined by TO in its absolute discretion, at the Customer's expense.
- 24.2 All Goods delivered to TO 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 by the Customer; and notice of any special storage requirements of any such Goods shall be given to TO in writing prior to the delivery of the Goods into the custody of TO or its agents.
- 24.3 TO 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. Every undertaking to warehouse Goods is subject to the condition that TO has available a suitable storage facility at the appropriate time.
- 24.4 Notwithstanding anything else to the contrary herein contained, the Customer and the owner of the goods indemnify TO 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 TO.

25. COLLECTION OF EXPENSES AND C O D (CASH ON DELIVERY)

When Goods are accepted or dealt with by TO upon instructions to collect freight, duties, charges or other expenses from the consignee or any other person, the Customer shall remain responsible for all expenses incurred by TO with respect to the Goods, even if they are not paid by such consignee or any other person immediately when due. If accepted by TO, instructions to collect payment on delivery shall be subject to the condition that TO 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 due date for payment.

26. 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 instructions relating to those Goods together with all necessary documents.

27. PACKING

In the event that TO 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 TO 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 TO at the sole risk and expense of the Customer.

28. EXAMINATION OF LANDED GOODS

- 28.1 Where it is necessary for an examination to be held or other action to be taken by TO 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 TO for any failure to hold such examination or to take any other action unless TO has been timely advised by the landing or discharge agent that such Goods have been landed and that such a discrepancy exists.
- 28.2 TO will not be responsible for examining or counting any Goods received by it where such Goods are bundled, palletised or packed in any manner such that their number cannot be quickly and easily counted. Should TO 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 TO or otherwise. TO shall be entitled to levy a charge on the Customer for the counting of Goods in such circumstances.

29. DUTIES, TAXES, IMPOSTS, LEVIES, DEPOSITS AND DISCOUNTS

- 29.1 The Customer shall, 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, 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 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 TO in connection therewith or arising thereout.
- 29.2 TO shall bear no liability in consequence of the fact that there may be a change in the rate of duty, wharfage, freight, railrage or cartage or any other tariff, before or after the performance by TO 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.
- 29.3 TO 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 Owner for any such amounts received or receivable by it.

30. RECOVERY OF DUTIES INCORRECTLY PAID

Where as a result of any act or omission by or on behalf or at the instance of TO and whether or not such act or omission was negligent, any duty, tax, levy, railrage, 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 TO may otherwise have will cease and fall away if the Customer does not –

- 30.1 within a reasonable time having regard to all the circumstances, and in particular to the time allowed for the recovery from the payee of the amount overpaid, advise TO that an incorrect amount has been paid or levied, and
- 30.2 do all such acts as are necessary to enable TO to effect recovery of the amount incorrectly paid. 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 purpose of clause 30.1. 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 TO's right of recovery, the Customer shall be deemed not to have complied with the provisions of clauses 30.1 and 30.2.

31. RISK OF POSTED ITEMS

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

32. LICENCES

TO shall be excused from performing Clearing and Forwarding 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 Agreement between TO and the Customer or between TO 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 Agreement. In the event that any specific Incoterm® as published, is in the view of TO inappropriate for the transaction to be undertaken, or is unclear, then TO 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. INDEMNITY BY THE CUSTOMER

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

- 34.1 to any hauler, 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 any 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

- 34.2 to any owner or consignee of such Goods who is not the Customer of TO where TO performs the service of a deconsolidation agent, or any other service; and/or
- 34.3 to any carrier of the Goods if TO is the consignor or consignee of the Goods; and/or
- 34.4 in respect of any Goods referred to in clause 20.

35. NO CLAIMS AGAINST COMPANY DIRECTORS AND EMPLOYEES

The Customer undertakes that no claims shall be made against any director, servant or employee of TO which imposes or attempts to impose upon him any liability in connection with the rendering of any services which are the subject of these Trading Terms and Conditions and hereby waives all and any such claims.

