



## **Fleetsmart(Pty) Ltd - Customer Relationship Terms**

Registration Number 2013 / 197995 / 07 - general terms for the provision of services

### **1. INTRODUCTION**

1.1 The customer relationship terms hereinafter set out shall apply to all business transactions, or services rendered by Fleetsmart (Pty) Ltd, including, without limiting the generality of the foregoing, arranging the transport of goods by road, air or by any other means of transport whatsoever. These terms are the general terms of the relationship between Fleetsmart (Pty) Ltd and any customer that enters into an order at whose request the company provides a service. Nothing in the terms obligates any party to enter into any orders.

### **2. INTERPRETATION AND DEFINITIONS**

#### ***In these customer relationship terms:-***

- 2.1 all headings are inserted for reference purposes only and shall not aid in the interpretation of the clauses to which they relate;
- 2.2 unless the context clearly indicates a contrary intention, words importing any one gender include the other two genders, the singular includes the plural and *vice versa*, and natural persons include created entities (corporate or unincorporate) and *vice versa*;
- 2.3 the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning namely :-
- 2.3.1 "**additional fee**" means a charge due to the company for the supply of services outside the scope of work in the original order.
- 2.3.2 "**AFSA**" means the Arbitration Foundation of Southern Africa (or its successor or body nominated in writing by it in its stead)
- 2.3.3 "**agreement**" shall mean the agreement between the parties contained herein, consisting of the terms and any orders entered into;
- 2.3.4 "**business day**" shall mean any day other than a Saturday, Sunday or a public holiday.
- 2.3.5 "**the Company**" shall mean Fleetsmart (Pty) Ltd, we or us, a company duly registered and incorporated in accordance with the company Laws of the Republic of South Africa, having registration number: CK 2013 / 197995 / 07
- 2.3.6 "**the Customer**" shall mean you, or any person;
- 2.3.6.1 at whose request or on whose behalf the company provides a service; and / or
- 2.3.6.2 whose signature appears in this document and who acknowledges having read and understood the terms contained herein;and/or
- 2.3.6.3 who is the owner of the goods; and / or
- 2.3.6.4 at whose request the company enters into an order and undertakes any business or provides any advice, information or service;
- 2.3.7 "**Fees**" shall mean the fees, rates, or charges the customer will pay to the company in respect of services provided under orders;
- 2.3.8 "**the Goods**" shall mean any goods handled, transported or dealt with by the Company, or its agents, transporters, servants, suppliers, vendors or third party service providers under instructions from the Customer.
- 2.3.9 "**the Order**" shall mean a written order agreed to and duly signed, describing the specific services rendered by the company.
- 2.3.10 "**the Parties**" shall mean Fleetsmart (Pty) Ltd and the customer.
- 2.3.11 "**Personnel**" shall mean any representative, including any director, employee, agent, affiliate, consultant or contractor.
- 2.3.12 "**pre-agreement**" shall mean the initial offer or quotation supplied by the company based on the facts provided by the customer.
- 2.3.13 "**Related and related persons**" shall mean a natural and juristic persons who are connected to one another in the manner contemplated in sections 2 and 3 of the Companies Act 71 of 2008;
- 2.3.14 "**the Services**" shall mean any business transactions conducted by the company or related persons to the customer, under orders;
- 2.3.15 "**tax**" shall mean any tax (including value added tax, income tax, pay-as-you-earn tax or other taxes levied in any jurisdiction)
- 2.3.16 "**transporters**" shall mean any third party contractor, carrier, owner driver, agent, supplier, vendor or service provider contracted to the company with the skill, knowledge and necessary licenses to undertake work and provide a suitable vehicle to transport the goods.
- 2.3.17 "**terms**" shall mean the terms, consisting of these customer relationship terms and any relevant specific terms, policies, disclaimers, rules and notices that the parties agree on(including any that may be applicable to any specific goods or services)

### **3. TRADE UNDERSTANDING**

#### ***The Customer agrees and acknowledges: -***

- 3.1 that all and any business undertaken or advice, information or services provided by the company, whether gratuitous or not, is undertaken or provided on these customer relationship terms.
- 3.2 that the rates presented are nett in every way and will be effective from inception, and will be monitored on a three monthly basis.
- 3.3 that surcharges such as fuel, are subject to change without prior notice. Fuel surcharge fluctuations will be monitored on the first Wednesday of each month following any external statutory fuel price increases.
- 3.4 that the company shall use its best endeavours to provide upon request suitable transporters to provide for the transportation needs of the customer.
- 3.5 the transporters are neither the employee of the company nor an agent of the company, it being acknowledged that the function of the company is merely to manage and place transporters with the customer for the fulfillment of the customer's transportation needs.
- 3.6 to indemnify and hold the company harmless, against all claims of whatsoever nature and how so ever arising which may be against the company resulting from the use of the transporter, or the manner in which the vehicle is driven while in use by the customer.
- 3.7 the company shall use its best endeavors to interview and do criminal, references and licenses checks in respect of the transporters provided to the customer from time to time.
- 3.8 to pay the company a commission in respect of the rendering of such transportation placement services in an amount/s which may be agreed upon by the parties from time to time
- 3.9 that the company warrants it is authorized on behalf of the transporters to administer all invoicing to the customer for the transporters services and to attend to the collection of payment from the customer for such services, inclusive of the company's commission.
- 3.10 that the company shall have discharged its duties by placing a transporter with the customer and the company does not warrant that the transporter will perform his duties diligently, save to say that the company shall use its best endeavours to ensure that reliable transporters are introduced to the customer.

