

# **SOUTH AFRICAN CONTAINER DEPOTS**

## **GENERAL TRADING CONDITIONS**



**Issued by:**

**South African Container Depots (Pty) Ltd**

**Reg. No. 1999/000645/07**

**30 Breede Road, New Pier 2, Bayhead, Durban**

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**Effective Date:**

**1 April 2015**

## 1. INTERPRETATION

### 1.1 In these Conditions:

1.1.1 The headings to the clauses are for reference purposes only and shall not aid in the interpretation of the clauses to which they relate;

1.1.2 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;

1.1.3 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning namely:

1.1.3.1 "The Act" The Customs and Excise Act No. 91 of 1964, Regulations made under the said Act and any amendments thereto or replacements thereof;

1.1.3.2 "Abnormal Goods" Goods which by reason of their nature, weight (mass), dimensions or otherwise require special preparations to be made or require unusual or special care, treatment or precautions to be taken for the transport or movement thereof, or such goods which SACD in its sole discretion, or in the case of intended transport by rail, then also TFR, classifies or regards as abnormal;

1.1.3.3 "Bimco" The Baltic and International Maritime Council;

1.1.3.4 "Carrier" Any carrier of Goods whether by rail, road, sea or air;

1.1.3.5 "Conditions" These general trading conditions as amended or supplemented from time to time;

1.1.3.6 "Container" Any container, transportable tank, bolster or flat rack, used to transport Goods and constructed to ISO standards or recommendations or those of a similar recognised classification society;

1.1.3.7 "Container Operator" A Container Operator as defined by the Act, or any Person who carries on the business of transporting containerised Goods, or any Ship Owner, Charterer, Ship Operator, Carrier, Ship's Agent, Shipbroker, Freight

Forwarder, non-Vessel Owning Common Carrier, Clearing and Forwarding Agent, International Transport Operator and Combined Transport Operator, from, on whose behalf, or at whose request or instruction SACD receives and containerises Export Goods and / or delivers such containerised Goods or from whom or at whose instance or instruction SACD receives containerised Import Goods. Whenever there is a reference in these Conditions to a Container Operator or to the obligation of a Container Operator, such reference shall be deemed to be a reference to the Container Operator from or on whose behalf SACD receives any Goods or for, or on whose behalf, it performs any service;

- 1.1.3.8 "Container Trailer" A trailer constructed for the purpose of carrying containers;
- 1.1.3.9 "Customer" Any Person at whose request or on whose behalf SACD undertakes any business or provides any advice, information or service and shall be deemed to include the Owner, consignee or consignor of the Goods as hereinafter defined, any agent acting for such Owner, consignee or consignor of the Goods and any other Person claiming any right to or in respect of any such Goods;
- 1.1.3.10 "Day" The 24 hour period from midnight to midnight;
- 1.1.3.11 "Dangerous Goods" Goods which by reason of their nature, quantity or mode of stowage either singularly or collectively are liable in SACD's sole opinion to endanger the lives or the health of Persons or any property including but not restricted to Containers, ships, rolling stock, vehicles, buildings and lifting equipment, as well as all Goods defined as dangerous in the IMO regulations or any statute, statutory instrument or order, any regulations made by any governmental or other public authority or by any local by-law relating to the handling, storage or carriage of Goods or specified as dangerous goods in the special

		classification of dangerous goods issued by TFR from time to time;
1.1.3.12	"Depot"	A Container Depot operated by SACD as a Depot Operator, or as defined in Section 1 of the Act;
1.1.3.13	"Export Goods"	Goods delivered to SACD for containerisation;
1.1.3.14	"FCL"	Full Container Load, that is a Container containing Import or Export Goods for one consignee or which is shipped under one ocean bill of lading;
1.1.3.15	"FCL Goods"	Goods contained in an FCL Container;
1.1.3.16	"Goods"	Any cargo handled, transported or dealt with by or on behalf of or at the instance of SACD or under the control of SACD or its agents, employees, contractors, or subcontractors on the instructions of the Customer and includes any package or any other form of covering, packaging or Transport Unit used in connection with or in relation to such goods,;
1.1.3.17	"IMO"	International Maritime Organization;
1.1.3.18	"Import Goods"	Containerised Goods delivered to a Depot by or on behalf of a Container Operator;
1.1.3.19	"ISO"	International Organisation for Standardisation, Geneva, Switzerland;
1.1.3.20	"Loss"	Physical loss, whether actual or constructive and includes loss arising out of damage, theft or any other cause whatsoever;
1.1.3.21	"LCL Container"	Any General Purpose (GP) Container other than an FCL Container, excluding empty and cabotage containers;
1.1.3.22	"LCL Goods"	Goods contained in an LCL Container;
1.1.3.23	"Market Value"	The market value at the date of the Loss of or damage to any items as determined in the case of an item other than Goods, at the place where such Loss or damage occurred, or in the case of Goods at the place where SACD handled or packed the Goods in question;

1.1.3.24	"Obnoxious Goods"	Any of the following kinds of Goods which are not included in the definition of Dangerous Goods, namely, goods defined as obnoxious in the IMO Regulations or any statute, statutory instrument or order, regulation made by any governmental or other public authority or by any local by-law relating to the handling, storage or carriage of Goods, and including any other Goods which in the sole opinion of SACD are possessed of inherent vice, likely to affect other Goods adversely or to cause physical discomfort or injury to personnel handling them;
1.1.3.25	"Out of Gauge"	Goods which extend beyond the confines of a Container;
1.1.3.26	"Owner"	The legal owner of the Goods or any other Person with right, title or interest in and to the Goods;
1.1.3.27	"Person"	Natural person, statutory body, company incorporated in terms of the law in force at the place at which the Company is incorporated, a firm, partnership, close corporation, trust or association;
1.1.3.28	"SACD"	South African Container Depots (Proprietary) Limited including its employees, agents, contractors and sub-contractors acting within the course and scope of their employment by SACD or, if exercising its right under clause 2, the member of the Group in respect of which it exercises its rights
1.1.3.29	"Services"	Means those services specified in clause 4.1;
1.1.3.30	"the Company"	SACD;
1.1.3.31	"the Group"	SACD and any company which is a holding company or subsidiary of SACD or a subsidiary of the Bidvest Group Limited, including any company in which any such company has a shareholding of more than 20% (twenty percent) of the issued shares, which may render Services to the Customer;
1.1.3.32	"Service Charge"	The Service Charge Schedule published by SACD Schedule as amended and in force from time to time, or any alternative Service Charge Schedule published by

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SACD in writing. Copies of the Service Charge Schedule are available from SACD upon request;

- 1.1.3.33 "Valuable Goods" Goods of high value or requiring special care including, without limiting the generality of the above, bullion, coins, money, precious metals and stones, electronic equipment, jewellery, antiques, pictures, paintings, works of art, and similar Goods or merchandise;
- 1.1.3.34 "Transport Unit" 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;
- 1.1.3.35 "TFR" Transnet Freight Rail, a division of Transnet Ltd;
- 1.1.3.36 "TNPA" Transnet National Ports Authority, a division of Transnet Ltd;
- 1.1.3.37 "TPT" Transnet Port Terminals, a division of Transnet Ltd;
- 1.1.3.38 "Warehousing and Logistics Services"

Those Services performed by SACD as described in clause 4.1 of these Conditions.

