



STANDARD TRADING TERMS AND CONDITIONS*

NOTICE: THIS DOCUMENT PROVIDES FOR VARIOUS LIMITATIONS OF THE COMPANY'S LIABILITY AND RENDERS THE CUSTOMER LIABLE FOR PAYMENT IN A VARIETY OF CIRCUMSTANCES. THE CUSTOMER IS ADVISED TO CAREFULLY READ EACH SUB-CLAUSE.

1. INTERPRETATION

- 1.1. **"Cargo"** means any goods handled, transported or dealt with by or on behalf of or at the instance of the Customer or which come under the control of the Company or its agents, servants or nominees on the instructions of the Customer, including:
 - 1.1.1. Dangerous Cargo;
 - 1.1.2. any Transport Units, packaging or equipment used in connection with or in relation to such Cargo; and
 - 1.1.3. all Cargo-related documents inclusive of, but not limited to bills of lading, sea, road and air waybills.
- 1.2. **"Carrier"** means any carrier whatever of a Customer's Cargo at the behest of the Company and includes the owner and/or operator of any Vessel and the operator of any conveyance by road, rail or air.
- 1.3. **"Company"** means the Company referred to above, or if it exercises its right under clause 13.4, the member of the Group in respect of which it exercises its rights.
- 1.4. **"Customer"** means any person at whose request or on whose behalf the Company undertakes any business or provides any advice, information or service.
- 1.5. **"Dangerous Cargo"** is as defined in clause 19.1.
- 1.6. **"the Group"** means any company within the LBH Group which may render a service to the Customer in terms of clause 13.4.
- 1.7. **"Freight Forwarding Services"** means services of any kind relating to the carriage, consolidation, storage, handling, packing or distribution of Cargo as well as ancillary and advisory services in connection therewith, including but not limited to customs and fiscal matters, declaring Cargo for official purposes, procuring insurance of Cargo and collecting or procuring payment or documents relating to Cargo.
- 1.8. **"Owner"** means the owner of the Cargo or owner or disponent owner of the Vessel (as applicable) to which any business concluded under these trading terms and conditions relates and any other person who is or may have or acquire any interest, financial or otherwise in the Vessel or Cargo including bill of lading holders.
- 1.9. **"Sanctioned Person"** means any natural or legal person subject to any economic or financial sanctions or trade embargoes administered or enforced by any applicable sanctions authority.

- 1.10. **"Services"** means vessel agency (whether port agency, charterer's agency, owner's agency, Cargo agency), Freight Forwarding Services, tallying, Cargo or stockpile monitoring, and all logistics related services.
- 1.11. **"STC's"** means these Standard Trading Terms and Conditions.
- 1.12. **"Statutory Authority"** means any government department or government agency as well as any authority or private company mandated by law or government to perform certain functions and includes port, terminal and rail operators.
- 1.13. **"Supplier"** means any person with whom the Company transacts any business on behalf of a Customer and includes any person who supplies services of whatever nature, including but not limited to insurers, brokers, Statutory Authorities, sub-agents and sub-contractors.
- 1.14. **"Transport Units"** means containers, pallets, trailers, flats, tilts, railway wagons, tanks, or any other unit load devices for the carriage of Cargo by land, sea or air.
- 1.15. **"Vessel"** means a ship which is owned, operated, managed or chartered by a Customer.
- 1.16. The headings to the clauses are for reference purposes only and shall not aid in the interpretation of the clauses to which they relate.
- 1.17. 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 unincorporated) and *vice versa*.

SECTION A: GENERAL

2. MANDATE, COMPANY'S DISCRETION AND INSTRUCTIONS

- 2.1. In the absence of **specific instructions** given timeously in writing by the Customer to the Company and accepted by the Company –
 - 2.1.1. 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.
 - 2.1.2. 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.
 - 2.1.3. In all cases where there is a choice of tariff rates or premiums offered by any Supplier, or other person depending upon the declared value of the relevant Cargo or the extent of the liability assumed by the Supplier, 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 Supplier or other person.
 - 2.1.4. The Company shall not be obliged to make any declaration for the purpose of any statute, convention, or contract, as to the nature or value of any Cargo or as to any special interest in delivery. 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 Dangerous Cargo, or other Cargo which requires special conditions of handling or storage; or arrange for any particular Cargo to be carried, stored or handled separately from other Cargo.