#### 4. DURATION

4.1 The terms commence on acceptance and continue until terminated. Where the duration of this agreement is specified in an order, this will apply to daily or ad hoc services supplied, however for long term or monthly services the customer may terminate the relevant service on seven business day's written notice to the company. However the company may charge an early termination fee.

#### 5. STAFF OF THE COMPANY RENDERING SERVICES TO THE CUSTOMER

5.1 The company may at its election perform all or any business undertaken or provide advice, information or services, whether gratuitous or not, either itself or it may procure that any member of the company undertakes such business or provides such advice, information or services as principal upon and subject to the terms contained herein which shall apply mutatis mutandis to the customer and any such member of Fleetsmart (Pty) Ltd.

#### 6. ORDERS

6.1 **Capacity** - You represent and warrant that you, as the customer (and any person who places an order):

6.1.1 are old enough under applicable law to enter into the agreement are legally capable of concluding any transaction;

6.1.2 possess the legal right, full power, and authority to enter into the agreement;

6.1.3 are authorised to use the credentials required for any account and will submit true, accurate and correct information to the company.

6.2 If the customer is younger than 18 years of age, they warrant that they have consent from a legal guardian to enter into an agreement.

6.3 **Pre-agreement price** - The customer fully understands that the initial quotations charges agreed to and signed by both parties are based on the facts provided by the customer. Should these facts change in any way, such as, date, distance, route, time taken, kilograms, weight or dimensions, then the company reserves the right to re-quote a new charge based on the new facts.

6.4 **Invitation to do business** - The marketing of all our services is valid for 30 days by the company and is merely an invitation to do business or for the customer to make an offer to procure services. The parties only conclude a valid and binding order when the company accepts the offer made by the customer. Unless proven to the contrary, the company will only accept an offer relating to services, when the company begins providing the services. The company may accept or reject any offer. We will refund any monies paid on rejected offers.

6.5 **Cancel** - Unless otherwise agreed, the company may cancel any order at any time in our absolute discretion. The company will refund any monies already paid by the customer. The customer shall have no claim whatsoever against the company for any loss that the customer might incur as a result of the company cancelling or resiling from the quotation or order.

6.6 **Fees** - Despite our best efforts, the stated fees may be incorrect. The company will confirm the fees for any goods or services when we accept the offer from the customer. All quotations or orders are subject to revision including, without limitation, rates and any surcharges.

6.7 **Time and place** - The parties conclude any agreement between each other at the time when the companies duly authorised representative accepts the relevant offer and at a place where the customer has their head office. The company does not need to communicate the acceptance of the offer to the customer.

6.8 **Orders** - The terms in effect at the time the customer makes an offer will govern the order. Each order will create a separate agreement. Despite that, the company may consider the breach of any one order to constitute a breach of of any or all orders.

#### 7. APPLICABLE LEGISLATION

7.1 If the company is obliged, in the execution of any of its duties and/or responsibilities to comply with any common law or legislative enactment ("the law") of any nature whatsoever, then the company by complying therewith, shall not be deemed to waive nor abandon any of its rights in terms of these customer relationship terms.

7.2 In addition thereto, in complying with the law, the company shall not be deemed to have assumed any onus, obligation, responsibility or liability in favour of the customer.

7.3 If any of the terms of these customer relationship terms is repugnant to or 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 customer relationship terms.

#### 8. EXCLUSION OF OBLIGATIONS OF COMMON OR PUBLIC CARRIER

8.1 The company deals with goods only on the basis that it is neither a common carrier nor a public carrier.

#### 9. COMPANY'S DISCRETION IN THE ABSENCE OF INSTRUCTIONS

*In the absence of the specific instructions given timeously in writing by the customer to the company -*

9.1 it shall be in the reasonable discretion of the company to decide at what time to perform or to procure the performance of any or all of the acts which may be necessary or requisite for the discharge of its obligations to the customer;

9.2 the company shall have an absolute discretion to determine the means, route and procedure to be followed by it in performing all or any of the acts or services it has agreed to perform;

9.3 in all cases where there is a choice of tariff rates or premiums offered by any carrier, warehouseman, underwriter, or other person depending upon the declared value of the relevant goods or the extent of the liability assumed by the carrier, warehouseman, underwriter or other person, it shall be in the discretion of the company as to what declaration, if any, shall be made, and what liability, if any, shall be imposed on the carrier, warehouseman, underwriter or other person.

#### 10. COMPANY'S GENERAL DISCRETION

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

10.2 If events or circumstances come to the attention of the company, its agents, servants, or nominees which, in the opinion of the company, make it in whole or in part, impossible or impracticable for the company to comply with a customer's instructions the company shall take reasonable steps to inform such customer of such events or circumstances and to seek further instructions. If such further instructions are not timeously received by the company in writing, the company 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.

## 11. GOODS IN TRANSIT INSURANCE

11.1 **No responsibility for the load (GIT)** -The company shall at no point be liable for any damage or loss of goods being transported by one of the company's vehicles, transporters, subcontractors, or third party suppliers, irrespective of whether or not damage or loss was due to company negligence, or the negligence of the company's agents or employees. The customer hereby assumes full responsibility for any loss or damage of goods during a period of transportation in which the company's vehicles, transporters, subcontractors, or third party suppliers are being used.

**Unless prior arrangements have been made;**

11.2 **Open or general policy** - Unless otherwise agreed in writing and signed by both parties the company shall not be under any obligation to obtain goods in transit 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 customer concerned shall have recourse against such insurer only and the company shall not have any responsibility or liability whatsoever in relation thereto providing that the premium paid on such policy is current and up to date. Insofar as the company agrees to arrange insurance the company acts solely as agent for and on behalf of the customer. Such insurance will be subject to such exceptions and conditions as may be imposed by the insurance company or underwriter taking the risk.