## 2. MEMBERS OF THE GROUP RENDERING SERVICES TO THE CUSTOMER

- 2.1 SACD may at its election perform all or any business undertaken or provide advice, information or Services, whether gratuitous or not, either itself or it may procure that any member of the Group undertakes such business or provides such advice, information or Services as principal upon and subject to these Conditions, which shall apply *mutatis mutandis* to the Customer and any such member of the Group.
- 2.2 Each member of the Group shall be deemed to have appointed SACD as its agent for procuring on behalf of any such a member of the Group, the benefit of these Conditions and SACD shall further be deemed to accept such benefits on behalf of any member of the Group to whom such benefits may have accrued at the time of accepting any instruction to perform any function in rendering any Services to the Customer.

## 3. THE APPLICABILITY OF THESE CONDITIONS AND THE SERVICE CHARGE SCHEDULE

- 3.1 These Conditions and the Service Charge Schedule apply to any and all business undertaken by SACD, and advice, Services and information provided by SACD, whether gratuitous or not, and to every Customer for or on whose behalf SACD procures and/or renders any Services in respect of Goods. In the event that the Customer is not the Owner of the Goods, the Customer:
- 3.1.1 Warrants that he is authorised to bind the Owner to the Conditions;
  - 3.1.2 Shall in any event provide the Owner with a full copy of the Conditions and bring the contents of the Conditions to the attention of the Owner;
  - 3.1.3 Accepts that, to the extent that the Owner may attempt to deny that he is bound by the Conditions, shall remain liable to SACD for all purposes relating to any agreement between SACD and the Customer.
- 3.2 The Service Charge Schedule is subject to and is to be construed and applied in accordance with the provisions of these Conditions. These Conditions shall prevail in the event of any conflict between them and the Service Charge Schedule, and furthermore, SACD shall not be bound by any term or condition contained in the Service Charge Schedule that would in any way increase or have the effect of increasing SACD's liability or obligations beyond its liability or obligations as set out in these Conditions.
- 3.3 These Conditions are those referred to in all SACD notices, correspondence, receipts, e-mails or other electronic communications and other documents.

#### 4. **SERVICES RENDERED BY SACD**

- 4.1 Subject to these Conditions, SACD provides, *inter alia*, the following Warehousing and Logistics Services together with any ancillary or related Services:
- 4.1.1 In respect of Import Goods:
    - 4.1.1.1 Receipt of Goods from TPT, TFR or any other Person.
    - 4.1.1.2 Container inspection, checking and recording of seals.
    - 4.1.1.3 Container storage.
    - 4.1.1.4 Opening of Containers for inspection by the South African Revenue Services/Department of Health and/or any other Governmental Authority.
    - 4.1.1.5 Unpacking, loading and handling of Goods and Containers.
    - 4.1.1.6 Delivery of Goods at the Depot to a duly authorised Person bearing appropriate proof of such authorisation.
    - 4.1.1.7 Goods storage, either directly for the Customer, or, where the Customer has placed goods in storage with SACD, when such Goods continue to be stored on

behalf of the State warehouse or pursuant to the Act, any other legislation or any court order.

- 4.1.1.8 Removal of Goods to State Warehouse.
- 4.1.1.9 Receiving, handling and checking of documents.
- 4.1.1.10 Completion of discrepancy and damage reports.
- 4.1.1.11 Provision of facilities for inspection of Goods.
- 4.1.1.12 Repair of damaged packaging.
- 4.1.2 In respect of Export Goods:
  - 4.1.2.1 Receipt of shipping instructions.
  - 4.1.2.2 Receipt, handling and checking of documents.
  - 4.1.2.3 Receipt of Goods in compliance with Export Goods delivery instructions.
  - 4.1.2.4 Outward examination and reporting of the condition of Goods.
  - 4.1.2.5 Packing, handling and loading of Goods and Containers.
  - 4.1.2.6 Closing and sealing of Containers.
  - 4.1.2.7 Preparing Load Lists.
  - 4.1.2.8 Obtaining receipts from TPT or other agents of the Container Operator.
  - 4.1.2.9 Storage of Containers for export staging.
- 4.1.3 In respect of Containers:
  - 4.1.3.1 The handling, storing, cleaning, repairing and inspection of Containers.
  - 4.1.3.2 Compliance with such provisions and obligations as are imposed on a Depot operator in terms of Section 44 (5B) of the Act.
  - 4.1.3.3 Tracking and stock monitoring.
  - 4.1.3.4 Pre-trip inspections of empty refrigerated Containers, specifically at the facilities that are equipped and skilled to perform the inspections.
- 4.1.4 In terms of the Act, any other legislation or any court order:
  - 4.1.4.1 The receipt of FCL Containers in compliance with the provisions of Section 64A (4) of the Act.
  - 4.1.4.2 Receipt of Containers in bond in terms of Section 18(1) (d) of the Act.



4.1.4.3 Provision at each Depot of accommodation for officials of such governmental authorities as may reasonably require it and facilities for such officials to enable them to carry out their duties in terms of the Act.

4.1.4.4 Storage of Goods in terms of any provision of the Act, any other legislation or any court order.

and in these Conditions, any reference to Warehousing Services shall be deemed a reference to any one or more of the foregoing and/or related Services.

4.2 Carriage of Goods by road, rail or air, which carriage may be performed by SACD or its subcontractors.

4.3 Generally: Any other Services which by reason of their nature are Warehousing or Logistics Services.

## 5. **TRANSPORT DOCUMENTS**

5.1 SACD shall be entitled to issue in respect of the whole or part of any contract for the movement of Goods, a combined transport document or bill of lading ("CTBL") in a form that shall be within SACD's discretion, including a FIATA combined transport bill of lading, a warehouse and/or forwarding receipt, an air or sea waybill, a consignment or delivery note, a Container movement or transport order, a Groupage or house bill of lading or a received for shipment or despatch bill of lading, (any of which may reflect SACD or another Person as the Carrier in terms thereof).

5.2 Clause 5.1 is subject to the caveat that these Conditions shall continue to apply as between SACD on the one part and the Customer and/or the Owner on the other part where a CTBL is issued (save with regard to the Owner, to the extent that these Conditions conflict with the terms and conditions applicable to the CTBL, in which event the provisions of the CBTL shall to the extent of such conflict only, have precedence).

5.3 The issue of the CTBL by SACD shall entitle it to raise an additional charge determined by SACD, to cover any additional obligations arising under the CTBL.

## 6. **ACCEPTANCE OF BENEFITS AND RATIFICATION**

6.1 Notwithstanding anything to the contrary contained in these Conditions, SACD shall be entitled to all the benefits, rights, immunities and limitations contained in bills of lading, combined transport documents or other documents and any statement in such documents to the effect that the benefits, rights, limitations and immunities in such documents and of the contracts of carriage pursuant to which such documents were issued, shall apply to any employee, agent, contractor or sub-contractor of the Person issuing such documents, shall be deemed to include SACD.

