

1. Definitions

In these conditions the following words shall bear the meaning assigned to them below:

- 1.1. **“Agreement”** means this agreement together with all schedules and annexures hereto;
- 1.2. **“Carrier”** means RB Associated Logistics (Pty) Ltd, Registration number 2014/172845/07, and includes the Carrier's servants and agents and any person or persons carrying any goods forming the subject matter of this contract under and in terms of a subcontract with the Carrier.
- 1.3. **“Customer”** means the party reflected on the waybill document as the sender and or receiver of the Goods, whether acting on his own behalf or in his capacity as agent or in any other capacity for a third party;
- 1.4. **“Days”** means a calendar days;
- 1.5. **“Dangerous Goods”** includes those classified as such by Spoornet, the marine division of the Department of Transport, goods specified as such by IATA or the SABS from time to time including hazardous chemical substances as defined in the regulations promulgated pursuant to the Occupational Health and Safety Act 85 of 1993 or which are considered by the Carrier to be dangerous;
- 1.6. **“Goods”** means the goods forming the subject matter of this Agreement, whether contained in one or more parcels or packaging and whether consigned singly or in parcels or in bulk, and includes the goods being handled, warehoused, held, controlled, loaded or unloaded, carried or otherwise possessed by the Carrier for any purpose whatsoever;
- 1.7. **“Parties”** means the parties to this Agreement, as set out on the cover page hereto;
- 1.8. **“Perishable Goods”** means goods that spoil quickly and therefore have a short shelf life;
- 1.9. **“Remuneration”** means remuneration payable to the Carrier by the Customer for the handling of goods and related services, in accordance with the provisions of this Agreement;
- 1.10. **“Tariffs”** means the standard tariffs of the Carrier, as determined by the Carrier from time to time;
- 1.11. **“Account Holder”** means the person who signs the Credit Application for said account.

2. No Variation

The handling of the Goods shall be subject to the conditions stated herein unless specifically varied by the Carrier in writing, and these conditions shall at all times take precedence over any terms, conditions or stipulations contained in any of the Customer's documentation.

3. Remuneration

- 3.1. In the absence of any written agreement to the contrary, the Remuneration payable to the Carrier by the Customer for the handling of goods and related services, will be in accordance with the Tariffs, which shall be made available to the Customer on request.
- 3.2. The Customer shall be liable for any duty, tax, fine or outlay of whatsoever nature levied by the authorities at any place in connection with the Goods and shall reimburse the Carrier for any such amount disbursed or losses sustained by the Carrier in connection therewith, unless the Carrier is negligent in providing its transport services.
- 3.3. In the event of the Carrier being obliged to deviate from the route selected by it, or to carry the goods over another route, for any reason whatsoever, including but not limited to adverse weather conditions, impassable or dangerous roads or bridges, or the instructions of any competent authority, the Carrier will be entitled to charge an additional remuneration in proportion to the resulting extra distance travelled.

- 3.4. In the event of the Carrier being obliged to take out or obtain any licenses or permits, or to comply with the requirements of any lawful authority, the Carrier will be entitled to levy an additional charge to cover any ensuing expenses not already included in the Carrier's standard tariffs.

4. Payment

- 4.1 The Carrier is not deemed to be a credit provider as defined in the National Credit Act No. 34 of 2005 . As such, unless the Customer already has an account facility with the Carrier, the Carrier shall be obliged to request payment to be made by the Customer by electronic funds transfer in advance into the bank account of the Carrier, which must be confirmed both via email and telephonically thereafter by the Customs with the Carrier.
- 4.2 The Account Holder shall not be entitled to withhold payment of any amount due in terms hereof by virtue of any claim the Customer and/or Account Holder may have for compensation for loss of or damage to goods or other property, or for any reason whatsoever.
- 4.3 In the absence of any provisions to the contrary, payment must be made by the Customer to the Carrier for all amounts due within 30 (thirty) days from the date of the Carrier's statement.

5. Carrier's Lien

- 5.1. As security for monies owing for the handling of the Goods, the Carrier shall have a lien over all goods in its possession or under its control.
- 5.2. Although credit may have originally been granted by the Carrier to the Customer, the Carrier may at any time in its sole discretion retain possession of any Goods pending the discharge of all the Customer's indebtedness to the Carrier, whether or not such indebtedness is related to the handling of the Goods in question.
- 5.3. If any monies owing to the Carrier are not paid by the Customer within 30 (thirty) days after they have become due, the Carrier shall be entitled, without further notice, to:
- 5.3.0. open and examine the Goods;
 - 5.3.1. sell the whole or any part of the Goods in such a manner and on such terms and conditions as it deems fit;
 - 5.3.2. apply the proceeds of any sale after deducting all expenses thereof in payment or reduction of any amount due by the Customer to the Carrier (including storage charges), provided that any surplus shall be paid over to the Customer without interest immediately after the sale, if the Customer's address is known, and if not, upon demand made by the Customer within 90 (ninety) days of the sale.
- 5.4. The Carrier shall not be liable for any loss, damage or deterioration of the Goods attributable to the implementation of this clause.
- 5.5. The Carrier's rights under this clause are without prejudice to any other rights which it may have.
- 5.6. Clause 5.3 shall not be invoked where there the parties have agreed in writing that reasonable grounds for dispute of payment exist.

