

CREDIT APPLICATION

Registered Name of Organisation

Trading Name (if not above)

Name in which Account will Operate

Registration No. VAT No Customs No

LEGAL STATUS: Sole Proprietor ☐ Close Corporation ☐ (Pty)Ltd. ☐ Ltd. ☐

Street Address

..... Code

Registered Address Code

Postal Address Code

Telephone No Fax No Email

Nature of Business Website

Holding Company Prev. Clearing Agent

Directors / Members / Partners Share % I.D. NO./S

1.

2.

3.

Financial Manager Shipping Manager

Bankers Branch A/C No.

Auditors Tel:

Financial Year End: When are Audited Financial Statements Available

Contactable Trade References

COMPANY NAME:

TELEPHONE NO:

1.

2.

3.

4.

Services Required: Imports Clearing ☐ Exports Forwarding ☐ Warehousing ☐ Distribution ☐ Transport ☐

CREDIT LIMIT REQUIRED: TOTAL : R..... Term:

GAC Laser Facility approved: Term:

Authorised by: Full name: Signat ure:

Conditions:

1. INTERPRETATION

In these trading terms and conditions:

- 1.1.** the headings to the clauses are for reference purposes only and shall not aid in the interpretation of the clauses to which they relate;
- 1.2.** unless the context clearly indicates a contrary intention, words importing any one gender include the other two genders, the singular includes the plural and vice versa and natural persons include created entities (corporate or unincorporated) and vice versa;
- 1.3.** the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have the same meaning, namely:
 - 1.3.1.** "the Business" or "the Services" means the business undertaken by the Company in respect of the Customer's requirements pertaining to the Goods;
 - 1.3.2.** "the Company" means King Cargo Projects;
 - 1.3.3.** "Customer" means the instructing party who warrants he/she/it is duly authorised to give such instructions to the Company to perform the Business and/or Services;
 - 1.3.4.** "Goods" means any goods handled, transported or dealt with by or on behalf of or at the instance of the Company and/or its approved associates or which come under the control of the Company and/or its agents, servants or nominees on the instructions of the Company, and includes inter alia any container, transportable tank, flat pallet package or any other form of covering, packaging container, or equipment used in connection with or in relation to the Goods;
 - 1.3.5.** "Owner" means the owner of any Goods to which any Business concluded under these trading terms and conditions relates.
 - 1.3.6.** "Prime Rate" means the publicly quoted basic rate per annum ruling from time to time at which First National Bank Limited ("First National Bank") lends on unsecured overdraft facilities to its corporate customers from time to time, compounded monthly in arrear and calculated on the daily balance outstanding and on the basis of a 365 (three hundred and sixty five) day year;
 - 1.3.7.** "Written Instructions" and or "In Writing" means instructions on a Customer letter head signed by the appropriate company officer or such similar official and where receipt thereof has been confirmed by the Company.

2. COMPANY ASSOCIATES

The Company may perform the Business undertaken or provide advice, information or services, whether gratuitous or not, either itself or it may procure that any one of its associates, agents and/or assigns undertakes the Business or provides such advice, information or Services subject at all times to these terms and conditions contained herein.

3. APPLICATION OF TERMS AND CONDITIONS

All and any Business undertaken or advice, information or Services provided by the Company, whether gratuitous or not, shall be regulated in accordance with these terms and conditions.