6.2 SACD authorises every Customer, which issues a bill of lading, combined transport document and/or any other document evidencing a contract of carriage, for or on whose behalf it deals with Goods in any manner:

6.2.1 To act as SACD's Agent to contract on its behalf with all Persons to whom bills of Lading, combined transport documents or any other documents evidencing contracts of carriage are issued, in order to obtain for SACD the same benefits as those which accrue to Carriers in terms of agreements evidenced by such documents, alternatively and/or in addition;

6.2.2 To act as SACD's agent to accept on its behalf the benefit of all provisions stipulated for the benefit of any employee, agent, contractor and/or sub-contractor in terms of bills of lading, combined transport documents or any other documents evidencing contracts of carriage.

6.3 Every Customer which issues a bill of lading, combined transport document and/or any other document evidencing a contract of carriage of Goods undertakes to contract on SACD's behalf with Persons to whom bills of lading, combined transport documents or any other documents evidencing contracts of carriage are issued in one or both of the manners detailed in clause 6.2.1 and clause 6.2.2 to procure for SACD the same benefits as accrue to the Carrier in terms of such documents. Every Customer from or on whose behalf SACD receives Goods, undertakes to SACD that all such Goods shall be subject to a contract of carriage which shall include a provision reading (or having the same meaning) as follows:

"The shipper, holder, consignee or any Person entitled to possession of the Goods or of this bill of lading undertakes that no claim or allegation shall be made against any Person or body whomsoever by whom the Carriage or any part of the Carriage is performed or undertaken (other than the Carrier) which imposes or attempts to impose upon any such Person or any vessel owned by any such Person any liability whatsoever in connection with the Goods whether or not arising out of negligence on the part of such Person, and if any such claim or allegation should nevertheless be made to indemnify that Person against all consequences thereof. Without prejudice to the foregoing every such Person shall have the benefit of all provisions herein benefiting the Carrier as if such provision were expressly for his benefit; and in entering into this Contract, the Carrier, to the extent of these provisions, does so not only on his own behalf, but also as agent and trustee for such Persons."

And that accordingly every bill of lading, combined transport document or other document evidencing or purporting to evidence such contract of carriage shall contain the aforesaid paragraph or a paragraph having the aforesaid effect.

6.4 The Customer shall procure that every receipt, delivery release order, delivery note or any similar document issued by or on behalf of a Carrier shall contain a statement to the effect that the liability of SACD is limited in terms of these Conditions.

**7. APPLICABLE LEGISLATION**

- 7.1 If SACD is obliged, in the execution of any of its duties and/or responsibilities, to comply with any common law or legislative enactment ("the law") of any nature whatsoever, then SACD, by complying therewith, shall not be deemed to have waived nor abandoned any of its rights in terms of these Conditions.
- 7.2 In addition thereto, in complying with the law, SACD shall not be deemed to have assumed any onus, obligation, responsibility or liability in favour of the Customer.
- 7.3 If any of the terms of these Conditions is repugnant to or in conflict with the law, then and in such event the conflicting term embodied herein shall be deemed to be amended and/or altered to conform therewith, and such amendment and/or alteration shall not in any way affect the remaining provisions of these Conditions.

**8. EXCLUSION OF OBLIGATIONS OF COMMON OR PUBLIC CARRIER**

- 8.1 SACD deals with Goods only on the basis that it is neither a common Carrier nor a public Carrier. All transporting of Goods by or on behalf of or at the request of SACD is effected at the sole risk of the Customer and/or the Owner, and the Customer fully indemnifies SACD against any claim which might be brought against SACD, howsoever arising, from the transporting of Goods.
- 8.2 Please note clause 22 deals with SACD's policy in respect of contingency Goods in Transit insurance cover.

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**9. COMPANY'S OBLIGATIONS IN THE ABSENCE OF INSTRUCTIONS**

- 9.1 Unless specific written instructions are timeously given to and accepted by SACD, the latter shall not be obliged to-
  - 9.1.1 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, SACD 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 Obnoxious Goods or Abnormal Goods; and
  - 9.1.2 Arrange for any particular Goods to be carried, stored or handled separately from other goods.

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## 10. COMPANY'S DISCRETION IN THE ABSENCE OF INSTRUCTIONS

In the absence of specific instructions given timeously in writing by the Customer to SACD -

- 10.1 It shall be in the reasonable discretion of SACD 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;
- 10.2 SACD 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; and
- 10.3 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 the extent of the liability assumed by the Carrier, warehouseman, underwriter or other Person, it shall be in the discretion of SACD 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.

## 11. COMPANY'S GENERAL DISCRETION

- 11.1 Notwithstanding anything to the contrary herein contained, if at any time SACD should consider it to be in the Customer's interests or for the public good to depart from any of the Customer's instructions, SACD shall be entitled to do so and shall not incur any liability in consequence of doing so.
- 11.2 If events or circumstances come to the attention of SACD, its agents, servants, or nominees which, in the opinion of SACD, make it in whole or in part, impossible or impracticable for SACD to comply with a Customer's instructions SACD 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 SACD in writing, SACD 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 th.

## 12. CUSTOMER'S INSTRUCTIONS

- 12.1 The Customer's instructions to SACD shall be precise, clear and comprehensive and in particular, but without limitation, shall cover any valuation or determination issued by the Customs in respect of any Goods to be dealt with by or on behalf of or at the request of SACD. Instructions given by the Customer shall be recognised by SACD as valid only if timeously given specifically in relation to a particular matter in question.
- 12.2 Oral instructions, standing or general instructions or instructions given late, even if received by SACD without comment, shall not in any way be binding upon the Company, but SACD may act thereupon in the exercise of its absolute discretion.

12.3 Instructions relating to the delivery or release of Goods against payment or against surrender of a particular document shall be in writing.

**13. COMPANY ENTITLED TO ACT AS AGENT OR PRINCIPAL IN CONTRACTING**

13.1 Unless otherwise agreed in writing, SACD in procuring Warehousing and Logistics Services 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.

13.2 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 SACD acting as agent for and on behalf of the Customer or as a principal.

13.3 The Customer acknowledges that when SACD, 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.

13.4 Unless otherwise agreed in writing, SACD, 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 -

13.4.1 carriage of goods by any route or means or Person;

13.4.2 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;

13.4.3 Carriage or storage of goods in break-bulk form or in or on Transport Units or with or without other goods of whatsoever nature; and

13.4.4 Carriage by rail, in which event the carriage will be undertaken in accordance with the provisions of the official TFR Tariff for containerised goods and the contract of carriage shall be one solely between the Customer and TFR, TFR's conditions relating to the placing of insurance and in the absence of such insurance being taken, their limitation of liability, being applicable.

