

Trading Terms & Conditions of Fr. Meyer's Sohn Specialised Logistics (Pty) Ltd

1. INTERPRETATION

In these trading terms and conditions:

- 1.1 the headings to the clauses are for reference purposes only and shall not aid in the interpretation of the clauses to which they relate;
- 1.2 unless the context clearly indicates a contrary intention, words importing any one gender include the other two genders, the singular includes the plural and vice versa, and natural persons include created entities (corporate or unincorporate) and vice versa;
- 1.3 the following terms shall the meanings assigned to them hereunder and cognate expressions shall have the same meaning, namely:
 - 1.3.1 "the Company" means the company referred to above, or if it exercises its rights under clause, the member of the Group in respect of which it exercises its rights;
 - 1.3.2 "Customer" means any person at whose request or on whose behalf the Company undertakes any business or provides any advice, information or services;
 - 1.3.3 "goods" means any goods handled, transported or 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 nominees on the instructions of the Company, and includes any container, transportable tank, flat pallet package or any other form of covering, packaging container, or equipment used in connection with or in relation to the goods;
 - 1.3.4 "Group" means the Company and/or any company which is a holding company of the Company, or a subsidiary company of any such holding company, or a subsidiary of the Company from time to time which may render services to the Customer in terms of clause 2;
 - 1.3.5 "Owner" means the owner of any goods to which any business concluded under these trading terms and conditions relates and any other person who is or may have or acquire any interest, financial or otherwise, therein.

2. MEMBERS OF THE GROUP RENDERING SERVICES TO THE CUSTOMER

The Company may at its election perform all and 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 the terms and conditions contained herein which shall apply mutatis mutandis to the Customer and any such member of the Group.

3. APPLICATION OF TRADING TERMS AND CONDITIONS

Subject to Clause 5, all and any business undertaken or advice, information or services provided by the Company, whether gratuitous or not, is undertaken or provided on these trading terms and conditions

4. OWNER'S RISK

All handling, packing, loading, unloading, unpacking, warehousing and transporting of goods by or on behalf of or at the request of the Company are affected at the sole risk of the Customer and/or the Owner, and the Customer indemnifies the Company accordingly.

5. APPLICABLE LEGISLATION

- 5.1 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.
- 5.2 In addition, thereto, in complying with the law, the Company shall not be deemed to have assumed any onus, obligation, responsibility or liability in favour of the Customer.
- 5.3 If any of the terms of these trading terms and conditions is unenforceable, then and in such event the unenforceable term embodied herein shall be deemed to be amended and/or altered so as to be enforceable or, if that is not possible in law, then the unenforceable term shall be severed from the remaining provisions of these trading terms and conditions, and such amendment **and/or alteration and/or severing shall not in any way affect the remaining provisions of these trading terms and conditions.**

6. FIATA MULTIMODAL TRANSPORT BILL OF LADING

The Company shall be entitled to issue in respect of the whole or part of any contract for the movement of goods. FIATA Combined Transport Bill of Lading ("FBL") provided that where a FBL is issued these trading terms and conditions shall continue to apply except insofar as they conflict with the terms and conditions applicable to the FBL. The issue of a FBL by the Company shall entitle it to raise such additional charge as is customary in the Shipping Industry, in respect of the issue thereof, to cover its additional obligations arising under the FBL. Any dispute between the Company and the Customer relating to such additional charge raised by the Company shall be referred to and determined by the auditors of the Company acting as experts and not as arbitrators whose decision shall be final and binding.

7. EXCLUSION OF OBLIGATIONS OF COMMON OR PUBLIC CARRIER

The Company deals with goods only on the basis that it is neither a common carrier nor a public carrier.

8. COMPANY'S DISCRETION IN THE ABSENCE OF INSTRUCTIONS

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

9. COMPANY'S GENERAL DISCRETION

- 9.1 Notwithstanding anything to the contrary herein contained, if at any time the Company should consider it to be in the Customer's interests or for the public good to depart from any of the Customer's instructions, the Company shall be entitled to do so and shall not incur any liability in consequence of doing so.
- 9.2 If events or circumstances come to the attention of the Company, its agents, servants or nominees which, in the opinion of the Company, make it in whole or in part, impossible or impracticable for the Company to comply with a Customer's instructions the Company shall take reasonable steps to inform such Customer of such events or circumstances and to seek further instructions. If such further instructions are not timeously received by the Company in writing the Company shall, at its sole discretion, be entitled to detain, return, store, sell, abandon, or destroy all or part of the goods concerned at the risk and expense of the Customer.

