



MENTOR SHIPPING

MENTOR SHIPPING AGENCY (PTY) LTD

Registration No. 1976/000330/07

STANDARD TRADING TERMS AND CONDITIONS



1. INTERPRETATION

- 1.1. In these Terms and Conditions, unless the context indicates otherwise, the following words have the following meanings:
- 1.1.1. "Carrier" means any transporter, whether by road, rail, sea or air, with whom the Company contracts, whether as principal or agent, to move Goods or provide services.
- 1.1.2. "Company" means Mentor Shipping Agency (Pty) Ltd, a limited liability private company incorporated in accordance with the company laws of the Republic of South Africa and registered with Registration Number 1976/000330/07, having its principal place of business at the 3rd Floor, Unit 300, Silver Oaks Centre, Silverton Road, Durban, KwaZulu-Natal, South Africa, or if it exercises its right under clause 2, the member of the Group in respect of which it exercises its rights.
- 1.1.3. "Customer" means any person at whose request or on whose behalf the Company undertakes any business or provides any advice, information or services, whether gratuitous or not.
- 1.1.4. "Goods" means any goods handled, transported, stored or otherwise dealt with, by or on behalf 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, and include any container, transportable tank, flat pallet, package or any other form of covering, packaging, container, equipment or transport device used in connection with or in relation to such Goods, and include dangerous goods and goods of high value.
- 1.1.5. "Group" means the Company and any company which is a holding company or subsidiary of the Company from time to time which may render services to the Customer in terms of clause 2.
- 1.1.6. "Owner" means the owner of the Goods to which any business is concluded under these Terms and Conditions and any other person who is or may have or acquire any interest, financial or otherwise, therein.
- 1.1.7. "Terms and Conditions" means these Standard Trading Terms and Conditions, as amended or supplemented from time to time.
- 1.2. The headings to the clauses are for reference purposes only and shall not be used to interpret the clauses to which they relate.
- 1.3. Unless the context clearly indicates otherwise, references to one gender shall include the other two genders, the singular includes the plural and vice versa, and all terms shall apply equally to natural persons, juristic persons and other associations.

2. GROUP SERVICES

The Company may in its discretion perform all or any business undertaken or provide advice, information or services itself or, alternatively, it may procure that any member of the Group undertakes such business or provides such advice, information or services upon and subject to the terms and conditions contained herein.

3. APPLICATION OF THESE TERMS AND CONDITIONS

- 3.1. All and any business undertaken, or advice, information or services provided by the Company is undertaken or provided on these Terms and Conditions.



- 3.2. Unless the Company specifically agrees in writing otherwise, no other terms or conditions (which conflict with these Terms and Conditions) will apply, including the Customer's standard trading terms and conditions.
- 3.3. Where these Terms and Conditions are inconsistent with any applicable tariff, these Terms and Conditions will prevail.
- 3.4. All Goods will be dealt with by the Company subject to these Terms and Conditions, whether or not inconsistent with the trading terms and conditions stipulated by any Carrier, warehouseman, government department, authority or other party (whether acting as agent or sub-contractor to the Company or not) into whose possession or custody the Goods may pass, or subject to whose authority they may be at any time.

4. AUTHORITY TO CONTRACT

If the Customer requests the services acting in its capacity as an agent for a third party, the Customer warrants that it is authorised to appoint the Company to provide the services in accordance with these Terms and Conditions.

5. ACTING CAPACITY

- 5.1. In rendering any services, the Company will be entitled to act either as agent for and on behalf of the Customer or as a principal, as it in its sole and absolute discretion deems fit, unless otherwise agreed in writing.
- 5.2. When acting as agent for and on behalf of the Customer, the Company shall be entitled to enter into any contract it reasonably deems necessary for the fulfilment of the Customer's instructions, in particular but without limiting the generality of this clause, contracts for the:
 - 5.2.1. carriage of Goods by any route, means or person or vehicle.
 - 5.2.2. 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 period of time.
- 5.3. 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, and the Company is not bound by such agreement in such circumstances.
- 5.4. Where the Company agrees to arrange insurance for the Goods, the Company does so as agent only, for and on behalf of the Customer.
- 5.5. The Customer authorises the Company to act as its agent in clearing Goods through customs, provided that a valid clearing instruction has been timeously provided to the Company by the Customer.
- 5.6. The acceptance of a fixed price by the Company for the provision of any service shall not determine whether the Company shall provide such service acting as agent for and on behalf of the Customer or as a principal.

6. APPOINTMENT OF SUB-CONTRACTORS

- 6.1. Where the Customer instructs the Company to perform any services, such services may be performed, in the absolute discretion of the Company, by its own servants performing part or all of the services, or by the Company employing third parties to provide part or all of the services on conditions that may be stipulated by, or negotiated with such third parties.