36. LIMITATION OF COMPANY'S LIABILITY

- 36.1 Subject to the provisions of clause 36.4 and clause 37, TO 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, pertaining to any negligent act or omission or statement by TO or its directors, employees, servants, agents or nominees; and/or any act or omission of the Customer or agent of the Customer with whom TO deals; and/or 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; and/or 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; and/or any loss, damage or expense arising from or in any way connected with any circumstance, cause or event beyond the reasonable control of TO, including but without limiting the generality of the aforesaid, strike, lock-out, stoppage or restraint of labour; and/or damages arising from loss of market or attributable to delay in forwarding or in transit or failure to carry out any instructions given to TO; and/or loss or non-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; and/or damage or injury suffered by the Customer or any person whatsoever arising out of any cause whatsoever as a result of TO's execution or attempted execution of its obligations to the Customer and/or the Customer's requirements or mandate; Unless, such claim arises from a grossly negligent act or omission on the part of TO or its servants; and such claim arises at a time when the Goods in question are in the actual custody of TO and under its actual control; and the loss or non-delivery of any separate package forms part of a consignment or the loss is from a package or an unpacked consignment or for damage or mis-delivery thereof, TO receives a written notice within five (5) calendar days after the end of the transit where the transit ends in the Republic of South Africa and within fourteen (14) calendar days after the end of the transit where the transit ends at a place outside the Republic of South Africa.
- 36.2 In the event that TO elects not to refer any claim by the Customer, which claim TO disputes, to arbitration for determination and, in the further event of the Customer failing to prosecute the claim as envisaged in Section 15(1) of the Prescription Act 68 of 1969 within one year from the date on which the damage or loss occurred, such claim shall be deemed to have been extinguished by effluxion of time.
- 36.3 All Delivery Dates specified in the Orders placed by the Customer are estimates only and TO shall not be responsible for any costs, expenses, losses or damages suffered by the Customer, either directly or indirectly arising where the Goods or services are not delivered by the Delivery Date. The Customer must accept or pay for Goods and services despite any delay in delivery or despatch thereof.
- 36.4 Notwithstanding anything to the contrary contained in these Trading Terms and Conditions, TO shall not be liable for any indirect and consequential loss arising from any act or omission or statement by TO, its directors, employees, agents, servants or nominees, whether negligent or otherwise.

37. MONETARY LIMITATION OF LIABILITY OF TO

- 37.1 In those cases where TO is liable to the Customer in terms of clause 36.1, in no such case whatsoever shall any liability of TO, howsoever arising, exceed whichever is the lesser of the following respective amounts, being 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; or the value of the Goods declared for insurance purposes; or double the amount of the fees raised by TO for its services in connection with the Goods, but excluding any amount payable to subcontractors, agents and third parties.
- 37.2 If it is desired that the liability of TO in those cases where it is liable to the Customer in terms of clause 36.1 should not be governed by the limits referred to in clause 36.1 written notice thereof must be received by TO before any Goods or documents are entrusted to or delivered to or into the control of TO (or its agents or sub-contractors), together with a statement of the value of the Goods. Upon receipt of such notice TO may in the exercise of its sole and absolute discretion agree in writing to its liability being increased to a maximum amount equivalent to the amount stated in the notice, in which case it will be entitled to effect special insurance to cover its maximum liability and the party giving the notice shall be deemed, by so doing, to have agreed and undertaken to pay TO the amount of the premium payable by TO for such insurance. If TO does not so agree, the limits referred to in clause 37.1 shall apply.

38. GENERAL AVERAGE

The Customer indemnifies and holds harmless TO in respect of any claims of a general average nature which may be made against TO and the Customer shall provide such security as may be required by TO in this connection.

39. TO'S LIEN

All Goods and documentation pertaining thereto, including, without limitation, bills of lading and import permits, as well as all refunds, repayments, claims and other recoveries or currency received by TO from, or on behalf of the Customer, shall be held by TO subject to a general lien and right of retention *in lieu* of any monies due to TO by the Customer, sender, owner, consignee, importer or the holder of the bill of lading or their agents, if any, for any reason whatsoever. If any moneys due to TO are not paid and/or the lien is not satisfied within fourteen (14) calendar days of written notice to the person from whom the moneys are due that such Goods or documents are being detained, or should the Agreement be terminated without TO having been paid all amounts owing to it by the Customer, the Goods may be sold by auction, private treaty or otherwise disposed of and the proceeds of the sale applied to the satisfaction of the lien and expenses incurred in respect of the sale; and TO shall be entitled to set off and to deduct any amount owing to it by the Customer from the amount of the proceeds held by it as a result of the sale; and the provisions of clause 21.2 shall apply *mutatis mutandis*.

40. FORCE MAJEURE

- 40.1 If any Party to these Terms and Conditions is prevented or restricted, directly or indirectly, from carrying out all or any of its obligations under these Terms and

Conditions by reason of strike, lock-out, fire, explosion, floods, riot, war, accident, Act of God, embargo, legislation, shortage of or a breakdown in transportation facilities, civil commotion, unrest or disturbances, cessation of labour, government interference or control, or any other cause or contingency beyond the control of that Party, the Party so affected shall be relieved of its obligations under these Terms and Conditions during the period that such event and its consequences continue, but only to the extent so prevented and shall not be liable for any delay or failure in the performance of any obligations hereunder or any loss or damages, whether general, special or consequential, which the other Party may suffer due to or resulting from such delay or failure, provided always that written notice shall forthwith be given of any such inability to perform by the affected Party.