## 12. COMPANY'S OBLIGATIONS IN THE ABSENCE OF INSTRUCTIONS

**Unless specific written instructions are timeously given to and accepted by the company, the company shall not be obliged to -**

12.1 make any declaration for the purpose of any contract, as to the nature or value of any goods. In particular, the company shall be under no obligation to make any declaration or to seek any special protection or cover from any carrier in respect of any goods which are, or fall within the definition ascribed by that body of 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 UNDERTAKINGS

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

**The Customer warrants that -**

13.1 it is either the owner or the authorised agent of the owner of any goods in respect of which the customer instructs the company and that each such person is bound by these customer relationship terms;

13.2 in authorising the customer to enter into any contract with the company and/or in accepting any document issued by the company in connection with such contract, the owner, sender or consignee is bound by these customer relationship terms for itself and its agents and for any parties on whose behalf it or its agents may act, and in particular, but without prejudice to the generality of the foregoing, it accepts that the company shall have the right to enforce against them jointly and severally any liability of the customer under these customer relationship terms or to recover from them any sums to be paid by the customer which upon proper demand have not been paid;

13.3 all information and instructions supplied or to be supplied by it to the company is and shall be accurate, true and comprehensive, and in particular, without derogating from the generality of the foregoing, the customer shall be deemed to be bound by and warrants the accuracy of all descriptions, values and other particulars furnished to the company for customs, consular and other purposes, and the customer warrants that it will not withhold any necessary or pertinent information, and indemnifies the company against all claims, losses penalties, damages, expenses and fines whatsoever, whensoever and howsoever arising as a result of a breach of the foregoing whether negligently or otherwise including, without derogating from the generality of the foregoing, any assessment or reassessment;

13.4 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 the company 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;

13.5 where goods are carried in or on containers, trailers, flats, tilts, railway wagons, tanks, igloos or any other unit load devices specifically constructed for the carriage of goods by land, sea or air, (each such device hereinafter individually referred to as "the transport unit") then save where the company has been given and has accepted specific written instructions to load the transport unit -

13.5.1 the transport unit has been properly and competently loaded; and

13.5.2 the goods involved are suitable for carriage in or on the transport unit; and

13.5.3 the transport unit is itself in a suitable condition to carry the goods loaded therein and complies with the requirements of all relevant transport authorities and carriers.

13.6 it is strictly prohibited to offer employment directly to a transporters supplied by the company, whether currently employed or previously supplied by the company to the customer, within 12 months from their last day of employment with such customer.

13.7 it agrees and undertakes to promptly upon receipt of all Invoices, effect payment of all sums due to the company as per the terms agreed to in the credit application.

13.8 if any payments to the company are withheld without due diligence, the company may at its sole discretion decide to temporarily suspend all services to the customer until all outstanding monies have been paid.

13.9 the furnishing of such transportation placement services by the company is dependant upon the fulfillment of the customer's obligations in terms of the agreement and the company reserves the right to withdraw from the agreement in the event of the customer being in breach of any of its obligations and remaining in breach, notwithstanding the furnishing of seven days written notice to this effect by the company.

13.10 it may during the course of its business dealings with the company and its transporters acquire knowledge or information of a confidential nature relating to the company and/or its transporters and in this regard, undertakes not to divulge such information to any party whomsoever, without first having obtained the written consent of the company.

13.11 it will not, during the currency of this agreement or any order between the company and the customer, or for a period of 12 (twelve) calendar months following termination of such agreements, directly or indirectly solicit, offer employment to, employ, contract in any manner or engages in business directly with any personnel or transporters supplied by the company who were involved in the implementation or execution of the order. If the customer does so, then the company may, without prejudice to any other rights it may have against the customer in law, be entitled to Interdict the customer from so conducting business and institute action against the customer for any damages the company may suffer in this regard, which unless it is proved to the contrary, shall be the total sum invoiced by the transporter in question to the customer.

13.12 **Survival** - Clause 13.11 will survive termination of this agreement.

#### 14. CUSTOMERS RISK

14.1 All handling , packaging , loading, unloading , warehousing and transporting of the goods by the the company on behalf of or at the request of the customer shall be effected at the sole risk of the customer and the customer hereby acknowledges that it shall have no claim against the company of any nature whatsoever arising out of the foregoing .

14.2 It shall be incumbent upon the customer to reach an agreement with the company regarding the risk of damage to or loss of goods in transit. The company shall require the transporter to be adequately insured against risks of this nature but does not in any way warrant that suitable insurance cover will be in place for eventualities of this nature.

14.3 In the event of a claim the company reserves the right to the recovery or salvage of the damaged goods, and the conditions imposed by the insurers contracted to the company and / or the transporter shall apply to any claims made in terms of the company's responsibility.

#### 15. COMPANY ENTITLED TO ACT AS AGENT OR PRINCIPAL IN CONTRACTING

15.1 Unless otherwise agreed in writing, the company 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 absolute discretion deems fit.

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

15.3 The customer acknowledges that when the company, as agent for and on behalf of the customer, concludes any contract with a third party, such agreement is concluded between the customer and the third party.

15.4 Unless otherwise agreed in writing, the company, when acting as agent for and on behalf of the customer, shall be entitled to enter into any contract it deems necessary for the fulfilment of the customer's instructions, including, without limitation, contracts for the -

15.4.1 carriage of goods by any route or means or person;

15.4.2 storage, packing, transport, shipping, loading, unloading and/or handling of goods by any person at any place whether on shore or afloat and for any length of time.

15.4.3 carriage or storage of goods or transport units as defined in clause 13.5 or with or without other goods of whatsoever nature.