- 6.2. When the Company employs third parties to perform all or any of the functions which it has agreed to perform, the Company shall not first be obliged to obtain the Customer's approval for the employment of the third party.
- 6.3. Where the Company employs third parties to provide any services in accordance with clause 6.1, the Company shall have no responsibility or liability whatsoever to the Customer for any act or omissions of such third party, even though the Company may be responsible for the payment of any such third party charges.
- 6.4. The Company shall, 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 the Customer's behalf as the Customer may in writing direct.

7. RISK

All services and handling, packing, loading, unloading, warehousing and transporting of the Goods by or on behalf of or at the request of the Customer are carried out at the sole risk and cost of the Customer.

8. CARRIAGE OF GOODS

- 8.1. Upon receipt of specific written instructions by the Customer, the Company shall arrange for the carriage and/or transport of Goods.
- 8.2. Any such carriage and/or transport, including storage and handling of the Goods, shall be arranged by the Company as agents for and on behalf of the Customer and shall be subject to the conditions stipulated by the Carrier contracted to carry the Goods.
- 8.3. The Company accepts no liability whatsoever and howsoever arising in respect of such carriage, provided that should it be found that the Company in any way retains any obligation or responsibilities with regard to the performance of the obligations by the Carrier, then the usual limitations of liability set out in these Terms and Conditions shall apply.

9. CUSTOMER'S INSTRUCTIONS

- 9.1. The Customer shall provide sufficient and executable instructions, in writing, to the Company for the provision of services, to enable the Company to carry out the instructions and provide the services.
- 9.2. Such instructions shall in particular, but without limitation, cover any valuation or determination issued by any customs & excise authority in respect of any Goods to be dealt with by or on behalf of or at the request of the Company.
- 9.3. The Customer must timeously provide the Company with all the information and documents which the Company requires to enable it to provide the services. All information must be in writing, precise, clear and comprehensive.
- 9.4. If any of the information which the Customer provides to the Company changes at any time, the Customer must immediately notify the Company thereof in writing and the Customer is responsible for all the consequences of that change.
- 9.5. If the Company is required to complete any bill of lading, through bill of lading, combined transport bill of lading, sea waybill or any other transport document on the Customer's behalf, the Company does so at the Customer's risk and is not in any way liable for any loss or damage which it may suffer as a result of any incorrect particulars recorded therein.



- 9.6. If the Customer provides the Company with incorrect instructions, it will be responsible for all wasted costs incurred by the Company in carrying out those incorrect instructions and the full costs for the services.
- 9.7. Oral instructions must be confirmed in writing by a representative of the Company who is duly authorised to do so. Oral instructions which have not been confirmed in writing by a duly authorised representative of the Company, 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.

10. ABSENCE OF INSTRUCTIONS

- 10.1. If the Customer does not timeously provide the Company with precise, clear and comprehensive written instructions which it needs to provide the services:
- 10.1.1. The Company may decide when and how to perform or procure the performance of any or all of the actions which may be necessary or requisite for the performance the services or any part thereof.
- 10.1.2. The Company shall in its reasonable discretion decide the means, route and procedure to be followed by it in performing any of the acts or services it has agreed to perform.
- 10.1.3. In the event that there is a choice of tariff rates or premiums offered to 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.
- 10.1.4. The Company is not obligated to make any declaration for the purpose of any statute, convention, contract as to the nature or value of any Goods or as to any special interest in delivery, in particular the Company will 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.
- 10.1.5. The Company is not obligated to arrange for any particular Goods to be carried stored or handled separately from other Goods.

11. SPECIAL AUTHORISATION

- 11.1. The Customer acknowledges that prior authorisation must be obtained from the relevant authorities in certain countries prior to the shipment of Goods.
- 11.2. If the Customer fails to provide the Company with any such documentation or authority timeously, alternatively, if the relevant customs authority refuses to grant authorisation in respect of the Goods, the Company shall not be obliged to load such Goods onto the vessel. Furthermore, the Customer shall be liable for all costs, damages (direct and indirect), expenses, penalties, forfeiture, demurrage and disbursements resulting therefrom.

12. GENERAL DISCRETION

- 12.1. Notwithstanding anything to the contrary contained in these Terms and Conditions, if at any time the Company should in its discretion consider it necessary to depart from any of the Customer's instructions, the Company shall be entitled to do so and shall not incur any liability as a result.



- 12.2. 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 impracticable for the Company to comply with the Customer's instructions, the Company shall take steps to inform the Customer of such events or circumstances and to seek further written instructions.
- 12.3. If such further written instructions are not timeously received by the Company, 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, and the Customer shall indemnify the Company and hold it harmless for any claims arising therefrom.

