

CARDINAL MARITIME (PTY) LTD

Registration No. 2006011617/07

STANDARD TRADING TERMS AND CONDITIONS

DEFINITIONS

- 1.1 **"the Corporation"** means CARDINAL MARITIME (PTY) LTD, Registration No. 2006011617/07, or its successors in title and assigns.
- 1.2 **"the Customer"** means any person, firm, company, close corporation, partnership or any other legal entity, their successors in title and assigns, and/or any agent of any of the foregoing, at whose request or on whose behalf the Corporation undertakes any business or provides any advice, information and/or services and includes the signatory of these terms and conditions.

ENTIRE AGREEMENT

- 1.3 Subject to the other provisions of this clause, these terms and conditions represent the entire agreement ("the agreement") between the Corporation and the Customer, and shall exclusively govern all future contractual relationships between the Corporation and the Customer and shall be applicable to all debts which the Customer may owe to the Corporation prior to the Customer's signature hereto (irrespective of whether or not credit facilities are granted). The South African Association of Freight Forwarder's ("SAAFF") Trading Terms and Conditions are incorporated into these terms and conditions, *mutatis mutandis*, as additional terms and conditions of this agreement **and the Customer acknowledges that he has read and unconditionally consents to those terms and conditions as well as those other terms and conditions embodied herein.**
- 1.4 No amendments, alteration, variation, deletion, addition or cancellation of these terms and conditions, whether consensual, unilateral or bilateral, shall be of any force and effect unless reduced to writing and signed by a member of the Corporation nor shall any act, omission or indulgence by the Corporation or its agents, servants or employees be in any way construed as constituting a variation of these conditions or a waiver of any of the Corporation's rights hereunder. The Customer acknowledges that no warranties, representations or

guarantees have been made by the Corporation or on its behalf which may have induced the Customer to sign this document.

- 1.5 To the extent that the trading terms and conditions of SAAFF conflict with these trading terms and conditions, these terms and conditions shall prevail and unless the parties agree, in writing, specifically to the contrary, these Trading Terms and conditions shall prevail in the event of the Customer itself having standard trading conditions.

PAYMENT, INTEREST AND COSTS

2. Unless otherwise specifically agreed by the Corporation in writing the Customer shall pay to the Corporation in cash immediately upon presentation of invoice all sums due to the Corporation 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.
3. Should any amount not be paid by the Customer on due date then the whole amount in respect of all services rendered by the Corporation to the Customer and monies disbursed by the Corporation 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 percentage points above the prime overdraft lending rate from time to time quoted by the Corporation's Bankers, The Standard Bank of South Africa Limited, from due date until date of payment.
4. In the event of the Customer breaching any of its obligations and/or failing to timeously make payment of any amount to the Corporation, the Customer agrees to pay, and shall be liable to pay, all legal costs on the attorney/own client scale including collection charges and tracing agent's fee incurred by the Corporation in recovering any such amount from the Customer.
5. The Corporation may in its sole discretion appropriate any payments made by the Customer to any principal debt owed by the Customer to the Corporation, 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.

6. A certificate signed by any Accountant of the Corporation stating the indebtedness of the Customer to the Corporation or certifying that specific services were rendered and/or monies disbursed and/or goods delivered, shall be *prima facie* evidence of the Customer's indebtedness to the Corporation or of the rendering of such services, disbursement of such monies or delivery of such goods.
7. The Corporation 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 Corporation's sole discretion.

AUTHORITY TO CONTRACT / PERFORMANCE

8. The Customer and/or any person representing or purporting to represent the Customer in contracting with the Corporation warrant that they have full authority to engage the services of the Corporation and to contract on these terms and conditions and both the Customer and the said representative personally hereby jointly and severally indemnify the Corporation against any claim by the true owner of any goods or any party with an interest therein in respect of which the Corporation is so contracted to deal.
9. If the Customer is a close corporation or limited liability company, then its directors and/or members personally guarantee, jointly and severally, the due performance of all obligations of the Customer to the Corporation and the representative of the Customer warrants that he is duly authorised to bind such members and/or directors and acts as the Customer's and their agent in all his dealings with the Corporation.

