

RENNIES SHIPS AGENCY (PTY) LTD
Registration No. 1999/012438/07
STANDARD TRADING TERMS AND CONDITIONS

PART A - GENERAL

1. INTERPRETATION

- 1.1 The headings to the clauses are for reference purposes only and will not be used to interpret the clauses to which they relate.
- 1.2 Unless the context clearly indicates otherwise, references to one gender will include the other two genders, the singular includes the plural and vice versa, and all terms will apply equally to natural persons, juristic persons and other associations.
- 1.3 "**the Company**" means Rennies Ships Agency (Pty) Ltd, trading as John T Rennie & Sons, Freightmarine Shipping, Richards Bay Steamships, Combine Ocean and Freightbulk.
- 1.4 "**these Conditions**" means these Standard Trading Terms and Conditions, as amended or supplemented from time to time.
- 1.5 "**the Customer**" ,excludes the Principal and means the legal entity or person who ships, receives, owns or forwards goods in respect of which the Company, whether as agent or principal, provides or procure services.
- 1.6 "**the Goods**" means any goods handled, transported, stored or otherwise dealt with by or on behalf of or at the instance of the Company or which come under the control of the Company or its agents, servants or sub-contractors on the instructions of the Customer or the Principal, and includes any container, transportable tank, flat pallet, package or any other form of covering, packaging, container or equipment or transport device used in connection with or in relation to such goods.
- 1.7 "**the Principal**" means the legal entity or person who or on whose behalf the Company is appointed as agent, including the owner or charterer or manager of the Vessel to be represented by the Company and/or the carrier under the bill of lading in connection with which services are provided by the Company.
- 1.8 "**the Services**" means any services rendered by the Company, whether gratuitously or not, including services as a liner agent, port agent, charterer's agent, cargo broking agent, transporter or forwarding agent and includes, but is not limited to, all services in respect of any Vessel, the provision of all information to or on behalf of Principals and Customers,

the solicitation of cargo, canvassing for cargo, issuing of freight quotations, forwarding of Goods and landside services.

1.9 "the **Supplier**" means any legal entity or person with whom the Company transacts any business on behalf of the Customer or the Principal and includes, but is not limited to, ship's chandlers; vendors of all types of goods; repairers; road, rail, air or sea carriers; suppliers of any services of whatever nature; other ships' agents or brokers; stevedores and port and other authorities.

1.10 "the **Vessel**" means any ship owned, operated, managed or chartered by the Principal and/or in respect of which any services are rendered.

2. **APPLICATION OF THESE CONDITIONS**

2.1 All and any business undertaken or advice, information or services provided by the Company, whether gratuitous or not, is undertaken or provided subject to these Conditions.

2.2 These Conditions are those referred to in the Company's notices, correspondence, receipts, emails or other electronic communications and other documents.

2.3 The Company may at its election perform the Services itself or it may procure that any of its associated or subsidiary companies provide all or any part of the Services.

2.4 These Conditions will prevail over those of the Customer, the Principal, the Supplier or any other party with whom the Company contracts, even if any applicable terms and conditions contain a clause similar in meaning and intention to this one.

3. **APPLICABLE LEGISLATION**

3.1 To the extent that any of these Conditions are repugnant to or in conflict with any law, they are deemed to be amended to comply with that law, and any such amendment will not in any way affect the remaining provisions of these Conditions.

3.2 If the Company is obliged, in the execution of any of its duties and/or responsibilities to comply with any common law or legislative enactment ("the law") of any nature whatsoever, then the Company by complying therewith, shall not be deemed to waive nor abandon any of its rights in terms of these trading terms and conditions.

4. **AUTHORITY TO CONTRACT**

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- 4.1 Any legal entity or person contracting with the Company warrants that he has full authority to engage the Company and to contract on these Conditions.

5. INSTRUCTIONS

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

6. DISCRETION OF THE COMPANY IN THE ABSENCE OF INSTRUCTIONS

In the absence of specific instructions given timeously in writing to the Company:

- 6.1 it will be in the reasonable discretion of the Company to decide at what time to perform or to procure the performance of any or all of the acts which may be necessary or requisite for the discharge of its obligations;
- 6.2 the Company will 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 to appoint any Supplier of its choice on such terms as the Supplier offers;
- 6.3 the Company will not be obliged to arrange for any particular goods to be carried, stored or handled separately from other goods.

