



**SCHENKER'S STANDARD TRADING TERMS, BASED ON THE FIATA MODEL RULES FOR FREIGHT FORWARDING SERVICES, AS AMENDED.**

**GENERAL PROVISIONS**

**1. APPLICABILITY OF RULES**

The FIATA Model Rules for Freight Forwarding Services are incorporated into this contract, referred to as Schenker's standard trading terms and conditions. The Freight Forwarder and the Customer agree that these terms and conditions shall supersede any additional terms of any other contract which conflict with these terms and conditions insofar as they increase the responsibility or obligations of the Freight Forwarder. However, if the Customer and the Freight Forwarder concluded a framework agreement, the latter shall prevail to the extent of any inconsistency between these terms and conditions and the framework agreement.

**2. GROUP SERVICE**

The Freight Forwarder may elect to perform all or any part of the Freight Forwarding Services, alternatively, it may procure that any member of the Schenker group of companies or third parties do so, subject to the terms and conditions contained herein.

**3. INSURANCE**

- 3.1. No insurance will be effected by the Freight Forwarder, except upon express instructions given in writing by the Customer.
- 3.2. Unless otherwise agreed in writing, the Freight Forwarder shall not be under any obligation to effect separate insurance on each consignment but may declare it on any open or general policy held by the Freight Forwarder.
- 3.3. In the event that the Customer instructs the Freight Forwarder to procure insurance on its behalf, the Freight Forwarder shall endeavour to procure any such insurance, and the Customer accepts that in doing so the Freight Forwarder shall be obliged to comply with the Financial Advisory and Intermediary Services Act No. 37 of 2002. Insofar as the Freight Forwarder agrees to arrange insurance, the Freight Forwarder acts solely as agent for and on behalf of the Customer.
- 3.4. In the event that any insurer disputes its liability in terms of any insurance policy in respect of any Goods, the Customer concerned shall have recourse against such insurer only and not against the Freight Forwarder.

**4. TRANSPORT DOCUMENTS**

The Freight Forwarder shall be entitled to issue, in respect of the whole or part of any contract for the movement of Goods, a bill of lading (combined transport, through transport, port-to-port) or waybill (sea freight or airfreight). Where a bill of lading or waybill has been issued, these standard trading terms and conditions shall continue to apply except insofar as they conflict with the trading terms and conditions of the bill of lading or waybill concerned. The Freight Forwarder is entitled to charge an additional fee for issuing a bill of lading or waybill.

**5. DEAD FREIGHT**

- 5.1. The Customer shall be liable for the full cost of any services rendered and/or disbursements, expenses, damages, cancellation fees, fines or penalties incurred by the Freight Forwarder in respect of:



- 5.1.1. Any dead freight as a result of a booking cancelled or any late amendment of a booking by the Customer;
- 5.1.2. Goods which are loaded on board a vessel, irrespective of whether the vessel sails or if the Goods are, or must be, transhipped; or
- 5.1.3. Goods which are placed at the Freight Forwarder's disposal but, for whatever reason, are not loaded for carriage.

## 6. SOLAS CONVENTION

- 6.1. In circumstances where the Customer or the Customer's agent is the named shipper (for the purposes of this clause 7, referred to as "the Named Shipper") in any Sea Transport Document as defined in the Sea Transport Documents Act 65 of 2000, in respect of the carriage of the Goods and the Freight Forwarder's Services to the Customer do not include the weighing of the Goods by the Freight Forwarder, the Named Shipper shall strictly comply with the SOLAS Guidelines, and, where applicable, the SOLAS Regulations, as amended, and shall timeously provide the Freight Forwarder with a Written Declaration specifying the verified gross mass of the packed container.
  