#### 16. SUBCONTRACTING

16.1 **Subcontracting** - Any business entrusted by the customer to the company may, in the absolute discretion of the company, be fulfilled by the company itself, by its own servants performing part or all of the relevant services, or by the company employing, or entrusting the goods or services to third parties on such conditions as may be stipulated by, or negotiated with, such third parties for the purposes of such services, or such part thereof as they may be employed to carry out.

16.2 **Limitation of liability** - Where the company employs third parties to perform all or any of the functions which it has agreed to perform, the customer agrees that the company shall have no responsibility or liability to its customer for any act or omission of such third party, even though the company may be responsible for the payment of such third party's charges; but the company shall, if suitably indemnified against all costs, (including attorney and client costs) which may be incurred by or awarded against the company. If the company has any right of action against the third party we will cede it to the customer who is free to pursue any right of action against the third party.

#### 17. TERMS OF AGENTS AND SUBCONTRACTORS

17.1 Notwithstanding anything to the contrary contained herein the customer agrees that all goods shall be dealt with by the company on these customer relationship terms, whether or not inconsistent with these trading terms and conditions, stipulated by the carriers, warehousemen, government departments, and all other parties (whether acting as agents or subcontractors to the company or not) into whose possession or custody the goods may pass, or subject to whose authority they may at any time be.

#### 18. GOODS

18.1 **Requiring special arrangements** - Except under special arrangements previously made in writing the company will not accept or deal with bullion, coin, precious stones, jewellery, valuables, antiques, pictures, human remains, livestock or plants. Should the customer nevertheless cause the company to handle or deal with any such goods otherwise than under special arrangements previously made in writing the company shall incur no liability whatsoever in respect of such goods.

18.2 **Dangerous goods** - The customer must obtain written consent from the company to transport dangerous goods. Dangerous goods are all goods that fall into the definition of "dangerous goods" according to the National Road and Rail Regulations of South Africa.

18.3 **Illegal goods** - The customer may not transport any illegal substances, or use any of the company services to commit a crime.

18.4 **Requiring special consent** - The customer shall obtain in advance the company'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 goods, including hazchem, radioactive 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.

#### 19. ADDITIONAL FEES

**The company may charge additional fees for; -**

19.1 **After hours surcharges** - any hours the transporter works outside of the regular 7:30am - 5:30pm or any 10 hours straight..

19.2 **Extra assistants** - this includes any persons, assistants, labourers, packers or loaders requested by the customer.

19.2 **Fuel surcharges** - any fuel surcharge increases, this will be assessed and implemented on the first Wednesday of each month.

19.3 **Sleep-outs** - any transporters who exceed more than 500 kilometers per day away from their home or base without a return load.

19.4 **Extra kilometers** - any additional kilometers that exceed the kilometers quoted for in the original order based on the information provided to the company by our drivers / transporters and verified on Google maps or Veza.

19.5 **Standing time** - this is time when the vehicle or transporter is not utilized but still under the customers custody.

19.6 **Toll fees** - which are not included into the customer rates matrix and will be billed out separately in addition to the rated provided.

19.7 **Tax** - this includes value added tax (Vat)

19.7 **Sunday and public holidays** - these days will attract an extra day rate plus the surcharge.

## 20. SERVICE RESTRICTIONS

- 20.1 **Breakdowns** - In the event the transporter experiences a breakdown to the vehicle, due to any causes whatsoever, the company has the right but not the obligation to supply the customer with a replacement vehicle providing there is stock availability.
- 20.2 **Map distance calculator** - The map distance calculator displayed on the website is merely a tool to provide the customer with an estimate of the number of kilometers. The distance may change due to route changes or more accurate information provided to us.
- 20.3 **Route details** - The driver's safety is paramount, therefore the customer may not decide on the route taken to drive to the destination.
- 20.4 **Overloading** - The customer may not overload the vehicle. If the weight is exceeded, then the customer will be liable for all additional costs to recover and redeliver the goods, any fine or penalty incurred due to overloading will be charged directly onto the customer.
- 20.5 **Furniture removals** - The company does not act as a furniture removal company, we merely supply the vehicle, driver and assistants required to facilitate a move. The onus remains with the customer to manage and supervise their own furniture removal.
- 20.6 **Vehicle body size** - The company cannot be accountable for varying vehicle sizes or dimensions. The onus is on the customer to request the vehicle size, body dimensions and the actual loading capacity prior to the company releasing the vehicle.
- 20.7 **People carrier** - The company is not a public transporter of persons, unless the correct vehicle is used and agreed to by both parties.
- 20.8 **Time periods** - The company will endeavour to supply the transporter to your location as fast as possible, however there may be delays beyond our control.