13. EXAMINATION, COUNTING AND INSPECTION OF GOODS

- 13.1. The Company is not obliged to examine, count or inspect any Goods in respect of which it renders any service to the Customer.
- 13.2. 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 Goods which are landed or discharged from any vessel, aircraft, vehicle, or other transport unit, the Company shall not be liable for a 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 an examination is necessary.
- 13.3. In the event that the Company undertakes to examine, count or inspect any Goods in respect received from the Customer, it shall incur no liability whatsoever with regard to any error or inaccuracy in such counting, whether the error or inaccuracy is the result of negligence on the part of the Company or otherwise, and notwithstanding that the Company may have had the means and expertise to identify any discrepancies.
- 13.4. The Company shall be entitled to levy a charge on the Customer for the examination, counting or inspection of Goods.
- 13.5. All Goods shall be deemed to have been received in good order and condition unless the Customer, within 3 days of receipt of the Goods in question, notifies the Company in writing to the contrary.
- 13.6. In the event that the Customer, upon delivery of the Goods, alleges that the shipping container seals have been tampered with, the Customer shall notify the Company immediately upon delivery, and the Company shall be entitled to nominate a representative to be present at the opening of the shipping container. In such an event, the Customer shall in no circumstances open the shipping containers without a representative of the Company in attendance.
- 13.7. The Customer shall not have any claim against the Company in the event that it fails to comply with clauses 13.5 and 13.6.

14. VALUABLE GOODS, LIVESTOCK AND BLOOD STOCK

- 14.1. The Company shall not accept, deal with or handle bullion and precious metal objects, precious stones, bank notes, coins, cheques, credit notes, bonds, negotiable documents and securities, jewellery, works of art or antiques (except where part of a household and personal effects movement), blood stock and livestock, plants or human remains, unless prior express written agreement has been given on its behalf by a duly authorised representative.
- 14.2. In the event that such Goods are dealt with without such express prior written agreement, the Company shall incur no liability whatsoever for these Goods, even if any loss or damage is caused by its gross negligence. If, for any reason, the Company is nevertheless found liable, the usual limitations of liability set out in these Terms and Conditions shall apply.



15. HAZARDOUS OR DANGEROUS GOODS

- 15.1. The Company shall not be obliged to accept into its possession or control of any of its servants, agents or employees any Goods, including radio-active materials, which may be or become dangerous, inflammable or noxious, or which by their nature may injure, damage, taint or contaminate, or in any way whatsoever adversely affect any person, Goods or property, including Goods likely to harbour or attract vermin or other pests and all such Goods likely to fall within in the definition of "hazardous or dangerous goods" in terms of the South African Transport Services Regulations (published in terms of section 73 of the South African Transport Services Act, no. 65 of 1981) International Maritime Dangerous Goods Code, as amended from time to time, unless the Company's specific written consent is first obtained by the Customer.
- 15.2. The Customer warrants that such Goods, or the case, container, crate, box, drum canister, tank, flat, pallet, package, other specialist packaging or other holder or covering of such Goods shall 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 shall be prominently and clearly marked on the outside cover of such Goods.
- 15.3. If any such Goods are delivered to the Company, whether or not in breach of the provisions of clause 15.1, 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 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.
- 15.4. The Customer indemnifies the Company against all loss, liability or damage suffered by the Company as a result of the Customer's failure to comply with clauses 15.1 to 15.3.

16. PERISHABLE GOODS

- 16.1. Goods including but not limited to perishable goods 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:
- 16.1.1. such Goods have begun to deteriorate or are likely to deteriorate, or are insufficiently addressed or marked;
- 16.1.2. the Customer cannot be identified;
- 16.1.3. the Goods have not been collected or accepted by the Customer or any other person after the expiration of 7 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.
- 16.2. Should any sum owing by the Customer to the Company become due and payable and remain unpaid, the Company shall be entitled, and the Customer hereby authorises the Company without further notice to the Customer and without first obtaining an order of court, to sell all or any of the Goods by public auction by private treaty. The net proceeds of any such sale, after deducting 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, but without prejudice to the Company's right to recover from the Customer any balance which may remain owing to the Company.



17. ABANDONED GOODS

- 17.1. If delivery of the Goods is not accepted by the Customer, consignee or party nominated by the Customer at the time and place agreed by the Company and the Customer, consignee or party nominated by the Customer, then the Company may accept that the Customer has abandoned the Goods.
- 17.2. The Company may store or destroy any abandoned Goods, or any part thereof, at the Customer's sole risk and expense. The Company shall not be liable for any damages (direct or indirect) which the Customer may suffer as a result of such storage.
- 17.3. The Customer hereby consents to the Company selling, or abandoning to Customs (and in that event, recovering from the Customer all related costs), or destroying, all or any of, the abandoned Goods and recovering all sums which the Customer owes to the Company for the services in accordance with the provisions of clause 17.2 if, *inter alia*:
- 17.3.1. the Customer fails to timeously pay any sums which it owes to the Company for the services provided in respect of the abandoned Goods; or
- 17.3.2. the Customer fails to collect or accept delivery of the abandoned Goods at the place designated by the Company within 14 days from, and including, the date when the Goods are discharged by the Carrier.