10. INSURANCE

The Company shall endeavour to affect any insurance the Customer timeously and in writing instructs it to effect. Such insurance will be subject to such exceptions and conditions as may be imposed by the insurance company or underwriter taking the risk and the Company shall not be obliged to obtain separate cover for any risks excluded. Unless otherwise agreed in writing the Company shall not be under any obligation to obtain separate insurance in respect of separate consignments but may insure all or any of such consignments under any open or general policy held by the Company from time to time.

Should any insurer dispute its liability in terms of any insurance policy in respect of any goods, the Customer concerned shall have recourse against such insurer only and the Company shall not have any responsibility or liability whatsoever in relation thereto notwithstanding that the premium paid on such policy may differ from the amount paid by the Customer to the Company in respect thereof.

Insofar as the Company agrees to arrange insurance the Company acts solely as agent for and on behalf of the Customer

11. TIMEOUS WRITTEN INSTRUCTIONS

Unless specific written instructions are timeously given to and accepted by the Company in writing, the Company shall not be obliged to:

- 11.1 make any declaration for the purpose of any statute, convention, or contract, as to the nature or value of any goods or as to any special interest in delivery. In particular the Company shall be under no obligation to make any

declaration or to seek any special protection or cover from any carrier in respect of any goods which are, or fall within the definition ascribed thereto by that body, of dangerous goods or other goods which require special conditions of handling or storage.

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

12. CUSTOMER'S UNDERTAKINGS

12.1 For all purposes under these trading terms and conditions the Customer shall be deemed to have in relation to the Customer's business, the goods, and the services to be rendered by the Company in regard thereto, reasonable knowledge of all matters directly or indirectly relating thereto or arising therefrom including, without limitation, terms of sale and purchase and all matters relating thereto, and the Customer undertakes to supply all pertinent information to the Company.

12.2 The Customer warrants that;

12.2.1 it is either the Owner or the authorised agent of the Owner of any goods in respect of which the Customer instructs the Company and that each such person is bound by these trading terms and conditions;

12.2.2 that in authorising the Customer to enter into any contract with the Company and/or in accepting any document issued by the Company in connection with such contract, the Owner, sender or consignee is bound by these trading terms and conditions for itself and its agents and for any parties on whose behalf it or its agents may act, and in particular, but without prejudice to the generality of the foregoing, it accepts that the Company shall have the right to enforce against them jointly and severally any liability of the Customer under these trading terms and conditions or to recover from them any sums to be paid by the Customer which upon proper demand have not been paid;

12.2.3 all information and instructions supplied and to be supplied by it to the Company is and shall be accurate, true and comprehensive, and in particular, without derogating from the generality of the foregoing, the Customer shall be deemed to be bound by and warrants the accuracy of all descriptions, values and other particulars furnished to the Company for

customs, consular and other purposes. The Customer warrants that it will not withhold any necessary or pertinent information, and indemnifies the Company against all claims, losses, penalties, damages, expenses and fines, whatsoever, 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;

12.2.4 all goods will be properly, adequately and appropriately prepared and packed, stowed, labelled and marked, having regard inter alia to the implementation by or on behalf of the Company or at its instance of the contract involved, and the characteristics of the goods involved and are capable of withstanding the normal hazards inherent in the implementation of such contract;

12.2.5 where goods are carried in or on containers, trailers, flats, tilts, railway wagons, tanks, igloos or any other unit load devices specifically constructed for the carriage of goods by land, sea or air, (each such device hereinafter individually referred to as "the transport unit") then, save where the Company has been given and has accepted specific written instructions to load the transport unit –

12.2.5.1 that the transport unit has been properly and competently loaded, and

12.2.5.2 that the goods are suitable for carriage in or on the transport unit, and

12.2.5.3 that the transport unit is itself in a suitable condition to carry the goods loaded therein and complies with the requirements of all relevant transport authorities and carrier

13. RECOVERY OF DEBTS DUE TO THE COMPANY

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

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

14.1 Unless otherwise agreed in writing, the Company in procuring the carriage, storage, packaging or handling of goods shall be entitled to act either as an agent for and on behalf of the Customer or as a principal, as it in its absolute discretion deems fit.

14.2 The offer and acceptance of a fixed price for the accomplishment of any task shall not itself determine whether such task is to be arranged by the Company acting as agent for and on behalf of the Customer or as principal.

14.3 The Customer acknowledges that when the Company as agent for and on behalf of the Customer concludes any contract with a third party, such agreement is concluded between the Customer and the third party.

14.4 Unless otherwise agreed in writing, the Company, when acting as agent for and on behalf of the Customer, shall be entitled to enter into any contract it reasonably deems necessary or requisite for the fulfilment of the Customer's

- instructions, including, without limitation, contracts for the:
- 14.4.1 carriage of goods by any route or means or person,
 - 14.4.2 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,
 - 14.4.3 carriage or storage of goods in breakbulk form or in or on transport units as defined, or with or without other goods of whatsoever nature.

15. SUB-CONTRACTING

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

16. TERMS AND CONDITIONS OF AGENTS AND SUB-CONTRACTORS

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

17. GOODS REQUIRING SPECIAL ARRANGEMENT

Except under special arrangements previously made in writing the Company will not accept or deal with bullion, coin, precious stones, jewelry, 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.

18. GOODS REQUIRING PRIOR CONSENT OF THE COMPANY

- 18.1 The Customer shall obtain in advance the Company's specific written consent to accept into its possession or control or into the possession or control of any of its servants, agents or employees any goods, including radioactive materials, which may be or become dangerous, inflammable or noxious, or which by their nature may injure, damage, taint or contaminate, or in any way whatsoever adversely affect any person, goods or property, including goods likely to harbour or attract vermin or other pests. The Customer warrants that such goods, or the case, crate, box, drum, canister, tank, flat, pallet, package or other holder or covering of such goods will comply with any applicable laws, regulations or requirements of any authority or carrier and that the nature and characteristics of such goods and all other data required by such laws, regulations or requirements will be prominently and clearly marked on the outside cover of such goods.
- 18.2 If any such goods are delivered to the Company, whether or not in breach of the provisions of Clause 18.1, such goods may for good reason as the Company in its discretion deems fit including, without limitation, the risk to other goods, property, life or health be destroyed, disposed of, abandoned or rendered harmless at the risk and expense of the Customer and without the Company being liable for any compensation to it, or any other third party and without prejudice to the Company's rights to recover its charges and/or fees including the costs of such destruction, disposal, abandonment or rendering harmless or other dealing with and the Customer indemnifies the Company against all loss, liability or damage caused to the Company as a result of the tender of goods to the Company and/or out of the foregoing.

19. PERISHABLE GOODS

- 19.1 Without limiting or affecting any other terms of these trading terms and conditions, goods (whether perishable or

otherwise) in the care, custody or control of the Company may at the Customer's expense be sold or disposed of by the Company without notice to the Customer, sender, Owner or consignee, if:

19.1.1 such goods have begun to deteriorate or are likely to deteriorate,

19.1.2 such goods are insufficiently addressed or marked;

19.1.3 the Customer cannot be identified;

19.1.4 the goods have not been collected or accepted by the Customer or any other person after the expiration of 21 days from the Company notifying the Customer in writing to collect or accept such goods, provided that if the Company has no address of the Customer such notice shall not be necessary, and payment or tender of the net proceeds, if any, of the sale thereof after the deduction of those charges and expenses incurred by the Company in respect thereof shall be equivalent to delivery of the goods.

19.2 Should any amount owing by the Customer to the Company in respect of any goods referred to in Clause 19.1 above become due and payable and remain unpaid, the Company shall be entitled and the Customer hereby authorises the Company and without first obtaining an Order of Court, to sell all or any of the goods by public auction or on reasonable notice not exceeding fourteen days by private treaty. The net proceeds of any such sale, after deducting therefrom all costs, charges and expenses incurred by the Company, shall be applied in reduction or discharge, as the case may be, of the Customer's obligations to the Company in respect of such goods without prejudice to the Company's rights to recover from the Customer any balance which may remain owing to the Company after the exercise of such rights. Should the total amount collected by the Company, after deducting therefrom all costs, charges and expenses incurred by the Company in respect thereof, exceed the full amount of the Customer's full obligations to the Company in respect of such goods, the Company shall be obliged to refund such excess to the Customer.

20. THE ACCEPTANCE OF DELIVERY

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

20.1 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

20.2 the provisions of Clause 19.2 shall apply mutatis mutandis.

21. WAREHOUSING

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

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

22.1 When goods are accepted or dealt with by the Company upon instructions to collect freight, duties, charges or other expenses from the consignee or any other person, the Customer shall remain responsible therefor if they are not paid by such consignee or other person immediately when due.

22.2 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 affect payment, and in the matter of such collection will not be liable for any negotiable instrument which is not met on the due date for payment.

23. SUNDRY GOODS RECOGNISABLE AS THE CUSTOMER'S

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

24. EXAMINATION OF LANDED GOODS

24.1 Where it is necessary for an examination to be held or other action to be taken by the Company in respect of any discrepancy in the goods which are landed or discharged from any vessel, aircraft, vehicle, or transport unit, no responsibility shall attach to the Company for any failure to hold such examination or to take any other action unless the Company has been timeously advised by the landing or discharging agent that such goods have been landed and that such discrepancy exists.

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

or otherwise. The Company shall be entitled to levy a charge on the Customer for the counting of goods in such circumstances.

25. DUTIES, TAXES, IMPORTS, LEVIES AND DEPOSITS

- 25.1 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 outlays of whatsoever nature levied by or payable to the authorities, its intermediaries or other parties at any port or place for or in connection with the goods and whether at the time of entry and/or at any subsequent time, and for any payments, fines, penalties, expenses, loss or damage or whatsoever incurred or sustained by the Company in connection therewith or arising therefrom.
- 25.2 The Company shall bear no liability in consequence of the fact that there may be a change in the rate of duty, wharfage, freight, railage or cartage or any other tariff, before or after the performance by the Company of any act involving a less favourable rate or tariff or by virtue of the fact that a saving might have been affected in some other way had any act been performed at a different time.

26. RECOVERY OF DUTIES INCORRECTLY PAID

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

- 26.1 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
- 26.2 do all such acts as are necessary to enable the Company to effect recovery of the amount incorrectly paid.

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 26.1. 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 the Company's right of recovery, then the Customer shall be deemed not to have complied with the provisions of Clauses 26.1 and 26.2.

27. PAYMENT BY THE CUSTOMER

- 27.1 Unless otherwise specifically agreed by the Company in writing the Customer shall pay to the Company in cash immediately upon presentation of account all sums due to the Company without deduction or set-off and payment shall not be withheld or deferred on account of any claim or counter-claim which the Customer may allege.
- 27.2 All and any monies received by the Company from the Customer shall be appropriated by the Company in its sole and absolute discretion in respect of any undisputed indebtedness owing by the Customer to the Company, notwithstanding that the Customer might, when making payment, seek to appropriate the payment so made to any particular debt or portion of a debt.
- 27.3 In the event that payment to the Company is affected electronically, the Customer bears the risk in respect of such payment until such time as the funds are received and cleared into the Company's bank account.

28. 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.

29. RISK OF POSTED ITEMS

Notwithstanding any prior dealings between the Company and the Customer, all documents, cash, cheques, bank drafts or other remittances, sent to the Company through the post shall be deemed not to have been received by the Company unless and until they are actually so received.

30. QUOTATIONS

- 30.1 The Company shall be entitled at any time by notice to the Customer to cancel or withdraw from any quotation or executory agreement in circumstances where it becomes impracticable or uneconomical for the Company to carry

out the contract at the quoted 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 or withdrawing from the quotation or executory agreement.

- 30.2 Without in any way limiting the provisions of Clause 30.1 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 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 increase or revision and any upward movements 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.

31. NO CLAIMS AGAINST COMPANY DIRECTORS AND EMPLOYEES

The Customer undertakes that no claim shall be made against any director, servant or employee of the Company which imposes or attempts to impose upon him any liability in connection with the rendering of any services which are the subject of these trading terms and conditions and hereby waives all and any such claims.

32. CUSTOMER'S INSTRUCTIONS

The Customer's oral and written instructions to the Company shall be precise, clear and comprehensive, and in particular, but without limitation, shall cover any valuation or determination issued by customs in respect of any goods to be dealt with by or on behalf of or at the request of the Company. 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. 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.

33. VARIATION OF THESE TRADING TERMS AND CONDITIONS

No variation or alteration of these trading terms and conditions shall be binding on the Company unless embodied in a written document signed by a duly authorised director of the Company. Any purported variation or alteration of these trading terms and conditions otherwise than as set out above shall be of no force or effect, whether such purported variation or alteration is written or oral, or takes place before or after the receipt of these trading terms and conditions by the Customer.

34. NON-WAIVER

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

35. GOVERNING LAW

These trading terms and conditions and all agreements entered into between the Company and the Customer pursuant thereto and on the terms thereof shall be governed by and construed in accordance with the laws of the Republic of South Africa.

36. SUBMISSION TO JURISDICTION

The parties agree that any legal action or proceedings arising out of or in connection with these trading terms and conditions and all agreements entered into between the Company and the Customer shall be brought in the division of the Supreme Court of South Africa where the Company's head office is situated at the commencement of the proceedings, and the Customer irrevocably submits to the exclusive jurisdiction of such court.

37. BENEFIT OF DISCOUNTS

The Company is entitled to the benefit of all discounts obtained and to retain and be paid all brokerages, commissions, allowances and other remunerations of whatsoever nature and kind and shall not be obliged to disclose or account to the Customer or principal for any such amounts received or receivable by it.

38. LIEN

All goods and documents relating to goods including bills of lading and import permits, as well as all refunds, repayments, claims and other recoveries, shall be subject to a special and general lien and pledge both for monies due in respect of such goods and for other monies due to the Company from the Customer, sender, Owner, consignee, importer or the holder of the bill of lading or their agents, if any. If any monies due to the Company are not paid within fourteen 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 satisfaction of such indebtedness.

39. INDEMNITY BY THE CUSTOMER

Without prejudice to any of the Company's rights and securities under these trading terms and conditions, the Customer indemnifies and holds harmless the Company against all liabilities, damages, costs and expenses whatsoever incurred or suffered by the Company arising directly or indirectly from or in connection with the Customer's express or implied instructions or their implementation by or on behalf of or at the instance of the Company in relation to any goods and in particular, but without limitation, in respect of any liability whatsoever which may be incurred –

- 39.1 to any haulier, carrier, warehouseman or other person whatsoever at any time involved with such goods arising out of any claim made directly or indirectly against any such person by the Customer or any consignor, consignee or Owner of such goods or by any person having an interest in such goods or by any other person whatsoever; and/or
- 39.2 to any owner or consignee of such goods who is not the Customer of the Company where the Company performs the service of a deconsolidation agent, or any other service; and/or
- 39.3 to any carrier of the goods if the Company is the consignor or consignee of the goods; and/or
- 39.4 in respect of any goods referred to in either of Clauses 17 or 18.

40. LIMITATION OF COMPANY'S LIABILITY

- 40.1 Subject to the provisions of Clause 40.2 and Clause 41, the Company shall not be liable for any claim of whatsoever nature (whether in contract or in delict) and whether for damages or otherwise, howsoever arising including but without limiting the generality of the aforesaid:
 - 40.1.1 any negligent act or omission or statement of by the Company or its servants, agents and nominee, and/or
 - 40.1.2 any act or omission of the Customer or agent of the Customer with whom the Company deals: and/or
 - 40.1.3 any loss, damage or expense arising from or in any way connected with the marking, labelling, numbering, non-delivery or mis-delivery of any goods, and/or
 - 40.1.4 any loss, damage or expense arising from or in any way connected with the mass, measurements, contents, quality, inherent vice, defect, or description of any goods, and/or
 - 40.1.5 any loss, damage or expense arising from or in any way connected with any circumstance, cause or event beyond the reasonable control of the Company, including but without limiting the generality of the aforesaid, strike, lock-out, stoppage or restraint of labour, and/or
 - 40.1.6 damages arising from loss of market or attributable to delay in forwarding or in transit or failure to carry out any instructions given to the Company, and/or
 - 40.1.7 loss or non-delivery of any separate package forming part of a consignment or for loss from a package or an unpacked consignment or for damage or mis-delivery, and/or
 - 40.1.8 damage or injury suffered by the Customer or any person whatsoever arising out of any cause whatsoever as a result of the Company's execution or attempted execution of its obligations to the Customer and/or the Customer's requirements or mandate;
unless:
 - a) such claim arises from a grossly negligent act or omission on the part of the Company or its servants, and
 - b) such claim arises at a time when the goods in question are in the actual custody of the Company and under its actual control, and
 - c) in the instance provided in Clause 40.1.7 above the Company receives a written notice within 5 (five) days after the end of the transit where the transit ends in the Republic of South Africa, or within 14 (fourteen) days after the end of the transit where the transit ends at any place outside the Republic of South Africa.
- 40.2 Notwithstanding anything to the contrary contained in these trading terms and conditions, the Company shall not be liable for any indirect and consequential loss arising from any act or omission or statement by the Company, its agents, servants or nominees, whether negligent or otherwise.

41. MONETARY LIMITATION OF LIABILITY OF THE COMPANY

41.1 In those cases where the Company is liable to the Customer in terms of Clause 40.1, in no such case whatsoever shall any liability of the Company, howsoever arising, exceed whichever is the least of the following respective amounts:

41.1.1 the value of the goods evidenced by the relevant documentation or declared by the Customer for customs purposes or for any purpose connected with their transportation;

41.1.2 the value of the goods declared for insurance purposes;

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

41.2 If it is desired that the liability of the Company in those cases where it is liable to the Customer in terms of Clause 40.1 should not be governed by the limits referred to in Clause 41.1 written notice thereof must be received by the Company before any goods or documents are entrusted to, or delivered to, or into the control of the Company (or its agent or sub- contractor), together with a statement of the value of the goods. Upon receipt of such notice the Company may in the exercise of its absolute discretion agree in writing to its liability being increased to a maximum amount equivalent to the amount stated in the notice, in which case the Company will be entitled to effect special insurance to cover its maximum liability and the party giving the notice shall be deemed, by doing so, to have agreed and undertaken to pay to the Company the amount of the premium payable by the Company for such insurance. If the Company does not so agree the limits referred to in Clause 41.1 shall apply.

42. 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.

43. BREACH

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

44. WARRANTIES AND REPRESENTATIONS BY THE COMPANY

The Company makes no warranties and representations to the Customer save as may be specifically provided herein or as notified in writing by the Company to the Customer from time to time. The Customer acknowledges that the Company is not in any way bound by any oral statement, representation, guarantee, promise, undertaking, inducement or otherwise which may have been made at any time by any salesman, employee, representative or any person acting or purporting to act for and on behalf of the Company, whether negligently or otherwise, unless such statements, representations, guarantees, promises, undertakings, warranties or inducements are supplied or made in writing by an employee duly authorised by written resolution by the board of directors of the Company in response to a written enquiry specifying accurately and in complete detail what information is required.

45. DISPUTE

45.1 Should there be any dispute of any nature whatsoever between the parties in regard to any aspect, matter or thing relating to these trading terms and conditions and whether or not the Company has executed its obligations in terms of any agreement it has with the Customer, then and in such event the Customer shall nevertheless be obliged to perform its obligations in terms of any such agreement as though the Company had performed properly and to the Customer's satisfaction.

45.2 The Customer's remedy, having performed its obligations as provided in Clause 45.1, shall be limited to an action against the Company for repayment of either the whole or portion of the amount which the Customer alleges, constitutes an overpayment.

45.3 Without affecting the generality of the above clauses, the Customer shall not be entitled to withhold payments of any amounts, by reason of any disputes with the Company, whether in relation to the Company's performance in terms of any agreement, or lack of performance or otherwise, after which payment the Customer's rights of action against the Company in terms of this clause can be enforced. Until such payment is made, any rights that the Customer may have, shall be deemed not yet to have arisen, and it is only the payment to the Company which releases such rights and makes them available to the Customer in respect of any claim that the Customer may have against the Company.

45.4 In any dispute between the Company and the Customer the Company 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.

46. TIME PERFORMANCE BY THE CUSTOMER

Time is of the essence for the performance by the Customer of all obligations owed to the Company in terms of any agreement with it governed by these trading terms and conditions.

47. SPECIAL CONDITIONS RELATING TO ELECTRONIC DATA

Notwithstanding the provisions of any legislation or other law regulating electronic communications and transactions, the company shall only be deemed to have received electronic data and/or messages when such electronic data and/or messages have been retrieved, processed and read by the addressee.

Under no circumstances whatsoever and however arising (including negligence on the part of the Company or its Employees) shall the Company be liable for any loss or damage arising from or consequent upon the provision by the Company to the Customer in whatever manner and/or form, of incorrect information, including electronically communicated information or data, where such incorrect information or data has been generated by and provided to the Company by any person with whom the Company conducts business, and/or any other third party.

The Company shall furthermore under no circumstances whatsoever be liable for any loss or damage arising from or consequent upon any failure and/or malfunction, for whatever reason, and regardless of negligence in whatever degree on the part of the Company, of the Company's computer systems and/or software programs, provided and/or operated by the Company and/or by any person with whom the Company conducts business, and/or any third party, and which systems shall include the Company's electronic automated information service provided to its Customers.

48. LATE PAYMENT BY CUSTOMER

48.1 For purposes of this clause 48 "Prime Rate" means the publicly quoted basic rate per annum ruling from time to time at which First National Bank Limited ("First National Bank") lends on unsecured overdraft facilities to its corporate customers from time to time, compounded monthly in arrear and calculated on the daily balance outstanding and on the basis of a 365 (three hundred and sixty-five) day year. A certificate issued under the hand of any manager (whose authority and appointment it shall not be necessary to prove) of First National Bank as to the prime rate from time to time shall, in the absence of manifest error, be final and binding on the parties.

48.2 If the Customer at any time, and from time to time, fails to make payment to the Company on the due date of payment of any amounts due by the Customer to the Company then,

48.2.1 interest shall be payable by the Customer to the Company on any such late payment calculated at the Prime Rate plus 5% (five percent) per annum from the due date for payment to the actual date of payment; and

48.2.2 the Company shall be entitled, without prejudice to any of its other rights in terms of or arising out of these trading terms and conditions, or any other arrangements between the Company and the Customer, by notice in writing to the Customer to demand immediate repayment by the Customer to the Company of any and all amounts owed by the Customer to the Company, and the Customer shall, forthwith, repay all such amounts to the Company. The provisions of sub-clause 48.2.1 shall apply mutatis mutandis in respect of all amounts payable by the Customer to the Company in terms of this sub-clause 48.2.2.

49. SEVERABILITY

If any provision of these terms and conditions is unenforceable, then the company shall be entitled to elect (which election may be at any time) that such provision shall be severed from the remaining provisions of these terms and conditions which shall not be affected and shall remain in full force and effect.

50 BUSINESS RESCUE PROVISIONS

50.1 The Customer warrants that, as at the signature date of this application, it is not in business rescue in terms of Chapter 6 of the Companies Act 2008 ("Business Rescue") and has not made any application to be placed under business rescue. Furthermore, the Customer warrants that it does not have any intention of making application for business rescue and is not aware of any current or pending circumstances relating to the business that could give rise to an application for business rescue.

50.2 The Customer agrees that in the event that the Customer is placed under Business Rescue, the conclusion of any compromise of the debt under such approved business rescue plan will not reduce the liability of any person or entity that has signed surety for the debts due by the Customer to the Company and such surety shall remain liable for

the full amount of the debt that was due before such compromise, notwithstanding that it is acknowledged, agreed and understood by the Customer that the surety may be entitled to have recourse against the Customer for amounts paid by the surety to the Company pursuant to such suretyship.

50.3 In the event that the Customer is placed under Business Rescue at a time when any goods are either in the possession of the Company, or are in transit either to the Company or its agents, or to any third party, then all amounts of whatsoever nature that become due by the Customer to the Company shall constitute post commencement finance as envisaged by section 135 of the Companies Act, 2008, including without limitation such amounts that are incurred in relation to:

50.3.1 the carriage and storage of such goods;

50.3.2 any taxes, duties or penalties of whatsoever nature that are incurred in relation to the goods; and

50.4 The Company, in the absence of either payment of the amounts that become due as envisaged by clause [50.3](#), or the provision of security to its satisfaction, shall be entitled to exercise a lien over such goods.

51. NATIONAL CREDIT ACT

51.1 To the extent that the Customer is either:

51.1.1 a natural person; or

51.2 a juristic person with both an asset value and a turnover that is less than the threshold and a credit facility is granted by the Company to the Customer of less than R250,000.00,

then any provision of these terms and conditions that would have the effect of making the agreement between the Customer and the Company a credit agreement will be severed from and will not be of application to such Customer.

52. PERSONAL INFORMATION

Notwithstanding anything to the contrary contained herein, the Customer and the Company acknowledge their respective obligations to comply with the substantive provisions of the Protection of Personal Information Act, 4 of 2013 (hereinafter referred to as 'POPI'). Where any party receives any personal information, as defined in POPI, it shall ensure that it fully complies with the provisions of POPI and only deal with the personal information to fulfil its obligations under this agreement. The personal information received shall not be further processed or disclosed without the consent of the disclosing party. Within thirty 60 (sixty) days after the termination of this agreement, for whatever reason, the receiving party of either party's personal information shall return same or at the discretion of the disclosing party of such personal information, destroy such personal information, and shall not retain copies, samples or excerpts thereof.

The applicant agrees that Fr. Meyer's Sohn may perform a credit search and update such information on the applicant's record with one or more of the registered Credit Bureau when assessing the applicant's application on an ongoing basis. Record and transmit the existence and details of how the applicant has performed on meeting its obligation on the account. The applicant acknowledges and agrees that any information regarding its credit worthiness, defaults in payment and conduct of the account to Fr. Meyer's Sohn may be disclosed to any other creditor of the applicant or to one or more Credit Bureaus. The Company reserves the right to discontinue any account and summarily to cancel any agreement in respect of which payments have fallen in arrears, and in the event of these rights being exercised, all amounts owing shall immediately become due and payable on demand. It is mutually agreed that any action arising between the parties may be instituted in the Magistrate's Court although the cause of action or amount of the action may exceed the jurisdiction of the court. The applicant shall be liable for all attorney, collection commission and tracing fees incurred in securing or endeavouring to secure fulfilment of their obligations.

AGREEMENT REGULATING ACCESS, PROCESSING & STORAGE PERSONAL INFORMATION IN TERMS OF THE PROTECTION OF PERSONAL INFORMATION ACT ("POPIA")

Fr. Meyer's Sohn South Africa (Pty) Ltd Registration Number **2006/033426/07** ("**the Company**") is committed to compliance with the Protection of Personal Information Act. No. 4 2013 ("**POPIA**").

In this agreement, the following words bear the meanings associated with them below:

"Personal Information" means information relating to an identifiable, living, natural person, including:

- 1) Financial information related to a person, including information provided by the Customer, or information obtained from a Credit Bureaux or from CIPC (the Companies and Intellectual Property Commission);
- 2) Any identifying number, symbol, email address, physical address, telephone number, location information, online identifier or other particular assignment to the person; and/or
- 3) The name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about that person.

"Data Subject" means each director of the Customer and each shareholder of the Company that is a natural person.

WHEREAS:

In the course of the Company's customer verification and credit vetting processes, the Company will collect and process Personal Information related to Data Subjects.

The Company is committed to ensuring that any processing of Personal Information related to Data Subjects is limited to the express purposes of opening and management of an account for the Customer and that such processing is compliant with POPIA.

IT IS HEREBY AGREED THAT:

1. The Customer consents to the Company:
 - a. performing a credit search on the Customer's record, as well as the record of Data Subjects, with one or more of the registered Credit Bureaux when assessing the Customer's Application for Credit (and at any other time in the Company's discretion);
 - b. recording the existence of the Customer's account with any Credit Bureau; and/or
 - c. recording and transmitting details of how the Customer has performed and how the account is conducted by the Customer in meeting its obligations on the account, including to a Credit Bureaux and the Company's credit insurers
2. The Customer acknowledges and agrees that any information regarding its credit worthiness, defaults in payment to the Company, and details of its account with the Company is conducted may be disclosed to any other creditor of the Customer or any registered Credit Bureaux, after 21 (twenty-one) days' notice having been given to the Customer.
3. The Customer consents to the collection, processing and storage of Personal Information by the Company related to Data Subjects, for the purposes of both the opening and ongoing management of a customer account.
4. The Customer warrants and represents that:
 - a. it has concluded a contract with each Data Subject; and that in terms of such contract, the Customer has obtained the consent from such person to the processing of Personal Information by suppliers in the credit vetting process; and
 - b. the processing of Personal Information by the Company is necessary for the legitimate interests of the Company in the Company's credit vetting process.
5. The Customer warrants that all Personal Information supplied to the Company is accurate, up to date, is not misleading and that it is complete in all respects.

6. The Customer undertakes to immediately advise the Company of any changes to the relevant Personal Information of a Data Subject, but not limited to, a change of ownership or control in the Customer.
7. The Company undertakes:
 - a. to act in accordance with POPIA in relation to the collection, processing and storing of Personal Information related to the Customer. The processing of Personal Information by the Company will be limited to the purposes set out herein and will not be excessive;
 - b. not to disclose the Customer's Personal Information unless it is legally or contractually required or for its legitimate business purposes; and
 - c. to use reasonable efforts in order to ensure that Personal Information related to Data Subjects in its possession or processed on its behalf is:
 - i. kept confidential;
 - ii. stored in a secure manner; and
 - iii. processed in terms of the provisions of POPIA, and, for the purposes for which the Company has been authorized;
 - d. to take reasonable steps to identify risks associated with the processing of the Customer's information and establish safeguards against any such identified risks; and
 - e. to take reasonable steps to ensure that the Customer is notified in the event of a breach of the confidentiality of the Customers Personal Information.
8. The Customer has a right to lodge a complaint with the information Regulator if the Customer if it is of the view that its rights in terms of POPIA have been breached. The contact details of the information Regulator are:
 - Telephone Number: 012 406 4818.
 - Address: JD House, 27 Stiemens Street, Braamfontein, Johannesburg, 2001
 - E-mail Address: complaints.IR@justice.gov.za / inforg@justice.gov.za.