13.5 Where SACD contracts with third parties to perform all or any of the functions which it has agreed to perform, the Customer agrees that SACD shall have no responsibility or liability to the Customer for any act or omission of such third party, even though SACD may be responsible for the payment of such third party's charges. Notwithstanding the foregoing, SACD undertakes to cede any right of action which it may have against such third parties to the Customer upon demand, the Customer

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hereby indemnifying SACD against any Loss, damage or expense which might arise from the Customer prosecuting such claims or right of action.

**14. TERMS AND CONDITIONS OF AGENTS AND SUBCONTRACTORS**

- 14.1 Notwithstanding anything to the contrary contained herein the Customer agrees that all Goods shall be dealt with by any third party appointed to perform any function in terms of clause 13 hereof, on the terms and conditions, whether or not inconsistent with these Conditions, stipulated by any such third party, including the Carriers, warehousemen, government departments, and all other parties (whether acting as agents or subcontractors to SACD or otherwise) into whose possession or custody the Goods may pass, or subject to whose authority they may at any time be.
- 14.2 If, notwithstanding the provisions of clause 14.1, it should be held that SACD in any way retains any obligations or responsibilities with regard to the performance of the obligations by a third party, then to the extent that the terms and conditions stipulated by the third party Carrier, warehouseman, government department and any other such party, impose a liability, obligation or responsibility on SACD, more onerous than those imposed by these Conditions, then such provision shall not apply as between SACD and the Customer or Owner and the provisions of these Conditions shall have precedence. In all other instances the third party's terms and conditions shall apply.

**15. AIR CARRIAGE**

- 15.1 If SACD acts as a principal in respect of a carriage of Goods by air, the following notice is hereby given:
- 15.1.1 If the carriage involves an ultimate destination or stop in a country other than the country of departure; the Warsaw Convention may be applicable and the Warsaw Convention governs and in most cases limits the liability of Carriers in respect of Loss of or damage to Goods. Agreed stopping places are those places (other than the places of departure and destination) shown under requested routing and/or those places shown in Carriers' timetables as scheduled stopping places for the route. The address of the first Carrier is the airport of departure.

**16. BOTH TO BLAME COLLISION**

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The current Both-to-Blame Collision Clause adopted by BIMCO is incorporated in these conditions with logical amendments pertaining to the modes of transport performed or arranged by SACD.

**17. OBLIGATIONS OF CUSTOMER**

17.1 The Customer warrants that:

17.1.1 It is either the Owner of the Goods or the authorised agent, contractor and/or sub-contractor of the Owner of the Goods and that it is authorised to accept and is accepting these Conditions not only for itself, but also as agent for and on behalf of the Owner of the Goods and thereby binds such Owner to the terms herein contained.

17.1.2 In circumstances where it is the authorised agent, contractor and/or sub-contractor of the Owner of the Goods, it shall bring the attention of the Owner of the Goods the all the terms of these Conditions by providing a copy to such Owner.

17.1.3 It has reasonable knowledge of matters affecting the conduct of its business, including but not limited to the provisions of all laws applicable to and the terms of sale and purchase of the Goods and all other matters relating thereto.

17.1.4 All information and instructions supplied or to be supplied by it to SACD 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 SACD for Customs, consular and other purposes, and the Customer warrants that it will not withhold any necessary or pertinent information, and indemnifies SACD against all claims, losses penalties, damages, expenses and fines whatsoever, whensoever and howsoever arising as a result of a breach of the foregoing whether negligently or otherwise including, without derogating from the generality of the foregoing, any assessment or reassessment.

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17.1.5 The 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 SACD or at its instance of the contract involved and the characteristics of the Goods involved and

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are capable of withstanding the normal hazards inherent in the implementation of such contract.

17.1.6 Where Goods are carried in or on a Transport Unit then, save where SACD has been given and has accepted specific written instructions to load the Transport Unit.-

17.1.6.1 That the Transport Unit has been properly and competently loaded;

17.1.6.2 That the Goods involved are suitable for carriage in or on the Transport Unit; and

17.1.6.3 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.

17.1.7 It and its principal, if any, have an annual turnover of more than three million rand.

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## 18. DANGEROUS GOODS

18.1 The Customer shall obtain in advance SACD's specific written consent to accept into its possession or control or into the possession or control of any of its servants, sub-contractors, agents or employees any Abnormal Goods or any Obnoxious Goods or any Dangerous Goods, or any Goods, including radio-active materials, which are or may become perishable, 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 disease, 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 requirement 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.

18.2 If any such goods are delivered to SACD, whether or not in breach of the provisions of clause 18.1, such goods may for good reason as SACD in its discretion deems fit (including, without limitation, risk to other goods, property, life or health) be destroyed, disposed of abandoned or rendered harmless or otherwise dealt with at the risk and expense of the Customer and without SACD being liable for any compensation to the Customer or any other party, and without prejudice to SACD'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. The Customer indemnifies SACD against all Loss, liability or damage whatsoever caused to SACD as a result of the tender of Goods to SACD.

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18.3 The Customer shall ensure that any Dangerous and/or Abnormal and / or Obnoxious Goods which SACD agrees to handle in terms of clause 18.1 comply in every respect with any and all applicable legislation and/or international conventions, including any regulations and/or rules promulgated and/or applicable pursuant thereto.

**19. PROHIBITED GOODS AND ABNORMAL GOODS**

SACD shall not accept or deal with unlawful Goods that are prohibited by the laws of any country through which the Goods may transit. SACD will further not accept or deal with counterfeit Goods, bullion, coins, banknotes, securities or other currency, precious stones, jewellery, valuables, antiques, pictures, real or imitation fire arms, weapons, explosives or ammunition and their parts, human remains, livestock or plants. Should the Customer nevertheless deliver such Goods to SACD or cause SACD to handle or deal with any such Goods otherwise than under lawful special arrangements previously made in writing, SACD may in its sole discretion destroy such Goods without compensation to the Customer and shall incur no liability whatsoever in respect of such Goods or the destruction thereof, and in particular, shall incur no liability in respect of its negligent acts or omissions in respect of such Goods or their destruction.

**20. RIGHTS TO DISPOSE OF GOODS AND PERISHABLE GOODS**

20.1 The Customer undertakes not to tender for transportation any Goods which require temperature control without previously giving at least 2 (two) Days written notice to SACD of their nature and particular temperature range to be maintained and in the case of a temperature controlled Container stuffed by or on behalf of the Customer, the Customer further undertakes that the Container has been properly pre-cooled or preheated as appropriate, that the Goods have been properly stuffed in the Container and that its thermostatic controls have been properly set by the Customer. If the above requirements are not complied with SACD shall not be liable for any Loss of or damage to the Goods caused by such non-compliance.

20.2 Without limiting or affecting any other terms of these Conditions, Goods (whether perishable or otherwise) in the care, custody or control of SACD may at the Customer's expense be sold by private treaty or public auction or otherwise disposed of by SACD, in its sole discretion, without notice to the Customer, sender, Owner or consignee, provided that SACD has taken reasonable steps to procure the best available price for the Goods, without reference to any court of law, if -

20.2.1 Such goods have begun to deteriorate or are likely to deteriorate;

20.2.2 Such goods are insufficiently addressed or marked;

20.2.3 The Customer cannot be identified; or

20.2.4 The Goods have not been collected or accepted by the Customer or any other Person after the expiration of 21 (twenty one) Days from SACD notifying the Customer in writing to collect or accept such goods, provided that if SACD has no address for the Customer such notice period shall not be necessary, and payment or tender of the net proceeds, if any, of the sale thereof after deduction of those charges and expenses incurred by SACD in respect thereof shall be equivalent to delivery of such goods.

