

## STANDARD TERMS AND CONDITIONS OF TRADE

### Contents

1. DEFINITIONS & INTERPRETATIONS.....	2
2. GENERAL.....	3
3. FINANCIAL INFORMATION .....	3
4. ESTIMATES/QUOTATIONS .....	4
5. PAYMENT .....	5
6. INSURANCE .....	6
7. DESCRIPTION OF GOODS .....	7
8. DELIVERY AND COLLECTIONS OF GOODS .....	8
9. LOADING / OFF-LOADING .....	8
10. ABNORMAL .....	9
11. SUB-CONTRACTING .....	9
12. LIMITATION OF COMPANY'S LIABILITY .....	9
13. PERISHABLE GOODS .....	11
14. WAREHOUSING/STORAGE .....	12
15. LIEN .....	12
16. DISCLOSURE OF INFORMATION .....	13
17. BREACH .....	13
18. JURISDICTION .....	14
19. WHOLE AGREEMENT .....	14
20. NO VARIATION .....	14
21. NON-WAIVER .....	14
22. SEVERABILITY.....	14
23. NOTICES .....	15
24. SPECIAL CONDITIONS RELATED TO ELECTRONIC DATA .....	15
25. OWNER'S RISK / LIMITATION OF THE COMPANY'S LIABILITY .....	15

## STANDARD TERMS AND CONDITIONS OF TRADE

### 1. DEFINITIONS & INTERPRETATIONS

Unless the contrary is clearly indicated, the following words and/or phrases shall have the following meaning:

- 2.1. **"Agreement"** shall refer to the Company's credit application including these standard terms and conditions of trade, Contract of Service, quotes/estimates and any addendums thereto and shall also include any reference to "terms and conditions";
- 2.2. **"Carrier and/or warehouseman (as the case may be)"** means any transporter, whether by road, rail, sea or air, or warehouseman with whom the Company contracts whether as principal or agent, to move or store goods, provide services, and references to Client or "third parties" includes the Carrier and/or warehouseman;
- 2.3. **"Client"** means the party identified in the first page of the credit application and who is applying for credit facilities herein, to whom the services are rendered and includes any reference to a recipient or consignee as an agent of the client;
- 2.4. **"COD"** means 'Cash on Delivery';
- 2.5. **"Company"** means TSI Central Station (Pty) Ltd and/or its lawful agents, and all of its subsidiary and associated companies, together with each of their successors in title, or assigns;
- 2.6. **"Company"** means TSI Central Station (Pty)Ltd and all of its subsidiary and associated companies, together with each of their successors in title, or assigns;
- 2.7. **"Confidential information"** means any information disclosed for purposes of this agreement and shall include, without limitation, any credit records, financial, commercial, trade secrets, systems, processes and business information generally or any information of whatsoever nature associated with the discloser;
- 2.8. **"Contract of service"** means any instruction in any format issued by the Client to the Company from time to time, including, but not limited to, an acceptance of any quotation or estimate issued by the Company;
- 2.9. **"Days"** means ordinary calendar days; and
- 2.10. **"Goods"** means any goods handled, transported, stored, warehoused or dealt with by or on behalf of the Company at the instance of the Client or which come under the control of the Company or its authorised agents on the instruction of the Client for purposes of this agreement. It also means any goods of whatsoever nature handled, transported or dealt with by or on behalf of or at the instance of the Company or which come under the control of the Company or its agents, servants or nominees on the instructions of the Carrier or the Client, and includes any type of container, transportable tank, flat pallet, package or any other form of covering, packaging, container or equipment used in connection with or in relation to such goods;
- 2.11. **"Owner"** means the owner of the goods and any other person who has any risk in and to the goods and any person who acquires any other interest, financial or otherwise, therein and to whom Services are provided;
- 2.12. **"Parties"** means the Company, the Carrier or the Client;
- 2.13. **"Sea Transport Document"** means those documents defined in Section 1(a) – (e) inclusive of the Sea Transport Documents Act, 2000 as amended from time to time;
- 2.14. **"Services"** means those activities and services of any kind provided by the Company including, but not restricted to, the issuing of sea and other transport documents, collecting freight, the release of goods against presentation of appropriate documents and information, the carriage, consolidation, storage, handling, packing, warehousing or distribution of goods as well as the clearing and forwarding of a

Clients' goods and any related and ancillary services, including the giving of advice and information relating thereto.

- 2.15. **STC's**" means these standard trading terms and conditions.
- 2.16. **"Warehousing Services"** means all services provided by the Company including , but not limited to, the packing, unpacking, palletising or de-palletising, consolidating, sorting, storing ( whether in the open or otherwise), loading, unloading, warehousing , transport or other handling of goods and the giving of advice and information relating thereto;

## 2. GENERAL

- 2.1 The terms and conditions as set out herein, shall govern the relationship between the Company and the Client in respect of each and every Contract of Service.
- 2.2 Every undertaking to convey goods is subject to the condition that the Company has available a suitable mode of transport at the necessary time.
- 2.3 The Company shall be entitled at any time by notice to the Client, to cancel or resile from any quotation or Contract of Service in the circumstances where it becomes impracticable or uneconomical for the Company to carry out the services and the Client shall have no claim whatsoever against the Company for any loss that the Client may incur as a result of such cancelation.
- 2.4 In the event of any emergency arising over which the Company has, in its opinion, no reasonable control, the Company reserves the right to cancel the agreement, and should any such emergency arise during transit of goods the Company shall have the right to deliver to the nearest reasonable destination, or to make use of any reasonable alternative route. If arising out of such emergency additional mileage has to be travelled, the Company shall be entitled to reasonable payment in respect thereof. In such cases the Company shall inform the Client accordingly and such delivery shall be in compliance by the Company with their obligations under Contract of Service. The Company shall be entitled at its discretion to transfer goods to which any Contract of Service relates from any vehicle to another and pending such transfer to keep the goods in such a place as the Company deems suitable, and such expenses will be for the Client's account.

## 3. FINANCIAL INFORMATION

- 3.1. The Client understands and acknowledges that the Company has concluded this agreement by virtue of the representation contained in the financial information provided by the Client. The Client furthermore acknowledges its financial position may vary from time to time.
- 3.2. For purposes of assessing the Client's financial means, the Client undertakes to provide the Company, prior to conclusion of this agreement, with the following financial information:
  - 3.2.1. Its latest audited financial statement;
  - 3.2.2. Copies of all its bank statement for the last 6 (six) months;
  - 3.2.3. Latest tax return/s;
  - 3.2.4. A list of its outstanding debtors and creditors;
- 3.3. The Company reserves the right to decline the Client's application for credit should the Client fail to provide the Company with the financial information referred to in clause 3.2 within 48(forty-eight) hours from being requested to do so.

- 3.4. The Company is entitled to review the Client's financial position in the event that the Client requests an increase to its credit limit. The provisions of 3.3. shall apply *mutatis mutandis* in the event of a request to increase credit limit.
- 3.5. Should the Company be of the opinion that the variation in the Client's financial position will affect the current credit limit granted to the Client, the Company is obliged to inform the Client in writing of its intention to decrease the credit limit and further decrease the credit limit without any further notice to the Client.

#### 4. ESTIMATES/QUOTATIONS

- 4.1. All estimates are subject to the Company's terms and conditions which should be read in conjunction with the additional terms and conditions which are applicable to the specific estimate furnished to the Client.
- 4.2. All estimates, quotations and Contracts of Service are subject to revision without notice having regard to changes in currency, exchange rates and upward movements in amounts payable by or on behalf of or at the instance of the Company to third parties including, without limitation, freight, surcharges, insurance premiums, equipment rental and labour which charges, and upward movements take place after the estimate/quotation. Any revision of rates as aforesaid will be commensurate with the change in the currency, exchange rate or the increase in such amounts payable. Any such increase shall, failing agreement between the parties, be determined by the then auditors of the Company, or any other auditors nominated by the Company, who in such determination shall act as experts and not as arbitrators and whose decision shall be final and binding on the parties.
- 4.3. Where a fee is based on the weight of the goods, the fee may be calculated, at the sole discretion of the Company, according to the higher of actual or volumetric weight. The Company shall have the right to re-weigh and to re-measure any goods and to correct any under-declaration of weight.
- 4.4. All rates quoted by the Company are exclusive of Value Added Tax (V.A.T.). Unless otherwise requested, all goods transported will be exclusive of Goods-in-Transit insurance and shall be subject to such goods being transported on a one-stop basis and the Client shall be liable for additional reasonable charges, should the Company be obliged to make further stops in the loading and off-loading of such goods.
- 4.5. Transporting of goods by road, the prices quoted are based on today's prices and will be subject to a minimum payload weight of 24 000 kg on a Tri-Axle truck tractor trailer and 32 000 kg on a super link truck tractor trailer and to revision prior to the conveyance of the item.
- 4.6. Each estimate will remain valid as per the notes on the estimate/quotation pending acceptance.
- 4.7. Estimates based on dimensions and weights furnished by the Client shall be subject to alteration in the event of actual dimensions and weights proving in excess of those stated. Where necessary the Company may delay the collection of a load until abnormal permits have been obtained or amended accordingly. In the event of incorrect dimensions and weights having been furnished to the Company, the Company shall be at liberty to resile from any agreement concluded with the Client.
- 4.8. Estimates in respect of out of gauge containers are subject to additional costs depending on actual measurements and estimates in respect of any container exceeding 24 Tons Gross weights (including Tare) are also subject to additional costs depending on actual weight. Rates are quoted on a load-by-load basis.
- 4.9. An additional amount will be charged in the event of a 6-meter container being loaded in the centre mount position and moved to the rear end of the trailer for convenience of off-loading (**Repositioning**).
- 4.1 Standing time has been provided for and any estimate given by the Company to the Client, is on the basis that three (3) hours be allowed for loading/offloading a six (6) metre container and four (4) hours

be allowed for loading/offloading a twelve (12) metre trailer. If the time is exceeded, a standard rate will be applicable, that will be no less than 5% (five percent) of the delivery charge with a minimum of R750.00 (five hundred and fifty rand) per hour once the allowed period of time is exceeded.

- 4.2 All quotations or estimates given by the Company shall be valid for 7 (seven) calendar days unless otherwise specified and the company shall be entitled at any time by notice to the Client to cancel, amend or resile from any quotation or estimate in circumstances where it becomes impracticable or uneconomical for the Company to carry out the contract at the quoted or estimated rate and the Client shall have no claim of any nature whatsoever against the Company for any loss that the Client might incur as a result of the Company cancelling, amending or resiling from the quotation or estimate.
- 4.3 Without in any way limiting the provisions of clause 4.11 all quotations, estimates and agreements are subject to revision without notice, having regard to errors in the accurate conversion of exchange rates, changes in currency exchange rates and upward movements in amounts payable by or on behalf of, or at the instance of the Company to third parties, including, without limitation, freight, surcharges, insurance premiums, equipment rental and labour which charges and upward movements take place after quotation. Any revision of rates as aforesaid will be commensurate with the change in the currency exchange rate or the increase in such amounts payable. Any such increase shall, failing agreement between the parties, be determined by the then auditors of the Company or any other auditors nominated by the Company, who in such determination shall act as experts and not as arbitrators and whose decision shall be final and binding on the parties.
- 4.4 Should the client cancel a confirmed booking / order or instruction after the Company has placed the order with a third party, the Client agrees to pay any costs relating to the Cancelling of such booking, order or instruction, the company will invoice the costs related to such cancellation by the Company without further notice to the Client.
- 4.5 **VERBAL or ORAL INSTRUCTIONS**
- 4.5.1 The Client's instructions to the Company shall be precise, clear, and comprehensive and in particular but without limitation, shall cover any valuation or determination issued by the Client in respect of any goods to be dealt with by or on behalf of or at the request of the Company. Instructions given by the Client shall be recognised by the Company as valid only if timeously given specifically in relation to a particular matter in question. Oral instructions, standing or general instructions or instructions given late, even if received by the Company without comment, shall not in any way be binding upon the Company, but the Company may act thereupon in the exercise of its absolute discretion.

## 5. PAYMENT

- 5.1 The Client shall punctually pay to the Company the amounts due to it in terms of the statement of account/invoices presented to the Client.
- 5.1.1 All goods exported loads by road, require a fifty percent deposit (50%) prior to the load departing for its destination.
- 5.2 All payments with respect to approved accounts shall be made within thirty (30) days from presentation of the statement of account/invoices to the Client. In the case of Clients with no approved accounts, all payments shall be made upon delivery of the goods.
- 5.3 Payment is strictly C.O.D. if credit has not been approved. Once credit is approved, payments are due within thirty (30) days of date of statement of account/invoices.
- 5.4 All payments due in terms of the statement of account/invoices presented shall be made without deductions or set-off of any kind and shall be free of any exchange, bank costs and other charges.

- 5.5 The Client shall not be entitled to withhold any payment(s) by reason of the fact that goods are defective, have been damaged or cannot be used, or have been stolen, and in the event of any dispute arising between the parties, the Client shall, pending the settlement of or a decision in such dispute, continue to pay all amounts payable in terms of the invoices presented on their due dates for payment.
- 5.6 The Client shall be liable for payment of any duties, taxes, imposts, levies, deposits or outlays of whatsoever nature which may be levied by or payable to the authorities, intermediaries or other parties at any port or place 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 incurred, sustained or paid by the Company in connection therewith.
- 5.7 If any amount due in terms of this agreement is not paid when due, the Company may, without prejudice to such other rights as may accrue, charge interest on all overdue payments at prime interest rate of 3.50% from due date to date of payment.
- 5.8 Should the Client fail to make payment on due date, the full amount outstanding, including interest, shall immediately become due and payable to the Company upon demand.
- 5.9 The Company is entitled to retain and be paid all brokerages, commissions, allowances, and other remunerations customarily retained by or paid to shipping or forwarding agents and insurance brokers and shall not be obliged to disclose or account to the Client or principal for any such remuneration received by it from third parties.

## 6. INSURANCE

- 6.1 All goods are transported, handled, stored and/or warehoused at the client's risk.
- 6.2 Where the Client requests for Insurance in writing and the Company agrees to do so, the Company shall endeavour to effect any insurance the Client requests timeously and where the Company agrees to do so, Such insurance will be subject to such exceptions and conditions as may be imposed by the relevant insurance company or underwriter taking the risk and the Company shall not be obliged to obtain separate cover for any risks so excluded. Unless otherwise agreed in writing, the Company shall not be under any obligation to obtain separate insurance in respect of separate consignments but may insure all or any of such consignments under any open or general policy held by the Company from time to time. Should any insurer dispute its liability in terms of any insurance policy in respect of any goods, the Client concerned shall have recourse against such insurer only and the Company shall not have any responsibility or liability whatsoever in relation thereto notwithstanding that the premium paid on such policy may differ from the amount paid by the Client to the Company in respect thereof.
- 6.3 Insofar as the Company agrees to arrange insurance, the Company acts solely as agent for and on behalf of the Client. The provisions of this clause shall inure for the benefit of any financial services provider represented by the Company, or to whom the Client is referred to by the Company, on the basis that any reference to "the Company" shall also be construed as a reference to such financial services provider.
  - 6.3.1 The client will be liable for all excess payable on any insurance claim.
- 6.4 The Company has the facility to offer comprehensive goods in transit insurance, including hi-jacking cover. Unless stated to the contrary in writing, quoted rates exclude insurance and any premiums payable in respect of such insurance shall be for the account of the Client. Should the Client require the Company to insure goods carried, the Company requires a letter from the Client stating the following: -
  - 6.4.1. That the goods carry no form of insurance;
  - 6.4.2. That the Client requires insurance from the ;
  - 6.4.3. The value to which the load must be insured (cost price);