* These STC's rely on industry standard terms recommended by BIMCO, FIATA and the South African Association of Freight Forwarders.

2.2. **Company's general discretion**

- 2.2.1. Notwithstanding anything to the contrary herein contained, if at any time the Company in the exercise of its sole and reasonable discretion should consider it to be in the Customer's interests 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.
- 2.2.2. 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, unlawful 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 act in the absence of instructions, including detaining, returning, storing, selling, abandoning, or destroying all or part of the Cargo concerned at the risk and expense of the Customer.

2.3. **Customer's instructions**

- 2.3.1. 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 the Customs in respect of any Cargo 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 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.

3. **CONTRACT TERMS AND SUB-CONTRACTS**

- 3.1. Unless otherwise agreed in writing, the Company shall be entitled to act either as **principal or an agent** for and on behalf of the Customer, as it in its absolute discretion deems fit. 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 or as a principal.
- 3.2. 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.
- 3.3. 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 reasonably deems necessary or requisite for the fulfilment of the Customer's instructions, including, without limitation, contracts for the –
- 3.3.1. carriage of Cargo by any route or means or Carrier;

- 3.3.2. storage, packing, transport, shipping, loading, unloading and/or handling of Cargo by any person at any place whether on shore or afloat and for any length of time;
- 3.3.3. carriage or storage of Cargo in break-bulk form in or on Transport Units or with or without other Cargo of whatsoever nature.
- 3.4. 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 kind and shall not be obliged to disclose or account to the Customer, or principal for any such amounts received or receivable by it.
- 3.5. 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 Cargo 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.
- 3.6. 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 the 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 wholly indemnified against all costs, (including attorney and own client costs) which may be incurred or awarded against the Company, take such action against the third party on the Customer's behalf as the Customer may direct.
- 3.7. To the extent that any Supplier, third party or Carrier operates pursuant to trading terms which purport to confer any benefit whatever on the Company, the Company hereby accepts such benefit(s).
- 3.8. Notwithstanding anything to the contrary contained herein the Customer agrees that all Vessels and Cargo shall be dealt with by the Company on the terms and conditions, whether or not inconsistent with these terms and conditions, stipulated by any Supplier, Statutory Authority, and all other parties (whether acting as agents or subcontractors to the Company or not) into whose possession or custody the Cargo or Vessel may pass, or subject to whose authority they may at any time be.

4. **CUSTOMER'S UNDERTAKINGS AND WARRANTIES**

- 4.1. For all purposes hereunder the Customer shall be deemed to have, in relation to the Customer's business, the Vessel, the Cargo and the services to be rendered by the Company in respect thereto, reasonable knowledge of all matters directly or indirectly relating thereto or arising therefrom including, without limitation, vessel and cargo characteristics, terms of the cargo's sale and purchase and all matter relating thereto and the Customer undertakes to supply all pertinent information to the Company.

- 4.2. The Customer warrants that –
- 4.2.1. it is either the legitimate principal or duly authorised agent in respect of which the Customer instructs the Company and that each such person is bound by these trading terms and conditions;
- 4.2.2. 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 is bound by these STC's 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 the Owner jointly and severally any liability of the Customer under these trading terms and conditions or to recover from the Owner any sums to be paid by the Customer which upon proper demand have not been paid;
- 4.2.3. all information and instructions supplied or to be supplied by it to the Company is and shall be timeous, 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, without derogating from the generality of the foregoing, any assessment or reassessment;
- 4.2.4. all Cargo 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 Cargo involved and are capable of withstanding the normal hazards inherent in the implementation of such contract;
- 4.2.5. where Cargo is carried in or on a Transport Unit, then save where the Company has been given and has accepted specific written instructions to load the Transport Unit –
- 4.2.5.1. that the Transport Unit has been properly and competently loaded; and
- 4.2.5.2. that the Cargo involved is suitable for carriage in or on the Transport Unit; and
- 4.2.5.3. that the Transport Unit is itself in a suitable condition to carry the Cargo loaded therein and complies with the requirements of all relevant transport authorities and Carriers.