20.3 Should any amount owing by the Customer to SACD in respect of any matters referred to in clause 20.1 and clause 20.2 become due and payable and remain unpaid, or in the event that any Goods are not accepted for delivery as provided for in clause 21 below, SACD shall be entitled and the Customer hereby authorises SACD 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 14 (fourteen) Days by private treaty. The net proceeds of any such sale, after deducting therefrom all costs, charges and expenses incurred by SACD, shall be applied in reduction or discharge as the case may be, of the Customer's obligations to SACD in respect of such goods without prejudice to SACD's rights to recover from the Customer any balance which may remain owing to SACD after the exercise of such rights. Should the total amount collected by SACD, after deducting there from all costs, charges and expenses incurred by SACD in respect thereof, exceed the full amount of the Customer's obligations to SACD in respect of such goods, SACD shall be obliged to refund such excess to the Customer.

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## 21. THE ACCEPTANCE OF DELIVERY AND LATE DELIVERY

21.1 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: -

21.1.1 SACD shall be entitled to store the Goods or any part thereof at no risk to SACD and at the expense of the Customer; and

21.1.2 The provisions of clause 20.3 shall apply *mutatis mutandis*.

21.2 SACD accepts no responsibility and/or liability whatsoever for the late departure or arrival of Goods.

21.3 An acknowledgement of receipt of any Goods by SACD shall not constitute an acknowledgement or admission in regard to the state or condition or quantity of such Goods, nor as to the correctness of any statement on the relevant Container Terminal Order form or other transport document.

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## 22. **INSURANCE**

- 22.1 SACD shall have no obligation whatsoever to obtain any form of insurance cover on behalf of the Customer in respect of the Goods. Any insurance requirements of the Customer shall be the sole responsibility of the latter.
- 22.2 Subject to clause 22.1, if the Goods are transported, or are to be transported, by rail, the Customer acknowledges that it is aware of the terms and conditions under which TFR undertakes the rail carriage of containerised goods, the terms and conditions of the insurance cover offered by TFR and their limitations of liability. TFR Conditions of carriage are available on request or may be viewed on TFR's website. Should the Customer require insurance which is additional to the insurance cover offered by TFR, it is the Customer's responsibility to procure same. Under no circumstances whatsoever shall SACD be liable for any Loss suffered by the Customer and howsoever caused, while the goods are in the custody of TFR.
- 22.3 It is recorded that SACD has contingency Goods in Transit insurance cover in respect of Goods in transit by road, subject to the limits, terms and conditions of the applicable policy, a copy of which is available on request.
- 22.4 Notwithstanding anything to the contrary herein contained SACD shall in no circumstances whatsoever be liable for any consequences of any failure to obtain any insurance cover, or otherwise.

## 23. **GENERAL INDEMNITIES**

- 23.1 The Customer shall defend, indemnify and hold harmless SACD against all liability, Loss, damage, claims, penalties, costs or expenses arising from:
- 23.1.1 The nature of the Goods, except and only to the extent that such liability, Loss, damage, claims, penalties, cost or expense is caused by SACD's gross negligence;
  - 23.1.2 SACD acting in accordance with the Customer's or Owner's instructions;
  - 23.1.3 Any breach of warranty or obligation by the Customer or Owner;
  - 23.1.4 The negligence, in any degree, of the Customer or Owner;
  - 23.1.5 Any contractual or other penalties for which the Customer may be liable including, but not limited to, demurrage, detention, dead freight, early arrival and storage in the port due to any particular shipment missing vessel stacks and / or being short-shipped due to the fault of TPT, TFR and/or TNPA.
- 23.2 The Customer shall be liable for and shall defend, indemnify and hold harmless SACD in respect of all duties, fines, penalties, taxes, imposts, detention charges, levies, deposits and outlays of whatsoever

nature levied by or paid to any authority whatsoever, including but not necessarily limited to TFR, TPT, TNPA and the South African Revenue Services, and for all claims, costs, expenses, Loss and damage whatsoever incurred or sustained by SACD in connection therewith.

- 23.3 Advice and information, in whatever form it may be given, is provided by SACD for the Customer only and the Customer shall defend, indemnify and hold harmless SACD for all liability, Loss, damage, costs and expenses arising out of any other Person relying on such advice or information.
- 23.4 The Customer hereby waives any claims it may have and shall defend, indemnify and hold harmless SACD from and against all claims, costs and demands whatsoever and by whomsoever made or preferred in excess of the liability of SACD under the terms of these Conditions and without prejudice to the generality of this clause this indemnity shall cover all claims, costs and demands arising from or in connection with the negligence of SACD, in whatever degree, its employees, contractors, sub-contractors and agents.
- 23.5 The Customer shall be liable for any Loss, damage, contamination, soiling, detention or demurrage suffered or incurred before, during and after the carriage of Goods by SACD or any Person or vessel.
- 23.6 Save where caused by the fault of SACD, the Customer shall indemnify and hold SACD harmless against any Loss, damages, claim, cost (including but not limited to legal costs on the attorney and own client scale) and/or other liability (including but not limited to fines and other penalties) which SACD may incur or suffer in terms of the National Road Traffic Act, 93 of 1996, and any regulations promulgated pursuant thereto, as may be in force from time to time and, in particular but without limiting the general meaning of this clause, liability which SACD may incur as a consignor or consignee as defined in the National Road Traffic Act 93 of 1996 or the regulations to that Act.
- 23.7 In no circumstances shall SACD be liable to any Customer for any penalty which a Customer attempts to impose against or on SACD for any reason whatsoever which is alleged by the Customer to be in consequence of negligence or wrongdoing by SACD.

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## 24. CHARGES

- 24.1 The Customer on whose behalf SACD performs Warehousing and Logistics Services shall be liable to SACD for the payment of all amounts due to SACD for Services rendered in respect thereof, and such payment shall, where applicable, be made in accordance with the charges set out in the then applicable Service Charge Schedule and/or as set out in SACD's credit application form and/or as agreed to at the time by the parties. SACD shall nevertheless be entitled to a reasonable remuneration at the comparable market rate where a service is provided which does not appear in the Service Charge Schedule and/or a rate has not been agreed to by the parties.