4. RISK

- 4.1.** All risk associated with the handling, packing, loading, unloading, unpacking, warehousing and transporting of the Goods shall be borne solely by the Customer and the Owner if the Customer and Owner are not the same person and the Customer and/or the Owner hereby fully indemnify the Company against any loss and/or damages of whatsoever nature that may be sustained by the Company pertaining to the Business and/or the Goods.
- 4.2.** The Company is not responsible for any loss and/or damages, including consequential damages, which the Customer and/or Owner may suffer as a result of the performance of Service by the Company, whether foreseeable or unforeseeable; even if the loss or damage arises out of negligence on the part of the Company, its employees, agents or sub-contractors (which are in a vicarious relationship with such Party), regardless of form or cause of action; whether in contract or delict or for restitution; whether based on these terms and conditions, any commitment performed or undertaken under or in connection with this Agreement, or otherwise.
- 4.3.** The Company may at its discretion take out a Goods in Transit Insurance Policy.
- 4.4.** Subject to the terms and conditions contained in this Agreement, the liability of the Company in respect of any loss or damage to the Goods, however such loss may arise, will under no circumstances exceed the actual amount paid by the insurers in terms of the aforesaid Goods in Transit Policy in the event of loss or damage to the Goods;
- 4.5.** The Customer and/or Owner is required to obtain any additional insurance coverage for all damages, which it may suffer at its own cost;
- 4.6.** Customer and/or shall immediately advise the Company of any loss or damage of the Goods or part thereof and then confirm it in writing within 7 (seven) days after delivery of the Goods. Claims not finalized within one year shall become null and void;
- 4.7.** The Company will not be responsible for shortages, damage of inner contents of packages or within bundles or damage to seals in respect of the Goods.
- 4.8.** The Company has no authority to carry hazardous goods of whatever nature and no such goods may be loaded onto any of the Company's vehicles or those of its agents and/or assigns without the prior explicit written consent from the Company. The Company and the Customer agree that should any claim for damages and/or pollution and/or environmental damages and/or clean-up costs arise consequential to the carriage of hazardous and/or dangerous goods, then all such claims will be for the Customer's sole account.

5. APPLICABLE LEGISLATION

- 5.1.** If the Company is obliged, in the execution of any of its duties and/or responsibilities in terms of the Business and its Services, to comply with any legislative requirements of any nature then the Company shall comply therewith and in so doing shall not be deemed to waive nor abandon any of its rights in terms of these terms and conditions.
- 5.2.** In addition thereto, in complying with the law, the Company shall not be deemed to have assumed any onus, obligation, responsibility or liability on behalf of the Customer and/or Owner

- 5.3.** If any of these term(s) is/are unenforceable, then and in such event the unenforceable term embodied herein shall be deemed to be amended and/or altered so as to be enforceable or, if that is not possible in law, then the unenforceable term shall be severed from the remaining provisions of these trading terms and conditions, and such amendment and/or alteration and/or severing shall not in any way affect the remaining provisions of these trading terms and conditions.

6. FIATA MULTIMODAL TRANSPORT BILL OF LADING

- 6.1.** The Company shall be, if it deems it necessary, entitled to issue a FIATA Combined Transport Bill of Lading ("FBL") in respect of the whole or any part of the Business and or Services pertaining to the movement of the Goods;
- 6.2.** Where a FBL is issued, these terms and conditions shall continue to apply except insofar as they conflict with the terms and conditions of the FBL in which event the terms of the FBL shall supersede these terms only in so far as the conflicting provisions is/are concerned.
- 6.3.** Where a FBL is issued, the Company shall be entitled to raise an additional charge as is customary in the Shipping Industry, in respect of the issue thereof, to cover its additional obligations arising under the FBL. Any dispute between the Company and the Customer relating to such additional charge raised by the Company shall be referred to and determined by the auditors of the Company acting as experts and not as arbitrators whose decision shall be final and binding.

7. EXCLUSION AND LIMITATION OF LIABILITY

- 7.1.** The Company deals with Goods only on the basis that it is neither a common carrier nor a public carrier.
- 7.2.** The Customer and/or the Owner confirms that its annual turnover and or its total asset values and or a combination of the two, exceeds the threshold determined by the Minister of the Department of Trade and Industry for purposes of the application of the Consumer Protection Act.
- 7.3.** The Customer shall properly and accurately furnish to the Company the name and addresses of the consignor and the consignee and all documents as such of necessity to accompany the Goods or such documents as the Company may require and the Company shall not be responsible nor incur any liability for any loss or incorrect delivery of the Goods due to the name and address of the consignor or the consignee being improperly stated and in the absence of wilful default of the Company shall not be liable for any loss in the event of delivery being effected to some person other than the consignee in the event of the consignee, or his agent not being present to receive and accept delivery of the Goods.
- 7.4.** The Customer indemnifies the Company against all claims made by third parties against the Company and against all liability incurred by the Company to any third party in respect of any loss or damage to the Goods from whatsoever cause, and includes without limiting the generality of the foregoing, all direct, indirect and/or consequential damages suffered by such third parties.
- 7.5.** 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/her 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.