ACCURACY OF / ACCESS TO INFORMATION

10. The Customer and its representatives personally acknowledge that the information given in its credit application, or if no credit application form has been completed, any other document issued by the Customer for purposes of instructing the Corporation ("instruction document"), including any electronic communication, may be used by the Corporation for the purposes of assessing the Customer's creditworthiness. The

Customer confirms that the information furnished in the credit application or any instruction document is accurate and complete. The Customer further agrees to update, from time to time, the information supplied in order to ensure its accuracy at all times and indemnifies the Corporation for all and any consequences of the Corporation relying or acting on inaccurate or outdated information.

11. The Corporation has the Customer's authority and consent at all times to seek and obtain information from any persons, credit bureaus or businesses, including those mentioned in the credit application form in which these terms and conditions are contained, and to obtain any information relevant to the Customer's credit assessment including but not limited to, information regarding the value of purchases from suppliers from month to month, length of time the Customer has dealt with the person concerned, the type of goods or services purchased and the manner and time of payment.
12. The Customer agrees and understands that information given in confidence to the Corporation by a third party regarding the Customer may not be disclosed to the Customer.
13. The Customer hereby consents to the furnishing of and authorises the Corporation at all times without prior reference to the Customer to furnish personal and credit information concerning the Customer's dealings with the Corporation to any credit bureau or to any third party seeking a trade reference regarding the Customer and the Customer hereby indemnifies and holds the Corporation harmless from any consequences of it so doing.

TIME BAR

14. Without prejudice and subject to any conditions regarding notice of claim contained in the SAAFF Trading Terms and Conditions incorporated herein, the Corporation shall be discharged from all liability whatsoever in respect of any claim of whatsoever nature (whether in contract or in delict) and whether for damages or otherwise, unless summons or other proper process originating action is served on the Corporation by not later than 90 (ninety) days after the first anniversary of the date on which the incident giving rise to such cause of action occurred, provided further that

the Corporation may, on written request, extend such period in writing. The onus shall be on the Customer to prove compliance with the provisions of this clause.

DOMICILIUM AND NOTICES

15. The Customer's physical address as set out in the credit application form or, failing which, on the Customer's most recently reviewed letterhead, or failing which the Customer's registered or physical address, shall constitute the Customer's *domicilium citandi et executandi* for all purposes in connection with any agreement entered into by the Customer and the Corporation, unless the Customer provides an alternative *domicilium* by written notice to the Corporation.
16. The Corporation's physical address as set out in the credit application form or, failing which, on the Corporation's most recently reviewed letterhead, or failing which the Corporation's registered or physical address, shall constitute the Corporation's *domicilium citandi et executandi* for all purposes in connection with any agreement entered into by the Customer and the Corporation.
17. Notices given to the above address or by facsimile or electronic mail to the Customer's current fax number or electronic mail address shall be deemed to have been duly given:
 - 19.1 14 days after posting, if sent by registered post;
 - 19.2 on delivery, if delivered by hand;
 - 19.3 on dispatch, if sent by facsimile or electronic mail.

QUOTATIONS

18. The Corporation shall be entitled at any time by notice to the Customer to cancel or resile from any quotation or executory agreement in circumstances where it becomes either impractical or uneconomical for the Corporation to carry out the contract at the quoted rate and the Customer shall have no claim whatsoever against the Corporation for any loss that the Customer might incur as a result of the Corporation cancelling or resiling from the quotation or executory agreement.

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19. Without in any way limiting the provisions of clause 18, all quotations and agreements are subject to revision without notice having regard to changes in currency rates and upward movements in amounts payable by or on behalf of or at the instance of the Corporation to third parties including, without limitation, freight, surcharges, insurance premiums, equipment rental and labour, which charges and upward movements take place after quotation. Any revision of rates as aforesaid will be commensurate with the change in the currency exchange rate or the increase in such amounts payable. Any such increase shall, failing agreement between the parties, be determined by the then auditors nominated by the Corporation, who in such determination shall act as experts and not as arbitrators and whose decision shall be final and binding on the parties.