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- 24.2 For the avoidance of doubt, the Customer shall remain liable to pay storage costs in respect of Services rendered pursuant to clause 4.1.1.7 of these GTC's.
- 24.3 The Customer shall pay to SACD all sums immediately when due without deduction or deferment on account of any claim, counterclaim or set-off.
- 24.4 SACD may appropriate any payment made by the Customer to any outstanding undisputed indebtedness by the Customer to SACD, in its sole discretion and even if the Customer, when making payment, seeks to appropriate such payment to any particular debt or part of a debt.
- 24.5 When SACD is instructed to collect freight, duties, charges or other expenses from any Person other than the Customer, the Customer shall be responsible for the same immediately on receipt of evidence of demand and non-payment by such other Person when due.
- 24.6 On all amounts overdue to SACD, the latter shall be entitled to charge interest, calculated at 4 per cent above base rate of the prime overdraft lending rate of First Rand Bank Limited from the date on which payment was due and payable until the full amount outstanding is paid.
- 24.7 The Customer, whether or not the cause of payment was due to an act, instruction or omission of the sender, Owner and/or consignee and their agents, if any, shall be liable for any duties, taxes, imposts, levies, deposits or out-lays of whatsoever nature levied by or payable to the authorities, intermediaries or other parties at any port or place 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 SACD in connection therewith or arising there out.
- 24.8 SACD 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 SACD 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.
- 24.9 SACD shall be entitled to recover any amounts due to it or other members of the Group by the Customer in respect of instructions relating to or in terms of any contract between the Customer and SACD or the Customer and other members of the Group, or if the Customer acts as agent for a disclosed or undisclosed principal, from the Customer or the principal, as SACD in its absolute discretion deems fit.
- 24.10 The Customer agrees that in the event of SACD or any member of the Group instituting legal proceedings against the Customer to recover amounts due in terms of any agreement or for breach of these Conditions or for enforcement of any other obligations or for the recovery of damages owed by the Customer to SACD or any member of the Group in terms of such agreement, Customer shall be liable for all legal costs incurred by SACD or member of the Group, as the case may be, on the scale as between attorney and own client, as well as collection commission and tracing agents' fees.

- 24.11 All and any monies received by SACD in excess of what is due owing and payable by the Customer may be held by SACD and transferred to any other member of the Group where such member of the Group has outstanding invoices due owing and payable by the Customer. The relevant member of the Group will then allocate the funds accordingly and account to the Customer in relation to receipt of same.
- 24.12 To the extent that SACD hereby creates a contract for the benefit of any member of the Group, the latter shall be deemed to have accepted the benefits conferred on it by such contract and may at any time hereafter ratify and accept such benefits to the same that its acceptance.
- 24.13 SACD 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.

**25. RECOVERY OF DUTIES INCORRECTLY PAID**

25.1 Where as a result of any act or omission by or on behalf or at the instance of SACD and whether or not such act or omission was negligent, any duty, tax, levy, railage, wharfage, freight, cartage or any other impost or charge has been paid or levied in an incorrect amount, then any responsibility or liability to the Customer which SACD may otherwise have will cease and fall away if the Customer does not –

25.1.1 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 SACD that an incorrect amount has been paid or levied; and

25.1.2 do all such acts as are necessary to enable SACD to effect recovery of the amount incorrectly paid or levied.

25.2 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 for the purpose of clause 25.1. 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 SACD's right of recovery, the Customer shall be deemed not to have complied with the provisions of clauses 25.1.1 and 25.1.2.

**26. RISK OF ITEMS POSTED OR ELECTRONICALLY TRANSMITTED**

- 26.1 Notwithstanding any prior dealings between SACD and the Customer all documents, cash, cheques, bank drafts or other remittances, sent to SACD through the post or electronically transmitted shall be deemed not to have been received by SACD unless and until they are actually received by SACD.
- 26.2 In the event that any payment to SACD is effected electronically, then the Customer bears the risk in respect of such payment until such time as the payment is received and cleared into SACD's bank account.

## 27. QUOTATIONS

- 27.1 SACD shall be entitled at any time by notice to the Customer to cancel or resile from any quotation or agreement in circumstances where it becomes impracticable or uneconomical for SACD to carry out the contract at the quoted rate and the Customer shall have no claim whatsoever against SACD for any Loss that the Customer might incur as a result of SACD cancelling or reselling from the quotation or executory agreement.
- 27.2 Without in any way limiting the provisions of clause 27.1 all quotations and agreements are subject to revision without notice having regard to changes in currency exchange rates and upward movements in amounts payable by or on behalf of or at the instance of SACD 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 of SACD or any other auditors nominated by SACD, who in such determination shall act as experts and not as arbitrators and whose decision shall be final and binding on the parties.

## 28. BENEFIT OF DISCOUNTS

- 28.1 SACD 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 whether or not they are customarily retained by or paid to freight forwarders, warehousemen or transporters and shall not be obliged to disclose or account to the Customer, or principal for any such amounts received or receivable by it.

## 29. LIBERTIES AND RIGHTS OF SACD

- 29.1 SACD shall be entitled, without notice to the Customer, and except insofar as has been otherwise agreed in writing, to enter into any contracts on behalf of itself or the Customer for the purpose of performing the Services, which shall include but not be limited to contracts:

- 29.1.1 For the carriage of Goods by any route, means or Person;
- 29.1.2 For the carriage of Goods of any description on or under the deck of any vessel;
- 29.1.3 For the storage, packing, transshipment, loading, unloading or handling of Goods by any Person at any place whether on shore or afloat and for any length of time;
- 29.1.4 For the carriage or storage of Goods in Containers or with other Goods of whatever nature;
- 29.1.5 For the performance of its own obligations;
- and to do such acts as in the opinion of SACD may be necessary or incidental to the performance of SACD's obligations.
- 29.2 SACD may at any time comply with the orders or recommendations given by any authority. The responsibility of SACD in respect of the Goods shall cease on the delivery or other disposition of the Goods in accordance with such orders or recommendations.
- 29.3 All Goods as well as 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 or pledge and may be held by SACD in any place by SACD or any other authorized agent of SACD as security either for monies due in respect of such Goods or for other monies due to SACD or any other companies within the Group by the Customer, sender, Owner, consignee, importer or the holder of the bill of lading or their agents, if any.
- 29.4 In delivering the Goods into the custody of SACD or its agents for any purpose whatsoever, such delivery shall for the purposes hereof be deemed to be delivery of the same in pledge and as security for all amounts owed to SACD or any other companies within the Group at that time or which become payable in the future. In the event of SACD utilising the Services or premises of any third party for any purposes including the transportation or storage of any Goods, such third party shall be the agent of SACD for purposes of exercising SACD's right to retention under lien and/or pledge.
- 29.5 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, hypothec, right of retention, or lien and pledge, without the prior written consent of SACD. The lien and pledge and right of retention in favour of SACD referred to above in clause 29.3 and clause 29.4, shall operate as a first and prior charge against the Goods and the documents relating to the Goods and no other security shall rank prior to SACD's lien, pledge or right of retention.
- 29.6 SACD shall have the right to enforce against the Owner and the Customer jointly and severally any liability of the Customer under these Conditions or to recover from them any sums to be paid by the Customer which upon demand have not been paid.