- 4.2.6. in the case of Services or Customers related to South Africa, the Customer's annual turnover exceeds the thresholds contained in the National Credit Act 34 of 2005 and the Consumer Protection Act 68 of 2008, and accepts that the provisions of these Acts do not apply to any Services rendered by the Company.

5. INDEMNITY BY THE CUSTOMER

Without prejudice to any of the Company's rights and securities under these STC's, the Customer 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:

- 5.1. claims by any Carrier or Owner of the Vessel or Cargo concerned who is not the Customer of the Company;
- 5.2. claims by any Carrier of the Cargo if the Company is the consignor or consignee of the Cargo;
- 5.3. in respect of any Dangerous Cargo;
- 5.4. any claim arising out of guarantees furnished by the Company pursuant to the provisions of Clause 8;
- 5.5. claims by Suppliers for the cost and expenses of Cargo or Services provided to the Customer at the Company's special instance and request;
- 5.6. payment of any taxation which may be levied on passenger earnings or freight earned on Cargo loaded in the absence of reciprocal Intergovernmental taxation agreements;
- 5.7. claims of a general average nature which may be made against the Company, and the Customer shall provide such security as may be required by the Company in this connection;
- 5.8. the Company carrying out any instructions of a Customer which have been given contrary to the advice of the Company.

6. DUTIES, TAXES, IMPOSTS, LEVIES AND DEPOSITS

- 6.1. The Customer, whether or not the cause of payment was due to an act, instruction or omission of, if any third party, shall be liable for any duties, taxes, imposts, levies, deposits or out-lays of whatsoever nature levied by or payable to the authorities, intermediaries or other parties at any port or place or in connection with the Cargo or Vessel and whether at the time of entry and/or at any subsequent time and for any payments, fines, penalties, expenses, loss or damage or whatsoever incurred or sustained by the Company in connection therewith or arising therefrom.
- 6.2. The Company shall bear no liability in consequence of the fact that there may be a change in the rate of duty, wharfage, freight, railage or cartage (whether arising from bunker or congestion adjustment by a Carrier or otherwise), or any other

tariff, before or after the performance by the Company of any act involving a less favourable rate or tariff or by virtue of the fact that a saving might have been effected in some other way had any act been performed at a different time.

- 6.3. Where as a result of any act or omission by or on behalf or at the instance of the Company and whether or not such act or omission was negligent, any duty, tax, levy, railage, wharfage, freight, cartage or any other impost or charge has been paid or levied in an incorrect amount, then any responsibility or liability to the Customer which the Company may otherwise have will cease and fall away if the Customer does not –
 - 6.3.1. within 30 days of invoice advise the Company that an incorrect amount has been paid or levied, and
 - 6.3.2. do all such acts as are reasonably necessary to enable the Company to effect recovery of the amount incorrectly paid.

7. PAYMENT BY THE CUSTOMER

- 7.1. 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 a particular Vessel or Cargo from the Customer or if the Customer acts as an agent for a disclosed or undisclosed principal, as the Company in its absolute discretion deems fit.
- 7.2. Unless otherwise specifically agreed by the Company in writing the Customer shall pay to the Company by Electronic Funds Transfer immediately upon presentation of account all sums due to the Company without deduction or set-off and payments shall not be withheld or deferred on account of any claim or counterclaim which the Customer may allege.
- 7.3. The Customer shall not be entitled to withhold payment of any amounts by reason of any dispute with the Company, whether in relation to the Company's performance in terms of any agreement, or lack of performance or otherwise, after which payment the Customer's rights of action against the Company in terms of this clause can be enforced. Until such payment is made, any rights that the Customer may have shall be deemed not yet to have arisen and it is only the payment to the Company which releases such rights and makes them available to the Customer in respect of any claim that he may have against the Company.
- 7.4. The Company may in its sole discretion appropriate any payments made by the Customer to any principal debt owed by the Customer to the Company, irrespective of when it arose, or to interest only, or to legal or other costs, or to any such combination of principal, interest and costs as it may in its sole discretion determine, irrespective of any purported allocation or appropriation being made by the Customer at the time of payment or at any other time.
- 7.5. Should any amount not be paid by the Customer on due date then the whole amount in respect of all Services rendered by the Company to the Customer and monies disbursed by the Company on behalf of the Customer (whether or not related to the transaction in relation to which the Customer has defaulted), shall become immediately due, owing and payable and the Customer shall be liable to pay interest, calculated daily and compounded monthly, in respect of all such amounts at a rate of 5 (five) percentage points above the prime overdraft lending rate from time to time quoted by the Company's bankers from due date until date of payment.