7. COMPANY'S GENERAL OVERRIDING DISCRETION

- 7.1 If events or circumstances come to the attention of the Company, its agents, servants or sub-contractors which, in the opinion of the Company in its sole discretion, make it wholly or partially impossible or impractical for the Company to comply with instructions previously given, the Company will take reasonable steps to inform the party which gave the instructions of such events or circumstances and to seek further instructions.

7.2 In the absence of further instructions, or if time does permit the Company to seek further instructions, then the Company will, at its sole discretion, be entitled to detain, return, store, sell, abandon or destroy all or part of the goods concerned at the risk and expense of the Customer and/or the Principal, as the case may be, and will not incur any liability in consequence of doing so.

8. **INSURANCE**

8.1 The Company is not a financial service provider and will not insure the Goods unless instructed in writing to do so by the Customer.

8.2 If instructed in writing to do so, the Company will as agent only and at the Customer's risk and cost endeavour to timeously insure the Goods through a licensed financial services provider as defined in the Financial Advisory and Intermediary Services Act No. 37 of 2002.

8.3 Any such insurance so effected will be subject to such exceptions and conditions as may be imposed by the insurance company or underwriter taking the risk and the Company will not be obliged to obtain separate cover for any risks so excluded.

8.4 Should any insurer dispute its liability in terms of any insurance policy in respect of any goods, recourse shall lie against the insurer only, and the Company will not accept any responsibility or liability whatsoever in relation thereto.

9. **WARRANTIES AND REPRESENTATIONS BY THE COMPANY**

No warranties or representations by the Company will be valid or binding unless expressly contained in writing and made in response to a written enquiry specifying accurately and in detail what information is required.

10. **ACTING AS PRINCIPAL**

The Company, in procuring the carriage, storage, packing or handling of the Goods, shall in its absolute discretion be entitled to depart from the rule that it acts as agent for the Customer or Principal and may contract as a principal in its own name for the provision of any service.

11. SUB-CONTRACTING

- 11.1 Any business entrusted to the Company may, in the absolute discretion of the Company, be fulfilled by the Company itself, by its own servants performing part or all of the Services, or by the Company employing or entrusting the goods or the Services or any part thereof to third parties or Suppliers on such conditions as may be stipulated by or negotiated with such third parties.
- 11.2 Where the Company employs third parties to perform all or any of the functions which it has agreed to perform, the Company will have no responsibility or liability for any act or omission of such third party.
- 11.3 The Company will be entitled to charge an uplift or administration fee where services are rendered by a sub-contractor.
- 11.4 The Company will, if suitably indemnified against all costs (including attorney and own client costs) which may be incurred by or awarded against the Company, take such action against the third party on behalf of the Customer or the Principal as the Customer or the Principal may direct.

12. TERMS AND CONDITIONS OF THIRD PARTIES

- 12.1 All goods will be dealt with by the Company on the terms and conditions, whether or not inconsistent with these Conditions, stipulated by the Supplier, Government department and all other parties (whether acting as agents or sub-contractors to the Company or not) into whose possession or custody the goods may pass, or subject to whose authority they may at any time be.
- 12.2 Where such third parties conditions contain an indemnity ("the third party indemnity"), then the Principal and/or Customer indemnify the Company in full against any claim that may arise from the third party indemnity.

13. QUOTATIONS & ESTIMATES

- 13.1 The Company shall be entitled at any time by notice to the Customer to cancel, amend or resile from any quotation or estimate given by the Company to the Customer, in circumstances where it becomes impracticable or uneconomical for the Company to carry out the contract at the quoted or estimated rate and the Customer shall have no claim

whatsoever against the Company for any loss that the Customer might incur as a result of the Company cancelling, amending or resiling from the quotation or estimate.

- 13.2 Without in any way limiting the provisions of clause 29.1 all quotations and estimates 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 the Company 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 the Company or any other auditors nominated by the Company, who in such determination shall act as experts and not as arbitrators and whose decision shall be final and binding on the parties.

14. DUTIES, TAXES, IMPOSTS, LEVIES AND DEPOSITS

- 14.1 The Company will not be liable for any duties, taxes, imposts, levies, deposits or outlays of whatsoever nature levied by or payable to any 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, for any payments, fines, penalties, expenses, loss or damage incurred or sustained by the Company in connection therewith.