- 6.2. In circumstances where either the Customer or the Freight Forwarder weighs the Goods to obtain the verified gross mass of the packed container, the Customer shall have no claim of any nature whatsoever against the Freight Forwarder as a result of or relating to, inter alia:
  - 6.2.1. the container(s) not being loaded onto a vessel due to the Master of the vessel in respect of which the Goods are to be carried, the terminal representative, the South African Maritime Safety Authority, or any other entity having the requisite authority to determine compliance with the SOLAS Guidelines, determines that the SOLAS Guidelines have not been complied with;
  - 6.2.2. the late delivery of a Written Declaration specifying the verified gross mass of the packed container to the Freight Forwarder;
  - 6.2.3. any discrepancy between a verified gross mass of a packed container obtained prior to the container's delivery to the port terminal facility and a verified gross mass of the container obtained by that port facility's weighing of the container;
  - 6.2.4. any penalty, fine, cost or other expense being incurred by the Customer in circumstances where the terminal representative, the South African Maritime Safety Authority, or any other entity having the requisite authority to determine compliance with the SOLAS Guidelines, determines that the SOLAS Guidelines have not been complied with.
  
- 6.3. The Customer, whether or not it is the Named Shipper, indemnifies and holds the Freight Forwarder harmless against all liability, damages, costs, penalties, fines and expenses whatsoever incurred or suffered by the Freight Forwarder (including but not limited to demurrage, detention and storage fees) relating to the Goods, as well as any consequential loss or damages associated with the revocation of the Freight Forwarder's accreditation under the SOLAS Guidelines, arising directly or indirectly from or in connection with the Customer (or the Named Shipper in circumstances where the Customer and the Named Shipper are not the same person) failing to adhere to the provisions of the SOLAS Guidelines to the satisfaction of the Master of the vessel in respect of which the Goods are to be carried, or the terminal representative, or the South African Maritime Safety Authority, or any other entity having the requisite authority to determine compliance with the SOLAS Guidelines.



- 6.4. The Freight Forwarder shall be entitled to raise its usual agency or disbursement fee in circumstances where the Customer's non-compliance with the SOLAS Guidelines or SOLAS Regulations result in inter alia fees, charges, fines, expenses or penalties being incurred and paid by the Freight Forwarder on behalf of the Customer.

## **7. HINDRANCES**

- 7.1. If at any time the Freight Forwarder's performance is or is likely to be affected by any hindrance or risk of any kind (including the condition of the Goods), not arising from any fault or neglect of the Freight Forwarder and which cannot be avoided by the exercise of reasonable endeavours, the Freight Forwarder may abandon the carriage of the Goods under the respective contract and where reasonably possible make the Goods or any part of them available to the Customer at a place which the Freight Forwarder may deem safe and convenient, whereupon delivery shall be deemed to have been made, and the responsibility of the Freight Forwarder in respect of such Goods shall cease.
- 7.2. In any event the Freight Forwarder shall be entitled to the agreed remuneration under the contract and the Customer shall pay any additional costs resulting from the above-mentioned circumstances.

## **8. METHOD AND ROUTE OF TRANSPORTATION**

- 8.1. The Freight Forwarder shall carry out his services according to the Customer's instructions as agreed in writing. If the instructions are inaccurate or incomplete or not according to the contract, the Freight Forwarder may, at the risk and expense of the Customer, act as he deems fit.
- 8.2. Unless otherwise agreed in writing, the Freight Forwarder may without notice to the Customer arrange to carry the Goods on or under deck.
- 8.3. Unless otherwise agreed in writing, the Freight Forwarder may, upon reasonable efforts to inform the Customer, choose or substitute the means, route and procedure to be followed in the handling, stowage, storage and transportation of the Goods.

## **9. TEMPERATURE CONTROLLED GOODS**

- 9.1. The Customer shall not, without giving prior written notice to the Freight Forwarder of a temperature range to be maintained and the nature of the Goods, deliver for transportation any Goods that require specific temperature control.
- 9.2. Where a temperature-controlled container has been packed by the Customer, or a third party on its behalf, the Customer undertakes that:
- 9.2.1. the Goods have been appropriately pre-cooled or pre-heated;
  - 9.2.2. the Goods have been properly packed into the container; and
  - 9.2.3. the container's thermostatic controls have been properly set.
- 9.3. The Freight Forwarder shall not be liable for any damage or loss to the Goods which is caused by the Customer's failure to comply with this clause or applicable law.



## PART II. THE FREIGHT FORWARDER'S LIABILITY

### 10. THE FREIGHT FORWARDER'S LIABILITY (EXCEPT AS PRINCIPAL)

#### 10.1. Basis of Liability

##### 10.1.1. The Freight Forwarder's duty of care

The Freight Forwarder is liable if he fails to exercise due diligence and take reasonable measures in the performance of the Freight Forwarding Services, in which case he, subject to clause 12, shall compensate the Customer for loss of or damage to the Goods as well as for direct financial loss resulting from a breach of his duty of care.

##### 10.1.2. No liability for third parties

The Freight Forwarder is not liable for acts and omissions by third parties, such as, but not limited to, Carriers, warehousemen, stevedores, port authorities and other freight forwarders, unless he himself has failed to exercise due diligence in selecting or instructing such third parties.

#### 10.2. The Freight Forwarder's liability as Principal

##### 10.2.1. The Freight Forwarder's liability as Carrier

- a. The Freight Forwarder is subject to liability as principal not only when he actually performs the carriage himself by his own means of transport (performing Carrier), but also if, by issuing his own transport document, he has made an express or implied undertaking to assume Carrier liability (contracting Carrier).
- b. However, the Freight Forwarder shall not be liable as Carrier if the Customer has received a transport document issued by a person other than the Freight Forwarder acting as an agent for the Carrier.

##### 10.2.2. The Freight Forwarder's liability as principal for other services

With respect to services other than the carriage of Goods such as, but not limited to, storage, handling, packing or distribution of the Goods, as well as ancillary services in connection therewith, the Freight Forwarder shall be liable as principal:

- a. when such services have been performed by himself using his own facilities or employees; or
- b. if an authorised director of the Freight Forwarder has made an express undertaking, in writing, to assume liability as principal.

##### 10.2.3. The basis of the Freight Forwarder's liability as principal

If the Freight Forwarder is liable as principal, he shall, subject to clause 11, be responsible and liable for the acts and omissions of third-parties he has engaged for the performance of the contract of carriage or other services in the same manner as if such acts and omissions were his own and his rights and duties shall be subject to the provisions of the law applicable to the mode of transport or service concerned, as well as the additional conditions expressly agreed or, failing express agreement, by the usual conditions for such mode of transport or services.

**11. EXCLUSIONS, ASSESSMENT AND MONETARY LIMITS OF LIABILITY****11.1. Exclusions**

The Freight Forwarder shall in no event be liable for:

- 11.1.1. Valuables or Dangerous Goods unless the value is declared as such to the Freight Forwarder prior to the Goods having been delivered into the actual custody of the Freight Forwarder or at the time of the conclusion of the contract, whichever is earlier;
- 11.1.2. loss following from delay unless expressly agreed in writing;
- 11.1.3. indirect or consequential loss such as, but not limited to, loss of profit and loss of market;
- 11.1.4. loss of or damage to the goods due to inherent defect of the Goods;
- 11.1.5. acts or omissions of the Customer, its agents or any third party that the Customer employs;
- 11.1.6. improper packing or marking of the Goods, unless the Freight Forwarder is liable as principal for such services.

**11.2. Assessment of compensation**

The value of the Goods shall be determined according to the current commodity exchange price or, if there is no such price, according to the current market price or, if there is no commodity exchange price or current market price, by reference to the normal value of the Goods of the same kind and quality.

**11.3. Monetary Limits****11.3.1. Loss of or damage to the Goods**

Notwithstanding the provisions of clause 10.2.3, the Freight Forwarder shall not be or become liable for any loss of or damage to the Goods in an amount exceeding the total amount of 666.67 SDR per package or 2 SDR per kilogram of the Goods damaged or lost unless a larger amount is recovered from a person for whom the Freight Forwarder is responsible. If the Goods have not been delivered within ninety consecutive days after the date when the Goods ought to have been delivered, the Customer may, in the absence of evidence to the contrary, treat the Goods as lost.

**11.3.2. Limitation of liability delay**

If the Freight Forwarder is liable in respect of loss following from delay, such inability shall be limited to an amount not exceeding the remuneration relating to the service giving rise to the delay.

**11.3.3. Other type of loss**

11.3.3.1 Notwithstanding the provisions of clause 10.2.3, the Freight Forwarder's liability for any type of loss not mentioned in clauses 11.3.1 and 11.3.2 shall not exceed the total amount of 36'000 SDR for each incident unless a larger amount is received from a person for whom the Freight Forwarders is responsible.

11.3.3.2 In the event that the Customer requests that the liability of the Freight Forwarder should not be governed by the limits in these standard trading terms and conditions, then written notice thereof must be given to and received by the Freight Forwarder 5 (five) business days before any Goods or documents are entrusted to or delivered into the control of the Freight Forwarder, together with a statement of the value of the Goods.

11.3.3.3 Upon receipt of any such notice, the Freight Forwarder, represented by a duly authorised director, may in its sole and absolute discretion agree in writing to its liability being increased to a maximum sum equivalent to the sum stated in the notice, in which case it shall be entitled to effect special



insurance to cover its maximum liability and the party giving the notice shall be deemed, by so doing, to have agreed and undertaken to pay the Freight Forwarder the sum of the premium payable by the Freight Forwarder for such insurance. If the Freight Forwarder does not so agree, the normal limits contained in these standard trading terms and conditions shall apply.

## **12. NOTICE OF DAMAGE OR LOSS**

- 12.1. Unless notice of loss of or damage to the Goods, specifying the general nature of such loss or damage is given in writing to the Freight Forwarder by the person entitled to receive the Goods when they are handed over to him, such handing over is prima facie evidence of the delivery of the Goods in good order and condition.
- 12.2. Where such loss or damage is not apparent, the same prima facie effect shall apply if notice in writing is not given within 7 calendar days after the day when the Goods were handed over to the person entitled to receive them.
- 12.3. With respect to all other loss or damage, any claim by the Customer against the Freight Forwarder arising in respect of any service provided for the Customer or which the Freight Forwarder has undertaken to provide shall be made in writing and notified to the Freight Forwarder within 14 calendar days of the date upon which the Customer became or should have become aware of any event or occurrence alleged to give rise to such claim.
- 12.4. Any claim not made and notified as aforesaid shall be deemed to be waived and absolutely barred except where the Customer can show that it was impossible for him to comply with this time limit and that he has made the claim as soon as it was reasonably possible for him to do so.

## **13. TIME BAR**

- 13.1. The Freight Forwarder shall be discharged of all liability unless suit is brought within 9 calendar months after the delivery of the Goods, or the date when the Goods should have been delivered, or the date when failure to deliver the Goods would give the consignee the right to treat the Goods as lost. The Freight Forwarder may, on written request by the Customer and if agreed to by the Freight Forwarder, extend such period in writing.
- 13.2. With respect to any other loss other than loss of or damage to the Goods, the 9 (nine) months period shall be calculated from the time when the failure of the Freight Forwarder giving right to the claim occurred.

## **14. APPLICABILITY TO ACTIONS IN DELICT OR OTHERWISE**

These standard trading terms and conditions apply to all claims against the Freight Forwarder whether the claim be founded in contract or in delict or otherwise.

## **15. LIABILITY OF SERVANTS AND OTHER PERSONS**

These standard trading terms and conditions apply whenever any claim is made against a servant, agent or other person the Freight Forwarder engaged for the performance of the Freight Forwarding Service (including any independent contractor) whether such claims are founded in contract, delict or otherwise, and the aggregate liability of the Freight Forwarder and such servants, agents or other persons shall not exceed the limit applicable to the service concerned as expressly agreed between the Freight Forwarder and the Customer or following from these standard trading terms and conditions.

**PART III. THE CUSTOMER'S OBLIGATIONS AND LIABILITY****16. UNFORESEEN CIRCUMSTANCES**

In the event that the Freight Forwarder, in case of unforeseen circumstances, acts in the best interest of the Customer and extra costs and charges are incurred, the Customer will be liable for these extra costs and charges.

**17. PAYMENT**

17.1. Unless otherwise specifically agreed by the Freight Forwarder in writing, the Customer shall pay the Freight Forwarder in cash, by way of electronic funds transfer, all sums due to the Freight Forwarder, without deduction or set-off and payment shall not be withheld or deferred on account of any counterclaim or non-performance which the Customer may allege.

17.2. In the event that the Customer has not paid the entire sum due by the due day (as stipulated in the Customer's credit application), then the entire sum in respect of all Freight Forwarding Services rendered by the Freight Forwarder to the Customer and funds disbursed by the Freight Forwarder on behalf of the Customer (whether or not these funds are related to the transaction in respect of which the Customer has defaulted), shall become immediately due, owing and payable to the Freight Forwarder.

17.3. In addition, the Customer shall be liable for the payment of interest, calculated daily and compounded monthly at the prime rate of interest plus 2%, in respect of all such sums.

17.4. In the event of the Customer breaching any of its obligations and/or failing to timeously make payment of any sum to the Freight Forwarder, the Customer agrees to pay, and shall be liable to pay, all legal costs on the attorney and own client scale, including collection charges and tracing agents fee incurred by the Freight Forwarder in recovering any such sum from the Customer.

17.5. The Freight Forwarder may in its sole discretion appropriate any payments made by the Customer to any principal debt owed by the Customer to the Freight Forwarder, irrespective of when it arose, or to interest only, or to legal or other costs, or to any such combination of principal debt, interest and costs as it may in its sole discretion determine, irrespective of any purported allocation or appropriation being made by the Customer at the time of payment or at any other time.

17.6. A certificate of balance signed by the Freight Forwarder's Chief Executive Officer or Chief Financial Officer stating the indebtedness of the Customer to the Freight Forwarder or certifying that certain services were rendered and/or funds disbursed and/or Goods delivered, shall be prima facie evidence of the Customer's indebtedness to the Freight Forwarder or of the rendering of such services, disbursement of such funds or delivery of such Goods.

17.7. The Freight Forwarder may, at any time, withdraw any credit facilities afforded to the Customer without prior notice and the nature and extent of such facilities shall at all times be at the Freight Forwarder's sole discretion, and the entire sum owed to the Freight Forwarder at the time of such withdrawal shall immediately become due, owing and payable to the Freight Forwarder.

17.8. If any Customer acted as agent on behalf of another party, and that other party fails to pay any sums due to the Freight Forwarder, the Freight Forwarder may recover such sums directly from the Customer and the Customer agrees to pay such sums on demand.



- 17.9. The Freight Forwarder shall under no circumstances be precluded from raising a debit and obtaining payment in respect of any fee or disbursements due to it notwithstanding that a previous debit or debits, whether excluding or partly excluding the items subsequently requiring to be charged or recovered, had been raised and whether or not any notice had been given that further debits were to follow.

#### **PART IV. GENERAL PROVISIONS**

##### **18. LIEN AND PLEDGE**

- 18.1. All Goods and documents relating to the Goods, including but not limited to, bills of lading, waybills (whether sea freight or airfreight) and import permits as well as all refunds, repayments, claims and other recoveries shall be subject to a special and general lien and pledge, either for sums due in respect of such Goods or for other sums due to the Freight Forwarder from the Customer, sender, Owner, consignee, importer or the holder of the bill of lading or their agents, if any.
- 18.2. If any sums due to the Freight Forwarder are not paid within 7 calendar days after notice has been given to the person from whom the sums are due that such Goods or documents are being detained, they may be sold by auction or by private treaty without further notice to the Customer, Owner or consignee, at the sole discretion of the Freight Forwarder and at the expense of such person and the net proceeds will be applied towards the satisfaction of such indebtedness.

##### **19. FORCE MAJEURE**

- 19.1. If either Party is prevented or restricted from carrying out all or any of its obligations under these terms and conditions by a Force Majeure event, the Party so affected shall, to the extent so prevented, be relieved of its obligations hereunder (excluding payment obligations) during the period of such event, provided always that written notice of the occurrence constituting the Force Majeure event is given by the affected Party within 2 (two) business days of knowledge of the Force Majeure event.
- 19.2. The Freight Forwarder shall not be liable for any delay, any failure in the performance of the Freight Forwarding Services or any rate increase if and to the extent that such delay, failure or rate increase is caused by a Force Majeure event.
- 19.3. The Customer shall reimburse the Freight Forwarder for any increase in costs actually incurred by the Freight Forwarder as a result of a Force Majeure event, alternatively, for any increase in costs in excess of such percentage as determined by the Freight Forwarder in its sole discretion, relating to resources and/or any activity supporting the Freight Forwarding Services, such as but not limited to, delays, changes, the promulgation of new laws, regulations or directives, reductions in capacity, cancellations or any other type of disruption in the supply chain not known to the Freight Forwarder at the conclusion of these terms and conditions.
- 19.4. The Parties agree that should the Force Majeure event last more than 2 (two) consecutive calendar months, the person which has not invoked Force Majeure to excuse any non-performance of its obligations may terminate these terms and conditions by giving written notice to the other party.





19.5. The Freight Forwarder shall not be liable for any delay, any failure in the performance of the Freight Forwarder services or any rate increase if and to the extent that such delay, failure or rate increase is caused by a Force Majeure event.

19.6. The Customer shall reimburse the Freight Forwarder for any increase in costs actually incurred by the Freight Forwarder for resources and/or activities supporting the Freight Forwarder services due to a Force Majeure event, including but not limited to delays, changes, reductions in capacity, cancellations or any other type of disruption in the supply chain or new laws not known to the Freight Forwarder at the conclusion of this contract.

## 20. NON-VARIATION

No variation of these trading terms and conditions, including this clause, shall be binding on the Freight Forwarder unless it is in writing and signed by a duly authorised director of the Freight Forwarder, which director must have the actual authority to vary these terms and conditions. Any purported variation or alteration of these trading terms and conditions otherwise than described above shall be of no force and effect.

## 21. NON-WAIVER

No extension of time or waiver or relaxation of any of these trading terms and conditions shall operate as an estoppel against the Freight Forwarder or the Customer in respect of its rights under these trading terms and conditions and shall not preclude the Freight Forwarder or the Customer from thereafter exercising its rights strictly in accordance with these trading terms and conditions.

## 22. LAW AND JURISDICTION

These trading terms and conditions and all agreements entered into between the Freight Forwarder and the Customer pursuant thereto shall be governed by and construed in accordance with the laws of the Republic of South Africa. The Customer hereby consents to the non-exclusive jurisdiction of the High Court of South Africa, South Gauteng Local Division, Johannesburg exercising its Admiralty Jurisdiction.

## 23. NOTICES

23.1. The Customer's physical address as set out in the business application form or, failing which, on the Customer's most recently reviewed letterhead or, failing which, the Customer's registered or physical address, shall constitute the Customer's nominated address for all purposes in connection with these trading terms and conditions and any agreement entered into by the Customer and the Freight Forwarder, unless the Customer provides an alternative address by written notice to the Freight Forwarder.

23.2. Notices given to the above addresses or by electronic mail to the correct electronic mail address shall be deemed to have been duly given on delivery, if delivered by hand; or on dispatch, if sent by electronic mail.

## 24. OWNER'S RISK

All handling, packing, loading, unloading, warehousing and transporting of Goods by or on behalf of or at the request of the Freight Forwarder are carried out at the sole risk of the Customer and/or Owner, and the Customer indemnifies the Freight Forwarder accordingly.

**25. SPECIAL CONDITIONS RELATING TO ELECTRONIC DATA**

- 25.1. Notwithstanding the provisions of any legislation or other law regulating electronic communications and transactions, the Freight Forwarder shall only be deemed to have received electronic data and/or messages when such electronic data and/or messages have been retrieved, processed and read by the addressee.
- 25.2. Under no circumstances whatsoever (including negligence on the part of the Freight Forwarder or its employees) shall the Freight Forwarder be liable for any loss or damage arising from or consequent upon the provision by the Freight Forwarder to the Customer, in whatever manner and/or form, of incorrect information, including electronically communicated information or data, where such incorrect information or data has by been generated by and provided to the Freight Forwarder by any person with whom the Freight Forwarder conducts business, and/or any other third party.
- 25.3. The Freight Forwarder shall furthermore under no circumstances whatsoever be liable for any loss or damage arising from or consequent upon any failure and/or malfunction, for whatever reason, and regardless of negligence in whatever degree on the part of the Freight Forwarder, of the Freight Forwarder's computer systems and/or software programs provided and/or operated by the Freight Forwarder and/or by any person with whom the Freight Forwarder conducts business, and/or any third party, and which systems shall include the Freight Forwarder's electronic automated information service provided to its Customers.

**26. PROTECTION OF PERSONAL INFORMATION ACT 4 OF 2013**

The Freight Forwarder and the Customer will ensure that they have due regard to generally accepted information security practices and procedures which may apply to them, in terms of the Protection of Personal Information Act 4 of 2013, as amended, or any applicable law and will implement reasonable measures to secure the data and personal information hosted by them.

**27. APPLICABILITY TO ACTIONS IN DELICT OR OTHERWISE**

These standard trading terms and conditions apply to:

- 27.1. All claims against the Freight Forwarder whether the claim be founded in contract, delict or otherwise.
- 27.2. All claims that are made against a servant, agent or other person engaged for the performance of the Freight Forwarding Services (including any independent contractor), whether such claims are founded in contract, delict or otherwise, and the aggregate liability of the Freight Forwarder and such servants, agents or other persons shall not exceed the monetary limits set forth herein or as expressly agreed between the Freight Forwarder and the Customer.

**28. INFORMATION**

The Customer shall be deemed to have guaranteed to the Freight Forwarder at the time the Goods were taken in charge by the Freight Forwarder of the accuracy of all particulars relating to the general nature of the Goods, their marks, number, weight, volume and quantity and, if applicable, to the dangerous character of the Goods, as furnished by him or on his behalf.

**29. DUTY OF INDEMNIFICATION****29.1. General duty of indemnification**

The Customer shall indemnify and hold the Freight Forwarder harmless in respect of any claims of a General Average nature which may be made on him and shall provide such security as may be required by the Freight Forwarder in this regard.

**29.2. Duty of indemnification in respect of General Average**

The Customer shall indemnify and hold the Freight Forwarder harmless in respect of any claims of a General Average nature which may be made on him and shall provide such security as may be required by the Freight Forwarder in this regard.

**30. THE CUSTOMER'S LIABILITY**

The Customer shall indemnify and hold the Freight Forwarder harmless for all loss or damage, penalties, fines, costs, expenses and official charges incurred resulting from the Customer's inaccurate or incomplete information or instructions; or the handing over by the Customer (or any person acting on his behalf) to the Freight Forwarder (or to any other person to whom the Freight Forwarder may become liable), of Goods having caused death or personal injury, damage to property, environmental damage or any other type of loss.

**31. TRADE COMPLIANCE**

- 31.1 The Parties agree that export, import and re-export of goods and/or the provision of related services may be subject to trade laws and regulations validly enacted by a competent authority ("Trade Regulations"), which may inter alia include EU and U.S. export laws and regulations. Each Party warrants and represents that, in the fulfilment of its obligations hereunder it complies and will continue to comply with all Trade Regulations applicable to it, which may include, but not be limited to sanctions requirements, antiboycott restrictions and restricted party screening in export, customs, import and in-country activities.
- 31.2 The Customer is responsible for determining whether Customer's goods are subject to such Trade Regulations and will obtain all necessary licenses, approvals, authorisations and/or exemptions thereto and will provide the Freight Forwarder with all relevant information the Freight Forwarder may reasonably request for review of compliance with Trade Regulations prior to Freight Forwarder's performance of respective Services.
- 31.3 With respect to Services related to countries for which U.S. embargos have been imposed or are imposed in the future, Customer specifically confirms that (i) these shipments will not contain U.S. origin products or products with a U.S. content, except in accordance with an applicable authorisation from competent U.S. government authorities and (ii) these shipments and/or other services related to such countries will have no U.S. connections, unless such shipments and/ or services are authorised by competent U.S. government authorities.
- 31.4 The Freight Forwarder reserves the right to suspend provision of Services without any liability in cases where any trade restrictions apply, are newly imposed/ re-imposed, or amended.
- 31.5 Customer acknowledges that Freight Forwarder is not obligated and will not provide services relating to goods for internal repression, ITAR goods and/or military goods and warrants to not hand over or have handed over such goods to Freight Forwarder for the provision of services.



### 32. NON-SOLICITATION

Neither Party will, for the duration of these standard terms and conditions and for a period of 12 (twelve) months after its termination or expiration, whether directly or indirectly, induce or solicit any employee of the other party to terminate its employment with such party, except with the prior written consent of such other party.

### 33. DEFINITIONS

- 33.1 **Carrier** means any person actually performing the carriage of the Goods with his own means of transport (performing Carrier) and any person subject to carrier liability as a result of an express or implied undertaking to assume such liability (contracting carrier).
- 33.2 **Customer** means any person having right or obligations under the contract of Freight Forwarding Services concluded with the Freight Forwarder as a result of his activity in connection with such a service.
- 33.3 **Dangerous Goods** means Goods which are officially classified as hazardous as well as Goods which are or may become dangerous, flammable, radioactive, noxious or damaging by nature.
- 33.4 **Freight Forwarding Services** means services of any kind relating to the carriage (performed by single mode or multimodal transport means), consolidation storage, handling, packing or distribution of the Goods as well as ancillary and advisory services in connection therewith, including but not limited to, customs and fiscal matters, declaring the Goods for official purposes, procuring insurance of the Goods and collecting or procuring payment or documents related to the Goods. Freight Forwarding Services are also include logistical services with modern information and communication technology in connection with the carriage, handling or storage of the Goods, and the total supply chain management.
- 33.5 **Freight Forwarder** means the person concluding the contract of Freight Forwarding Services with a customer.
- 33.6 **Force Majeure** means Act of God, any natural disaster, adverse weather conditions, diseases, epidemic, pandemic, plague, quarantine restrictions, governmental action, war terrorism, riot, civil commotion, strike, industrial action, trade or economic sanctions, or any other circumstance beyond a person's reasonable control.
- 33.7 **Goods** means any property including live animals as well as containers, pallets or similar articles of transport packaging not supplied by the Freight Forwarder.
- 33.8 **In writing** includes written information generated, sent, received or stored by electronic, magnetic, optical or similar means, including but not limited to electronic data, interchange, telegram, telefax, or electronic mail, if the information is accessible so as to be available so as to be able for subsequent reference.
- 33.9 **Mandatory Law** means any statutory law the provisions of which cannot be departed from by contractual stipulations to the detriment of the Customer.
- 33.10 **SDR** means a Special Drawing Right as defined by the International Monetary Fund.



- 33.11 **SOLAS Guidelines** means the South African Maritime Safety Authority Marine Notice No. 30 of 2016 dated 2 August 2016, (Guidelines on the implementation of SOLAS Vi Regulation 2 Amendment: Verification of the Gross Mass of Packed Containers), as may be amended, substituted, updated or verified from time to time, mutatis mutandis, read the SOLAS Regulations.
- 32.12 **SOLAS Regulations** means the International Maritime Organization Guideline Regarding the Verified Gross Mass of a Container Carrying Cargo (MSC1/Circ.1475) dated 9 June 2014.
- 32.13 **Valuables** means bullion and precious metal objects, precious stones, bank notes, coins, cheques credit notes, bonds, negotiable documents, information technology/computer software and hardware, securities, jewellery, works of art or antiques (except where part of a household and personal effects movement) and similarly properties whose value clearly exceeds the regular value of ordinary goods or merchandise.