- 7.6. In the event of the Customer breaching any of its obligations and/or failing to timeously make payment of any amount to the Company, the Customer agrees to pay, and shall be liable to pay, all legal costs whatsoever on a full indemnity or an attorney and own client basis, including collection charges and tracing agent's fee incurred by the Company in recovering any such amount from the Customer.
- 7.7. A certificate signed by any Auditor of the Company stating the indebtedness of the Customer to the Company or certifying that specific Services were rendered and/or monies disbursed and/or Cargo delivered, shall be *prima facie* evidence of the Customer's indebtedness to the Company or of the rendering of such Services, disbursement of such monies or delivery of such Cargo.
- 7.8. The Company reserves the right to withdraw any credit facilities accorded to the Customer, at any time without prior notice and the nature and extent of such facilities shall at all times be at the Company's sole discretion. In particular, but without derogating from the generality of the foregoing, if the Customer commences any type of proceedings related to insolvency in terms of the law of any country, the Company may forthwith revoke any credit facilities previously accorded to the Customer and thereafter, should the Company remain willing to act on behalf of the Customer, or should the Company at that time have custody of any of the Customer's Cargo or in any way be in the process of effecting any transaction on behalf of the Customer, it may thereupon refuse to continue with such transaction, or any future transaction or mandate, or to release any such Cargo unless and until the Company has been placed in funds by way of cash or confirmed banking transaction.

8. GUARANTEES BY THE COMPANY

A Customer shall under no circumstances require the Company to furnish a guarantee or to provide security for the performance of any obligations by the Customer or the Company on behalf of the Customer. In the event of the Company, by reason of legislation or the requirement of a Statutory Authority, being obliged to guarantee the obligations of a Customer or secure the fulfillment of the Company's obligations on behalf of the Customer, the Customer shall, prior to the furnishing of such guarantee or security by the Company, indemnify the Company as is provided for in Clause 5.4 and in addition pay to the Company the applicable commission or fee payable by the Company to the issuer of such guarantee (if a person or entity other than the Company) and any commission payable calculated on the maximum amount of any loss the Company may sustain were any such guarantee or security to be acted upon.

9. QUOTATIONS

- 9.1. Information furnished to a Customer by the Company as to the costs and expenses of providing Services, or any matter relating thereto, whether in the form of an estimate, offer, quotation or tender, shall be deemed to be information furnished for the guidance of the Customer only and shall not be binding on the Company unless the contrary has been expressly stated in such estimate, offer, quotation or tender.
- 9.2. All quotations by the Company shall, subject to 9.1, be valid and binding on the Company for a period of 30 (thirty) days after issue thereof. Should any business based upon a quotation be confirmed by the Customer more than 30 days after issue of the said quotation, the Company reserves the right to adjust the quotation.

- 9.3. Without in any way limiting the generality of 9.1, if the Company provides or makes an estimate, offer, quotation or tender to a Customer, whether or not same is stated or implied to be a binding and fixed offer to the Customer:
- 9.3.1. the final invoice(s) from the Company may be increased or decreased, as the case may be, should there be any fluctuation of more than 5% (five *per centum*) in the underlying costs of Suppliers arising from matters beyond the control of the Company and/or Suppliers, such as costs which were not reasonably foreseeable, fluctuations in fuel and transport costs, and currency fluctuations.
- 9.3.2. Where any tariff headings or other statutory increases are amended on demand by any Statutory Authority, the Customer shall be deemed to have expressly consented to and agreed the tariff headings as amended and shall not dispute liability towards the Company for payment under such tariff headings.