7.6. If the Company is found to be liable to the Customer, then any liability of the Company, howsoever arising shall never exceed whichever is the least of the following respective amounts:

7.6.1. the value of the Goods evinced by the relevant documentation or declared by the Customer for customs purposes or for any purpose connected with their transportation;

7.6.2. the value of the Goods declared for insurance purposes;

7.6.3. double the amount of the fees raised by the Company for its services in connection with the goods, but excluding any amounts payable to subcontractors, agents and third parties.

7.7. The Customer indemnifies and holds harmless the Company in respect of any claims of a general average nature which may be made against the Company and the Customer shall provide such security as may be required by the Company in this Connection.

8. COMPANY'S DISCRETION IN THE ABSENCE OF INSTRUCTIONS

8.1. It is the responsibility of the Customer to ensure that the Company receives timeous Written Instructions failing which the Company shall be able to use its reasonable discretion in respect of performing the Services such as but not limited to route, 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.

8.2. In the absence of specific instruction given timeously in writing by the Customer to the Company, in all cases where there is a choice of tariff rates or premiums offered by any carrier, warehouseman, underwriter, or other person, depending upon the declared value of the relevant Goods or the extent of the liability assumed by the carrier, warehouseman, underwriter, or other person, it shall be in the discretion of the Company as to what declaration, if any, shall be made, and what liability, if any, shall be imposed on the carrier, warehouseman, underwriter, or other person.

8.3. In the event that the Company and/or its agents and/or its servants and/or nominees are of the opinion that it is impossible and/or impracticable for the Company to comply with a Customer's instructions, the Company shall take reasonable steps to inform such Customer 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, make reasonable alternative plans and/or be entitled to detain, return, store and/or sell and if absolutely necessary to abandon and/or destroy all or part of the Goods concerned at the risk and expense of the Customer.

8.4. The Company shall be entitled in its sole discretion, to determine the means, procedures and routes to be followed in performing the carriage of any Goods;

9. INSURANCE

9.1. The Company shall endeavour to effect any insurance the Customer timeously and in Terms of a Written Instruction provides. Such insurance will be subject to such exceptions and conditions as may be imposed by the insurance company and/or underwriter taking the risk and the Company shall not be obliged to obtain separate cover for any risks excluded.

9.2. Unless otherwise agreed upon in writing, the Company shall not be under any obligation to obtain separate insurance in respect of separate consignments but may insure all or any of such consignments under any open or general policy held by the Company from time to time.

- 9.3.** Should any insurer dispute its liability in terms of any insurance policy in respect of any Goods, the Customer concerned shall have recourse against such insurer only and the Company shall not have any responsibility or liability whatsoever in relation thereto notwithstanding that the premium paid on such policy may differ from the amount paid by the Customer to the Company in respect thereof.
- 9.4.** Insofar as the Company agrees to arrange insurance the Company acts solely as agent for and on behalf of the Customer.

10. TIMEOUS WRITTEN INSTRUCTIONS

Unless specific Written Instructions are timeously given to and accepted by the Company, the Company shall not be obliged to:

- 10.1.** make any declaration for the purpose of any statute, convention, or contract, as to the
- 10.2.** nature or value of any Goods or as to any special interest in delivery;
- 10.3.** 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;
- 10.4.** arrange for any particular Goods to be carried, stored or handled separately from other Goods.

11. OBLIGATIONS OF CUSTOMER

- 11.1.** The Customer undertakes to ensure that all applicable legislation and regulations of all countries and jurisdictions relating to the possession, transfer and transportation of the Goods, have been complied with, which shall include, without limiting the generality of the afore going, the payment of all taxes (including customs and excise and value added tax) and obtaining all required permits.
- 11.2.** The Customer hereby indemnifies the Company against all and any damages, losses, charges, liabilities, costs (including legal costs) or proceedings of any cause whatsoever which the Company may suffer or incur as a result, whether directly or indirectly, of the Customer's failure to comply with it's obligations in terms of clause **11.1** above.
- 11.3.** The Customer specifically undertakes to pay a standing fee as stipulated by the Road Freight Association Cost Schedule 18 (on date of incident) cost per day and cost per hour, or any part thereof, in the event that a transport vehicle of the Company is delayed or attached due to the Customer's failure to comply with it's obligations in terms of this clause.
- 11.4.** The Customer warrants that;
- 11.4.1.** it is either the Owner or the authorised agent of the Owner of any Goods in respect of which the Customer instructs the Company and that each such person is bound by these terms and conditions;