- 14.2 The Company will not be liable for any increase in the rate of duty, terminal handling charge, freight, railage or cartage or any other tariff or fee, before or after the performance by the Company of any act involving a less favourable rate or tariff, or by virtue of the fact that a saving might have been effected had any act been performed at a different time.

15. RECOVERY OF DUTIES INCORRECTLY PAID

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

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- 15.1.1 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 the Company that an incorrect amount has been paid or levied; and
- 15.1.2 do all such acts as are necessary to enable the Company to effect recovery of the amount incorrectly paid or levied.
- 15.2 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 determining what is to be considered a reasonable time. Should any act or omission by the Customer, whether or not such act or omission was due to ignorance on the part of the Customer, and whether or not such ignorance was reasonable or justified in the circumstances, prejudice the Company's right of recovery, the Customer shall be deemed not to have complied with the provisions of clause 15.1.

16. CUSTOMS AND EXCISE LIABILITY

- 16.1 The Company will not be liable for any duty, value added tax, penalties, amounts raised in forfeiture or any other fines, levies or charges raised by the South African Revenue Services.
- 16.2 The Principal, Customer or Supplier, as the case may be, indemnifies the Company in full against all liability that may arise from any demand by SARS.

17. EXAMINATION OF LANDED GOODS

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

18. PERISHABLE GOODS

18.1 Without limiting or affecting any other terms of these trading terms and conditions, goods (whether perishable or otherwise) in the care, custody or control of the Company may at the Customer's expense be sold by private treaty or public auction or otherwise or otherwise disposed of by the Company, in its sole discretion, without notice to the Customer or any other interested party, if -

18.1.1 such goods have begun to deteriorate or are likely to deteriorate;

18.1.2 such goods are insufficiently addressed or marked;

18.1.3 the Customer cannot be identified; or

18.1.4 the goods have not been collected or accepted by the Customer or any other person after the expiration of 21 days from the company notifying the Customer in writing to collect or accept such goods, provided that if the Company has no address 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 the Company in respect thereof shall be equivalent to delivery of such goods.

19. GOODS REQUIRING SPECIAL ARRANGEMENTS

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

20. GOODS REQUIRING PRIOR CONSENT OF THE COMPANY

20.1 The customer shall obtain in advance the Company's specific written consent to accept into its possession or control or into the possession or control of any of its servants, sub-

contractors, agents or employees 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 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.

20.2 If any such goods are delivered to the Company, the Company may for such reason as it deems fit (including, without limitation, the 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 the Company being liable for any compensation to the customer or any other party, and without prejudice to the Company's rights to recover its charges and/or fees including the costs of such destruction, disposal, abandonment or rendering harmless or other dealing with the goods. The Customer indemnifies the Company against all loss, liability or damage caused to the Company as a result of the tender of goods to the Company.

21. **THE ACCEPTANCE OF DELIVERY**

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

21.1 the Company shall be entitled to store the goods or any part thereof at no risk to the Company and at the expense of the Customer; and

21.2 the provisions of clause 18.1 shall apply mutatis mutandis.

22. **WAREHOUSING & DEPOTS**

22.1 In providing the services, the Goods may at the Principal or the Customer's risk and expense be warehoused or otherwise held at any place as may be determined by any authority or as is customary practice or as the Company in its absolute discretion may deem fit.

22.2 Where the Company acts as in the capacity as warehouseman, as a principal, whether in premises owned, leased or operated by it, or in premises operated by a third party, all

Goods are received, stacked, stored, moved, despatched and otherwise handled, at the risk of the Customer and/or the owner thereof. All such activities shall be undertaken by the Company in terms of and subject to these conditions and the Company shall not be liable at law, as a bailee or deposittee.

22.3 The Customer and the owner warrant that:

22.3.1 all goods delivered to the Company for warehousing shall be properly packed and labelled and in the event of any such goods requiring special storage, packaging or labelling by reason of its nature or properties or in accordance with any regulation, convention or statute, that all such requirements shall be complied with; and

22.3.2 notice of any special storage requirements of any such goods shall be given to the Company in writing prior to the delivery of the goods into the custody of the Company or its agents, provided that the Company shall not be obliged to take delivery of any such goods in the event of it being of the view that such goods or the handling and storage thereof are for any reason whatsoever undesirable.