INSTRUCTIONS

20. Wherever it is necessary for the purpose of these Trading Terms and conditions or any other purpose whatsoever, for instructions to be given to the Corporation, such instructions shall be recognised by the Corporation as valid, only if timeously given specially in relation to the matter in question. Standing or general instructions or instructions given late, even if received by the Corporation without comment, shall not be binding upon the Corporation.
21. In addition, in order to render such instructions valid, they shall be either given in writing, or, if owing to the urgency of the situation it is not practicable to give same in writing, they shall be given orally and thereafter confirmed in writing as soon as reasonably practicable.
22. If at any stage in any transaction the Corporation should consider that there is a good reason, making it advisable in the Customer's interests to depart from any of the Customer's instructions, the Corporation shall be permitted to do so, and it shall not thereby incur any additional liability.
23. In the absence of written instructions, the Corporation reserves to itself the absolute discretion as to the means, route and procedure to be followed in performing the business.

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24. If events or circumstances come to the attention of the Corporation, its agents, servants, or nominees which, in the opinion of the Corporation, make it in whole or in part, impossible or impracticable for the Corporation to comply with a Customer's instructions, the Corporation 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 Corporation in writing, the Corporation 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.

ORAL INSTRUCTIONS

25. The Customer's instructions to the Corporation 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 Corporation. Instructions given by the Customer shall be recognised by the Corporation 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 Corporation without comment, shall not in any way be binding upon the Corporation, but the Corporation may act thereon in the exercise of its absolute discretion.

CORPORATION'S DISCRETION IN THE ABSENCE OF INSTRUCTIONS

26. In the absence of specific instructions given timeously in writing by the Customer to the Corporation –
- 26.1 It shall be in the reasonable discretion of the Corporation 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;
- 26.2 The Corporation 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.

CORPORATION'S OBLIGATIONS IN THE ABSENCE OF INSTRUCTIONS

27. Unless specific written instructions are timeously given to and accepted by the Corporation, the Corporation shall not be obliged to -

27.1 make any declaration for the purpose of any statute, convention, or contract, as to the nature or value of any goods or as to any special interest in delivery. In particular, the Corporation 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 thereto by that body of dangerous goods or other goods which require special conditions of handling or storage;

27.2 arrange for any particular goods to be carried, stored or handled separately from other goods.

COLLECTION AND DELIVERY

28. Loading and unloading shall be performed by the customer or its respective agents and unless otherwise agreed to in writing, the customer will deliver goods onto and will take delivery from the side or tailboard of the Corporation's vehicle. The Corporation will not be responsible for any loss or damage arising from the loading or unloading of its vehicle or from the overloading or unsafe loading thereof.

29. Nothing in clause 28 above shall be construed as preventing the Corporation from giving assistance in loading or unloading goods onto or from its vehicle where such assistance is customary and practicable, but assistance so given shall be without any liability on the Corporation's part, and shall be at the sole risk of the Customer.

RECOVERY OF DEBTS DUE TO THE CORPORATION

30. The Corporation 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 an agent for a disclosed or undisclosed principal, as the Corporation in its absolute discretion deems fit.

LIEN

31. All goods and documents relating to goods including bills of lading and import permits, as well as all refunds, repayments, claims and other recoveries, shall be subject to a special and general lien and pledge either for moneys due in respect of such goods or for other moneys due to the Corporation from the customer, sender, owner, consignee, importer or the holder of the bill of lading or their agents, if any. If any moneys due to the Corporation are not paid within 14 days after notice has been given to the person from whom the moneys are due that such goods or documents are being detained, they may be sold by auction or otherwise or in some other way disposed of for value at the sole discretion of the Corporation and at the expense of such person, and the nett proceeds applied in or towards satisfaction of such indebtedness.

CORPORATION ENTITLED TO ACT AS AGENT OR PRINCIPAL

32. Unless otherwise agreed in writing, the Corporation in procuring the on-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.
33. 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 Corporation acting as agent or as a principal.
34. The Customer acknowledges that when the Corporation, 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.
35. Unless otherwise agreed in writing, the Corporation, 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 -

- 35.1 carriage of goods by any route or means or person;
- 35.2 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.
- 35.3 carriage or storage of goods in break-bulk form in or on transport units or with or without other goods of whatsoever nature.

DEBITING FEES AND DISBURSEMENTS

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

CLAIMS AGAINST CORPORATION DIRECTORS AND EMPLOYEES

- 37. The Customer undertakes that no claims shall be made against any director, member, servant or employee of the Corporation which imposes or attempts to impose upon him any liability in connection with the rendering of any services which are the subject of these Trading Terms and Conditions and hereby waives all and any such claims.