10. LIEN

- 10.1. All Cargo, currency, freights or other assets ("**Assets**") received by the Company from or on behalf of a Customer shall be held by the Company, subject to a special and general lien, right of retention and pledge ("**Lien**") for money due to the Company by the Customer or Owner for any reason whatsoever.
- 10.2. Should any amount due to the Company giving rise to the exercise of such Lien not be satisfied within 10 (ten) days after notice to the Customer, or should the contract of agency between the Customer and the Company be terminated without the Company having been paid all amounts owing to it by the Customer –
- 10.2.1. the Assets may be sold by auction, private treaty or otherwise and the proceeds of the sale applied to the satisfaction of the Lien and expenses incurred by and about the sale, without prejudice to the Company's rights to recover from the Customer any balance which may remain owing to the Company after the exercise of such rights.
- 10.2.2. the Company shall be entitled to set off and to deduct from the amount of the currency held by it as aforesaid any amount owing to it by the Customer.

11. LIMITATION OF COMPANY'S LIABILITY

- 11.1. All handling, packing, loading, unloading, warehousing and transporting of Cargo by or on behalf of or at the request of the Company are effected at the sole risk of the Customer and/or the Owner, and the Customer indemnifies the Company accordingly. The Company deals with Cargo only on the basis that it is neither a common carrier nor a public carrier.
- 11.2. Subject to clause 11.1, the Company shall not be liable for any loss, damage, delay or expense of whatsoever nature, howsoever arising in the course of providing the Services unless same has been caused by the wilful default or gross negligence of the Company or its servants.
- 11.3. Notwithstanding anything to the contrary contained in these STC's, the Company shall not be liable for any indirect and consequential loss arising from any act or omission or statement by the Company, its agents, servants or nominees, whether negligent or otherwise.
- 11.4. The Company shall not be liable for any loss or damage of whatsoever nature sustained by a Customer or Supplier directly or indirectly attributable to *Force Majeure*.

Force Majeure means extra-ordinary events outside the control of the parties and which render performance of the Services impossible, including but not limited to acts of God, war, riots, civil insurrection, acts of public enemy, strikes or lockouts, acts of military authority, fires, floods, earthquakes, storms, pandemic or epidemic, traffic delays, public infrastructure collapses or breakdowns, acts of Statutory Authority, detainments.

- 11.5. In the event of the Company being precluded from providing Services due to any such circumstances beyond its control or to any other circumstances constituting *Force Majeure* the Company shall nevertheless be entitled to be reimbursed by the Customer for costs and expenses incurred by it in taking all such steps as may be necessary to protect the interests of the Customer, in particular but not limited to storage charges paid by the Company at the applicable tariff rates.
- 11.6. The Company shall not be liable for the default or negligent act howsoever arising, whether wilful or otherwise, on the part of any Supplier providing Cargo or Services to a Customer at the Company's instance and request, such Supplier being deemed to be an independent contractor employed by the Customer.
- 11.7. The Company shall not be responsible for any money paid or remitted by it on behalf of a Customer to any person pursuant to any request or instruction given to the Company by a Customer.
- 11.8. 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 STC's and hereby waives all and any such claims.
- 11.9. The current Both-to-Blame Collision Clause adopted by BIMCO is incorporated in these conditions.

12. MONETARY LIMITATION OF LIABILITY OF THE COMPANY

- 12.1. In those cases where the Company is liable to the Customer in terms of clause 11.2, liability howsoever arising, shall never exceed for each incident or series of incidents giving rise to a claim or claims **the lesser of:**
- 12.1.1. a total of 10 (ten) times the amount of the fees raised by the Company for its Services, but excluding any amount payable to Suppliers and third parties; or
- 12.1.2. 2 (two) Special Drawing Rights (SDR) per kilogram in respect of any lost or damaged Cargo or Cargo in respect of which the Company has rendered or ought to have rendered Services.
- 12.2. If it is desired that the liability of the Company in those cases where it is liable to the Customer in terms of clause 11.2 should not be governed by the limits referred to in clause 12.1, written notice thereof must be received by the Company before commencement of any Services. 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 notify the Customer of any applicable surcharges. If the Company does not so agree the limits referred to in clause 12.1 shall apply.

13. APPLICATION OF TRADING TERMS AND CONDITIONS, FIATA BILL OF LADING

- 13.1. All and any business undertaken or advice, information or service provided by or to the Company, whether gratuitous or not, is undertaken or provided on these STC's.

- 13.2. Subject to the other provisions of this clause, these STC's, as read with any credit application which may have been completed by the Customer and any order which may have been placed, including any acknowledged written instructions and/or acknowledgement thereof, but excluding the Customer's own Standard Trading Conditions or equivalent thereof, represent the entire agreement between the Company and the Customer, and shall exclusively govern all future contractual relationships between the Company and the Customer and shall be applicable to all debts which the Customer may owe to the Company prior to the Customer's signature hereto (irrespective of whether or not credit facilities are granted).
- 13.3. The Company shall be entitled to issue in respect of the whole or part of any contract for the movement of Cargo a FIATA combined transport bill of lading ("FBL") provided that where a FBL is issued these STC's shall continue to apply except insofar as they conflict with the terms and conditions applicable to the FBL. The issue of the FBL by the Company shall entitle it to raise an additional charge determined by the Company, to cover its additional obligations arising under the FBL.
- 13.4. 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 Group undertakes such business or provides such advice, information or services as principal upon and subject to these STC's which shall apply *mutatis mutandis* to the Customer and any such member of the Group.

14. GENERAL

- 14.1. 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, undertakings, 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.
- 14.2. No extension of time or waiver or relaxation of any of the STC's shall operate as an estoppel against any party in respect of its rights under these STC's, nor shall it operate so as to preclude such party thereafter from exercising its rights strictly in accordance with these STC's.
- 14.3. If any provision of these STC's is unenforceable, then the Company shall be entitled to elect (which election may be made at any time) that such provision shall be severed from the remaining provisions of these STC's which shall not be affected and shall remain of full force and effect.

15. LAW AND DISPUTE RESOLUTION

- 15.1. These STC's and any agreements between the Customer and Company will in all respects be governed by and construed under the laws of the Republic of South Africa.

For the avoidance of doubt, the parties shall comply with all compulsorily applicable laws.

- 15.2. 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 STC's. If any of the terms of these STC's 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 STC's.
- 15.3. At the election of the Company, any dispute, controversy or claim (together a "**dispute**") between any of the parties howsoever arising out of or in connection with the Services, these STC's and / or any agreement between the parties irrespective of whether the dispute is of a contractual, delictual or any other nature shall, unless precluded by law, be determined by final and binding arbitration on the following terms:
- 15.3.1. In the absence of agreement between the parties in respect of the appointment of an arbitrator, a single arbitrator shall be appointed by the Association of Arbitrators (Southern Africa) NPC ("**the Association**") by the Association on application.
- 15.3.2. The seat of the arbitration shall be Maputo or Durban, at the election of the Company.
- 15.3.3. The arbitral referral, the appointment of the arbitrator, the conduct of the arbitral proceedings, the law applicable to the arbitration, the juridical seat and the place of the arbitration and, without limitation, all things relating to or arising from any of the aforesaid shall be governed by such edition of the Standard Procedure Rules for the Conduct of Arbitrations of the Association current at the time of appointment of the arbitrator.

16. TIME BAR

- 16.1. The Company shall be discharged from all liability whatsoever in respect of any claim of whatsoever nature (whether in contract, delict or otherwise) and whether for damages or otherwise, unless summons or other proper process originating action is served on the Company by not later than 30 (thirty) days after the first anniversary of the date on which the incident giving rise to such cause of action occurred, provided further that the Company may, on written request, extend such period in writing.
- 16.2. The onus shall be on the Customer to prove compliance with the provisions of this clause.

17. SANCTIONS AND ANTI-BRIBERY AND CORRUPTION

The Customer warrants, represents and undertakes to the Company that it and its affiliates:

- 17.1. have complied with, and will comply with all applicable laws, rules and regulations, including any anti-bribery and corruption laws, sanctions, anti-money laundering laws and anti-tax-evasion laws;
- 17.2. have not authorised, offered, promised, paid or otherwise given or solicited or accepted, and will not authorise, offer, promise, pay or otherwise give or solicit or accept,

- whether directly or indirectly, any improper inducement in contravention of any anti-bribery and corruption laws;
- 17.3. neither the Customer nor any of its directors, senior executives or officers, or to the knowledge of the Customer is a Sanctioned Person;
 - 17.4. no Sanctioned Person has any beneficial or other property interest in the Services nor will have any participation in or derive any other financial or economic benefit from the Services.