## 21. PAYMENT PROTOCOLS

- 21.1 **Credit application** - Notwithstanding the foregoing, the company requires a credit application form to be completed in full prior to an account being authorised. The company will contact the customer should the application for credit be granted.
- 21.2 **Payment terms** - In the event that the company has granted credit facilities to the customer, the due date of payment of any amount due in terms of a statement rendered by the company shall be strictly 7 (seven) days from the date of month end statement, which shall be presumed to have been received by the customer on the 01<sup>st</sup> day of each month, unless and until the contrary is proven.
- 21.3 **No credit Offered** - It is against company policy to dispatch any vehicles to the customer unless payment is received in full.
- 21.4 **Manner of payment** - Payment of any amount due to the company by the customer shall be made by the way of bank guaranteed cheque, bank transfer or in cash, free of exchange or bank charges and without deduction or set-off to such address as the company may advise the customer in writing from time to time. Proof of payment will suffice should payment be made from another bank.
- 21.5 **Guarantee** - The company may ask the customer to provide a bank guarantee to cover the use of the account for a one month period. The company will review these guarantees on an ongoing basis to ensure we are always covered by the customers guarantees.
- 21.6 **Deposit** - The company may ask the customer to pay a deposit. The company will invest the deposit into an interest bearing account for the customers benefit. If the customer does not pay for our services when payment is due, the company may appropriate the whole, or part of the deposit. On payment of the fees, or if any party cancels the agreement, the company will repay the deposit and any interest due to the customer.
- 21.7 **Late payment** - Any additional fees, surcharges and penalties specified will apply to any payment received after the due date to cover collection fees and additional administration costs. The customer must pay the additional fees, surcharges and penalties to the company on demand. The company may halt the provision of any services until the customer has paid all amounts that are due.
- 21.8 **Interest on overdue amounts** - To the extent permitted by applicable law, any amounts not paid by the customer on the date of the statement of outstanding invoices will bear interest for the company's benefit, from the due date until the date you pay it. The rate of interest will be either 2% above the published prime overdraft rate from time to time of our bankers or 15%, whichever is higher. A letter signed by a general, branch or other bank manager setting out their rate will be proof of the rate. Interest will be payable on a claim for damages from when the damages were suffered.
- 21.9 **Non payment** - In the event of non-payment of any monies due by the customer to the company in terms of 21.2, the company shall have the right, in addition to its rights already specified in this clause, to:
- 21.9.1 Suspend and carrying out any of its then uncompleted obligation until full payment is made: and/or
- 21.9.2 Refuse to provide any further services to the customer; and/or
- 21.9.3 Rescind the credit facilities granted to the customer.
- 21.10 **Without prejudice** - The exercise by the company of any of the rights granted to it by this clause, shall be without prejudice to any other rights it may have under this agreement or at common law.
- 21.11 **Lien** - The company shall hold a lien over the goods, irrespective of whether the customer is also the owner of the goods. In the event of non-payment of any monies due by the customer to the company, we shall have the right, without any notice to the customer:-
- 21.11.1 To open and examine any part of such goods;
- 21.11.2 sell the goods and use the proceeds of the sale for the payment of the amount owed, any surplus shall be paid to the customer without interest, within 3 (three) months from the date of the sale; and
- 21.11.3 if only part of the goods have been sold, the customer shall be entitled to take delivery of such goods. The company may charge the customer a reasonable storage fee, which shall apply mutatis mutandis.
- 21.12 **Discounts** - The customer may qualify for discounts on weekly statements or billing. These billing discounts will only apply if payment is received within 7 (seven) days from the date of the weekly statement and will be credited to the following weeks statement.
- 21.13 **Recovery of debts due to the company** - The company shall be entitled to recover any amounts due to it by the customer in respect of instructions relating to or in terms of any contract in respect of particular goods from the customer, or if the customer acts as agent for a disclosed or undisclosed principal from the customer or the principal, as the company in its absolute discretion deems fit.
- 21.14 **Appropriation** - All and any monies received by the Company from the Customer shall be appropriated by the Company in its sole discretion in respect of any undisputed indebtedness owing by the Customer, notwithstanding that the Customer might, when making payment, settle to appropriate the payment so made to any particular debt or portion of debt.
- 21.15 **Certificate** - An order / certificate signed by any director or manager of the Company showing the amount owing by the Customer at any time and reflecting the amount thereon as due and unpaid, shall be prima facie proof of the amount owing by the Customer for the purpose of any proceedings (whether for the purpose of provisional sentence, summary judgement or otherwise).
- 21.16 **Tax** - All fees exclude any tax, which will be payable where applicable by the customer in addition to the fees.
- 21.17 **Payment profile** - The customer and any signatory consent and agree that the company may provide any registered credit bureau with information about the payment of amounts due to the company.
- 21.18 **Reimburse costs** - If the company suspends a service or removes any goods that we supplied, the customer will pay for the costs that we incurred (including redeployment, travel and associated expenses) in remobilising our employees and transporters affected by the agreement and recommencing the services or re-installing the removed goods and services.

## 22. CHANGE CONTROL

22.1 **Changes to goods or services** - During the currency of a order, events may occur which require a change to the nature and scope of goods or services. The parties will not implement a change unless they comply with this clause.

22.2 **Change request** - A party may propose a change to the nature and scope of goods or services by sending a scope change document to the other party detailing the desired changes.

22.3 **Scope change document** - If a scope change document is made by the:

22.3.1 **Customer** - the customer will specify the reasons for that change and describe the change in sufficient detail to enable the company to formulate a response. The company will investigate the likely impact of any proposed changes on the provision of services and will provide the customer with a scope change proposal, including amended pricing and time-frames; or

22.3.2 **Company** - the company will detail in a scope change proposal the reasons for and impact of the change, the services required to implement the change and effect that the changes, if implemented, we will have on the relevant order.

22.4 **Sign-off** - The parties will discuss and agree the proposed changes and make the necessary amendments to our scope change proposal. The customer will then consider the scope change proposal and may approve or reject it in writing within three business days. If the customer:

22.4.1 accepts a scope change proposal, a duly authorized representatives of the parties will sign off the scope change proposal and it will be incorporated into the relevant order; or

22.4.2 rejects a scope change proposal, the company will continue to provide the goods or services on the existing terms.

22.5 **No change effective until sign-off** - No party may proceed with any change to an order until the change and all matters relating to the change have been agreed in writing between the parties. Pending sign-off, the parties will continue to perform their obligations without taking account of the proposed changes. No party must agree to any change, but a party will not unreasonably delay or withhold their agreement to a proposed change.