**30. CONTAINERS**

- 30.1 If a Container has not been packed or stuffed by SACD, the latter shall not be liable for Loss of or damage to the contents if caused by:
- 30.1.1 The unsuitability of the Goods for carriage in Containers, unless SACD has approved the suitability in writing;
  - 30.1.2 The unsuitability or defective condition of the Container provided that where the Container has been supplied by or on behalf of SACD this clause shall only apply if the unsuitability or defective condition arose (a) without any negligence on the part of SACD or (b) would have been apparent upon reasonable inspection by the Customer or Person acting on behalf of either of them;
  - 30.1.3 The fact that the Container has not been properly sealed at the commencement of the Carriage except where SACD has agreed to seal the Container.
- 30.2 The Customer hereby waives any and all claims which it may have and indemnifies SACD against any claims which may arise against SACD arising out of or in connection with the matters covered by clause 30.1.1 above, loading, unloading, securing and/or lashing of Goods, whether or not such claim arose as a result of breach of contract, and/or negligence in whatever degree on the part of SACD.
- 30.3 Where SACD is instructed to provide a Container, in the absence of a written request to the contrary, SACD is not under an obligation to provide a Container of any particular type or quality.

**31. GENERAL LIABILITY AND FORCE MAJEURE**

- 31.1 Except insofar as otherwise provided by these Conditions, SACD shall not be liable for any claims, whether arising in contract or delict, which are in any way related or attributable to:
- 31.1.1 Any act or omission of the Customer or any Person acting on its behalf;
  - 31.1.2 Compliance with the instructions given to SACD by the Customer or any other Person entitled to give them;
  - 31.1.3 Insufficiency of the packing or labelling of the Goods;
  - 31.1.4 The weight, measurements, contents, quality, defect or description of any Goods;
  - 31.1.5 Handling, loading, stowage or unloading of the Goods by the Customer or any Person acting on its behalf;
  - 31.1.6 Inherent vice of the Goods;

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- 31.1.7 Default of subcontractors or suppliers;
- 31.1.8 Damages, costs, claims, penalties and/or charges of whatever nature arising from loss of market or attributable in any way to delay in forwarding or in transit or failure to carry out any instructions given to SACD, including any indirect and/or consequential Loss;
- 31.1.9 Loss or non-delivery of any separate package forming part of a consignment or for Loss for a package or an unpacked consignment or for damage or misdelivery;
- 31.1.10 Injury or death suffered by the Customer or any Person arising from any cause, including but not limited to SACD's negligence, in whatever degree, as a result of SACD's performance or attempted performance of its obligations to the Customer and/or the Customer's requirements or mandate;
- 31.1.11 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 miss-delivery; and/or
- 31.1.12 Damage or injury suffered by the Customer or any Person whatsoever arising out of any cause whatsoever as a result of SACD's execution or attempted execution of its obligations to the Customer and/or the Customer's requirements or mandate;
- 31.1.13 unless -
  - 31.1.13.1 Such claim arises from a grossly negligent act or omission on the part of SACD or its servants, subject to clause 8 and 31.3 hereof; and
  - 31.1.13.2 Such claim arises at a time when the Goods in question are in the actual custody of SACD and under its actual control; and
- 31.2 In any dispute between SACD and the Customer SACD 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.
- 31.3 SACD shall furthermore not be liable for any claims whatsoever arising from any *force majeure* event which, for purposes hereof is defined as the arising of any occurrence or event whatsoever which is beyond the reasonable control of SACD, including but in no way limited to the following:
  - 31.3.1 *Vis major* or any Act of God whatsoever, including without limitation all natural catastrophes such as fire, flood, storms, strong winds, lightning, droughts, meteorites epidemic, plague or quarantine;
  - 31.3.2 Riots, civil commotions, strikes (whether lawful or not), lockouts, stoppages, go slows or restraint of labour from whatsoever cause;
  - 31.3.3 Pressure waves caused by aircraft or other aerial devices;
  - 31.3.4 A nuclear incident;

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- 31.3.5 War (whether war be declared or not), hostilities, military or usurped power, acts of a foreign enemy or power, civil war, revolution, rebellion, insurrection, civil strife, riots, civil commotion, public demonstration, terrorist act (or act by any Person acting from political motives), sabotage, or act of vandalism;
  - 31.3.6 Piracy, capture, seizure, arrest, restraint or detainment or consequences arising therefrom;
  - 31.3.7 Unforeseen breakdown of essential machinery or equipment;
  - 31.3.8 Power failures or surges or electricity interruptions of any nature whatsoever;
  - 31.3.9 Confiscation, expropriation, nationalisation, requisition, destruction or damage caused by the order of any Government, public or local authority;
  - 31.3.10 Mines, torpedoes, bombs, weapons of explosion or of war whether derelict or not.
- 31.4 If and to the extent that SACD is prevented from executing Services by any event described in clause 31.1 and/or clause 31.3, SACD shall be relieved of its obligations to provide the Services for the duration of the *force majeure* event, but shall use its best endeavours to continue to perform its obligations in so far as reasonably practicable, and the Customer shall be in no way relieved from performing such of its obligations as it is still able and which arose prior to the *force majeure* event, including its obligation to make payment. To the extent that SACD is able to perform some of its obligations following and during the continuation of the *force majeure* event, the Customer shall perform those of its obligations in relation thereto as it is able.
- 31.5 SACD shall as soon as reasonably practicable notify the Customer of the happening of any *force majeure* event and the anticipated effect on the Services, and shall again notify the Customer upon the cessation of the *force majeure* event.
- 31.6 Notwithstanding anything to the contrary contained in these Conditions, SACD shall not be liable for: Any Loss or damage to property other than the Goods themselves; any indirect or consequential Loss or damage; Loss of profit; delay or deviation arising from any cause, including but not limited to SACD's negligence, in any degree, or breach by it of any of these Conditions.

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## 32. AMOUNT OF COMPENSATION

- 32.1 Except insofar as otherwise provided by these Conditions, the liability of SACD, howsoever arising, and notwithstanding that the cause of Loss or damage be unexplained shall not exceed the following:
- 32.1.1 In respect of all claims, of whatsoever nature, relating to the Goods (excluding Containers), whichever is the least of

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- 32.1.1.1 The value of, or
- 32.1.1.2 R20.00 per gross Kilogram of,
- 32.1.1.3 In the case of carriage by rail, R500.00 in respect of anyone claim in respect of, the Goods, lost, damaged, misdirected, miss-delivered or in respect of which a claim arises, provided that no claim of any nature whatsoever, shall ever exceed the maximum net insurance cover of SACD which pertains specifically to the Goods (if any) as updated from time to time.

32.1.2 In respect of claims arising out of Loss of or damage to Containers, which for whatever reason are not excluded by the provisions of these Conditions:

- 32.1.2.1 The reasonable cost of repair thereof; or
- 32.1.2.2 The lesser of the market or depreciated value thereof at the date of such Loss or damage in the event of total Loss and/or damage being beyond economical repair.

32.1.3 In respect of any and all other claims, whether related to the Goods or other property and/or equipment, including claims arising out of or in any way attributable to delay, which for whatever reason are not excluded by the provisions of these Conditions, the amount of SACD's charges in respect of the Goods.

32.2 The value of Goods shall be calculated by reference to the invoice value of the Goods plus freight and insurance if paid.