18. STOP, DETENTION OR SEIZURE

In the event that any Goods are stopped, detained or seized by a customs authority, the South African Police Services or any other government authority at a port of discharge or a port of loading, then any instruction by the Customer or any authority to move the Goods to a customs warehouse or any other premises, shall be carried out in its capacity as agent only, for and on behalf of the Customer, and at the sole risk and expense of the Customer.

19. RELEASE OF GOODS

- 19.1. The Customer shall ensure that it timeously furnishes the Company with the necessary clearance documents to customs clear the Goods, pay all sums due in respect of the Goods and collect the relevant Goods from the port of discharge before 10h30 on the last day of free storage granted by the port of discharge, failing which the Company may move the Goods into a customs licensed depot at the sole risk and expense of the Customer.
- 19.2. In the event that the Customer does not collect the relevant Goods with 14 days from, and including, the date when they are discharged by the Carrier:
- 19.2.1. the Company may continue to store the Goods at the Customer's sole risk and expense; or
- 19.2.2. the Company or State authority may move the Customer's Goods to a State's warehouse and store them there; or
- 19.2.3. the Company may consider the Customer's Goods to be Abandoned Goods in accordance with clause 17 of these Terms and Conditions.
- 19.3. The Company is only obliged to release the Goods in question when it receives, in respect of those Goods, the relevant bill of lading, the customs processed bill of entry, proof of payment of all cargo dues, any other documentation required by law or which the Company notifies the Customer that it requires.



- 19.4. In addition, the Company is not obliged to release the Goods to the Customer until it receives as freely available funds, free of any set-off, withholding and bank charges, all sums owed to the Company in respect of any services rendered by the Company.

20. WAREHOUSING

- 20.1. The Company may, at its sole and absolute discretion:
- 20.1.1. attend to the warehousing or holding of the Goods at any place as determined by the Company in its absolute discretion, pending forwarding and/or delivery by or on behalf of the Company, and at the Customer's expense; or
- 20.1.2. store the Goods at the Company's warehouse, bonded or otherwise, or a warehouseman with whom the Company has contracted, at the special instance and request of the Customer, and at the Customer's expense.
- 20.2. The Company shall not be liable for physical loss or damage to the Goods whilst in the care, custody and control of the Company or the warehouseman with whom the Company has contracted, nor for any consequential loss arising therefrom, nor for delay, incorrect or misdelivery.
- 20.3. The Company shall not be liable for any penalties, duties, VAT, taxes or sums raised in lieu of forfeiture by any customs and excise authority in respect of Goods stored at a bonded warehouse by the Company for and on behalf of the Customer and the Customer hereby indemnifies and holds the Company harmless for all such sums.

21. CANCELLATIONS

- 21.1. If the Customer cancels or changes the services which it has requested the Company to provide, it will be liable for all charges and expenses incurred by the Company up to and including the date on which the Company receives written notice from the Customer that it no longer requires the services, or that the services the Customer requires have changed, including any penalties or other costs which may be imposed by any third party or otherwise as a result of the cancellation of any services.
- 21.2. Notwithstanding the aforementioned, if the Customer does not notify the Company of the cancellation or change of the services timeously, it will be liable to make payment to the Company of the full cost of the services that would have been provided but for the cancellation or change.
- 21.3. If a third party terminates or cancels any contract for the supply of the services for any reason, the Company may also terminate or cancel the services which it has undertaken to supply to the Customer and the Customer will not have any claim against the Company arising from, or in connection with, that cancellation.

22. DISBURSEMENTS, DUTIES, TAXES, IMPOSTS AND LEVIES

- 22.1. The Customer is liable for all duties, taxes, imposts, charges, levies, deposits, fines, penalties, outlays of whatsoever nature and other disbursements levied by or payable to any third party, the authorities, intermediaries, agents or any other parties at the port or place in respect of the services and Goods.
- 22.2. The Customer shall be liable for any payments, fines, penalties, expenses, loss or damage (direct or indirect) incurred or sustained by the Company and whether these are charged or levied at the time of entry and/or any subsequent time.
- 22.3. The Company shall not, under any circumstances, be liable for any increase in the rate of duty, railage, cartage, freight or any other tariff whatsoever, before or after the performance by the Company of any act involving a less favourable rate or tariff, or because a more favourable tariff may have been applicable in the event that a particular service had been rendered at another time.



- 22.4. The Customer must, on request by the Company, pay to the Company in advance, the amount of any disbursements which the Company estimates that it will be required to pay to any Supplier or third party on the Customer's behalf in relation to the services as set-out in its proforma/estimated disbursement account.
- 22.5. The Company is not obliged to pay any disbursements on the Customer's behalf unless it has received sufficient funds from the Customer for the payment of such disbursements.
- 22.6. The Company may refuse to commence or may discontinue providing the services to the Customer if the Customer fails to make payment of the estimated disbursements on request by the Company, and will not be liable for any loss or damage which the Customer may suffer as a result thereof.
- 22.7. The Customer indemnifies the Company against any liability in respect of any disbursements which the Company incurs in relation to the services provided to the Customer.
- 22.8. If for any reason, the Company pays any disbursement on the Customer's behalf in an incorrect amount, or such disbursement is levied in an incorrect amount, the Company will not be liable to the Customer for the amount of the overpayment.
- 22.9. The Company is entitled to the benefit of any discounts, commissions and other allowances and is not required to disclose or account to the Customer for such amounts.

23. INSURANCE

- 23.1. The Company is not obliged to obtain insurance in respect of the Goods and is not obliged to procure any insurance cover for and on behalf of the Customer, unless the Company is timeously and in writing instructed to so by the Customer.
- 23.2. In the event that the Customer timeously and in writing instructs the Company to procure insurance in respect of the Goods for and on its behalf, the Company shall endeavour to procure any such insurance, and the Customer accepts that in doing so the Company shall be obliged to comply with the Financial Advisory and Intermediary Services Act, no. 37 of 2002 and may have to engage the services of a licensed financial services provider as defined in that Act. In the event that the Company has to engage the services of a financial services provider, the Customer authorises the Company to instruct such a person on its behalf.
- 23.3. Any such insurance so effected shall 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 so excluded.
- 23.4. 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.
- 23.5. In the event that any insurer disputes its liability in terms of any insurance policy in respect of any Goods, the Customer concerned shall have recourse against such insurer only and not against the Company.

24. DEFERMENT

- 24.1. The Company is a registered and licensed clearing and forwarding agent with a deferment facility with the South African Revenue Service (SARS) which allows it to defer payment of Customs duties and VAT for a period of up to 30 days.
- 24.2. The Customer may request, in writing, to utilize the Company's deferment facility with SARS.



- 24.3. The Company will notify the Customer in writing of its decision whether or not to grant the deferment option to the Customer, which decision will be made in the sole discretion of the Company.
- 24.4. The Company will notify the Customer of the charges to be levied to it by the Company for the use of its deferment facility. The Customer is obliged to make payment of this charge to the Company in advance (and before it is entitled to make use of the deferment facility) as set-out in the Company's proforma/estimated deferment account.
- 24.5. The Company reserves the right at any time and in its sole discretion to cancel, withdraw, vary or amend any deferment granted to the Customer, without prior notice. In the event that the Company withdraws or cancels such deferment, all amounts owing by the Customer to the Company will immediately become due, owing and payable.

25. PAYMENTS TO THE COMPANY

- 25.1. The Customer must pay all amounts due to the Company, plus Value Added Tax (if applicable):
 - 25.1.1. immediately on presentation of the Company's invoice or if the Company has agreed to provide the services to the Customer on credit, on such terms for payment;
 - 25.1.2. in the currency specified by the Company;
 - 25.1.3. without deduction or set-off and payments will not be withheld or deferred on account of any claim or counterclaim which the Customer may allege against the Company;
 - 25.1.4. free of all bank charges;
 - 25.1.5. by electronic funds transfer into the bank account nominated by the Company on the invoice.
- 25.2. Should any amount not be paid by the Customer on the due date then the full amount in respect of any amounts owing to the Company will become immediately due, owing and payable.
- 25.3. Interest calculated daily and compounded monthly at the maximum rate permitted by law will be levied on all amounts which are not paid by the due date for payment.
- 25.4. The Company may in its sole discretion appropriate any payments made by the Customer to any principal debt owed by the Customer to the Company, irrespective of when it arose, or to interest only, or to legal or other costs, or to any such combination of principal, interest and costs as it may in its sole discretion determine, irrespective of any purported allocation or appropriation being made by the Customer at the time of payment or at any other time.
- 25.5. The Company may at any time summarily stop providing the services to the Customer and/or withdraw the Customer's credit facilities if it fails to make payment for the services on the due date for payment thereof, without prior notice to the Customer.
- 25.6. The Company may deduct from any amounts which the Company owes the Customer, any amounts which the Customer owes to the Company, whether or not they are liquidated.
- 25.7. A certificate signed by any director or manager of the Company stating the indebtedness of the Customer to the Company or certifying that the services were provided and/or monies disbursed, will be *prima facie* evidence of the Customer's indebtedness to the Company, the provision of the services or the disbursement of such monies.
- 25.8. If any Customer acted as an agent on behalf of another party, and that other party fails to pay any sums due to the Company, the Company may recover such sums directly from the Customer.



26. CHARGES INCORRECTLY PAID

- 26.1. 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 charge has been paid or levied in an incorrect sum, then the Company's liability and responsibility to the Customer, if any, shall cease if the Customer fails:
- 26.1.1. within 6 months of making such a payment, to advise the Company that an incorrect sum has been paid or charged; and
- 26.1.2. perform all acts and provide all information necessary to enable the Company to effect recovery of any sum incorrectly paid.
- 26.2. The fact that the Customer may not be aware that any incorrect payment has been made shall not render clause 26.1.1 inapplicable. Should any act or omission by the Customer, whether or not such act or omission was due to the Customer's ignorance of the incorrectly paid charge, and regardless of whether or not such ignorance was reasonable or justified in the circumstances, prejudice any right of recovery on the part of the Company, the Customer shall be deemed not to have complied with the provisions of this clause 26.

27. DEAD FREIGHT

- 27.1. The Customer shall be liable for the full cost of any services rendered and/or disbursements, expenses, damages, fines or penalties incurred by the Company in respect of:
- 27.1.1. any dead freight as a result of a booking cancelled by the Customer; or
- 27.1.2. Goods which are loaded on board a vessel, irrespective of whether the vessel sails or if the Goods are, or must be, transhipped.

28. LIEN AND PLEDGE

- 28.1. All Goods and documents relating to Goods, including but not limited to bills of lading, waybills (whether seafreight or airfreight) and import permits as well as all refunds, repayments, claims and other recoveries, shall be subject to a special and general lien and pledge either for sums due in respect of such Goods or for other sums due to the Company from the Customer, sender, Owner, consignee, importer or the holder of the bill of lading or their agents, if any.
- 28.2. If any sums due to the Company are not paid within 7 days after notice has been given to the person from whom the sums are due that such Goods or documents are being detained, they may be sold by auction or by private treaty, without further notice to the Customer, Owner or consignee, 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 and all costs incurred in arranging and achieving the sale of the Goods (on a full indemnity basis).

29. QUOTES

- 29.1. Any quote given by the Company to the Customer shall not exceed the time period specified on that quote, unless otherwise agreed in writing by the Company and the Customer.
- 29.2. Any quote given by the Company to the Customer shall only be valid if it is in writing.
- 29.3. Any additional services which the Company is obliged or entitled to provide, which have not been quoted for, shall be charged at the usual rate of the Company in respect of such services, or where there is no usual rate, at a reasonable charge.



- 29.4. The Company shall be entitled by notice to the Customer to cancel or resile from any quote or agreement in the event that it becomes either 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 may incur as a result of the Company cancelling or resiling from the quote or agreement.
- 29.5. Without in any way limiting the provisions of clause 29.4, all quotes and agreements are subject to revision without notice having regard to changes in currency exchange rates and upward movements in sums 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 quote.
- 29.6. Any such revision of rates as aforesaid shall be commensurate with any change in the currency exchange rate or the increase in such sums payable. Any such increase shall, failing written agreement between the parties, be determined by the auditors of 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.
- 29.7. The Company shall be entitled to determine and fix the freight rate in accordance with the prevailing rate of exchange applicable to the relevant currency, at any time it deems appropriate.

30. DISCOUNTS

The Company shall be entitled to the benefits of any discounts obtained from any authority, public or private entity, and to retain and be paid all brokerages, commissions, allowances, rebates and other remunerations or fees of whatsoever nature and kind and shall not be obliged to disclose or account to the Customer for any such sums received or receivable by it.

31. LIABILITY

- 31.1. All services rendered, including the transport of any persons by the Company, the handling, packing, loading, unloading, warehousing and transporting of Goods by or on behalf of or at the request of the Company are effected at the sole risk of the Customer, and the Customer indemnifies the Company accordingly, notwithstanding that any resultant loss or damage was caused by breach of contract or negligence of the Company, its servants or agents or any other party for whose conduct the Company would otherwise in law be responsible.
- 31.2. The Company shall not be liable for any claim relating to a contractually agreed date or delivery time.
- 31.3. The Company shall not in any circumstances be liable for indirect or consequential loss or damage caused by delay or any other cause whatsoever and howsoever caused, unless the Company is proved to have been grossly negligent in its actions.
- 31.4. The Company shall not under any circumstances be liable for a claim for any loss, damage or liability arising out of or caused directly or indirectly by or contributed by one or more of the following:
- 31.4.1. a negligent act or omission of the Customer or any person acting on behalf of the Customer other than the Company, its servants, agents or sub-contractors;
 - 31.4.2. compliance with the instructions of any person entitled to give instructions to the Company;
 - 31.4.3. the lack or insufficiency of or defective condition of packing in the case of Goods which, by their nature, are liable to wastage or to be damaged when not packed or when not properly packed;
 - 31.4.4. inherent vice of the Goods;
 - 31.4.5. fire;



- 31.4.6. a nuclear incident;
- 31.4.7. any cause or event which the Company could not avoid or prevent by the exercise of reasonable diligence;
- 31.4.8. war (whether war be declared or not), hostilities, military or usurped power, acts of a foreign enemy or power, civil war, revolution, rebellion, insurrection, civil strife, riots, civil commotion, terrorist act (or act by any person acting from political motives);
- 31.4.9. piracy, capture, seizure, arrest, restraint or detainment or consequences arising therefrom;
- 31.4.10. confiscation, expropriation, nationalisation, requisition, destruction or damage caused by the order of any Government, public or local authority;
- 31.4.11. mines, torpedoes, bombs, weapons of explosion or of war whether derelict or not;
- 31.4.12. strikes, lockouts, labour disturbances, stoppages, riots or civil commotions;
- 31.4.13. any loss of life, limb or injury suffered by any persons transported by the Company.

32. INDEMNITIES

- 32.1. The Customer 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 Customer's express or implied instructions or the implementation 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 services rendered by the Company and the Goods and in respect of any liability whatsoever.
- 32.2. In particular, and without limiting the generality of clause 32.1, the Customer shall defend, indemnify and hold harmless the Company against any loss, liability, costs or expense arising from:
 - 32.2.1. any breach or warranty of the Customer, or arising from the negligence of the Customer or owner of the Goods;
 - 32.2.2. the nature of the Goods or the defective condition of containers (including overweight containers) or vehicles not provided by the Company;
 - 32.2.3. any storage or handling of the Goods by the Customer or any third party on its behalf;
 - 32.2.4. the Company's compliance with the Customer's instructions or requirements of any relevant authority.
 - 32.2.5. any claims arising under General Average against the Company and undertakes to provide such security immediately upon receipt of a request by the Company to do so.
- 32.3. Any advice or information given by the Company to the Customer is for the use of the Customer only, and the Customer shall indemnify, hold harmless and defend the Company against any liability, damage, loss, delay, costs or expenses arising out of any other person acting upon such advice or information. The Customer shall not pass on any advice or information given by the Company, without the Company's written consent.

33. LIMITATION OF LIABILITY AND TIME BAR

- 33.1. The Company and its directors, servants, representatives, personnel and/or employees will not be liable for any claim or loss of any nature including for direct, indirect, special or consequential damages in respect of the Goods or services rendered by the Company.



- 33.2. Notwithstanding the exclusion of liability in accordance with the provisions of these limitations of liability, if the Company is found to be liable to the Customer for any reason, its liability shall under no circumstances exceed whichever is the least of the following respective sums:
- 33.2.1. The value of the Goods in accordance with the relevant documentation, or as declared by the Customer for customs purposes or for any purpose connected with their transportation, including the value of the Goods declared for insurance purposes;
- 33.2.2. Double the sum of fees raised by the Company for its services, but strictly excluding any sum payable to sub-contractors, agents and third parties;
- 33.2.3. ZARR100,000.00 for any one occurrence.
- 33.3. The Company shall be discharged from all liability whatsoever in respect of any claim of whatsoever nature and howsoever arising unless summons or other proper process originating action is served on the Company within nine months of the date on which the incident giving rise to such cause of action occurred. The Company may in its discretion and on written request by the Customer extend such period in writing which extension will only be valid if granted in writing and signed by a duly authorized director of the Company.

34. WARRANTIES

- 34.1. The Customer warrants that:
- 34.1.1. it is either the Owner of the Goods or the authorised agent of the Owner of any Goods in respect of which the Customer instructs the Company;
- 34.1.2. it is authorised to agree to these Terms and Conditions on behalf of any person or company that it represents;
- 34.1.3. in the event that the Customer acts as the authorised agent of the Owner of the Goods, that the Owner is bound by these Terms and Conditions;
- 34.1.4. its annual turnover exceeds the monetary thresholds contained in the National Credit Act, no. 34 of 2005 and the Consumer Protection Act, no. 68 of 2008 and accepts that the provisions of these Acts do not apply to the services;
- 34.1.5. if the Customer is a close corporation or limited liability company, then its members and/or directors personally guarantee, jointly and severally, the due performance of all the obligations of the Customer to the Company and the representative of the Customer warrants that he is duly authorised to bind such members and/or directors and act as the Customer's agent in all his dealings with the Company;
- 34.1.6. all information provided is accurate and comprehensive and no necessary or pertinent information has been withheld, and the Customer indemnifies the Company against all claims, penalties, fines, damages (direct and indirect) and expenses arising as a result of any breach of this undertaking;
- 34.1.7. the Goods concerned are suitable for the type and mode of carriage contemplated in or on the transport device concerned, and that the transport device is in a proper condition to carry the Goods safely and complies with the requirements of all relevant transport authorities and Carriers;
- 34.1.8. the Goods comply with all relevant laws and regulations;



- 34.1.9. the Goods are accompanied by all necessary completed documents, save to the extent that the Company has undertaken to prepare or procure this, failing which the Company shall be entitled to withhold delivery until the document has been provided;
- 34.1.10. the Goods are appropriately stowed, marked, and labelled, and properly packed to withstand handling and storage;
- 34.1.11. it has the requisite International Maritime Dangerous Goods Code (IMDG) certification to handle hazardous Goods, where applicable;
- 34.1.12. no claims shall be made against any director, member, 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 any services which are the subject of these Terms and Conditions or any act or omission arising during the course and scope of their employment, and it hereby waives all and any such claims.
- 34.2. In the event that the Customer's turnover does not exceed the thresholds, the onus is on the Customer to bring this to the immediate attention of the Company.

35. DISPUTE RESOLUTION

- 35.1. Should any dispute arise between the parties which they cannot resolve within 5 days, the Company may, in its sole discretion, refer the dispute for determination by an expert in terms of this clause 35.
- 35.2. If the Company elects to refer the dispute to an expert for determination in terms of clause 35.1, the parties must then jointly nominate, within a further 5 days, a suitably qualified expert with appropriate skills and knowledge in relation to the matter in dispute, to make a decision, who will determine the matter as an expert and not as an arbitrator.
- 35.3. If the parties are unable to agree on the identity of the expert, then within 5 days, the Executive Officer of the Legal Practice Council (or its successor in title) will appoint a suitably qualified expert with appropriate skills and knowledge in relation to the matter in dispute, who must be a Senior Advocate.
- 35.4. The expert is authorised, within his sole discretion, to appoint an assessor who is an expert in the field in dispute to provide the expert with advice or guidance that will assist the expert in making his decision.
- 35.5. Within 5 days of the appointment of the expert, the parties will be entitled to make written representations to the expert and submit documents in support of the representations regarding the dispute.
- 35.6. The expert will be entitled, but not required, to call for any specific written submissions that he in his sole discretion deems necessary. The expert will not be entitled to hear oral evidence from the parties or from anyone else.
- 35.7. The parties will be jointly liable for the expert's costs, and those of any assessor appointed by the expert, up until the expert has made his decision, however the expert will determine ultimate liability for his and the assessor's costs, which determination will form part of his decision.
- 35.8. The expert will further determine, which determination will also form part of his decision, if a party is liable for the other party's legal costs incurred in connection with preparing the submissions to the expert (if applicable), as well as the total sum of these costs.
- 35.9. The expert will thereafter make his decision within 10 days of the dispute being referred to the expert, on the basis of such written representations and documents, which decision will be final and binding on the parties and the parties will not have a right of appeal.



36. FORCE MAJEURE

In the event that the Company cannot provide the services or continue to provide the services due to any circumstances beyond its control, the Company shall nevertheless be entitled to be reimbursed by the Customer for charges and expenses incurred, specifically the charges and expenses incurred by it in taking all such steps as may be necessary to protect the interests of the Customer.

37. NON-VARIATION

37.1. No variation of these Terms and Conditions, including this clause, shall be binding on the Company unless it is in writing and signed by a duly authorised director and prescribed officer of the Company, which director and prescribed officer must have the actual authority to vary these Terms and Conditions.

37.2. Any purported variation or alteration of these Terms and Conditions otherwise than described in clause 37.1 shall be of no force and effect.

38. NON-WAIVER

No extension of time or waiver or relaxation of any of these Terms and Conditions shall operate as an estoppel against the Company or the Customer in respect of its rights under these Terms and Conditions, and shall not preclude the Company or the Customer from thereafter exercising its rights strictly in accordance with these Terms and Conditions.

39. LAW AND JURISDICTION

39.1. These Terms and Conditions will be subject to and construed in accordance with the law of the Republic of South Africa.

39.2. The Customer consents to the non-exclusive jurisdiction of the High Court of South Africa, KwaZulu-Natal Local Division, Durban, exercising its admiralty jurisdiction.

40. NOTICES AND ADDRESSES FOR SERVICE

40.1. The giving of all legal notices, pleadings or documents relating to these Terms and Conditions must be delivered by hand, sent by registered post or by electronic mail.

40.2. The Customer chooses its street address and electronic mail address set-out in the Company's completed Credit Application Form as its *domicilium citandi et executandi*. If the Customer has not completed such a form, the Customer chooses its head office as its *domicilium citandi et executandi*.

40.3. The Company chooses its physical address as set-out in clause 1.1.2 and the electronic mail address of darryl@mentorshipping.com as its *domicilium citandi et executandi*.

40.4. Notice is deemed to have been duly given on the date of delivery, if delivered by hand, 14 days after it has been sent by registered post or on the date of dispatch, if sent by electronic mail.

41. LEGAL COSTS

If the Company institutes legal proceedings against the Customer to recover any amounts due by it to the Company or for breach of these Terms and Conditions or enforcement of any of the Customer's obligations, the Customer will be liable for all legal charges incurred by the Company on an attorney and own client scale including collection charges and tracing agent's fees incurred by the Company in recovering all such amounts from the Customer.