22.4 In the event that the Company agrees to undertake the packing of the goods into any container or the packaging or unitisation of the goods for any purpose, such packing shall be undertaken at the sole risk and expense of the Customer and it shall be the obligation of the Customer to provide the Company with full packing and labelling instructions in writing, including but not limited to any requirements as to internal or other securing, mass distribution, maximum aggregate mass restrictions, labelling, temperature control or other restrictions, information as to the properties of the goods and any noxious or other possible hazardous or dangerous properties they might possess.

22.5 Notwithstanding anything else to the contrary herein contained, the Customer and the owner of the goods indemnify the Company against any consequences (including all damages and consequential losses) howsoever resulting from the storage of any goods tendered for transport or warehousing. A failure to provide all relevant information to the Company shall render the Customer liable in damages to the Company.

22.6 In the event that the storage facility is a Customs licensed facility, then the Customer and/or the Principal on whose behalf such Goods are stored, undertakes and warrants that they will remove the Goods from such Customs licensed facility within the prescribed time periods. If such Goods are not removed or Customs cleared in anticipation of being removed within 14 days of expiry of the prescribed time period, then the Company may without notice to the party concerned, clear the Goods at the defaulting party's expense

and may on demand recover the cost from them. If the Goods cannot be cleared, then the Company can apply to abandon the Goods to Customs and the principal or Customer consents to such abandonment and indemnifies the Company and Customs against any claims arising from such abandonment.

23. COLLECTION OF EXPENSES AND C O D

23.1 When goods are accepted or dealt with by the Company upon instructions to collect freight, duties, charges or other expenses from the consignee or any other person, the Principal or Customer on whose behalf they do so, shall remain responsible therefore if they are not paid by such consignee or any other person immediately when due.

23.2 If accepted by the Company, instructions to collect payment on delivery shall be subject to the condition that the Company will be entitled to assume that the recipient will effect payment and in regard to the collection will not be liable for any negotiable instrument which is not met on due date for payment. Such payment is collected by the Company at the Principal's or Customer's risk.

24. PAYMENT BY THE PRINCIPAL OR CUSTOMER

24.1 Unless otherwise specifically agreed by the Company in writing, the Principal or Customer shall pay to the Company in cash immediately upon presentation of invoice, all sums due to the Company without deduction or set-off and payments shall not be withheld or deferred on account of any claim or counterclaim which they may allege.

24.2 All other invoices must be paid by the due date.

24.3 Payment of all amounts due to the Company shall be made :

24.3.1 free of exchange and any other charges into such bank account or at such address as the Company nominates in writing;

24.3.2 in such currency as the Company may direct;

24.3.3 without demand and free of any deduction or set off.

24.4 Any amount not paid on due date for payment shall bear interest at the maximum permissible rate allowed by law on accounts not settled within the agreed terms of credit and calculated on daily balance and compounded monthly in arrears or, if the Customer is an individual, the maximum interest rate as determined by the NCA or any Regulations

thereto, which interest shall be capitalised monthly in accordance with the provisions of the NCA.

24.5 All and any moneys received by the Company from the Customer shall be appropriated by the Company firstly to satisfy any due or unpaid interest charges, secondly to satisfy any due or unpaid fees or charges, and lastly to reduce the amount of the principal debt.

24.6 The Customer undertakes to pay the Value Added Tax, where applicable, at the then prescribed rate, payable in respect of the exclusive amount reflected in any invoice.

24.7 In the event of the Company having granted any credit terms or facilities to the Customer in writing, which provide the Customer a deferred period of time to effect payment of any amount due to the Company, and in the event of the Customer being in default of payment of any one or more amount due and payable, or being in default of any other term or condition on which such credit facility was granted, then notwithstanding any other term to the contrary where-so-ever contained, the Company shall be entitled to forthwith revoke such credit facilities and declare all amounts immediately due and payable and proceed for recovery of all amounts which would be due and payable to the Company, were it not for the credit terms or facilities granted to the Customer.

25. RECOVERY OF DEBTS DUE TO THE COMPANY

25.1 The Company shall be entitled to recover any amounts due to it by the Principal or Customer in respect of instructions relating to or in terms of any contract in respect of particular Goods from the Customer, or if the Customer acts as agent for a disclosed or undisclosed principal, from such principal, as the Company in its absolute discretion deems fit.