VARIATION OF THESE TRADING TERMS AND CONDITIONS

- 38. No variation of these Trading Terms and Conditions shall be binding on the Corporation unless embodied in a written document signed by a duly authorised member of the Corporation. Any purported variation or alteration of these trading terms and conditions 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 standard trading terms and conditions by the Customer.

WAIVER

39. No extension of time or waiver or relaxation of any of the trading terms and conditions shall operate as an estoppel against any party in respect of its rights under these trading terms and conditions, nor shall it operate so as to preclude such party thereafter from exercising its rights strictly in accordance with these trading terms and conditions.

BENEFIT OF DISCOUNTS

40. The Corporation 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.

LIMITATION OF CORPORATION'S LIABILITY

41. Subject to the provisions of this clause and clause 42, the Corporation shall not be liable for any claim of whatsoever nature (whether in contract or in delict) and whether for damages or otherwise, howsoever arising, including but without limiting the generality of the aforesaid, for -
- 41.1 any negligent act or omission or statement by the Corporation or its servants, agents or nominees ; and/or
 - 41.2 any act or omission of the Customer or agent of the Customer with whom the Corporation deals; and/or
 - 41.3 any loss, damage or expense arising from or in any way connected with the marking, labelling, numbering, non-delivery or mis-delivery of any goods; and/or
 - 41.4 any loss, damage or expense arising from or in any way connected with the weight, measurements, contents, quality, inherent vice, defect or description of any goods; and/or

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- 41.5 any loss, damage or expense arising from or in any way connected with any circumstance, cause or event beyond the reasonable control of the Corporation, including but without limiting the generality of the aforesaid, strike, lock-out, stoppage or restraint of labour; and/or
- 41.6 damages arising from loss of market or attributable to delay in forwarding or in transit or failure to carry out any instructions given to the Corporation; and/or
- 41.7 loss or non-delivery of any separate package forming part of a consignment or for loss from a package or an unpacked consignment or for damage or mis-delivery; and/or
- 41.8 damage or injury suffered by the Customer or any person whatsoever arising out of any cause whatsoever as a result of the Corporation's execution or attempted execution of its obligations to the Customer and/or the Customer's requirements or mandate;
- unless the Customer proves that -
- a) such claim arises from a grossly negligent act or omission on the part of the Corporation or its servants; and
 - b) such claim arises at a time when the goods in question are in the actual custody of the Corporation and under its actual control; and
 - c) in the instance provided in clause 41.7 above, the Corporation receives a written notice within 5 days after the end of the transit where the transit ends in the Republic of South Africa and within 14 days after the end of the transit where the transit ends at a place outside the Republic of South Africa.
- 41.9 Notwithstanding anything to the contrary contained in these trading terms and conditions, the Corporation shall not be liable for any indirect and consequential loss arising from any act or omission or statement by the Corporation, its agents, servants or nominees, whether negligent or otherwise.

MONETARY LIMITATION OF LIABILITY OF THE CORPORATION

42. In those cases where the Corporation is liable to the Customer in terms of clause 41, the liability of the Corporation shall not in any such case whatsoever, howsoever arising, exceed whichever is the least of the following respective amounts -
- 42.1 the value of the goods evidenced by the relevant documentation or declared by the Customer for Customs purposes or for any purpose connected with their transportation;
 - 42.2 the value of the goods declared for insurance purposes;
 - 42.3 double the amount of the fees raised by the Corporation for its services in connection with the goods, but excluding any amount payable to sub-contractors, agents and third parties.
43. If it is desired that the liability of the Corporation in those cases where it is liable to the Customer in terms of clause 41 should not be governed by the limits referred to in clause 42, written notice thereof must be received by the Corporation before any goods or documents are entrusted to or delivered to or into the control of the Corporation (or its agents or sub-contractors), together with a statement of the value of the goods. Upon receipt of such notice the Corporation may in the exercise of its absolute discretion, agree in writing to its liability being increased to a maximum amount equivalent to the amount stated in the notice, in which case it will be entitled to effect special insurance to cover its maximum liability and the party giving the notice shall be deemed, by so doing, to have agreed and undertaken to pay the Corporation the amount of the premium payable by the Corporation for such insurance. If the Customer does not so agree the limits referred to in clause 42 shall apply.