SECTION B: CARGO

18. CARGO REQUIRING SPECIAL ARRANGEMENTS

- 18.1. Except under special arrangements previously made in writing the Company will not accept or deal with the following types of Cargo:
 - bullion, coin, jewelry, valuables, antiques, artwork, pictures.
 - stamps, vouchers, tokens, lottery tickets, negotiable instruments or securities of any kind.
 - human remains, livestock or plants.
 - ammunition, arms and other such military equipment.
 - any pharmaceutical product or component of any drug.
 - precious stones, precious metals and nonferrous metals such as silver, gold, platinum, copper, aluminium, lead, nickel, tin, titanium and zinc, brass, bronze, palladium, iridium, osmium, rhodium, and ruthenium, diamonds, emeralds, rubies and sapphires.
 - cigarettes, processed tobacco or other tobacco products.
 - bottled spirits, perfume and perfume products.
 - portable communication devices and portable entertainment devices such as microchips, memory in component or card form, micro-processors, integrated circuits, system boards and SIM cards, computer processors, CD-ROM drives, DVD drives, sound cards, video cards, modems, laptops, notebooks.
- 18.2. Should the Customer nevertheless deliver such Cargo to the Company or cause the Company to handle or deal with any such Cargo otherwise than under special arrangements previously made in writing, the Company shall incur no liability whatsoever in respect of such Cargo and, in particular, shall incur no liability in respect of its negligent acts or omissions in respect of such Cargo.

19. DANGEROUS AND NOXIOUS CARGO

- 19.1. 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 Cargo, including radio-active materials, which may be or become dangerous, inflammable or noxious, or which by their nature may injure, damage, taint or contaminate, or in any way whatsoever adversely affect any person, Cargo or property, including Cargo likely to harbour or attract vermin or other pests. The Customer warrants that such Cargo, or the case, crate, box, drum canister, tank, flat, pallet, package or other holder or covering of such Cargo will comply with any applicable laws, regulations or requirement of any

Statutory Authority or Carrier and that the nature and characteristics of such Cargo and all other data required by such laws, regulations or requirements will be prominently and clearly marked on the outside cover of such Cargo.

- 19.2. If any such Cargo is delivered to the Company, whether or not in breach of the provisions of clause 19.1, such Cargo may for good reason as the Company in its discretion deems fit including, without limitation, the risk to other Cargo, property, life or health be destroyed, disposed of abandoned or rendered harmless or otherwise dealt with at the risk and expense of the Customer and without the Company being liable for any compensation to the Customer or any other party, and without prejudice to the Company's rights to recover its charges and/or fees including the costs of such destruction, disposal, abandonment or rendering harmless or other dealing with the Cargo. The Customer indemnifies the Company against all loss, liability or damage caused to the Company as a result of the tender of Cargo to the Company and/or out of the foregoing.

20. PERISHABLE CARGO

- 20.1. Without limiting or affecting any other terms of these STC's, Cargo (whether perishable or otherwise) in the care custody or control of the Company may at the Customer's expense be sold or disposed of by the Company without notice to the Customer, sender, owner or consignee, if –
 - 20.1.1. such Cargo has begun to deteriorate or is likely to deteriorate;
 - 20.1.2. such Cargo is insufficiently addressed or marked;
 - 20.1.3. the Customer cannot be identified;
 - 20.1.4. the Cargo has not been collected or accepted by the Customer or any other person after the expiration of 21 (twenty-one) days from the Company notifying the Customer in writing to collect or accept such Cargo, provided that if the Company has no address for the Customer such notice period shall not be necessary.
- 20.2. Should any amount owing by the Customer to the Company in terms of clause 20.1 become due and payable and remain unpaid, the Company shall be entitled and the Customer hereby authorises the Company and without first obtaining an order of court, to sell all or any of the Cargo by public auction or on reasonable notice not exceeding 14 (fourteen) 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 Customer's obligations to the Company in respect of such Cargo without prejudice to the Company's rights to recover from the Customer 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 Customer's obligations to the

Company in respect of such Cargo, the Company shall be obliged to refund such excess to the Customer.