- 11.4.3.** all information and instructions supplied and to be supplied by it to the Company is and shall be accurate, true and comprehensive, and in particular, without derogating from the generality of the foregoing, the Customer shall be deemed to be bound by and warrants the accuracy of all descriptions, values and other particulars furnished to the Company for customs, consular and other purposes. 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, when-so-ever, and howsoever arising as a result of a breach of the foregoing whether negligently or otherwise including, without derogating from the generality of the foregoing, any assessment or reassessment;
- 11.4.4.** all goods will be properly, adequately and appropriately prepared and packed, stowed, labelled and marked, having regard inter alia to the implementation by or on behalf of the Company or at its instance of the contract involved, and the characteristics of the goods involved and are capable of withstanding the normal hazards inherent in the implementation of such contract;
- 11.4.5.** where goods are carried in or on containers, trailers, flats, tilts, railway wagons, tanks, igloos or any other unit load devices specifically constructed for the carriage of goods by land, sea or air, (each such device hereinafter individually referred to as "the transport unit") then, save where the Company has been given and has accepted specific written instructions to load the transport unit –
- 11.4.5.1.** that the transport unit has been properly and competently loaded, and
- 11.4.5.2.** 12.4.5.2 that the Goods are suitable for carriage in or on the transport unit, and
- 11.4.5.3.** 12.4.5.3 that the transport unit is itself in a suitable condition to carry the Goods loaded therein and complies with the requirements of all relevant transport authorities and carriers.
- 11.5.** The Customer, whether or not the cause of payment was due to an act, instruction or omission of the Customer and/or Owner and/or consignee and their agents, if any, shall be liable for any duties, taxes, imposts, levies, deposits or outlays of whatsoever nature levied by or payable to the authorities, its intermediaries or other parties at any port or place for or in connection with the Goods and whether at the time of entry and/or at any subsequent time, and for any payments, fines, penalties, expenses, loss or damage or whatsoever incurred or sustained by the Company in connection there with or arising therefrom.
- 11.6.** 1The 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 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. Where as a result of any act or omission by or on behalf of 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 at an incorrect amount, then the responsibility or liability to the Customer which
- 11.7.** the Company may otherwise have will cease and fall away if the Customer does not –
- 11.7.1.** within a reasonable time having regard to all the circumstances, and in particular to the time allowed for the recovery from the payee of the amount overpaid, advise the Company that an incorrect amount has been paid or levied; and

11.7.2. do all such acts as are necessary to enable the Company to effect recovery of the amount incorrectly paid.

11.8. The fact that the Customer may not be aware that any such incorrect payment has been made shall not constitute a circumstance to be taken into account in calculating what is a reasonable time.

11.9. Should any act or omission by the Customer, whether or not such act or omission was due to ignorance on the part of the Customer and whether or not such ignorance was reasonable or justified in the circumstances, prejudice the Company's right of recovery, then the Customer shall be deemed not to have complied with these provisions.

12. QUOTATIONS

12.1. The Customer shall pay an amount as provided for in the quotation by the Company as consideration for the Business and/or Services rendered in respect of the Goods.

12.2. Unless specific quotations are given, the Services will be performed in accordance with these terms and conditions and the Company's tariff of charges prevailing from time to time.

12.3. Quotations shall only be valid against and binding upon the Company if accepted by the Customer In Writing within 7 days of the date thereof, failing which the Company shall be at liberty to withdraw, vary or revise any quotation.

12.4. The Company reserves the right to revise any quotation after acceptance, where such quotation includes charges applicable to the Goods and a change occurs in the rates of such charges. Furthermore, the Company shall be entitled to vary or revise any quotation in the following circumstances:

12.4.1. In the event of the Company being obliged to take out or obtain any licenses or permits, or to comply with the requirements of any lawful authority;

12.4.2. In the event of the Customer and/or any third party increasing the Goods or changing the Goods;

12.4.3. In the event that any aspect of rendering the Services is increased such as but not limited increase in insurance premiums, equipment rental and or labour.

13. PAYMENT

13.1. Unless otherwise agreed between the parties In Writing, all amounts payable by the Customer to the Company shall be paid upon presentation of invoice.

13.2. Amounts payable to the Company in terms of these terms and conditions shall be paid without deduction and/or set-off, by way of electronic transfer to the bank account of the Company, unless agreed otherwise In Writing, held at ____BANK_____, Branch Code _____ Account number: _____.

13.3. If any amount owing by the Customer is unpaid on due date then all other amounts owing by the Customer to the Company whether due and payable or not, shall become due and payable forthwith.

- 13.4.** A certificate by any director of the Company, whose appointment or authority need not be proved, shall be due and sufficient proof of the amount of the Customer's indebtedness to the Company for the purposes of obtaining summary judgment or provisional sentence.
- 13.5.** The Customer shall not be entitled to withhold payment of any amount due in terms hereof by virtue of any claim the Customer may have for compensation for loss and/or damage to Goods, animals or other property, or for any reason whatsoever.
- 13.6.** All and any monies received by the Company from the Customer shall be appropriated by the Company in its sole and absolute discretion in respect of any undisputed indebtedness owing by the Customer to the Company, notwithstanding that the Customer might, when making payment, seek to appropriate the payment so made to any particular debt and/or portion of a debt.
- 13.7.** In the event that payment to the Company is effected electronically, the Customer bears the risk in respect of such payment until such time as the funds are received and cleared into the Company's bank account.
- 13.8.** If the Customer at any time, and from time to time, fails to make payment to the Company on the due date of payment of any amounts due by the Customer to the Company then:
- 13.8.1.** interest shall be payable by the Customer to the Company on any such late payment calculated at the Prime Rate plus 5% (five percent) per annum from the due date for payment to the actual date of payment;
- 13.8.2.** the Company shall be entitled, without prejudice to any of its other rights in terms of or arising out of these trading terms and conditions, or any other arrangements between the Company and the Customer, by notice in writing to the Customer to demand immediate repayment by the Customer to the
- 13.8.3.** Company of any and all amounts owed by the Customer to the Company, and the Customer shall, forthwith, repay all such amounts to the Company.
- 13.9.** Should the Customer breach any of the provisions of this Agreement and fail to timeously remedy such breach from date of dispatch of a written notice calling upon him to remedy such breach, the Company may call up the full amount owed plus legal costs on the attorney and own client scale and interest as immediately due and payable and proceed to take judgment against the Customer without the need for any further notices;
- 13.10.** The Customer hereby provides its consent to taking judgment against it and waives any defence it may have in opposing such consent to judgment.

14. LIEN OVER GOODS

- 14.1.** The Company shall have a special and general lien over all Goods and documentation such as but not limited to bills of lading and import permits, as well as all refunds, repayments, claims and other recoveries for monies due to the Company in respect of the Business and/or Services rendered by the Company under these terms and conditions or at common law in respect of the non-payment by the Customer of the Company's remuneration.

15. WARRANTIES AND REPRESENTATIONS BY THE COMPANY

The Company makes no warranties and representations to the Customer save as may be specifically provided in these terms and conditions 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 and 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 by the board of directors of the Company in response to a written enquiry specifying accurately and in complete detail what information is required.

16. BREACH

- 16.1.** If the Company breaches any of these terms and conditions or any agreement between it and the Customer and fails to remedy such breach within thirty 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 Company of the obligations it has defaulted in, but shall not be entitled to cancel any agreement between the Customer and the Company.
- 16.2.** If the Customer breaches any of these terms and conditions and fails to remedy such breach within thirty days of the date of receipt of written notice requiring it to do so then the Company shall be entitled to compel performance and/or to cancel the agreement.

17. ELECTRONIC DATA

- 17.1.** The Company shall only be deemed to have received electronic data and/or messages when such electronic data and/or messages have been retrieved, processed and read by the addressee.
- 17.2.** Under no circumstances whatsoever and however arising (including negligence on the part of the Company or its Employees) shall the Company be liable for any loss or damage arising from or consequent upon the provision by the Company to the Customer in whatever manner and/or form, of incorrect information, including electronically communicated information or data, where such incorrect information or data has been generated by and provided to the Company by any person with whom the Company conducts business, and/or any other third party.
- 17.3.** The Company shall furthermore under no circumstances whatsoever be liable for any loss or damage arising from or consequent upon any failure and/or malfunction, for whatever reason, and regardless of negligence in whatever degree on the part of the Company, of the Company's computer systems and/or software programmes, provided and/or operated by the Company and/or by any person with whom the Company conducts business, and/or any third party, and which systems shall include the Company's electronic automated information service provided to its Customers.

18. THE ACCEPTANCE OF DELIVERY

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

- 18.1.** the Company shall be entitled to store the Goods or any part thereof at no risk to the Company and at the expense of the Customer.

19. WAREHOUSING

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

20. COMPANY ENTITLED TO ACT AS AGENT OR PRINCIPAL IN CONTRACTING

- 20.1.** Unless otherwise agreed in writing, the Company in procuring the carriage, storage, packaging 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.
- 20.2.** The offer and acceptance of a fixed price for the accomplishment of any task shall not itself determine whether such task is to be arranged by the Company acting as agent for and on behalf of the Customer or as principal.
- 20.3.** The Customer acknowledges that when the Company as agent for and on behalf of the Customer concludes any contract with a third party, such agreement is concluded between the Customer and the third party.
- 20.4.** Unless otherwise agreed in writing, the Company, when acting as agent for and on behalf of the Customer, shall be entitled to enter into any contract it reasonably deems necessary or requisite for the fulfilment of the Customer's instructions, including, without limitation, contracts for the:
- 20.4.1.** carriage of Goods by any route or means or person,
 - 20.4.2.** storage, packing, transport, shipping, loading, unloading and/or
 - 20.4.3.** handling of Goods by any person at any place whether on shore or
 - 20.4.4.** afloat and for any length of time,
 - 20.4.5.** carriage or storage of Goods in breakbulk form or in or on transport
 - 20.4.6.** units as defined, or with or without other Goods of whatsoever nature.

21. SUB-CONTRACTING

- 21.1.** Any business entrusted by the Customer to the Company may, in the absolute discretion of the Company, be fulfilled by the Company itself, by its own servants performing part or all of the relevant services, or by the Company employing or entrusting the Goods or services to third parties on such conditions as may be stipulated by, or negotiated with, such third parties for the purposes of such services, or such parts thereof as they may be employed to carry out.
- 21.2.** Where the Company employs third parties to perform all or any of the functions which it has agreed to perform, the Customer agrees that the Company shall have no responsibility or liability to its Customer for any act or omission of such third party, even though the Company may be responsible for the payment of such third party's charges; but the Company shall, if suitably indemnified against all costs, (including attorney and client costs) which may be incurred by or awarded against the Company, take such action against the third party on the Customer's behalf as the Customer may direct.

22. GOODS REQUIRING PRIOR CONSENT OF THE COMPANY

- 22.1.** 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 Goods, including radioactive materials, which may be or become dangerous, inflammable or noxious, or which by their nature may injure, damage, taint or contaminate, or in any way whatsoever adversely affect any person, Goods or property, including Goods likely to harbour or attract vermin or other pests. The Customer warrants that such goods, or the case, crate, box, drum, canister, tank, flat, pallet, package or other holder or covering of such Goods will comply with any applicable laws, regulations or requirements of any authority or carrier and that the nature and characteristics of such Goods and all other data required by such laws, regulations or requirements will be prominently and clearly marked on the outside cover of such goods.
- 22.2.** If any such Goods are delivered to the Company, whether or not in breach of the provisions of these terms and conditions, such goods may for good reason as the Company in its discretion deems fit including, without limitation, the risk to other Goods, property, life or health be destroyed, disposed of, abandoned or rendered harmless at the risk and expense of the Customer and without the Company being liable for any compensation to it, or any other third 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 and the Customer indemnifies the Company against all loss, liability or damage caused to the Company as a result of the tender of Goods to the Company and/or out of the foregoing.

23. PERISHABLE GOODS

- 23.1.** Without limiting or affecting any other terms of these trading terms and conditions, Goods (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:
- 23.1.1.** such Goods have begun to deteriorate or are likely to deteriorate,
- 23.1.2.** such Goods are insufficiently addressed or marked;
- 23.1.3.** the Customer cannot be identified;
- 23.1.4.** the Goods have not been collected or accepted by the Customer or any other person after the expiration of 21 days from the Company notifying the Customer in writing to collect or accept such goods, provided that if the Company has no address of the Customer such notice shall not be necessary, and payment or tender of the net proceeds, if any, of the sale thereof after the deduction of those charges and expenses incurred by the Company in respect thereof
- 23.1.5.** shall be equivalent to delivery of the goods.
- 23.2.** Should any amount owing by the Customer to the Company in respect of any Goods referred to in Clause 23.1 above 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 Goods by public auction or on reasonable notice not exceeding 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 Goods 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 full obligations to the Company in respect of such Goods, the Company shall be obliged to refund such excess to the Customer.

24. TERMS AND CONDITIONS OF AGENTS AND SUB-CONTRACTORS

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

25. GOODS REQUIRING SPECIAL ARRANGEMENT

Except under special arrangements previously made in writing the Company will not accept or deal with bullion, coin, precious stones, jewellery, valuables, antiques, pictures, human remains, livestock or plants. Should the Customer nevertheless deliver such Goods to the Company or cause the Company to handle or deal with any such Goods otherwise than under special arrangements previously made in writing the Company shall incur no liability whatsoever in respect of such goods, and in particular, shall incur no liability in respect of its negligent acts or omissions in respect of such goods.

26. COLLECTION OF EXPENSES AND C.O.D.

- 26.1. When Goods are 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 other person immediately when due.
- 26.2. If accepted by the Company, instructions to collect payment on delivery shall be subject to the condition that the Company will be entitled to assume that the recipient will effect payment, and in the matter of such collection will not be liable for any negotiable instrument which is not met on the due date for payment.

27. SUNDRY GOODS RECOGNISABLE AS THE CUSTOMER'S

The Company shall have no obligation to take any action in respect of any Goods which may be recognisable as belonging to the Customer unless and until it receives suitable instructions relating to those Goods together with all necessary documents.

28. EXAMINATION OF LANDED GOODS

- 28.1. 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 Goods which are landed or discharged from any vessel, aircraft, vehicle, 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 by the landing or discharging agent that such Goods have been landed and that such discrepancy exists.

28.2. The Company will not be responsible for examining or counting any Goods received by it where such Goods are bundled, palletised or packed in any other manner such that their number cannot be quickly and easily counted. Should the Company undertake to count Goods so received, it shall incur no liability in respect of any error or inaccuracy in such counting, whether such error or inaccuracy is the result of negligence on the part of the Company or otherwise. The Company shall be entitled to levy a charge on the Customer for the counting of Goods in such circumstances.

29. LEGAL COSTS

In the event that the Company has to enforce and exercise any of its rights in terms of these terms and conditions, the Customer shall be liable for the legal costs thereof on the attorney and own client scale including the full cost of counsel.

30. CERTIFICATE OF AMOUNT OWING

30.1. Any certificate issued by the Company that serves to certify the amount due owing and payable by the Customer, will be accepted as prima facie (face value) proof of the indebtedness;

30.2. certificate will be sufficient to allow the Company to obtain judgment against the Customer in any competent court for the amount stated in the certificate,

31. CONFIDENTIALITY

31.1. The Company and Customer agree that these terms and conditions are confidential and proprietary information communicated to them in connection this Agreement shall be received in strict confidence and be used only for purposes of this Agreement;

31.2. No Party, its agents, representatives or employees shall disclose any such information without the prior written consent of the other Party.

32. GENERAL AND MISCELLANEOUS

32.1. This is the sole record of the terms and conditions;

32.2. No addition to, variation of, or agreed cancellation of this Agreement shall be of any force or effect unless reduced to writing and signed by or on behalf of the Parties including this clause

32.3. No relaxation or indulgence which any Party may grant to any other shall constitute a waiver of the rights of that Party and shall not preclude that Party from exercising any rights which may have arisen in the past or which may arise in future.

32.4. It is mutually agreed that any action arising between the parties may be instituted in the Magistrate's Court although the cause of action or amount of the action may exceed the jurisdiction of the court

32.5. If any provision of these terms and conditions is unenforceable, then the company shall be entitled to elect (which election may be 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 remain in full force and effect.