BREACH

44. If the Corporation breaches any of these trading terms and conditions or any agreement between it and the Customer and fails to remedy such breach within 30

days of the date of receipt of written notice requiring it to do so then the Customer shall be entitled to compel performance by the Corporation of the obligations it has defaulted in, but shall not be entitled to cancel these trading terms and conditions and any agreement between the Customer and the Corporation.

WARRANTIES AND REPRESENTATIONS BY THE CORPORATION

45. The Corporation makes no warranties and representations to the Customer save as may be specifically provided herein or as notified in writing by the Corporation to the Customer from time to time. The Customer acknowledges that the Corporation 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 Corporation, 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 Corporation in response to a written enquiry specifying accurately and in complete detail what information is required.

DISPUTES

46. Should there be any dispute of any nature whatsoever between the parties in regard to any aspect, matter or thing relating to these trading terms and conditions and whether or not the Corporation has executed its obligations in terms of any agreement it has with the Customer, then and in such event the Customer shall nevertheless be obliged to perform its obligations in terms of any such agreement as though the Corporation had performed properly and to the Customer's satisfaction.
47. The Customer's remedy, having performed its obligations as provided in clause 46, shall be limited to an action against the Corporation for repayment of either the whole or portion of the amount which the Customer alleges, constitutes an overpayment.
48. Without affecting the generality of clauses 46 and 47 the Customer shall not be entitled to withhold payment of any amounts, by reason of any dispute with the Corporation, whether in relation to the Corporation's performance in terms of any

agreement, or lack of performance or otherwise, after which payment the Customer's rights of action against the Corporation 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 Corporation which releases such rights and makes them available to the Customer in respect of any claim that he may have against the Corporation.

49. In any dispute between the Corporation and the Customer the Corporation shall be deemed to have performed its obligations in a proper and workmanlike manner and strictly in accordance with any agreement between it and the Customer, until such time as the Customer proves the contrary.

LAW AND JURISDICTION

50. Regardless of the place of execution hereof or performance pursuant hereto or domicile of the Customer, this agreement and all modifications and amendments hereof, shall be governed by and construed in accordance with the laws of the Republic of South Africa which are in force at the time when any dispute arising out of or in any way related to this agreement arises.
51. Subject to the provisions of clause 52, the Corporation shall, notwithstanding that the amount of its claim or the nature of the relief sought by it exceeds the jurisdiction of the Magistrate's Court, be entitled in its sole discretion to institute action or other proceedings out of the Magistrates Court or the High Court of South Africa sitting as a court of Admiralty, and the Customer hereby irrevocably submits to the jurisdiction of the court out of which proceedings are thus instituted. In the event that the Corporation invokes the jurisdiction of the Magistrate's Court, and notwithstanding the fact that the Corporation's claim against the Customer might be a maritime claim in terms of Act 105 of 1983, as amended, the Customer waives the right to challenge the jurisdiction of the Magistrate's Court on this ground alone.

ARBITRATION

52. The Corporation may in its sole discretion refer any dispute arising from or in connection with this agreement to arbitration which arbitration shall bind both the Corporation and the Customer.

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53. For the purpose of arbitration, the parties shall jointly nominate and agree upon an arbitrator who shall be an advocate of the High Court of South Africa of no less than ten years standing. Should the parties fail to agree on the arbitrator to be appointed, he shall be nominated by the President from time to time of the Maritime Law Association of South Africa whose decision in this regard shall be final and binding on the parties.
54. The arbitration shall be subject to and conducted in accordance with the Rules for the Conduct of Arbitration ("the Rules") published from time to time by the Association of Arbitrators (Southern Africa) and then in force.
55. Subject to any rights of appeal contained in the Rules or the Arbitration Act no. 42 of 1965, all arbitration awards shall be final and binding upon the parties and capable of being made an order of any competent court of law.

SEVERABILITY

56. If any provision of these terms and conditions is unenforceable, then the Corporation 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 terms and conditions which shall not be affected and shall of full force and effect.