25.2 The Principal or Customer agree that in the event of the Company 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 Principal or Customer to the Company in terms of such agreement, the Customer shall be liable for all legal costs incurred by the Company on the scale as between attorney and own client, as well as collection commission and any agent's fees.

26. LIEN

26.1 All Goods and documents relating to the Goods, including bills of lading and import & export permits, will be subject to a special and general lien and pledge either for monies due in respect of such goods or for other monies owed to the Company by the Principal, the Customer or their agents.

26.2 If any monies due to the Company are not paid within 14 days after notice has been given to the person from whom the monies are due that such Goods or documents are being detained, they may be sold by auction or otherwise or in some other way disposed of for value at the sole discretion of the Company and at the expense of such person, and the net proceeds applied in or towards the satisfaction of such indebtedness.

27. **GENERAL AVERAGE**

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

28. **NO CLAIMS AGAINST INDIVIDUALS IN THEIR PERSONAL CAPACITIES**

No claims will be made against any director, servant, employee or agent of the Company in their respective personal capacities which imposes or attempts to impose upon them any liability in connection with the rendering of the Services which are the subject of these Conditions or any act or omission arising during the course and scope of their employment.

29. **BENEFIT OF DISCOUNTS**

Irrespective of whether the Company acts as an agent or as a principal, the Company will be entitled to the benefits of any discounts obtained and to retain and be paid all brokerages, commissions, allowances and other remuneration of whatsoever nature and kind and will not be obliged to disclose or account for any such amounts received or receivable by it.

30. **ACCEPTANCE OF BENEFITS**

30.1 The Company accepts all benefits and all defences contained in the Bill of Lading and/or in as allowed under any terms and conditions of any Suppliers with whom the Company contracts to provide the Services.

30.2 Where the Company acts as agent, it accepts any defence or benefit to which the Principal or Customer may be entitled through the Company as its agent.

31. INDEMNITY

- 31.1 The Principal, Customer or Supplier, as the case may be ("the other contracting party") indemnifies and holds harmless the Company against all liability, damages, costs and expenses incurred or suffered by the Company, arising directly or indirectly from or in connection with the other contracting party's express or implied instructions or the implementation thereof by or on behalf of or at the instance of the Company, or any act or omission within the discretion of the Company, in relation to any goods and in respect of any liability whatsoever.
- 31.2 The Company shall not be liable for any claims, whether arising in contract or in delict, which are in any way related or attributable to compliance with any instructions given to the Company by the other contracting party or any other person entitled to give instructions, and the other contracting party indemnifies and holds harmless the Company against all liability, damages, costs and expenses incurred or suffered by the Company arising therefrom.
- 31.3 The Principal and/or Customer indemnify the Company in full against all or any claims by any Supplier.

32. LIMIT OF COMPANY'S LIABILITY

The Company will not be liable for any claim of whatsoever nature (whether in contract or in delict) and whether for damages or otherwise, howsoever arising, including but not limited to:

- 32.1 any delay;
- 32.2 any negligent act or omission or statement by the Company or its servants, agents or sub-contractors;
- 32.3 any act or omission of the Customer, the Principal, the Supplier or any other party with whom the Company deals;
- 32.4 any loss, damage or expense arising from or in any way connected with the marking, labelling, numbering, non-delivery or mis-delivery of the Goods;
- 32.5 any loss, damage or expense arising from or in any way connected with the weight, measurement, contents, quality, inherent vice, defect or description of the Goods;

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- 32.6 any loss or expense arising from or in any way connected with any circumstances, cause or event beyond the reasonable control of the Company, including but not limited to a strike, lockout, stoppage, restraint of labour, service disruption, breakdown of equipment or power outage;
- 32.7 damages arising from loss of market or attributable to delay in forwarding or in transit or failure to carry out any instructions given to the Company;
- 32.8 loss of or non-delivery of any separate package forming part of a consignment or for loss from a package or an unpacked consignment or for damage or mis-delivery;
- 32.9 damage or injuries suffered by any person arising out of any cause whatsoever as a result of the Company's execution or attempted execution of its obligations;
- 32.10 fire, flood, storm or other natural phenomena;
- 32.11 the failure or malfunction, for whatever reason and regardless of negligence on the part of the Company or breach by it of these Conditions, or the Company's computer systems or software programmes provided or operated by the Company or by any other person with whom the Company conducts business, or any third party, and which systems shall include any electronic automated information service provided by the Company.