22.6 **Exception** - Amendments to the content of the agreement that do not directly impact the nature and scope of the goods or services will not be subject to this change control procedure, but the parties will execute them in writing.

## 23. THE ACCEPTANCE OF DELIVERY

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

23.1 The company shall be entitled to store the goods or any part thereof at no risk to the company and at the expense of the customer.

23.2 The provisions of clause 20.2 shall apply mutatis mutandis.

## 24. WAREHOUSING

Pending forwarding and/or delivery by or on behalf of the company, goods may be warehoused or otherwise held at any place as determined by the company in its absolute discretion, at the customer's expense.

## 25. PROJECT MANAGERS

25.1 **Appointment** - On the effective date, each party will appoint a suitably qualified and responsible person to act as their project manager. If a party does not appoint a project manager and that party is a natural person, then that party will be its own project manager. Otherwise, the natural person that is ordinarily responsible for the day-to-day administration of that party will be its project manager.

25.2 **Function** - The project managers' responsibilities include to manage and coordinate the services and to discuss and manage any changes.

25.3 **Replacement** - A party may, on seven calendar days' written notice to the other, appoint an alternative project manager who is suitably qualified and responsible.

## 26. TRANSPORTER COMPLAINTS

26.1 should the customer have a complaint about a driver or transporter, the customer must immediately notify us in writing giving us the full details of your complaint. The company will review the complaint. The company will replace the driver and or transporter in either 24 hours or seven days depending on the severity level of the complaint. For serious offences the customer will need to provide the company with proof, either video, a recording, or some other adequate form of proof.

Minor Offence (driver replaced within seven days of complaint)	Major Offence (driver replaced within 24 hours of the complaint)
Attitude problems.	Theft of goods.
Late for duty on more than one occasion.	Under the influence of alcohol or illegal substances.
Failure to deliver goods on more than one occasion.	Reckless and negligent driving.
Goods damaged on more than one occasion.	Failure to accept tasks or perform duties.

## 27. COMPANY WARRANTIES AND REPRESENTATIONS

The company makes no warranties and representations to the customer save as may be specifically provided herein or as notified in writing by the company to the customer from time to time. The customer acknowledges that the company is not in any way bound by any oral statement, representation, guarantee, promise, undertaking, inducement or otherwise which may have been made at any time by any salesman, employee, representative or any person acting or purporting to act for or on behalf of the company, whether negligently or otherwise unless such statements, representations, guarantees, promises, undertaking, warranties or inducements are supplied or made in writing by an employee duly authorised by written resolution of the board of directors of the company in response to a written enquiry specifying accurately and in complete detail what information is required.

## 28. DISCLAIMER OF WARRANTIES

28.1 **Disclaimer** - The customer may use our services at their sole responsibility and risk. The company will provide the services on an “as is” and “as available” basis. Except for the warranties notified in writing and to the extent allowed by law, the company shall expressly disclaim all representations, warranties, or conditions of any kind, whether express or implied, including:

28.1.1 any implied warranties or conditions of satisfactory quality, no latent defects, merchantability, fitness for a particular purpose, accuracy, system integration, quiet enjoyment, title, and non-infringement.

28.1.2 that the services will meet the customers requirements or be uninterrupted, legally effective or complete, timely, secure, error-free or free from infection by malicious software.

28.2 **Exclusion of liability** - Despite any warranty given by the company, we will not be liable regards and defect arising from negligence, failure to follow our instructions (whether oral or in writing) or misuse.

28.3 **Exclusion of third party liability** - The customer will not hold the company responsible or liable for any third party act or omission. the customer is free to pursue any right of action against the third party. If we have any right of action against the third party we will cede it to the customer.

28.4 **Risk** - No documents, cheques or other material sent by the customer through the post will be deemed to have been received by the company, unless they are actually received by the company.

## 29. CUSTOMER WARRANTIES

**The customer warrants that:**

29.1 they have not been induced to enter into the agreement by any prior representations, warranties or guarantees (whether oral or in writing), except as expressly contained in the agreement.

29.2 by entering into an order the customer is not acting in breach of any agreement to which they are a party;

and the customer agrees to indemnify, defend, and hold the company harmless (and those related to the company and our personnel, co-branders or other partners) from and against any claim for damages by any third party as a result of the breach of these warranties, including all legal costs. If permissible under applicable law, legal costs will be on an attorney and own client basis.

## 30. INDEMNITY BY THE CUSTOMER

Without prejudice to any of the company's rights and securities under these customer relationship terms, the customer indemnifies and holds harmless the company against all liabilities, damages, costs and expenses whatsoever incurred or suffered by the customer arising directly or indirectly from the customer's implied instructions to the company.

## 31. LIMITATION OF COMPANY'S LIABILITY

31.1 **Direct damages limited** - To the extent permitted by applicable law, regardless of the form (whether in contract, delict or any other legal theory) in which any legal action may be brought, our maximum liability to the customer for direct damages for anything giving rise to any legal action will be an amount equal to the total fees already paid by the customer to the company for the goods or services related to the claim. The aggregate amounts for all claims will not be greater than the R50.00 per consignment.

31.2 **Notice** - Any claims made against the company or our transporters for the loss or damage to goods must be submitted in writing and be sent to the company by registered post.

31.3 **Indirect damages excluded** - To the extent permitted by applicable law, in no event will the company (or our personnel) be liable for any indirect, incidental, special or consequential damages or losses (whether foreseeable or unforeseeable) of any kind (including loss of profits, loss of goodwill, damages relating to lost or damaged data or software, loss of use, damages relating to downtime or costs of substitute products) arising from the agreement.

31.4 **Exclusions** - The limitation contained in this clause will not apply to any breach by a party of the party's proprietary or confidential information or intellectual property or damages arising from a party's gross negligence.

31.5 **Company not liable for your default** - The company will not be liable for any loss or damage suffered by the customer arising out of or in connection with any breach of the agreement by the customer or any act, misrepresentation, error or omission made by or behalf of the customer or their personnel.

31.6 **Other goods or services** - The company will not be liable for any other deliverable, including website, goods, or service provided by any third party.

31.7 **Air Carriers** - The customer will have no claim against any air carrier who may handle their goods.

31.8 **Indemnity** - The company agrees to indemnify, defend and hold the customer (and their personnel) harmless against any and all:

31.8.1 loss of or damage to any property or injury to or death of any person; and

31.8.2 loss, damage (including attorney' fees on an attorney and own client basis), costs and expenses that the customer may suffer or incur arising directly or indirectly from: (i) any wilful misconduct or fraud by the company or our personnel; or (ii) a breach by the company of your proprietary or confidential information, or intellectual property.

31.9 **Liability** - Without limiting liability, neither party will be liable to the other for any loss that it may suffer as a result of theft, fraud, or other criminal act by a party or its personnel.

## 32. BREACH AND TERMINATION

**If a party:**

32.1 fails to fix any breach of this agreement (failure to comply with it) within seven days of receiving written notice from other party to do so;

32.2 breaches this agreement materially twice or more in any six month period;

32.3 is insolvent (bankrupt) or has some legal disability, for example, if they are placed under administration;

32.4 takes steps to register itself (close down) or is registered;

32.5 makes any settlement or arrangement with its creditors; or

32.6 fails to pay a court order against it (does not satisfy a writ of execution) for more than one million rand, within 21 days;

then the other party may, without prejudice to any of its rights:

32.6.1 claim specific performance of this agreement (make the party comply with this agreement); or

32.6.2 immediately cancel this agreement in writing; and

32.6.3 claim damages from the other party, including any claim for any fees already due.

### 33. TERMINATION

33.1 **Termination for good cause** - The company may immediately terminate this agreement at any time by giving the customer notice in writing if:

- 33.1.1 the company discontinues the services;
- 33.1.2 the company believes providing the services could create an economic or technical burden or material security risk for us;
- 33.1.3 termination is necessitated by the company having to comply with any applicable law or requests of government entities; or
- 33.1.4 the company determines that the provision of any services to the customer has become impractical or unfeasible for any reason.

33.2 **Duties on termination** - On termination, cancellation, or expiry of this agreement:

- 33.2.1 the company will stop providing the services
- 33.2.2 the customers access rights will cease to exist; and
- 33.2.3 the company will erase your data, unless we have agreed to provide you with post termination assistance in writing.

33.3 **Survival** - The termination, cancellation, or expiry of this agreement will not affect the enforceability of the terms that are intended to operate after expiry or termination.

### 34. EFFECT OF TERMINATION

34.1 **Amounts due to the company become due and payable** - On termination, cancellation, or expiry this agreement, all amounts due to the company for services rendered before termination will become due and payable even if we have not yet invoiced them. You may not without the amounts for any reason, unless the arbitrator directs otherwise.

34.2 **Cancellation fee** - If the customer terminates the contract, the company may charge the customer a reasonable cancellation fee.

34.3 **No expectation** - We acknowledge and confirm that no expectation has been created by anyone, by the agreement or any other agreement, entitling the company or the customer to expect the renewal or extension of the term of any agreement.

34.4 **Survival** - The termination, cancellation, or expiry of this agreement will not affect the enforceability of the terms that are intended to operate after expiry or termination.

### 35. RESOLVING DISPUTES

35.1 **Notifying each other** - There will be a dispute about or from this agreement if a party writes to the other about it and asks for it to be resolved under this clause. The parties must refer any dispute to be resolved by:

- 35.1.1 negotiation (direct talks to try and agree how to end the dispute) ; failing which
- 35.1.2 mediation (talks in which a neutral third party tries to help the parties agree how to end the dispute) ; failing which
- 35.1.3 arbitration (a hearing after which a neutral third party makes a binding decision about the dispute).

35.2 **Negotiation** - Each party must make sure that their chosen representatives meet within 10 business days of notification, to negotiate and try to end the dispute by written agreement within 15 more business days.

35.3 **Mediation** - If negotiation fails , the parties must refer the dispute to mediation under AFSA's rules.

35.4 **Arbitration** - If mediation fails , the parties must refer the dispute within 15 business days to arbitration (including any appeal against the arbitrator's decision) under AFSA's latest rules for expedited arbitrations. The arbitration will be held in English in the city of Durban (Kwazulu Natal). The parties will agree and appoint one arbitrator. If the parties cannot agree on the arbitrator within 10 business days after the referral, the Secretariat of AFSA will appoint the arbitrator.

35.5 **Agree otherwise in an order** - The parties may agree otherwise in an order.

35.6 **Periods** - The parties may agree in writing to change the periods for negotiation or mediation.

35.7 **Urgent interim relief** - This clause will not stop a party from applying to court for urgent interim relief (temporary help) while the dispute resolution process is being finalised. An example might be an interdict (type of court order).

35.8 **Severability** - This clause is separate and divisible from the rest of this agreement and remains effective even if this agreement ends or is invalid.

### 36. NOTICES AND DOMICILE

36.1 **Notices** - The parties will send all notices, authorisations, disclosures, acknowledgements, or requests by hand delivery, prepaid registered post, fax, or email to an address or number given in the relevant order.

36.2 **Service (delivery) address for legal documents** - Each party chooses its street addresses and numbers as its **domicilium citandi et executandi** (its address for the service of any document used in legal action) for this agreement.

36.3 **Change of addresses or numbers** - Each party may change the addresses or numbers in the specific terms to any other addresses or numbers in South Africa by writing to the other party 14 days before the change.

36.4 **Deemed delivery** - Notice will be considered to be delivered on the date shown on any hand-delivered, prepaid registered post , courier , fax or email confirmation of delivery.

36.5 **Notice actually received** - If a party actually receives any notice or other communication , this will be good enough.

### 37. FORCE MAJEURE

37.1 **Parties not liable** - No party will be responsible for any breach of this agreement caused by circumstances beyond its control , including flood, fire, earthquake, war, tempest, hurricane action, government restrictions, or acts of God.

37.2 **Party affected to notify other party** - If there is an event of force majeure, the party affected will tell the other immediately, and they will meet within seven days to negotiate other ways to carry out any affected responsibilities under this agreement. the parties will continue to comply with the responsibilities that are not affected by the circumstances.

37.3 **Right to cancel** - If a party cannot fulfil a material (significant) part of its responsibilities under this agreement for more than 60 days because of force majeure, the other party may cancel this agreement by written notice.

### 38. CUSTOMER'S ORAL INSTRUCTIONS

The customer's instructions to the company shall be precise, clear and comprehensive and in particular, but without limitation, shall cover any valuation or determination issued by Customs in respect of any goods to be dealt with by or on behalf of or at the request of the company. Instructions given by the customer shall be recognised by the company as valid only if given specifically in relation to a particular matter in question. Oral instructions, standing or general 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 its absolute discretion.

**39. NO CLAIMS AGAINST COMPANY DIRECTORS AND EMPLOYEES**

The customer 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 customer relationship terms, and hereby waives all and any such claims.

**40. ASSIGNMENT AND SUBCONTRACTING**

40.1 **No assignment** - No party may delegate its duties under this agreement or assign its rights under this agreement, in whole or in part. The company may assign this agreement to any successor or purchaser of our business or some of our assets.  
 40.2 **Exception** - Despite this clause, the company may cede and assign all rights and obligations under this agreement to a related person without the customers prior written consent, provided that we notify the customer within a reasonable time of the event occurring.  
 40.3 **Our third party contractors** - The company may sub-contract our obligations under this agreement to third party contractors. No one may require us to disclose the terms (including payment terms) of any sub-contract entered into with respect to our obligations under this agreement. The company 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 and shall not be obliged to disclose or account to the customer, or principal for any such amounts received or receivable by it.

**41. RELATIONSHIP**

41.1 **No temporary employment service or partnership** - Nothing in this agreement will be construed as constituting a temporary employment service or as creating a partnership between the parties and no party will have any authority to incur any liability on behalf of the other or to pledge the credit of the other party.  
 41.2 **No employment relationship** - Each party enters into the agreement as an independent contractor. The agreement does not create any other relationship, including employment for any purpose, partnership, agency, trust or joint venture relationship.

**42. GENERAL**

42.1 **Entire agreement** - The agreement is the entire agreement between the parties on the subject.  
 42.2 **Changes to the terms** - The company may change the terms at any time and where this affects our customers rights and obligations, we will notify our customers of any changes by placing a notice in a prominent place on our website or by email. If our customers do not agree with the changes made they must stop using the services. If the customer continues to use the services following notification of a change to the terms, the changed terms will apply to the customer and the customer will be deemed to have accepted such terms.  
 42.3 **Changes to any third party software license agreement** - The company will notify the customer of any changes to any third party software license terms by placing a notice in a prominent place on our website, or notifying the customer by email. The updated third party software license terms will be effective immediately and the customer will be deemed to have accepted them upon notification.  
 42.4 **Waiver (giving up rights)** - Any favour the company may allow the customer will not affect or substitute any of our rights against you.  
 42.5 **Severability** - If any term is void (invalid), unenforceable, or illegal, the term may be severed (removed) from and will not affect the rest of this agreement if it does not change its purpose.  
 42.6 **Governing Law** - South African law governs this agreement.  
 42.7 **Jurisdiction** - The customer consents to the jurisdiction of the magistrate's Court in respect of any action or proceedings that the company may bring against you in connection with this agreement, even if the action or proceedings would otherwise be beyond its jurisdiction without prejudice to our right to institute any action in any other court having jurisdiction.  
 42.8 **Non-exclusivity** - The company may provide any goods or services to any other person or entity. The company may exploit its intellectual property subject to its confidentiality obligations.  
 42.9 **Costs** - Each party is responsible for its own costs of drafting and negotiating this agreement.  
 42.10 **Legal costs** - The customer is responsible for the company's legal costs if the company has to institute legal proceedings against the customer on an attorney-and-own client scale.  
 42.11 **Right to reference** - The customer consents to us using their name and a general description of the services in any marketing or sales material.  
 42.12 **Publicity** - A party will not make any announcement or statement to the press about this agreement, without first getting written permission from the other party.

**43. VARIATION OF THESE TRADING TERMS**

No variation of these customer relationship terms shall be binding on the company unless embodied in a written document signed by a duly authorised director of the company. Any purported variation or alteration of these customer relationship terms otherwise than as set out above shall be of no force and effect, whether such purported variation or alteration is written or oral, or takes place before or after receipt of these customer relationship terms by the customer.

Signed by the **Customer** at \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_ In  
 the presence of the undersigned witness :-

Customers Name: \_\_\_\_\_  
 ( Print Full Name and Surname)

Customers Signature: \_\_\_\_\_  
 (He who warrants that he is duly authorized to sign)

Company Name : \_\_\_\_\_

**Company Stamp:**

**Witness:**

Print Name : \_\_\_\_\_

Signature : \_\_\_\_\_