6. Insurance

- 6.1. The Carrier shall have no obligation to effect any insurance on the Goods except upon express written instructions given by the Customer, which have been accepted in writing by the Carrier.

- 6.2. Such insurance will be on the terms specified by the insurance company or underwriter taking the risk in relation to the Goods, and will be subject to such exceptions and conditions as may be imposed by the insurer. The Carrier shall be under no obligation whatsoever to obtain separate cover for any risks so excluded and shall not be liable for the consequences of any failure to obtain insurance cover.
- 6.3. Unless otherwise agreed in writing, the Carrier shall not be under any obligation to obtain separate insurance in respect of separate consignments of Goods but may insure all or any of such consignments under any open or general policy.
- 6.4. Should any insurer dispute its liability in terms of any insurance policy in respect of any Goods, the Customer shall have recourse against such insurer only and the Carrier shall not have any responsibility or liability whatsoever in relation thereto notwithstanding that the premium paid on such policy may differ from the amount paid by the Customer to the Carrier in respect thereof.
- 6.5. Insofar as the Carrier agrees to arrange insurance, the Carrier acts solely as agent for and on behalf of the Customer.
- 6.6. Subject to clause 6.1, if the Goods are transported, or are to be transported by rail, it shall be the obligation of the Customer to instruct the Carrier prior to receipt of the Goods into its or the rail carrier's custody or control, as to whether the Carrier is to accept the rail carrier's standard terms and conditions and/or any offer of insurance of the Goods, on behalf of the Customer, or to request the Carrier to endeavour to place such insurance cover with such other underwriter as directed by the Customer.
- 6.7. In any event the Customer acknowledges that it is aware of the terms and conditions under which the rail carrier (currently Transnet, but which includes any successor thereof, or that entity operating under a new name) undertakes the rail carriage of containerised Goods, the terms and conditions of the insurance cover offered by the rail carrier and their limitations of liability in the event of such insurance cover not being accepted and under no circumstances whatsoever shall the Carrier be liable for any loss suffered by the Customer and howsoever caused, while the Goods are in the custody of the rail carrier.

7. Customer's Warranties

The Customer is bound by and warrants in favour of the Carrier:

- 7.1. The accuracy of all descriptions, values and other particulars furnished to the Carrier. The Customer indemnifies the Carrier against all expenses, claims or fines arising from any inaccuracy or omission of descriptions, values or other particulars.
- 7.2. That the carriage of the Goods is not prohibited by law and the Customer hereby indemnifies and holds the Carrier harmless against any claims and/or damages which the Carrier may suffer by virtue of the Customer's breach of this warranty;
- 7.3. That the Goods are the Customer's sole property, alternatively, the Customer is authorised by the person owning the Goods to enter into this Agreement, and the Customer hereby indemnifies the Carrier against any claims made by the owner.

8. Conditions of goods

The onus of proving the quantity, type, physical properties and composition and the condition of the Goods and/or the condition of any container at the time of receipt thereof by the Carrier shall at all times remain with the Customer, and no delivery note, receipt or other document furnished or signed at such time by or on behalf of the Carrier shall constitute conclusive proof thereof.

9. Dangerous goods

- 9.1. The Customer warrants that all Goods handled are fit to be so handled in the ordinary manner and, unless otherwise agreed in writing between the Parties by specific written notice, the Carrier will not handle any dangerous, corrosive, noxious, hazardous, inflammable or explosive goods or any goods which in its opinion are likely to cause damage.
- 9.2. The Customer shall be liable for all losses or damage caused to the Carrier and/or third Parties by all Dangerous Goods handled not specifically contemplated in any written notice or other agreement between the Carrier and the Customer. The Customer hereby indemnifies the Carrier against any claims arising in connection therewith.
- 9.3. If, in the opinion of the Carrier, any Goods become a danger to any person or property, the Carrier shall be entitled to immediately and without notice to the Customer dispose of the Goods in question or take such other steps as it, in its sole discretion, deems prudent to avert danger. In such event the carrier shall:
 - 9.3.0. not be liable under any circumstances for the value of the Goods or for any other loss or damage whether direct or consequential sustained by the Customer or owner of the Goods as a result of such disposal or other steps; and
 - 9.3.1. still be entitled to recover from the Customer its Remuneration for the handling of the Goods together with any costs incurred by it in disposing of them or taking other steps.
- 9.4. Should the Carrier agree to handle any Dangerous Goods for any purpose in terms of clause 8.2, the Customer shall furnish the Carrier with the necessary dangerous goods declaration and TREM card.
- 9.5. The Customer shall ensure that the Dangerous Goods are packed strictly in accordance with dangerous goods regulations that shall bear the necessary warning labels required in terms of the laws and regulations applicable to the transportation of the Dangerous Goods.

10. Perishable goods

Perishable goods which are not taken up immediately upon arrival at their destination or which are insufficiently marked or otherwise not identifiable may be disposed of without notice to the Customer.

11. Loading and off-loading

- 11.1. The Customer shall ensure that:
 - 11.1.0. unless otherwise arranged in writing, the Goods shall be ready for loading by the Customer onto vehicle(s) despatched by the Carrier to the address supplied by the Customer on the date and time specified;
 - 11.1.1. all documentation necessary in connection with the Goods and the transportation thereof shall be fully and correctly prepared and emailed to the Carrier prior to pickup / delivery;
 - 11.1.2. at all places where the Carrier is to collect and/or off-load the Goods, there shall be safe, suitable and adequate access and loading off-loading facilities, and that it shall be possible for the Carrier to do so by means of ordinary access, without need for any special or additional tackle, plant, power, labor or equipment.
 - 11.1.3. any Goods uplifted will be sufficiently packed and prepared for carriage;
 - 11.1.4. the Customer shall sign such certificates and receipts on loading and off-loading as the Carrier may require.

- 11.2. The Carrier shall not be under any obligation to provide any plant, power or labor which in addition to its vehicle's crew is required for the loading or unloading of any goods. Any assistance given by the Carrier in such loading or unloading shall be at the sole risk and expense of the Customer.
- 11.3. Any Customer conducting any packing or other operation or activity in any area or premises provided by the Carrier shall do so at its own risk and the Customer indemnifies the Carrier against all claims or losses arising out of the presence of the Customer in such area or premises.

12. Route

When carrying goods, the Carrier shall in its sole discretion decide what route to follow.

13. Carrier's liability for damage or loss

13.1. The Carrier shall not carry the following goods:

- Bullion;
- Specie;
- Alcoholic beverages;
- Jewellery;
- Precious stones;
- Cash;
- Stamps;
- Deeds;
- Traveller's cheque/s;
- Valuable documents;
- Film;
- Household removals;
- Cigarettes;
- Tyres;
- Livestock and game;
- Tinned fish;
- Copper products;
- Electronic goods;
- Prepaid phone cards.

- 13.2. No claim will be considered by the Carrier in cases where goods are insufficiently packed for transport.
- 13.3. The Customer shall be responsible to pack goods in a manner that will withstand handling and travelling.
- 13.4. Plastic wrapping shall not be considered to be packaging, but rather protection against dampness and/ or dirt.
- 13.5. The Carrier shall be responsible to do a visual check on loading, and advise of any visible defects that may result in damages during transit.
- 13.6. The Carrier's staff shall be entitled to reject goods which appear obviously unsafe to transport, and the Parties will deploy an operating procedure to ensure clear communication and management of such circumstances should they arise.

- 13.7. Subject to the terms of this Agreement and in respect of the goods carried by the Carrier, the Carrier will only be liable in respect of loss or damage of such goods in transit by the Carrier, to an amount of the relevant Goods in Transit (GIT) cover for the conveyance of the goods.
- 13.8. Subject to clauses 12.2 to 12.6 above, the Customer hereby exempts the Carrier and indemnifies the Carrier against any liability arising, directly from the handling of the Goods. The exemption and indemnity include, but are not restricted to, any liability for any loss or damages arising from the loss of the Goods, damage to the Goods, theft of Goods, the failure to collect or deliver the Goods timeously, adequately or at all, or from or to correct address, or from any other cause arising whether any such liability, loss or damage is caused by or arises from breach of contract or delict on the part of the Carrier, its servants, agents or employees, or otherwise.
- 13.9. The Customer acknowledges and agrees that the Carrier's liability is further limited, having regard to clauses 13.2 to 13.6 above, to a maximum of:
- | | | | |
|---------|---------------------|---|---|
| 13.9.0. | 34t full truck load | - | R3,000,000.00 (Three Million Rand); |
| 13.9.1. | 16t truck load | - | R1,500,000.00 (One Million Five Hundred Thousand Rand); |
| 13.9.2. | 8t truck load | - | R750,000.00 (Seven Hundred and Fifty Thousand Rand); |
| 13.9.3. | 1,2t truck load | - | R150,000.00 (One Hundred and Fifty Thousand Rand). |
- 13.10. The Carrier accepts no responsibility for the amount or quantity of goods inside parcels, only for the number of parcels.
- 13.11. The Carrier shall be liable for direct loss, only in the event of gross negligence but shall not be liable for indirect and/or consequential loss in any event whatsoever.
- 13.12. Subject to this clause 13, any claim for damages must be reported to the carrier in writing within 24 hours of delivery.

14. Subcontracting

- 14.1. The Carrier reserves the right to employ subcontractors to act for it, subject to the terms and conditions contained herein which shall apply equally to any sub-contractor employed to act on behalf of the Carrier.
- 14.2. Where the Carrier employs independent third Parties to perform all or any of the functions required of the Carrier, the Carrier shall, subject to the provisions of clause 13 above, have limited responsibility or liability to the Customer for any acts or omissions of such third Parties.
- 14.3. Whenever reasonably practicable, the Carrier shall notify the Customer of the use of subcontractors.

15. Permits and consents

The Customer shall provide or arrange any permit, consent or approval to handle Goods, if so required by law, to the Carrier.

16. Right to inspection

The Carrier may, in order to control goods as well as the safety of its employees, inspect the Goods which shall include the right to open and examine the goods. Any such need for an examination shall be clearly communicated to the Customer prior to the opening of the Goods, unless the Carrier is so directed by a municipal or governmental

authority to open the Goods. In such an event the Carrier will still notify the Customer of such actions at its earliest convenience.

17. Carrier's obligations

It will be deemed that the Carrier has discharged all its obligations in terms hereof, once the Carrier has delivered or handed the Goods to the receiver stated in the waybill at the receiver's address or at any other address the carrier has been requested to deliver to.

18. Delay for Compliance

The Carrier shall not be liable for any delay occasioned by compliance with any instructions issued by the police or any other competent authority. Any additional costs incurred by the Carrier as a result of compliance with any such instructions shall be added to its charges.

19. Applicable law

- 19.1. This Agreement shall be governed, interpreted and implemented in accordance with the laws of the Republic of South Africa, as constituted from time to time.
- 19.2. The Parties consent in terms of section 45 of the Magistrate's Court Act No. 32 of 1944 to the jurisdiction of the Magistrate's Court in respect of any dispute arising out of this Agreement.

20. General Terms

- 20.1. The Agreement constitutes the sole record of the agreement between the Parties, and the Parties waive the right to rely on any alleged provision not expressly contained in this Agreement or in any written addendum or amendment hereto.
- 20.2. The Carrier shall not be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.
- 20.3. No addition to, variation of or agreed cancellation of this agreement shall be of any force or effect unless recorded in writing and accepted by the carrier in writing and signed by both Parties.
- 20.4. No relaxation or indulgence which the carrier may grant to the customer shall constitute a waiver of the rights of the carrier and shall not preclude the carrier from exercising any of its rights which may have arisen in the past or which might arise in the future.
- 20.5. Neither party to this Agreement may cede, assign, transfer or encumber in any way any of its rights, title or interest or delegate any obligations arising from this Agreement without the informed and prior written consent of the other party.
- 20.6. In the event that any of the terms of the Agreement are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining terms, which will continue to be valid and enforceable.
- 20.7. A party will not be liable to the other party for failure or delay in meeting any obligation under this Agreement due to strikes and/ or lockouts or any other cause beyond the reasonable control of the party which has a duty to perform.

21. Breach

In the event of either party breaching the terms of this Agreement and failing to remedy such breach within 7 (seven) days of written notice to do so, then the aggrieved party shall be entitled to enforce specific performance hereof, or cancel this Agreement, entirely without prejudice to any other rights which the aggrieved party may have in law.

22. Costs

- 22.1. Each party shall bear their own costs in respect of the negotiation of this Agreement.
- 22.2. In the event of either party hereto instituting legal proceedings against the other party hereto, then the successful party in the legal proceedings shall be entitled to recover costs on the attorney and client scale.

23. Confidentiality

The Parties shall keep the contents of this Agreement confidential, including any information ancillary to the Agreement, and shall not disclose any information in this regard to any third parties, without the prior written consent of the other, save for purposes of complying with any law or under any order of court, or for purposes of obtaining legal advice from an attorney duly registered with the requisite Law Society.

24. Data Privacy

For the duration of this Agreement, both Parties undertake to process any and all personal information received in accordance with the provisions of the Protection of Personal Information Act No. 4 of 2013 ("POPIA"). In particular, the Parties undertake to implement commercially reasonable, technical and organisational security procedures and measures to preserve the security and confidentiality of the personal information received in terms of this Agreement. Neither Party shall do any act that puts the other Party in breach of its obligations under POPIA. Each Party agrees to obtain all necessary consents required in terms of POPIA, and will not share any personal information with any third party without first obtaining the written consent from the other Party. In the event of any unauthorised disclosure of personal information, such Party shall be required to immediately notify the other party of such breach, to enable such Party to comply with any and all obligations imposed on it in terms of POPIA.