33. MONETARY LIMITATION OF LIABILITY

If, in spite of the exclusion of liability in these Conditions, the Company is found to be liable, its liability will not exceed whichever is the least of the following amounts:

- 33.1 the value of the goods evidenced by the relevant documentation or declared for Customs purposes or for any purpose connected with their transportation, including the value of the goods declared for insurance purposes;
- 33.2 double the amount of fees raised by the Company for its services in connection with the Goods, but excluding any amount payable to sub-contractors, agents and third parties;
- 33.3 ZAR 50, 000.00 for any one occurrence.

34. TIME BAR

Without derogating from any time bar stipulated under the terms of the Bill of Lading or the Carriage of Goods by Sea Act, the Company will be discharged from all liability whatsoever in

respect of any claim of whatsoever nature unless summons or other proper process initiating action is served on the Company within 9 months of the date on which the incident giving rise to such cause of action occurred. The Company may in its discretion, on written request, extend such period in writing.

35. BREACH

If the Company breaches any of these Conditions and fails to remedy such breach within 30 days of the date of receipt of written notice requiring it to do so then the other contracting party will be entitled to compel performance by the Company of the obligations it has defaulted in, but shall not be entitled to cancel these Conditions.

36. DOMICILIUM AND NOTICES

36.1 The other contracting party's physical address as set out in the credit application form or, failing which, on that party's most recently reviewed letterhead or, failing which, that party's registered or physical address, shall constitute the other contracting party's *domicilium citandi et executandi* for all purposes in connection with any agreement entered into by the other contracting party and the Company, unless the other contracting party provides an alternative *domicilium* by written notice to the Company.

36.2 Notices given to the above addresses or by facsimile or electronic mail to the correct fax number or electronic mail addresses shall be deemed to have been duly given:

36.2.1 14 days after posting, if sent by registered post;

36.2.2 on delivery, if delivered by hand;

36.2.3 on dispatch, if sent by facsimile or electronic mail.

37. GOVERNING LAW AND JURISDICTION

These Conditions and all agreements entered into by the Company pursuant thereto and on the terms thereof will be governed by and construed in accordance with the laws of the Republic of South Africa.

38. SUBMISSION TO JURISDICTION

38.1 Where the other contracting party is a *peregrinus* (foreign persona) such party consents to the jurisdiction of the High Court of South Africa, alternatively to the Magistrates Court if the claim is less than R100,000.

38.2 Notwithstanding the above, such consent to jurisdiction will not preclude the Company's right to attach or arrest an asset belonging to such party in accordance with the Admiralty Jurisdiction Regulation Act No 105 of 1983, whether to found or confirm jurisdiction, or to obtain security for its claim, or otherwise, whether the claim is to be prosecuted in that jurisdiction or elsewhere.

39. **NO VARIATION OF THESE CONDITIONS**

39.1 No variation of these Conditions shall be binding on the Company unless embodied in a written document signed by a director or duly authorised officer of the Company.

39.2 Any purported variation or alteration of these Conditions otherwise than as set out above shall be of no force and effect, whether such purported variation or alteration is written or oral, or takes place before or after receipt of these Conditions by the Customer, the Principal, the Supplier or any other legal entity or person contracting with the Company.

40. **NON WAIVER**

No extension of time or waiver or relaxation of any of these Conditions will 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.