21. ABANDONED CARGO, WAREHOUSING, COD

- 21.1. If delivery of any Cargo is not accepted by the Customer, consignee or party nominated by the Customer at the appropriate time and place then: -
- 21.1.1. the Company shall be entitled to store the Cargo or any part thereof at no risk to the Company and at the expense of the Customer.
- 21.1.2. the provisions of clause 20.2 shall apply *mutatis mutandis*.
- 21.2. Pending forwarding and/or delivery by or on behalf of the Company, Cargo may be warehoused or otherwise held at any place as determined by the Company in its absolute discretion, at the Customer's expense.
- 21.3. When Cargo is accepted or dealt with by the Company upon instructions to collect freight, duties, charges or other expenses from the consignee or any other person, the Customer shall remain responsible therefor if they are not paid by such consignee or any other person immediately when due.
- 21.4. The Company shall have no obligation to take any action in respect of any Cargo which may be recognisable as belonging to the Customer unless and until it receives suitable instructions relating to those Cargo together with all necessary documents.

22. EXAMINATION OF CARGO

- 22.1. Should the Company undertake to count, inspect, monitor or examine any Cargo ("**examination**") it shall incur no liability in respect of any error or inaccuracy in such, whether such error or inaccuracy is the result of negligence (including gross negligence) on the part of the Company or otherwise.
- 22.2. Where it is necessary for an examination to be held or other action to be taken by the Company in respect of any discrepancy in the Cargo which is landed or discharged from any Vessel, aircraft, vehicle, train or Transport Unit, no responsibility shall attach to the Company for any failure to hold such examination or to take any other action unless the Company has been timeously advised that such Cargo has been landed and that such a discrepancy exists.

23. STOP, DETENTION OR SEIZURE

In the event that any Cargo is stopped, detained or seized by a Statutory Authority ("**seizure**"), any instruction by the Customer or any Statutory Authority to move the Cargo to a Customs warehouse or any other premises, will be carried out by the Company in its capacity as agent for and on behalf of the Customer and at the sole risk and expense of the Customer. Without derogating from the generality thereof, the Customer shall be liable for demurrage / detention, storage, destruction of the Cargo, transport, loading and unloading, administration, labour or other costs or damages occasioned by any such seizure.

24. RELEASE OF CARGO

- 24.1. In the event that the Customer fails to ensure that it timeously furnishes the Company with the necessary clearance documents, and / or fails to pay all amounts due in respect of the Cargo and / or fails to collect its Cargo from the port of discharge or inland terminal before the deadline on the last day of free storage granted by the port of discharge or inland terminal or other deadlines, failing which the Company may move the Cargo into a Customs licensed depot at the sole risk and expense of the Customer.
- 24.2. If the Customer does not collect its Cargo within 14 (fourteen) days from, and including, the date when they are discharged from the vessel, or any other shorter period after which the Cargo may be disposed of after the failure of the Customer or its agent to duly enter the Cargo as prescribed by applicable Customs law and any directives from the relevant Statutory Authority:
- 24.2.1. The Company may continue to store the Cargo at the Customer's sole risk and expense; or
- 24.2.2. at the Customer's sole risk and expense, the Company or Statutory Authority may move the Customer's Cargo to a State's warehouse or other area appointed by the Statutory Authority and store the Cargo there; or
- 24.2.3. the Company may consider the Customer's Cargo to be abandoned cargo and deal with the Cargo in accordance with clause 20.2 *mutandis mutandis*.

SECTION C: SUPPLIERS

25. This section applies to Suppliers who render services to the Company.
- 25.1. Suppliers shall properly execute their services, with due care and suitable equipment and personnel. Suppliers shall be responsible for proper handling, storage and / or carriage for Cargo, with due care and suitable equipment and personnel.
- 25.2. Sub-contractors may not be used, unless permitted by the Company in writing.
- 25.3. Suppliers shall have adequate insurance for non-performance of their services, negligent performance of their services and damage to Cargo.
- 25.4. Suppliers shall not be entitled in any circumstances to exercise a lien over Cargo, unless authorised in writing by the Company.
- 25.5. Where the Company acts as agent on behalf of its Customer, the Supplier shall have no right of recourse for payment or otherwise against the Company.
- 25.6. The following clauses apply to Suppliers *mutandis mutandis*: 14 (General), 15 (Law and Dispute Resolution), 16 (Time-bar) and 17 (Sanctions and Anti-bribery and Corruption).