- 40.2 Any Party invoking *force majeure* in accordance with this paragraph 40 shall upon termination of an event giving rise thereto, forthwith give written notice of such cessation to the other Party. If such *force majeure* continues for a period of more than 90 (ninety) calendar days, then either Party shall be entitled forthwith to cancel these Terms and Conditions in respect of any obligations still to be performed hereunder, and neither Party shall have any claim against the other.

41. BREACH

- 41.1 If either Party to these Terms and Conditions breaches any of the provisions of this Agreement and, where such breach is capable of remedy, the defaulting Party fails to remedy the breach for a period of 10 (ten) calendar days after receipt of notice from the aggrieved Party calling upon the defaulting Party to remedy its breach; and/or commits any other breach of the terms of this Agreement which is incapable of being remedied; and/or takes steps or has steps taken against it for its winding-up, sequestration or liquidation (whether voluntary or otherwise), or commits any act of insolvency in terms of the Insolvency Act 24 of 1936; and/or being a company or close corporation, ceases to be controlled by the person(s) that control(s) it at the date of commencement of these Terms and Conditions as contemplated in clause 4; and/or fails to contest or discharge any final judgment taken against it in any court of competent jurisdiction for a period of 10 (ten) days or longer; and/or ceases to carry on business for any reason whatsoever; then such defaulting Party shall be deemed to be in breach of its obligations in terms of these Terms and Conditions.
- 41.2 If either Party is in breach of these Terms and Conditions, or is deemed to be in breach of these Terms and Conditions in terms of 41.1, and provided the aggrieved Party has given the defaulting Party 10 (ten) calendar days written notice to remedy such breach and the defaulting Party fails to timeously remedy such breach after receiving such written notice, the aggrieved Party shall be entitled, but not obliged, in addition to any other rights which it may have or remedies which may be available to it in terms of these Terms and Conditions or otherwise in law, to –
- 41.2.1 cancel these Terms and Conditions forthwith, with or without claiming damages;
- 41.2.2 obtain an order against the defaulting Party for specific performance, with or without claiming damages; and/or
- 41.2.3 claim such damages as it may have suffered in lieu of specific performance, together with all amounts owing under, or in terms of these Terms and Conditions, whether or not such amounts have become due for payment.

42. TERMINATION FOR CONVENIENCE

Either Party shall, in its sole and absolute discretion, be entitled, at any time, to terminate this Agreement on 30 (thirty) calendar days' written notice to the other Party, subject to clauses 2.2 and 4.

43. DOMICILIUM

- 43.1 The Customer elects as their *domicilium citandi et executandi*, the address provided to TO in their written Application for Cash or Credit Facility form and/or the Order. Such address (not being a poste restante) shall be the *domicilium citandi et executandi* at which all processes and notices arising out of or in connection with these Terms and Conditions or a breach or termination thereof may be validly served upon and delivered to the Customer.
- 43.2 The Customer may, by notice in writing to TO, change its *domicilium citandi et executandi*.
- 43.3 A notice sent by TO to the Customer shall be deemed to be received on the date of delivery, if delivered by hand; on the fourth day after posting, if sent by prepaid registered mail; on the day after faxing, if sent by facsimile transmission; and on the date of sending, if sent by electronic mail (email).
- 43.4 Notwithstanding anything to the contrary contained in this 43, a written notice or communication actually received by the Customer from TO, shall be adequate written notice or communication to the Customer notwithstanding that it was not sent or delivered at its chosen *domicilium citandi et executandi*.

44. ARBITRATION

- 44.1 Subject to 44.2, in the event of any dispute of whatsoever nature arising between the Parties in relation to any matter provided for in, or arising out of these Terms and Conditions, then that dispute may, at the sole election of TO, which election shall be communicated to the Customer in writing, be referred to arbitration to be held at Cape Town. Should TO elect that the dispute be referred to arbitration, such dispute shall be referred to a single arbitrator to be agreed upon by the Parties to the dispute or, failing such agreement, to be nominated by the president for the time being of the Maritime Law Association of the Republic of South Africa, and such arbitration shall be conducted in accordance with and subject to the provisions of the Arbitration Act No. 42 of 1965, or any statutory modification or re-enactment thereof for the time being in force or such rules as the Parties may agree to, in writing.
- 44.2 Should TO elect to proceed with arbitration in terms of 44.1, the provisions of 44.1 shall not preclude any Party from obtaining relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

45. MISCELLANEOUS

45.1 Statutory Authorities

In the compilation and submission by TO to any Statutory Authority in respect of the application for any right, permit, licence, exemption, permission or consent that may be required by the Customer, TO will exercise reasonable skill and care to compile and submit the application to the Statutory Authority correctly and within the prescribed filing deadlines. TO shall not be responsible or liable for the correctness or accuracy of the information and/or documentation provided by the Customer or any failure by the Customer to provide the information and/or documentation in a timely manner, nor for any technical problems or human errors beyond TO's control. TO shall bear no liability of whatsoever nature irrespective of any alleged negligence or fault on the part of TO, arising from the submission by TO to any Statutory Authority of any application or omission to file such application timeously or at all and liability therefor shall rest exclusively with the Customer and the Customer shall be responsible for the payment of any fines imposed by any Statutory Authority. The Customer hereby indemnifies and holds TO harmless in respect thereof.

- 45.10.4 The e-mail address(es) of TO may not be used, copied, sold, disclosed or incorporated into any database or mailing list for spamming and/or other marketing practices without the prior written consent of TO.
- 45.10.5 Under no circumstances shall TO be liable to any party for any direct, indirect, special or other consequential damages for any use of e-mail transmissions dispatched by TO or attachments thereto, or of any other hyper linked web site, including, without limitation, any lost profits, business interruption, loss of programs or other data or information handling systems or otherwise, even if TO has been expressly advised of the possibility of such damages.
- 45.10.6 No e-mail correspondence sent to TO shall be deemed to have been received until TO has responded thereto in writing. An auto-reply shall not constitute such a response.
- 45.10.7 TO retains the copyright in all e-mail messages and attachments sent from its communications systems.

45.2 Implementation and good faith

- 45.2.1 The Parties to these Terms and Conditions undertake to do all such things, perform all such acts and take all steps to procure the doing of all such things and the performance of all such acts, as may be necessary or incidental to give or conducive to giving effect to the terms, conditions and import of these Terms and Conditions.
- 45.2.2 The Parties shall at all times during the continuance of these Terms and Conditions observe the principles of good faith towards one another in the performance of their obligations in terms of these Terms and Conditions. This implies, without limiting the generality of the foregoing, that they will at all times during the term of these Terms and Conditions act reasonably, honestly and in good faith; and will perform their obligations arising from these Terms and Conditions diligently and with reasonable care; and will make full disclosure to each other of any matter that may affect the execution of these Terms and Conditions.

45.3 Severability

The agreements and undertakings of Parties contained in these Terms and Conditions shall each be construed as an agreement and undertaking independent of any other provision of these Terms and Conditions. The Parties hereby expressly agree that it is not the intention of either Party to violate any public policy, statutory or other applicable law, and that if any sentence, paragraph, clause or combination of the same is in violation of the law of the Republic of South Africa, such sentence, paragraph, clause or combination of the same alone shall be void in the jurisdiction where it is unlawful, and the remainder of such clause and these Terms and Conditions shall remain binding upon the Parties hereto.

45.4 Variation

No variation or alteration of these Terms and Conditions shall be binding on TO unless embodied in a written document signed by a duly authorised director of TO. Any purported variation or alteration of these Terms and Conditions otherwise than as set out herein 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 Terms and Conditions by the Customer.

45.5 Relaxation

No latitude, extension of time or other indulgence which may be given or allowed by any Party to the other in respect of the performance of any obligation hereunder, or the enforcement of any right arising from these Terms and Conditions, and no single or partial exercise of any right by any Party shall under any circumstances be construed to be an implied consent by such Party, or operate as a waiver or a novation of, or estop such Party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

45.6 Time of the essence

Time is of the essence for the performance by the Customer of all obligations owed to TO in terms of this Agreement.

45.7 Non-assignment

The Customer shall not be entitled to assign any of its rights and obligations under these Terms and Conditions without the express prior written consent of TO, which consent TO may, in its sole and absolute discretion, withhold or withdraw.

45.8 Email correspondence

All electronic mail (email) exchanged between TO and the Customer is subject to the following:

- 45.8.1 The relevant portions of these Terms and Conditions are enforceable and binding on the recipient / addressee in terms of sections 11(1) to 11(3) of the Electronic Communications and Transactions Act 25 of 2002.
- 45.8.2 All e-mail transmissions dispatched by TO contains confidential information, which is the property of TO. No person, other than the recipient (so indicated by TO) may use or disclose the contents of all e-mail transmissions dispatched by TO or attachments hereto, to any person whatsoever.
- 45.8.3 The information in all e-mail transmissions dispatched by TO or attachments thereto is intended for the attention and use only of the addressee. Any disclosure, copying or distribution of the contents of this e-mail transmission, or the taking of any action in reliance thereon or pursuant thereto, by any person other than the intended recipient is strictly prohibited.

45.9 Costs

All costs (including collection fees and tracing agents), incurred by TO (whether partially or substantially successful) in enforcing its rights (whether action has been instituted or not) arising out of a breach of these Terms and Conditions by the Customer shall be borne by the Customer on the scale as between attorney and own client.