32.3 If there be no invoice value for the Goods, the value shall be calculated by reference to the value of such Goods at the place and time when they are delivered to the Customer or Owner or should have been so delivered. The value of the Goods shall be fixed according to the current market price or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.

32.4 By special agreement in writing and on payment of additional charges, higher compensation may be claimed from SACD not exceeding the value of the Goods or the agreed value, whichever is the lesser.

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**33. NOTICE OF LOSS, TIME BAR**

33.1 SACD shall be discharged of all liability unless:

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- 33.1.1 Notice of any claim is received in writing by SACD or its agent within 14 (fourteen) Days after the date specified in clause 33.2 below, or within a reasonable time after such date, but in any event not exceeding 60 (sixty) Days, if the Customer proves that it was impossible to so notify, and
- 33.1.2 Suit is brought in the proper forum and written notice thereof received by SACD within 9(nine) months after the date specified in clause 33.2 below.
- 33.2 The time limits referred to in clause 33.1 shall commence on:
- 33.2.1 In the case of Loss or damage to Goods, the date of delivery of the Goods;
- 33.2.2 In the case of delay or non-delivery of the Goods, the date that the Goods should have been delivered;
- 33.2.3 In any other case, the event giving rise to the claim.

#### 34. **EXAMINATION OF LANDED GOODS**

- 34.1 Where it is necessary for an examination to be held or other action to be taken by SACD in respect of any discrepancy in the Goods which are landed or discharged from any vessel, aircraft, vehicle, or Transport Unit, no responsibility or liability shall attach to SACD for any failure to hold such examination or to take any other action unless SACD has been timeously advised by the landing or discharge agent that such goods have been landed and that such a discrepancy exists.
- 34.2 SACD will not be responsible for examining or counting any Goods received by it where such goods are bundled, palletised or packed in any manner such that their number cannot be quickly and easily counted. Should SACD undertake to examine or 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 SACD or otherwise. SACD shall be entitled to levy a charge on the Customer for the counting of Goods in such circumstances.

#### 35. **NO CLAIMS AGAINST COMPANY DIRECTORS AND EMPLOYEES**

The Customer undertakes that no claim shall be made against any director, servant or employee of SACD which imposes or attempts to impose any liability whatsoever in connection with the rendering of any Services which are the subject of these Conditions and the Customer hereby waives all and any such claims.

#### 36. **BREACH**

- 36.1 If SACD breaches any of these Conditions or any agreement between it and the Customer and fails to remedy such breach within 30 (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 SACD of the obligations it has defaulted in, but shall not be entitled to cancel these Conditions and any agreement between the Customer and SACD.
- 36.2 No provision in these Conditions shall derogate from SACD's common law rights in the event that the Customer breaches any term or condition of the agreement.

**37. GENERAL AVERAGE**

- 37.1 The Customer shall defend, indemnify and hold harmless SACD in respect of any claims of a General Average nature which may be made on SACD and the Customer shall, upon demand by SACD, provide such security as may be required by SACD in this connection.

**38. MISCELLANEOUS**

- 38.1 All notices in terms of these Conditions shall be given in writing and delivered by hand or sent by telefax or e-mail. The Customer appoints as his/her/its *domicilium citandi et executandi* for all purposes under these Conditions the physical address, e-mail address and telefax number stipulated herein, failing which any other physical address, e-mail address or telefax number provided by the Customer to SACD on any letterhead, order or other document generated or completed by the Customer.
- 38.2 The defences and limits of liability provided for by these Conditions shall apply in any action against SACD whether such action is founded in contract or delict, or otherwise.
- 38.3 These Conditions and any claim or dispute arising out of or in connection with the Services of SACD shall be subject to South African law.
- 38.4 The parties agree that any legal action or proceedings arising out of or in connection with these Conditions, or the granting of any credit, may at SACD's sole discretion, be brought in the relevant court which has jurisdiction over the area where SACD's registered office is situated at the commencement of the proceedings, and the Customer irrevocably submits to the non-exclusive jurisdiction of such court. This clause is for the benefit of SACD only and shall not limit the right of SACD to bring proceedings against the Customer in any other court of competent jurisdiction or concurrently in more than one jurisdiction.
- 38.5 No extension of time or waiver or relaxation of any of these Conditions shall operate as an estoppel against any party in respect of its rights under these Conditions, nor shall it operate so as to preclude such party thereafter from exercising its rights strictly in accordance with these Conditions.

- 38.6 No variation of these Conditions shall be binding on SACD unless embodied in a written document signed by a director of SACD, duly authorised by a SACD Board Resolution. Any purported variation, alteration or novation of these Conditions otherwise than as set out above shall be of no force and effect, whether such purported variation, alteration or novation is written or oral, or takes place before or after receipt of these Conditions by the Customer.
- 38.7 If any provision of these Conditions is unenforceable, then SACD 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 Conditions which shall not be affected and shall remain of full force and effect.

### 39. CHOICE OF RATES

Where there is a choice of rates according to the extent or degree of liability assumed by Persons carrying, storing, handling the Goods, no declaration of value (where optional) will be made unless otherwise agreed in writing.

### 40. INCOTERMS

Any INCOTERM which might be made applicable to any contract between SACD and the Customer or between SACD acting on behalf of the Customer and any third party, shall be interpreted in accordance with the published guidelines issued from time to time by the International Chamber of Commerce and particularly the Introduction to the official publication containing the latest INCOTERMS published and in force as at the time of the incorporation of INCOTERMS into such contract.

### 41. SPECIAL CONDITIONS RELATED TO ELECTRONIC DATA

- 41.1 Notwithstanding the provisions of the Electronic Communications and Transactions Act 25 of 2002, as amended from time to time, SACD 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.
- 41.2 Under no circumstances whatsoever and howsoever arising (including negligence on the part of SACD or its employees) shall SACD be liable for any Loss or damage arising from or consequent upon the provision by SACD to the Customer in whatever manner and/or form, of incorrect information, including data as defined in the Electronic Communications and Transactions (Act 25 of 2002), as amended from time to time, where such incorrect information has been generated by and provided to SACD by any Person with whom SACD conducts business, and/or any other third party.
- 41.3 SACD 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 SACD, of SACD's computer systems and/or software programmes, including those "Information System Services" as defined in the Electronic Communications and Transactions (Act 25 of 2002), as amended from time to time, provided and/or operated by SACD and/or by any Person with whom SACD conducts business, and/or any third party, and which systems shall include SACD's electronic automated information service provided to its Customers.

**42. AGREEMENT BY THE CUSTOMER**

- 42.1 I, the undersigned hereby certify that I am duly authorised by the Customer to sign this document on its behalf.
- 42.2 I confirm that I have read and understood the Conditions as set out above and agree that the Customer is bound by them.
- 42.3 I confirm that I am over the age of 18 years and that I am legally able to agree to the Conditions.

SIGNED: .....

NAME: .....

DESIGNATION: .....

DATE: .....



**COMPANY CONTACT DETAILS**

E-MAIL:

FAX:

PHYSICAL ADDRESS:

POSTAL ADDRESS:

Initial here: