

**STANDARD TERMS AND CONDITIONS OF SALES,
INCORPORATING A LIMITATION OF LIABILITY, CESSION OF BOOK DEBT, INDEMNITY AND ASSUMPTION OF RISK**

NAME OF BUSINESS: _____ (**"the Customer"**)

REGISTRATION NO.: _____

IT IS AGREED THAT THE PARTIES WHO HAVE APPENDED THEIR SIGNATURES HERETO ON BEHALF OF THE CUSTOMER:

- 1.1 warrant that all of the information set out in this application form is true and correct;
- 1.2 agree to abide by the limits and terms designated by First Freight Couriers (Pty) Ltd ("the Service Provider");
- 1.3 acknowledge and understand that payment facilities will only be granted on acceptance by the Service Provider of this Credit Application and that the amount of payment facilities granted will be at the Service Provider's sole discretion;
- 1.4 agree that the definition of "customer" also extends to the person and/or entity:
 - 1.4.1 at whose request or on whose behalf the Service Provider renders the services; and/or
 - 1.4.2 who completed the waybill as the shipper.
- 1.5 The following definitions shall apply in terms of this agreement:
 - 1.5.1 "the goods" shall mean any goods handled, transported or dealt with by the Service Provider on behalf of or at the instance of, or which come under control of the Service Provider or its agents, servants or nominees on the instructions of the Customer, and include any container, flat pallet, package or any other form of covering, packaging, container or equipment used in connection with or in relation to such goods;
 - 1.5.2 "the owner" shall mean the owner of the goods in respect of which the Service Provider renders the services under these terms and conditions and any other person who is or may have or acquire any interest, financial or otherwise, in such goods;
 - 1.5.3 "the parties" shall mean the Service Provider and the Customer;
 - 1.5.4 "the premises" shall mean the premises of the Service Provider situated in Johannesburg, Cape Town or Durban or such addresses as the Service Provider may advise the Customer in writing from time to time;
 - 1.5.5 "the services" shall mean the business conducted or the information, advice or any other service provided by the Service Provider to the Customer

- 2.1 No orders for services placed will be binding upon the Service Provider until accepted by the Service Provider's Head Office, and the Service Provider reserves the right not to accept orders placed.
- 2.2 The invoice price reflected on the Service Provider's invoice shall be paid by the Customer without any deduction and in accordance with the terms of payment which the parties hereto might from time to time agree.
- 2.3 The Customer agrees that in the event of the Customer requesting additional copies of waybills, the Service Provider will be entitled to charge R5-00 per copy, alternatively the fair and reasonable cost of such copying

- 3.1 In the event of the Service Provider having provided the Customer with credit terms and unless otherwise agreed in writing all amounts reflected on the Service Provider's invoice are payable within 30 (THIRTY) days from date of statement. Failure to make any payment on due date shall render the full amount owing payable immediately, together with interest at the maximum rate permissible in law on all overdue amounts. The Service Provider also reserves the right to stop services on accounts that are 30 (THIRTY) days and over in arrears.
- 3.2 Payment of any amount due to the Service Provider by the Customer shall be made by way of cheque, bank transfer or in cash, free of exchange or bank charges and without deduction or set-off to such address as the Service Provider may advise the Customer in writing from time to time.
- 3.3 The Customer may qualify for discounts as specified in the service guide. Current billing discounts will only be applied if payment is received within 30 (THIRTY) from the date of statement in terms of clause 3.1 and will be credited to the following month's statement.
- 3.4 All and any monies received by the Service Provider from the Customer shall be appropriated by the Service Provider in its sole discretion in respect of any undisputed indebtedness of the Customer, notwithstanding that the Customer might, when making payment, seek to appropriate the payment so made to any particular debt or portion of debt.
- 3.5 A certificate by a director of the Service Provider showing the amount due and owing by the Customer to the Service Provider at any given time will be evidence that is sufficient to raise a presumption of the facts stated therein, unless rebutted, for the purpose of all legal proceedings and recovery of all outstanding amounts.

- 4.1 The Service Provider shall have a lien over all the goods, irrespective of whether the Customer is also the owner of the goods.
- 4.2 In the event of non-payment of any monies due by the Customer to the Service Provider, the Service Provider shall have the option, and without prejudice to any of its rights, be entitled to:

- 4.2.1 request that the Customer allow the Service Provider to open and examine any part of such goods;
- 4.2.2 at its option and subject to the necessary court order (with the required notice to the Customer), to sell the goods by way of public auction and apply the proceeds of any such sale, after deducting all expenses thereof, in payment of or towards any amount due by the Customer to the Service Provider.
- 4.3 Any surplus held by the Service Provider after the sale of the goods as aforesaid shall be paid to the Customer within a reasonable time after such sale, or in the event of the Service Provider being unaware of the address of the Customer, on the application of the Customer within 3 (three) months from the date of the sale, but save therefore, the Service Provider shall be released from all liability whatsoever in respect of the goods or any surplus held by the Service Provider as aforesaid;
- 4.4 Where the Service Provider has, in accordance with the provisions of clause 4.2, sold only part of the goods and the proceeds of such sales are sufficient to pay the Service Provider all monies due to it by the Customer, the Customer shall take delivery of the remainder of such goods. The Service Provider shall have the right to charge a reasonable sum for the storage of any goods forming part of such remainder of which delivery is not taken by the Customer and, without notice to the Customer, to recover any such sum in accordance with the provisions of clauses 4.2 and 4.3.
- 4.5 In the event of non-payment of any monies due by the Customer to the Service Provider in terms of clause 3.1, the Service Provider shall have the right, in addition to its rights already specified in this clause, to:
- 4.5.1 suspend the carrying out of any of its then uncompleted obligations to the Customer until full payment is made; and/or
- 4.5.2 refuse to provide any further services to the Customer; and/or
- 4.5.3 rescind the payment facilities granted to the Customer.
- 4.6 The exercise by the Service Provider of any of the rights granted to it by this clause shall be without prejudice to any other rights it may have under this agreement or at common law.

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5. All handling, packaging, loading, unloading, warehousing and transporting of the goods by the Service Provider on behalf of or at the request of the Customer shall be effected at the sole risk of the Customer, and the Customer hereby acknowledges that it shall have no claim against the Service Provider of any nature whatsoever arising out of the foregoing, other than as provided for in the Consumer Protection Act

- 6.1 If the Service Provider is obliged, in the execution of its duties and/or responsibilities, to comply with any common law or legislative enactment ("the law") of any nature whatsoever, then the Service Provider by complying therewith, shall not be deemed to waive or abandon any of its rights in terms of these terms and conditions.
- 6.2 In addition thereto, in complying with the law, the Service Provider shall not be deemed to have assumed any onus, obligation, responsibility, or liability in favour of the Customer, other than as provided for in the Consumer Protection Act.
- 6.3 If any of the terms and conditions are 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 and/or severed to conform therewith, and such amendment and/or alteration shall not in any way affect the remaining provisions of these terms and conditions.
7. The Customer warrants and undertakes that:
- 7.1 it is the owner or the duly authorised agent of the owner of the goods which are the subject of the Customer's instructions to the Service Provider and, if it is the authorised agent of the owner, that such owner is bound by this agreement;
- 7.2 by authorising the Customer to enter into any contract with the Service Provider, the owner, sender or consignee is bound by this agreement and any other person on behalf of whom such owner, sender or consignee is acting is bound by this agreement and, in particular, without derogating from the generality of the foregoing, the owner, sender or consignee accepts that it shall be jointly and severally liable with the Customer for the due performance by the Customer of all its obligations under this agreement;
- 7.3 all descriptions, values, marks, brands, weights, numbers, contents quality and other particulars in respect of the goods furnished by it to the Service Provider for customs, consular and other purposes are accurate, and accordingly indemnifies the Service Provider against all claims, losses, penalties, damages, expenses and fines whatsoever which the Service Provider may suffer or sustain arising out of or in connection with the breach of this warranty, whether negligently or otherwise;
- 7.4 all goods subject to this agreement shall be properly, adequately and appropriately prepared and packed, stowed, labelled and marked and such goods are capable of withstanding the normal hazards inherent in the implementation of this agreement;
- 7.5 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 Service Provider has been given and has accepted specific written instructions to load the transport unit:
- 7.5.1 the transport unit has been properly and competently loaded; and
- 7.5.2 the goods involved are suitable for carriage in or on the transport unit and 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 laws.
8. All goods delivered by the Customer shall be examined by the Service Provider either manually or by way of an x-ray machine before transport of such goods to ensure that no dangerous goods as referred to in clause 9 or goods requiring a special arrangement with the Service Provider in terms of clause 9 are to be transported. If the Service Provider suspects dangerous goods are being moved after being x-rayed then a delay may take place while the contents are checked.
- 9.1 The Customer shall obtain in advance the Service Provider'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 without limitation 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 or cause damage to any person, goods or property, including without limitation, goods likely to harbour or attract vermin or other pests. The goods referred to above shall include, without limiting the generality of the foregoing, all goods falling within the definition of "hazardous and dangerous goods" as specified by the

- South African Railways Regulations and the International Maritime Dangerous Goods Code (MCO Code) and any other regulations governing the transport or movement of dangerous and hazardous cargo.
- 9.2 The Customer warrants that such goods, or where applicable, the 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 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.
- 9.3 If any such goods are delivered to the Service Provider, whether or not in breach of the provisions of clause 9.1 for good reason as the Service Provider may in its discretion deem fit including, without limitation, the risk property, life or health be destroyed, disposed of, abandoned or rendered harmless or otherwise dealt with expense of the Customer and without the Service Provider being liable for any compensation to the Customer or any other party, and without prejudice to the Service Provider'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 goods.
- 9.4 **The Customer hereby indemnifies and holds the Service Provider harmless against all loss, liability or damage caused by the Customer or the Service Provider or any other person as a result of the delivery of goods to the Service Provider in breach of clause 9.1.**
- 9.5 A penalty will be implemented against the Customer if undeclared Dangerous goods are detected in accordance with DCA, IATA rules and regulations.
- 10.1 Save in accordance with special arrangements previously made in writing the Service Provider will not accept or deal with bullion, coin, bank notes and other currency, precious stones, jewellery, valuables, antiques, pictures, human remains, livestock or plants.
- 10.2 Should the Customer deliver any such goods to the Service Provider or cause the Service Provider to handle or deal with any such goods otherwise than in accordance with special arrangements previously made in writing, the Service Provider 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, other than as provided for in the Consumer Protection Act.
- 10.3 **The Customer hereby indemnifies and holds the Service Provider harmless against all loss, liability or damage suffered by the Service Provider or the Customer or any other person as a result of the breach by the Customer of the provisions of clause 10.1, and as provided for in the Consumer Protection Act.**
- 11.1 Goods delivered at the destination airport and in the care, custody or control of the Service Provider or its representative, may, at the Customer's expense be sold in accordance with the provisions of clause 4.2, at the option of the Service Provider, if:
- 11.1.1 such goods are insufficiently addressed or otherwise marked so as to identify the Customer or consignee;
- 11.1.2 the Customer, owner or consignee of such goods cannot be identified or located after the Service Provider has taken reasonable steps to identify or locate the said persons;
- 11.1.3 such goods have begun to deteriorate or are likely to deteriorate; or
- 11.1.4 such goods have not been collected by the Customer or any other person within 72 (seventy two) hours from the time that the goods were delivered at the destination airport and after the Service Provider has advised the Customer or the consignee, telephonically or in writing, that the goods are ready for collection.
- 11.2 Notwithstanding the provisions of clause 11.1, the Service Provider shall be entitled, in the circumstances referred to in clause 11.1.4, to store such goods at **no risk to the Service Provider** and at the expense of the Customer.
12. In the absence of specific instructions on the waybill prepared by the Customer or given timeously in writing by the Customer to the Service Provider:
- 12.1 the Service Provider shall be entitled to decide, in its reasonable discretion at what time to perform or to procure the performance of any or all of the services it has agreed to perform;
- 12.2 the Service Provider shall have an absolute discretion to determine the means, route and procedure to be followed by it in performing all or any of the services it has agreed to perform, unless the party have in writing agreed otherwise;
- 12.3 in all cases where there is a choice of tariff rates or premiums offered by any carrier, warehouseman, underwriter, or other person depending upon the declared value of the relevant goods or to the extent of the liability assumed by the carrier, warehouseman, underwriter, or any other person, it shall be at the discretion of the Service Provider 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.
- 13.1 Should the Service Provider deem it to be in the interests of the Customer or in the public interest to depart from any of the instructions of the Customer, the Service Provider shall be entitled to do so, shall take reasonable steps to advise the Customer accordingly and shall not incur any liability whatsoever as a result thereof other than as provided for in the Consumer Protection Act.
- 13.2 Should it, in the opinion of the Service Provider, be impossible or impractical for the Service Provider to comply with the Customer's instructions in whole or part, the Service Provider undertakes to take reasonable steps to inform the Customer of the circumstances giving rise to such impossibility or impracticability and the Customer shall furnish the Service Provider with further instructions.
- 14.1 It is hereby agreed that the Service Provider is neither a common carrier nor a public carrier in relation to the carriage of goods in terms of this agreement.
- 14.2 **Subject to the provisions of clause 14.6, the Service Provider shall not be liable to the Customer for any loss of profit or any damages, direct or indirect, consequential or otherwise arising from any cause whatsoever, other than as provided for in the Consumer Protection Act.**
- 14.3 If the Customer alleges that the Service Provider is liable for loss or damage suffered by it, the Customer shall notify the Service Provider thereof by completing the claim form attached to the service guide and giving same to the Service Provider within 10 (ten) business days of receipt of the goods allegedly damaged or of it coming to the Customer's attention that the goods were lost.

- 14.4 The Customer shall, in the case of alleged damaged goods, make such goods available for inspection by the Service Provider or its representative.
- 14.5 The Service Provider shall accept or reject liability for the loss or damage within a reasonable time after receiving the duly completed claim forms referred to in clause 14.3.
- 14.6 Where the Customer elects to take out insurance, the insurance column must be clearly marked on the waybill, with the insured value stipulated in the Insurance Block.
- 14.7 **The Customer hereby indemnifies the Service Provider against all and any claims made by 3rd parties in the value of the insurance claim, whether such claims arose directly or indirectly from or in connection with the Customer's instructions or their implementation in relation to the goods.** Initial here
- 15.1 **In those cases where the Service Provider is liable to the Customer notwithstanding the provisions of clause 14.2, in no such case whatsoever shall any liability of the Service Provider, howsoever arising, exceed whichever is the least of the following respective amounts:**
- 15.1.1 **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; or**
- 15.1.2 **the value of the goods declared for insurance purposes; or**
- 15.1.3 **double the amount of the fees raised by the Service Provider for its services in connection with the goods, but excluding any amounts payable to sub-contractors, agents and third parties.**
- 16.1 **For the purpose of this clause "carrier" shall mean any carrier involved in the carriage of the cargo on behalf of the Service Provider.**
- 16.2 **It is recorded that where the goods are transported by the carrier in terms of this agreement, the carrier shall not be liable to the Customer or any other person, save as provided in terms of the Consumer Protection Act, for:**
- 16.2.1 **loss, damage or delay arising out of the carriage of the goods or other services performed by the carrier incidental thereto, unless such loss or damage or delay is occasioned by an in-flight accident; excluding in-flight accidents caused or occasioned by the negligence or wilful misconduct of the Service Provider;**
- 16.2.2 **any indirect or consequential damages of any nature or any loss of profit or other special damages of any nature which the Customer may suffer as a result of an in-flight accident, excluding in-flight accidents caused or occasioned by the negligence of wilful misconduct of the Service Provider;**
- 16.2.3 **the delay or loss of market attributable to, or associated with, the transport of livestock and perishables;**
- 16.2.4 **any inherent vice or defect (whether latent or apparent) in the cargo or the goods conveyed by the carrier;**
- 16.2.5 **any act or omission of any of the carrier's agents, contractors or third parties required to perform any services for and on behalf of the carrier.**
- 16.3 **Subject to and without in any way limiting the provisions of clause 16.2:**
- 16.3.1 **the liability of the carrier for any damages sustained by the Customer for any in-flight accident, excluding in-flight accidents caused or occasioned by the negligence or wilful misconduct of the Service Provider shall be limited as to the amount, which amount the Service Provider shall advise the Customer of on request;**
- 16.3.2 **the carrier shall not be liable to the Service Provider for any claim for in-flight accidents, excluding in-flight accidents caused or occasioned by the negligence or wilful misconduct of the Service Provider, made by the Customer or any other third party unless such a claim is made in writing within 6 (six) months after the claim arises.**
- 17.1 Any services rendered by the Service Provider in terms of this agreement may, in the absolute discretion of the Service Provider, be fulfilled by the Service Provider itself, by its own employees performing part of or all of the relevant services, or by the Service Provider employing, or entrusting the goods or services to third parties on such conditions as may be stipulated by, or negotiated with, such third parties for the purposes of such services, or such part thereof as they may be employed to carry out.
- 17.2 Notwithstanding anything to the contrary contained herein, the Customer agrees that all goods shall be dealt with by the Service Provider on the terms and conditions, whether or not inconsistent with these terms and conditions, stipulated by the carriers, warehousemen, government departments, and all other third parties (whether acting as agents or subcontractors to the Service Provider or not) into whose possession or custody the goods may pass or subject to whose authority they may at any time be.
18. No documents, cheques or any material sent to the Service Provider through the post shall be deemed to have been received by the Service Provider unless they are actually received by the Service Provider.
- 19.1 Any instruction given to the Service Provider based on any quotation furnished by the Service Provider to the customer shall be deemed to be an offer by the Customer to the Service Provider to conclude a contract between the Customer and the Service Provider based on such instructions and quotation. The Service Provider shall not be bound by any instructions or quotations unless it has notified the Customer in writing of its acceptance of such offer.
- 19.2 Quotations are given on the basis of costs and exchange rates prevailing at the date of the quotation. Should the Service Provider's costs including, without limitation, rates of freight, insurance premiums, equipment rental and labour and any other charges applicable to the goods, increase thereafter for any reason beyond the control of the Service Provider, the Service Provider shall be entitled to increase its charges to the Customer to the extent necessary to recoup such additional costs.
- 19.3 In the event of such increase as specified in 19.2, the Customer will be entitled to cancel the transaction should it no longer wish to use the Service Provider. Such right must be exercised within 5 (FIVE) days of the Customer receiving notification of the increase in costs.
- 19.5 The Service Provider shall be entitled at any time by written notice to the Customer to cancel or resile from any published rate in circumstances where it becomes impractical or uneconomical for the Service Provider to carry out the agreement at the published rate and the Customer shall have no claim whatsoever against the Service Provider for any loss that the Customer might incur as a result of the Service Provider cancelling or resiling from the published rate.

20. No negotiable instrument received by the Service Provider from a Customer shall constitute a novation of the debt for which it is given and the Customer waives presentment, notice of dishonour and protest where applicable. No negotiable instrument, document or notice shall be deemed to have been received by the Service Provider until same has actually been delivered to the Service Provider at its principal place of business.
21. The Service Provider is entitled to the benefit of any discounts obtained and to retain and be paid all brokerage allowances and other remunerations of whatsoever nature and kind and shall not be obliged to disclose to the Customer for any such amounts received or receivable by it.
22. The Customer shall not be entitled to effect, or allow to be effected any security in respect of the goods or the documents relating to the goods, including without limitation, any general or special notarial bond, pledge, hypothec, right of retention, or lien and pledge, without the prior written consent of the Service Provider.
- 23. The Service Provider makes no warranties and representations to the Customer save as may be specifically provided herein or as notified in writing by the Service Provider to the Customer from time to time. The Customer acknowledges that the Service Provider is not in any way bound by any oral statement, representations, guarantee, promise, undertaking, inducement or otherwise which may have been made at any time by any salesman, employee or any person acting or purporting to act for and on behalf of the Service Provider, 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 Service Provider's members or board of directors, as the case maybe, in response to a written enquiry specifying accurately and in complete detail what information is required.**
- 24.1 Subject to the provisions of clause 25 and in the event of a party breaching any of its obligations under this agreement ("the defaulting party") and failing to remedy such breach within 7 (seven) days of receiving written notice from the other party requiring it to do so, the other party may, without prejudice to any other right which it may have in law, including the right to claim damages, in the case of:
- 24.1.1 a material breach, which breach is not capable of being remedied, cancel this agreement; or
- 24.1.2 any other breach, claim specific performance or cancel this agreement.
- 24.2 Should the Customer::
- 24.2.1 commit a breach of any of these conditions; or
- 24.2.2 being an individual, die or surrender his/her estate; or
- 24.2.3 being a partnership, be dissolved; or
- 24.2.4 being a juristic person or trust, be placed under provisional or final liquidation, or under judicial management, or be provisionally or finally sequestrated, or be subject to a business rescue plan; or
- 24.2.5 commit an act of insolvency as defined in any South Africa statute or common law from time to time, or compromise or attempt to compromise generally with its creditors,
- then in any of these above events occurring the Service Provider may summarily cancel this agreement by giving the Customer written notice to that effect, without prejudice to any rights which the Service Provider may have as a result of the breach or cancellation.
25. The Service Provider, Customer and Surety/ies consent and agree that the Service Provider may, but is not obliged to, have any dispute, disagreement or claim arising out of this Agreement finally resolved in the Magistrate's Court having jurisdiction in respect of the Customer Surety/ies, notwithstanding that the amount in issue may exceed the jurisdiction of such court.
- 26.1 In the event of the Service Provider having to institute legal proceedings of whatsoever nature against the Customer, the Customer will be liable for the Service Provider's legal costs on the scale as between attorney and own client, together with any tracing fees and collection commissions which may be incurred by the Service Provider.
- 26.2 In the event of the Customer instituting legal proceedings of whatsoever nature against the Service Provider, the Service Provider will be liable for the Customer's legal costs on the scale as between attorney and client.
- 27.1 The Purchaser nominates the Purchaser's physical address as recorded herein as its chosen address (*domicilium citandi et executandi*) for the service on it of all legal processes and notices.
- 27.2 Communications from the Seller to the Purchaser/Surety/ies will be deemed to have been delivered within 3 (THREE) days if sent by registered mail.
28. No extension of time or any other relaxation or indulgence granted by the Service Provider to the Customer shall operate as, or be deemed to be a waiver by the Service Provider of any of its rights under this agreement, or a novation of any of the terms and conditions of this agreement
29. The Purchaser authorises the Seller to through the service of any NCR registered credit bureau:
- 29.1.1 carry out any checks and/or traces that the Seller deems fit;
- 29.1.2 to report the Purchaser's payment history; and
- 29.1.3 to list the Purchaser in the event of the Purchaser defaulting in payment in terms of this agreement.
30. If any provision of this agreement, is found or held to be invalid or unenforceable, such terms will be severable from the remaining terms, which will continue to be valid and enforceable.

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31. This entire agreement and any legal proceedings flowing from it will be governed by the laws of the Republic of South Africa.
32. No variation or amendment of, or addition to the terms and conditions of this Agreement, will be binding upon the parties unless in writing and signed and accepted by a duly authorised member/director of the Service Provider and the Customer.

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