PART B – SHIP'S AGENCY

41. **ACTING FOR A PRINCIPAL**

41.1 The Company may at its discretion agree to render, amongst others, the following services to its Principals:

41.1.1 Arrange berths for a Vessel;

41.1.2 Facilitate the entry and clearance of a Vessel;

41.1.3 Provide for the payment of port charges and any dues payable in respect of a Vessel;

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- 41.1.4 Husbandry;
 - 41.1.5 Arrange for the supply of fuel, water, provisions and deck and engine room stores;
 - 41.1.6 Arrange for any repairs required to be done to a Vessel;
 - 41.1.7 Take charge of and arrange solicitation of and booking of cargo and mail for a Vessel;
 - 41.1.8 Issue bills of lading and other similar documents to shippers in the form prescribed by the Principal;
 - 41.1.9 Arrange for stevedoring and other cargo handling operations;
 - 41.1.10 Arrange for the delivery of cargo in accordance with the bills of lading issued by or on behalf of a Principal;
 - 41.1.11 Take charge of and arrange solicitation of passengers for a Vessel;
 - 41.1.12 Arrange the embarkation and disembarkation of passengers and their baggage;
 - 41.1.13 Attend to all matters appertaining to the crew of a Vessel, including in particular, engaging, the signing on, signing off and repatriation of crew;
 - 41.1.14 Perform such other activities and duties in connection with the foregoing functions as may be requisite thereto.
 - 41.2 The Company will, unless otherwise stipulated by the Company, at all times as agent only for the Principal, and will be authorised to enter into contracts with the Customer as agent for and on behalf of the Principal.
 - 41.3 Any information provided by the Company to the Principal and/or to the Vessel in connection with compliance with the requirements for the reporting of pre-arrival and pre-entry information under the Merchant Shipping (Maritime Security) Regulations, 2004 ("ISPS Code"), is provided by the Company to the Principal and/or the Vessel for information purposes only. The Company will not be liable for any claim of whatsoever nature, whether in contract or in delict, and whether for damages or otherwise, arising from a failure by the Vessel to timeously transmit complete and correctly formatted pre-arrival and/or pre-entry information.

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- 41.4 Where the Company performs or procures services in relation to the Customer's goods which are or will be carried in accordance with the contract with the Principal contained in or evidenced by a bill of lading, charter party or other contract of affreightment, all services will be performed or procured by the Company as agent for and on behalf of the Principal. The provision of such services will be subject to the terms and conditions of the Principal's bill of lading or other contract between the Principal and the Customer.
- 41.5 Information furnished to the Principal by the Company as to the costs and expenses of providing the Services, whether in the form of an estimate, offer, quotation or tender, will be deemed to be information furnished for the guidance of the Principal only and will not be binding on the Company.
- 41.6 The Principal will pay forthwith by electronic transfer to the Company's bank account, such sum as the Company may request as an advance on port and other disbursements, which the Company estimates will be incurred whilst the Principal's vessel is in the Company's agency. If the Principal fails to comply with the Company's request, the Company may at any time give notice of the termination of its agency.
- 41.7 The Principal is be liable for and will pay to the Company all costs and expenses incurred by the Company in providing the Services at the request or on the instructions of the Principal himself, the Master of the Vessel, the office of the Principal or his nominees, representatives or agents.
- 41.8 The Principal will pay to the Company the charges agreed or, in the event that there is no agreement as to these charges, the Principal will pay to the Company a reasonable charge for the Services. For the purposes of this clause, and in the absence of any agreement to the contrary, the Company's customary charges as set out on its website at www.rsagency.co.za, are deemed to be a reasonable charge.
- 41.9 The Principal will reimburse the Company for all the costs and expenses incurred by the Company arising out of the receipt of currency from the Principal or the remittance of currency to or on behalf of the Principal.
- 41.10 The Company will not be obliged to make any disbursement whatsoever on behalf of the Principal until the Company has been paid all amounts due by the Principal to the Company for the Services and has received sufficient funds for the purpose of making the particular disbursement. The Company may either before, during or after providing the Services require the Principal to furnish security for the payment of such amounts as are

or will become due to the Company by the Principal for providing the Services and for the reimbursement of disbursements made or to be made by the Company.

41.11 The Company will be entitled to deduct from sums held by the Company for the Principal's account any amounts due to the Company by the Principal.

42. BILLS OF LADING

The Company, if authorised in writing by the Principal, will be entitled to sign and issue bills of lading on behalf of the Principal, and the Principal will indemnify the Company against any claims, including legal costs pertaining thereto on the attorney and own client scale, which may arise against the Company in consequence of it having issued any bill(s) of lading on behalf of the Principal.

43. INDEMNITIES BY PRINCIPAL

43.1 The Principal indemnifies and holds the Company harmless against any loss or damage the Company may sustain by reason of –

43.1.1 claims by Suppliers for the cost and expenses of Goods or Services provided to the Principal at the Company's special instance and request;

43.1.2 payment of any taxation which may be levied on passenger earnings or freight earned on cargo loaded in the absence of reciprocal Intergovernmental taxation agreements;

43.1.3 any claims arising out of a guarantee furnished by the Company on behalf of the Principal or in the course of providing the Services.

43.2 The Principal undertakes to place the Company in sufficient funds or to furnish the Company with security to the satisfaction of the Company to ensure the due fulfilment by the Principal of his obligations under the aforesaid indemnity, either prior to the commencement of, during or after the performance of the Services, as may be required by the Company.

PART C – THE CUSTOMER

44. TERMS SPECIFIC TO THE CUSTOMER

In addition to provisions of PART A of these terms and conditions, the following terms and conditions will govern any services rendered by the Company and the Customer.

- 44.1 Unless the Company stipulates otherwise, the Company will act as agent for and on behalf of the Customer in performing the Services or procuring the Services from any Supplier.
- 44.2 Upon receipt of specific written instructions from the Customer, the Company will arrange for the inland carriage and/or transport of the Goods. Any such carriage and/or transport, including storage and handling of the Goods, will be arranged by the Company as agent for and on behalf of the Customer and will be subject to the conditions stipulated by the haulier contracted to carry the goods or the warehouseman contracted to store the Goods.
- 44.3 Where the Company agrees to provide or arrange services for the Customer's goods, the Customer will be deemed to have authorised the Company to conclude all and any contracts necessary to provide those services.
- 44.4 The Customer will declare to the Company full details of goods, which are of a dangerous or damaging nature, including those goods which are more particularly described in the International Maritime Organisation ("IMO") Code. Should the Customer fail to provide such details the Customer will be responsible for all costs and damages arising as a result thereof.
- 44.5 The Customer must on request pay to the Company prior to the commencement or continuation of the services, such amounts as may be required to cover disbursements of whatever nature or the estimated fees.
- 44.6 The Company may refuse to commence or may discontinue rendering any service should the Customer refuse or fail to make such payment. The Customer will have no claim or recourse against the Company where it ceases rendering any service for want of payment.
- 44.7 The Company reserves the right to extend and to withdraw any credit facilities afforded to the Customer at any time without prior notice and the nature and extent of such facilities shall at all times be at the Company's sole discretion.

PART D – CONTRACTING WITH SUPPLIERS

45. TERMS OF APPOINTMENT OF ANY SUPPLIER

In addition to provisions of PART A of these terms and conditions, the following terms and conditions will apply where the Supplier is appointed to render any service or part of the services:

- 45.1 Unless otherwise stated in writing, the Company will act at all times as agent only for and on behalf of the Customer or the Principal.
- 45.2 The Company will not be personally liable for payment of any amount owed to the Supplier by the Customer or the Principal.

PART E – CLEARING & FORWARDING

46. CUSTOMER'S INSTRUCTIONS

- 46.1 The Customer must provide the Company with a written clearing instruction in the prescribed form, if the Company is required to clear the Goods through customs.
- 46.2 Any other instructions to the Company shall be precise, clear and comprehensive and in particular, but without limitation, shall cover the required information for any valuation or determination for Customs purposes.
- 46.3 Instructions given by the Customer shall be recognised by the Company as valid only if timeously given specifically in relation to a particular matter in question.
- 46.4 Oral instructions, standing or general instructions or instructions given late, even if received by the Company without comment, shall not in any way be binding upon the Company, but the Company may act thereupon in the exercise of its absolute discretion.

47. TRANSPORT DOCUMENTS

The Company 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 the Company'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 the Company or another as the carrier in terms thereof) provided that where a CTBL is issued these trading terms and

conditions shall continue to apply as between the Company on the one part and the customer and/or the owner on the other part, (save with regard to the owner, to the extent that they 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). The issue of the CTBL by the Company shall entitle it to raise an additional charge determined by the Company, to cover any additional obligations arising under the CTBL.

48. EXCLUSION OF OBLIGATIONS OF COMMON OR PUBLIC CARRIER

Where the Company undertakes to transport the Goods as principal, it performs such carriage on the basis that it is neither a common carrier nor a public carrier. The transportation of all goods is undertaken at the sole risk and expense of the Customer and subject to these conditions.

49. DEBITING FEES AND DISBURSEMENTS

The Company 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.