- 6.4.4. The estimate loads per month;
  - 6.4.5. The commodity being carried; and
  - 6.4.6. The letter must be as detailed as possible, showing all variances of the loads. The additional cost per load for insurance will be supplied on presentation of the said letter. In the absence of this letter, the Company is deemed not to have taken out insurance for and on the Client's behalf, and the Client is accordingly deemed to carry its own insurance.
- 6.5 It shall not be obligatory upon the Company to effect insurance on any goods being handled, transported, warehoused or stored by it except upon express instructions given in writing by the Client, and all insurance effected by the Company is subject to the usual exceptions and conditions of the policies of the insurance Company or underwriter taking the risk. The Company shall not be under any obligation to effect a separate insurance on each consignment but may declare each on any open or general policy. Should the insurers dispute their liability for any reason, the insured (i.e., the Client) shall have recourse against the insurers only and the Company shall not be under any responsibility or liability in relation thereto, notwithstanding that the premium upon the policy may not be at the same rate as that charged by the Company or paid to the Company by its Client.
- 6.6 Should the Client decide to utilise the insurance services provided by the Company then, in the event of conflicting provisions between the terms and conditions of this agreement and terms and conditions of the insurance agreement, the terms and conditions of this agreement shall prevail.
- 6.7 The Client acknowledges that should it utilise the insurance services provided by the Company, the Client will be liable in the event of the goods being lost, stolen, damaged, destroyed or any other risk in and to the goods. Should such risk occur whilst the goods are in the custody of the Company or any of its authorised agents, the Company shall immediately notify the Client and where applicable, the insurer.
- 6.8 Where the Client has procured the requisite insurance itself, the risk in and to the goods shall remain with the Client. In the event of the goods being lost, stolen, damaged or destroyed whilst in the custody of the Company or any of its authorised agents, the Company shall immediately notify the Client but is under no obligation to notify the insurer.
- 6.9 In all cases where there is a choice of tariff rates of premium offered by carriers, warehousemen, underwriters or others, depending upon the value declared or the extent of the liability assumed by the carrier, warehousemen, underwriter or other person, it shall be in the entire discretion of the Company as to what declaration, if any, should be made and what liability, if any, should be imposed on the carrier, warehousemen, underwriter or other person, unless express instructions in writing are timeously given by the Client.

## **7. DESCRIPTION OF GOODS**

- 7.1 Unless the Company is given, by or on behalf of the Client at or before the time of loading, a document giving a full description of the goods, no liability for any loss or damage is accepted by the Company . It is incumbent upon the Client to see that nothing required to be moved is left behind.
- 7.2 The Client shall be deemed to be bound by and to warrant to the Company the accuracy of all descriptions, values and other particulars furnished to the Company for customs, consular and other purposes, and they shall be deemed to have indemnified the Company against all losses, damages, expenses and fines arising from any inaccuracy or omission, even if such inaccuracy or omission is not due to any negligence.
- 7.3 The Company shall not be liable under any circumstances for any loss, damage or expense arising from or in any way connected with marks, weights, numbers, brands, contents, quality or description of goods.

- 7.4 The Company shall, upon request, allow the Client a reasonable opportunity to inspect and examine the goods delivered for purpose of ensuring that the goods delivered are as described in the document referred to in clause 7.1 above.
- 7.5 The Company shall not be liable for any goods which, upon the Client's failure to request for inspection and examination, have not been off-loaded from the Company's vehicle.

## **8. DELIVERY AND COLLECTIONS OF GOODS**

- 8.1 If delivery of any goods is not accepted by the Client, at the appropriate time and place, the Company shall be entitled to store the goods or any part thereof, in terms of clause 13 below, at no risk to the Company and at the expense of the Client;
- 8.2 When goods are accepted or dealt with by the Company, upon instructions to collect freight, duties, charges or other expenses, the Client shall remain responsible and/or liable, therefore.
- 8.3 If accepted by the Company, instructions to collect payment upon delivery (i.e., C.O.D) shall be subject to the condition that the Company will be entitled to assume that the party receiving the goods will affect 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.
- 8.4 Unless otherwise agreed, the Client will take delivery from the Company's vehicle. The Company will not be responsible for any loss or damage arising from the loading or off-loading of the vehicles and the Client indemnifies the Company against any claims which may be brought against the Company arising out of such loading, off-loading, and overloading, unsafe loading or out of the nature of any defect in the goods concerned
- 8.5 Nothing contained herein shall be construed as preventing the Company from giving assistance in loading or off-loading the goods on to or from the vehicle where such assistance is customary and practicable, but assistance so given shall be without any liability on the Company's part, and shall be at the sole risk of the Client, as the case may be, who shall indemnify the Company accordingly.
- 8.6 In the event of any unnecessary delays howsoever caused, whether as a result of loading or off-loading or otherwise, the Company reserves the right to charge a per hour fee as set out in clause 4.10.

## **9. LOADING / OFF-LOADING**

- 9.1 The Company is not responsible for the loading and off-loading of cargo, unless prior arrangements have been agreed upon in writing. Should such request be made, this will be entirely at the client's risk and the client fully indemnifies the Company from any loss or damage howsoever caused.
- 9.2 The correct legal dimensions and weight distribution over the axles (truck and trailer) is the responsibility of the Client. Any fines and additional costs resulting from illegal dimensions and/or weight distribution will be for the Client's account. Details of the permissible axle mass loads of vehicles with pneumatic tyres can be found under section 365 of the Road Traffic Act of 1989 (Act no. 29 of 1989).
- 9.3 It shall be the express responsibility of the Client to ensure that: -
  - 9.3.1 All goods loaded shall be in such condition as to enable due off-loading to be freely affected at the point of destination of such loading;
  - 9.3.2 Suitable access and off-loading facilities and personnel will be provided to ensure the due off-loading of the goods at the point of destination and to ensure that the goods are off loaded into the correct tank, vessel, container store or warehouse as the case may be. The Client hereby indemnifies the Company and its service providers and holds them harmless against all costs,



expenses, claims, losses, damages, or injuries to any person or property whatsoever, and whether direct or indirect arising out of or during the course of such loading or off-loading, including any costs, expenses, claims, losses, damages or injuries arising out of the contamination of any goods whatsoever.

- 9.4 The Client is responsible for all containers, which need to be lifted off the vehicle to facilitate unpacking, and the Client is required to make their own arrangements. The costs thereof will be for the Client's account.
- 9.5 Standing time has been provided for and any quotation given by the Company to the Client, is on the basis that three (3) hours be allowed for loading/offloading a six (6) metre container and four (4) hours be allowed for loading/offloading a twelve (12) metre container and any standard rate of 5% five percent of the total transport invoice per hour once the allowed period is exceeded with a minimum of R750.00
- 9.6 Unless stated to the contrary in writing, quoted rates include one loading and one off-loading point. Additional stops will be charged at a minimum rate of R1500.00 per stop. Any deviation from the regular route may be subject to an additional charge.
- 9.7 Goods left on the Company's lawful agents' vehicle for any reason to suit the convenience of the Client are held at the sole risk of the Client, as the case may be. Pending forwarding and delivery, goods may be warehoused or otherwise held at any place or places in terms of clause 13 above at the Client's risk and expense.
- 9.8 The tri-axle semi-trailer has 12 metres of deck space and a legal maximum load ability of 24 tons. The 22m super-link has 18 metres of deck space and a legal maximum load ability of 34 tons. Super-link loads are subject to loading and off-loading premises being able to accommodate these 22 metre vehicles.

## 10. ABNORMAL

- 10.1 Abnormal loads are handled against the terms and conditions stated on the estimate/quote and is subject to the terms stated on all regulatory permits.

## 11. SUB-CONTRACTING

- 11.1 The Company reserves the right to employ sub-contractors and/or agents to act for them. In the event of their doing so all the conditions exempting the Company from liability and requiring the Client to indemnify the Company are hereby included and shall apply *mutatis mutandis* in favour of such sub-contractor and/or agent against the Client.

## 12. LIMITATION OF COMPANY'S LIABILITY

- 12.1 The Company shall not be liable for any claim of whatsoever nature (whether in contract or in delict) and whether for damages or otherwise, howsoever arising, in favour of the Client and/or a third party, unless –
  - 12.1.1 such claim arises from a proven grossly negligent act or grossly negligent omission on the part of the Company, its employees or its authorised agents; and
  - 12.1.2 if the claim relates to the loss of, damage to or delay in the handling of goods, such claim in addition arises at a time when the goods in question are in the custody and control of the Company or its lawful agents.

- 12.2 Notwithstanding anything to the contrary contained in these terms and conditions, the Company shall not be liable for any direct, indirect and/or consequential loss arising from any act, omission, statement or advice by the Company, its employees or its authorised agents, whether proven negligent or otherwise.
- 12.3 In those cases where the Company is liable to the Client in terms of clause 12.1 above, or for any other reason, in no such case whatsoever shall any liability of the Company, howsoever arising, exceed whichever is the least of the following respective amounts –
- 12.3.1 if applicable, the value of the goods evidenced by the relevant documentation or declared by the Client for customs purposes or for any purpose connected with their transportation;
- 12.3.2 if applicable, the value of the goods declared for insurance purposes; or
- 12.3.3 double the amount of the fees raised by the Company for its services in connection with the goods, information, advice, or other service provided by it, but excluding any amount payable to its lawful agents and third parties.
- 12.4 If it is desired that the liability of the Company, in those cases where it is liable to the Client in terms of clause 12.1 above, should not be governed by the limitations referred to in clause 12.3, written notice thereof must be received by the Company before any goods or documents are entrusted to, delivered to or into the control of the Company (or its authorised agents), together with a statement of the value of the goods. Upon receipt of such notice the Company may in the exercise of its 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 the Company the amount of the premium payable by the Company for such insurance. If the Company does not so agree, the limits referred to in clause 12.1 shall apply.
- 12.5 If no fee is raised by the Company for the information, advice or service provided by it, then for purposes of clause 12.3.3, the Company shall be deemed to have raised a fee equivalent to the fee that it would usually have raised for such information, advice, or service or, failing this, an amount of R 1 000.00.
- 12.6 The Client indemnifies and holds harmless the Company in respect of any claims of a general average nature which may be made against the Company and the Client shall provide such security as may be required by the Company in this regard.
- 12.7 Except under special arrangements previously made in writing, the Company will not accept or deal with any noxious, dangerous, hazardous, inflammable, or explosive goods or any goods likely to cause damage. Any persons delivering such goods to the Company or causing the Company to handle or deal with any such goods, except under special arrangements previously made in writing shall be liable for all loss or damages caused thereby and shall be deemed to have indemnified the Company against all penalties, claims, damages, costs and expenses arising in connection therewith and the goods may be destroyed or otherwise dealt with at the sole discretion of the or any other person in whose custody they may be at the relevant time. If such goods are accepted under special arrangements previously made in writing, they may nevertheless be so destroyed or otherwise dealt with if they become dangerous to other goods or property. The expression “goods likely to cause damage” includes goods likely to harbour or encourage venom or other pests and all such goods, which fall within the definition of “hazardous and dangerous goods” in the South African Railway Regulations.
- 12.8 Without derogating from the generality of the aforesaid limitations of liability, the parties expressly agree that the Company shall not at any stage be liable for damage resulting from or caused by or in connection with fire, flood, railway or road accidents, moth vermin, insects, damp, rust, burglary or housebreaking, act of God, riot, civil commotion, invasion, war, sabotage, malicious intent, explosion, marine risks, labour unrest, strikes, lockouts, chemical damage, leakage or any other causes whatsoever.

- 12.9 The Client accepts the responsibility for all damage or loss and shall indemnify the Company against all claims arising out of the presence of any articles of a hazardous or dangerous nature.
- 12.10 The Company does not accept any responsibility for demurrage charges howsoever incurred or cranes, railway wagons and trucks of any description, ships, port charges, aircraft or Client's vehicles, terminal storage, or any vehicle not under the control of the Company .
- 12.10.1 The Company shall not be liable for demurrage or storage charges of any nature whatsoever, and howsoever arising, or levied by a third party, and where any such demurrage and/or storage charges are paid by the Company, such charges shall be refunded to the Company by the Client on demand. The Client hereby appoints the Company irrevocably and in rem suam as its agents in its place and stead to contract for the storage of such goods upon such terms and conditions as the Company may, in its sole discretion, elect and without any liability whatsoever attaching to the Company to attend to such storage
- 12.11 The Company shall not in any circumstances be liable for damages arising from loss of market or attributable to delay in forwarding or in transit or failure (not amounting to wilful default) to carry out the instructions given to it.
- 12.12 The Company shall not be liable for additional charges in respect of the alteration of stack dates that are beyond the Company's control.
- 12.13 Without derogating from the generality of any of the above it is specifically recorded that the Company shall not be liable for any demurrage or detention (terminal storage) how so ever incurred if the Client has not specifically instructed the Company to manage and monitor such.
- 12.14 The Client undertakes that no claim shall be made against any director, servant or employee of the Company which imposes or attempts to impose upon him any liability in connection with the rendering of any services which are the subject of these **STANDARD TERMS AND CONDITIONS OF TRADE (STC's)** and the Client hereby waives all and any such claims.
- 12.15 Without prejudice to any of the Company's rights and securities under these STC's, the Client indemnifies and holds harmless the Company against all liabilities, damages, costs and expenses whatsoever incurred or suffered by the Company arising directly or indirectly from or in connection with the Client's express or implied instructions or their implementation by or on behalf of or at the instance of the Company in relation to any Goods and in particular, but without limitation of the foregoing, in respect of any liability whatsoever which may be incurred-
- 12.15.1 arising from the failure of any warranty given to the Company in respect of the Goods being true and correct; and/or
- 12.15.2 to any haulier, carrier, warehouseman or other person whatsoever at any time involved with such Goods arising out of any claim made directly or indirectly against any such person by the Client 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
- 12.15.3 to any Owner or consignee of such goods who is not the Client of the Company where the Company performs the service of a de-consolidation agent, or any other service; and/or
- 12.15.4 to any carrier of the Goods if the Company is the consignor or consignee of the Goods; and/or
- 12.15.5 in respect of any goods referred to in Clauses 14 and 15.
- 12.15.6 Notwithstanding that the Company may seek recovery of any amount due to it, from any person other than the Client, the Client shall remain liable to make payment of the said amount to the Company upon demand, at any stage.

### 13. PERISHABLE GOODS

- 13.1 Without limiting or affecting the terms and conditions herein, goods (whether perishable or otherwise) in the care custody or control of the Company, its employees or authorised agents may at the Client's expense be sold or disposed of by the Company without notice to the Client, if –
- 13.1.1 such goods have begun to deteriorate or are likely to deteriorate;
  - 13.1.2 such goods are insufficiently addressed or marked;
  - 13.1.3 the Client cannot be identified;
  - 13.1.4 the goods have not been collected or accepted by the Client, after the expiration of 21 days from the Company notifying the Client, in writing, to collect or accept such goods, provided that if the Company has no address for the Client such notice period shall not be necessary, and payment or tender of the net proceeds, if any, of the sale thereof after deduction of those charges and expenses incurred by the Company in respect thereof shall be equivalent to delivery of such goods.
- 13.2 Should any amount owing by the Client to the Company in respect of any goods referred to in clause 13.1 become due and payable and remain unpaid, the Company shall be entitled and the Client hereby authorises the Company and without first obtaining an order of court, to sell all or any of the goods by public auction or on reasonable notice not exceeding 14 days by private treaty. The net proceeds of any such sale, after deducting therefrom all costs, charges and expenses incurred by the Company, shall be applied in reduction or discharge as the case may be, of the Client's obligations to the Company in respect of such goods without prejudice to the Company's rights to recover from the Client any balance which may remain owing to the Company after the exercise of such rights. Should the total amount collected by the Company, after deducting therefrom all costs, charges and expenses incurred by the Company in respect thereof, exceed the full amount of the Client's obligations to the Company in respect of such goods, the Company shall be obliged to refund such excess to the Client.

#### **14. WAREHOUSING/STORAGE**

- 14.1 Pending forwarding, collection and/or delivery by or on behalf of the Company, goods may be warehoused or otherwise held at any place as determined by the Company in its absolute discretion, at the Client's risk and expense.

#### **15. LIEN**

- 15.1 The Company shall have a lien over all goods (and documents relating to goods) as security for all monies owing to it by the Client in any event.
- 15.2 In addition, the Company shall be entitled to hold all goods as security for any monies which may be due and payable to it by the Client from any cause whatsoever arising.
- 15.3 If any monies are not paid in full by the Client within 7 (seven) days of receipt of notice from the Company that it intends disposing of the goods, the Company may realise the goods either by public auction or private treaty at its entire discretion and apply the proceeds towards the Client's indebtedness, provided any surplus is to be paid over to the Client without interest as soon as possible after the sale if the Client's address is known or, if not, upon demand by the Client.
- 15.4 Upon payment or tender of the proceeds of any such sale, the Company shall be released from all liability to the Client in respect of the goods.
- 15.5 The Company's rights under this clause are not exhaustive and are in addition to any other rights which the Company may have as against the Client.

## 16. DISCLOSURE OF INFORMATION

- 16.1 The Company acknowledges that the Client's confidential information is a valuable, special and unique asset proprietary to the Client and will treat it as such.
- 16.2 The Company agrees that it will not, during or after the course of this agreement or ongoing relationship, disclose the Client's confidential information to any third party for any reason or purpose whatsoever without the prior written consent of the Client, save in accordance with the provisions of this agreement.
- 16.3 Notwithstanding anything to the contrary contained in this agreement, the parties agree that the confidential information may be disclosed by the Company to its authorised agents or sub-contractors on a need-to-know basis, provided that that party takes whatever steps are necessary to procure that such authorised agents agree to abide by the terms of this agreement to prevent the unauthorised disclosure of the confidential information to third parties. For purposes of this clause, each party and any of its authorised agents, employees, directors or managers shall be deemed to be acting, in the event of a breach, as that party's duly authorised agents.
- 16.4 The Company agrees: -
- 16.4.1. not to use the confidential information of the Client for any purpose other than for which it is disclosed and in accordance with the provisions of this agreement.
- 16.4.2. not utilise, exploit or in any other manner whatsoever use the Client's information disclosed pursuant to the provisions of this agreement for any purpose, other than for the execution of any duties imposed on the Company, whatsoever without the prior written consent of the Client; and
- 16.4.3. that the authorised disclosure of the Client's confidential information to a third party may cause irreparable loss, harm and damage to the Client. Accordingly, the Company indemnifies and holds the Client harmless against any direct or indirect loss, claim, harm and damage suffered or sustained by the Client pursuant to a breach by the Company of this provision of the agreement.
- 16.5. The provisions to disclosure of information shall apply *mutatis mutandis* to the Client in relation to the Company's confidential information.

## 17. BREACH

- 17.1 If the Company breaches any of these STC's or any agreement between it and the Client and fails to remedy such breach within 30 days of the date of receipt of written notice requiring it to do so, then the Client shall be entitled to compel performance by the Company of the obligations it has defaulted in but shall not be entitled to cancel these STC's or any agreement between the Client and the Company.
- 17.2 No provision in these STC's shall derogate from the Company's common law rights in the event that the Client breaches any term or condition of the agreement.
- 17.3 The Company shall be entitled to cancel any agreement between it and the Client by written notice if –
- 17.4 The Client commits any breach of its obligations under the agreement and fails to remedy that breach within 7 (seven) days of its being given written notice to do so;
- 17.5 The Client commits any act of insolvency in terms of any applicable Insolvency Legislation;
- 17.6 The Client is deemed to be unable to pay its debts in terms of any deeming provision of any applicable legislation relating to Companies or Insolvency;

- 17.7 The Client compromises or attempts to compromise with its creditors;
- 17.8 Any application is brought for the sequestration, winding up, bankruptcy or business rescue, of the Client, or any equivalent order is made in terms of any applicable law with regard to the status of the Client;
- 17.9 The Client fails to satisfy any default or other judgement granted against it, within 10 (ten) days.

## **18. JURISDICTION**

- 18.1 The Client hereby consents to the jurisdiction of the Magistrate's Court, in terms of section 45 of the Magistrates' Court Act 32 of 1944, to determine any action or proceeding which may arise under or in connection with these trading terms and conditions, but without prejudice to the Company's right to bring proceedings in the High Court where such proceedings would, but for the foregoing consent, fall outside the jurisdiction of the Magistrate's Court.

## **19. WHOLE AGREEMENT**

- 19.1 No terms and conditions contained in any letter, order, or other such like documents of the Client, or stipulated orally by or on behalf of the Client, aside from this Agreement, shall form part of any contract concluded between it and the Company. This contract alone shall solely govern the relationship between the Company and its Client, and expressly excludes the terms and conditions of trading of such Client as contained in any of the Client's delivery notes, orders and/or invoices, and the like.

## **20. NO VARIATION**

- 20.1 No warranty or representation other than those expressly contained herein shall be of any force and effect against the Company, unless same is contained in writing and signed for and on behalf of the Company by an authorised representative.
- 20.2 No amendment, variation or consensual cancellation of any terms hereof shall be of any force and effect unless such amendment, variation and/or consensual cancellation is reduced to writing and signed by a duly authorised representative of the Company.

## **21. NON-WAIVER**

- 21.1 No indulgence, latitude, extension of time or the like granted by the Company to the Client shall in any way whatsoever be construed as a novation or waiver of any other rights which the Company may have against the Client, nor it may operate as an estoppel against the Company.

## **22. SEVERABILITY**

- 22.1 Each of the terms hereof is severable from the rest of the terms contained herein which terms shall remain of full force and effect, should any one term be found to be invalid for any reason, or, without limiting the generality hereof, contra bona mores.

## **23. NOTICES**

- 23.1 All notices in terms of these STC's shall be given in writing and delivered by hand or sent by electronic mail. The Client appoints as his/her/its domicilium citandi et executandi for all purposes under these STC's its physical address and email address provided by the Client to the Company on any letterhead, order or other document generated or completed by the Client.

## **24. SPECIAL CONDITIONS RELATED TO ELECTRONIC DATA**

- 24.1 Notwithstanding the provisions of any legislation or other law regulating electronic communications and transactions, the Company 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.
- 24.2 Under no circumstances whatsoever and howsoever arising (including negligence on the part of the Company or its employees) shall the Company be liable for any loss or damage arising from or consequent upon the provision by the Company to the Client in whatever manner and/or form, of incorrect information, including electronically communicated information or data, where such incorrect information or data has been generated by and provided to the Company by any person with whom the Company conducts business, and/or any other third party.
- 24.3 The Company 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 Company, of the Company's computer systems and/or software programmes, provided and/or operated by the Company and/or by any person with whom the Company conducts business, and/or any third party, and which systems shall include the Company's electronic automated information service provided to its Clients.

## **25. OWNER'S RISK / LIMITATION OF THE COMPANY'S LIABILITY**

- 25.1 All Services provided by the Company by or on behalf of or at the request of the Client and/or the Owner, is provided at the sole risk of the Client and/or Owner, and the Client indemnifies the Company against any claim which might be brought against the Company, howsoever arising, whether in contract or delict or otherwise, by any Owner or any other third party.
- 25.2 The Company shall not be liable to any Client or Owner for any loss or damage of whatsoever nature and, howsoever caused, whether by breach of contract, negligence, proven gross negligence or the intentional acts of the Company, its servants, agents, or sub-contractors.
- 25.3 Notwithstanding any representations made by the Company regarding any times or delivery dates for performance by the Company, these times and delivery dates are estimates only, and it is agreed that insofar as the Company is concerned, time shall not be of the essence and any delay in the Company performing any of its obligations will not entitle the Client to cancel any contract or to claim damages from the Company.
- 25.4 If the Company is prevented or restricted, whether directly or indirectly, from carrying out all or any of its obligations by force majeure or by any other reason beyond its control, the Company shall be relieved of performing its obligations for the period that such event continues, and no liability whatsoever shall attach to the Company for any inability to perform the services. Force majeure includes, but is not limited to,

any strike, lock-out, port closure, industrial dispute, fire, explosion, earthquake, storms, hail, flood, landslide, riot, unrest, war, act of God, legislation, derailment, regulation or ordinance, act or omission of any port or other authority.

25.5 In the event that the Company is found liable to the Client and/or owner, despite the operation of Clauses above then it is agreed that the Company's liability shall not exceed ZAR 20 000,00 (Twenty Thousand South African Rand) for any one incident or occurrence, or the INCOTERM 2000 CIF, or similar, value of the goods, or the reasonable cost of the repair of the damaged goods, whichever is the lesser.

25.6 Any claim against the Company must be instituted within 6 (six) months after the cause of action arose, failing which, the claim shall be deemed to have lapsed irrevocably.

This signed on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_

(Print full name) \_\_\_\_\_ Designation \_\_\_\_\_

For and on behalf of \_\_\_\_\_ <- Business Full Name

\_\_\_\_\_  
*Signature*

who is duly authorised to sign on behalf of the company

\_\_\_\_\_  
*Signature*

For **TSI Central Station (Pty) Ltd**

Who is duly authorised to sign on behalf of the company.

IN WITNESS WHEREOF, the Parties have executed the Agreement on the date set forth above:

\_\_\_\_\_  
**Witness 1**

**Registered Address of Client:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
**Witness 2**

**TSI Central Station (Pty) Ltd**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CLIENT OFFICIAL COMPANY SYTAMT

TSI OFFICIAL COMPANY SYTAMT