STANDARD TRADING TERMS AND CONDITIONS

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 unincorporated) and vice versa;

1.3. the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning namely –

1.3.1. "the company" means the company referred to above, or if it exercises its right under clause 2, 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 service;

1.3.3. "goods" means any goods handled, transported, warehoused 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 customer, 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 such goods;

1.3.4. "the group" means the company and any company which is a holding company or subsidiary of the company from time to time which may render a service to the customer in terms of clause 2;

1.3.5. “the law” includes the common law, legislative enactments, regulations, international conventions and the directions or directives of any relevant body or authority;

1.3.6. "the owner" means the owner of the 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 or any business undertaken or provide advice, information or services, whether gratuitous or not, either itself or it may procure that any member of the group undertakes such business or provides such advice, information or services as principal upon and subject to 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, 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/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 the law, 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 repugnant to or in conflict with the law, then and in such event the conflicting term embodied herein shall be deemed to be amended and/or altered to conform therewith, and such amendment and/or alteration shall not in any way affect the remaining provisions of these trading terms and conditions.

6. FIATA COMBINED 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 a 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 the FBL by the company shall entitle it to raise an additional charge determined by the company, to cover its additional obligations arising under the FBL.

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

In the absence of specific instructions given timeously in writing by the customer to the company –
8.1 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 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 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

Where the company agrees to do so, it shall endeavour to effect 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 so 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. The provisions of this clause 10 shall inure for the benefit of any financial services provider represented by the company, or to whom the customer is referred to by the company, on the basis that any reference to “the company” shall also be construed as a reference to such financial services provider.

11. COMPANY'S OBLIGATIONS IN THE ABSENCE OF INSTRUCTIONS

Unless specific written instructions are timeously given to and accepted by the company, 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 hereunder 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 respect thereto, reasonable knowledge of all matters directly or indirectly relating thereto or arising therefrom including, without limitation, terms of sale and purchase and all matter 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 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 aforegoing, 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 or 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 aforegoing, 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, and 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 aforegoing whether negligently or otherwise, without derogating from the generality of the aforegoing, any assessment or reassessment;

12.2.4 it will comply with such laws as may be applicable to it;

12.2.5 it is validated and accredited by the applicable civil aviation authority as a known consignor, unless it has informed the company otherwise in writing;

12.2.6 all goods will be properly, safely, 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 and dangers associated with the goods involved and are capable of withstanding the normal hazards inherent in the implementation of such contract and will not cause the death of, or injury to, or illness of, any person, nor cause any loss of, or damage to, property;

12.2.7 save where the company has been given and has accepted specific instructions to prepare and pack the goods –

12.2.7.1 that the goods have been prepared and packed in secure premises; and

12.2.7.2 that the goods have been handled by staff who have been subjected to background checks and have received job specific cargo security training as prescribed by law; and

12.2.7.3 that the goods have been protected from unlawful interference during preparation, storage and transportation; and

12.2.7.4 that the goods have been subjected to such security controls as may be prescribed by law; and

12.2.7.5 that the goods have been sealed with seals of acceptable quality and of such type as may be prescribed by law.

12.2.8 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 –

12.2.8.1 that the transport unit has been properly and competently loaded; and

12.2.8.2 that the goods involved are suitable for carriage in or on the transport unit; and

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

12.2.8.4 that it will provide the company in writing with the verified gross mass of the transport unit, prior to it being loaded on board a ship.

13. RECOVERY OF DEBTS DUE TO THE COMPANY

13.1 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 an agent for a disclosed or undisclosed principal, as the company in its absolute discretion deems fit.

13.2 The customer agrees that in the event of the Company or any member of the Group taking steps or institute legal proceedings against the Customer to recover amounts due in terms of any agreement or for breach of these trading terms and conditions or for enforcement of any other obligations or for the recovery of damages owed by the Customer to the Company or any member of the Group in terms of such agreement, the Customer shall be liable for all cost incurred by the Company or member of the Group, including legal costs on the scale as between attorney and own clients, as well as collections commission and tracing agent fees.

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, packing 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 or as a 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 break-bulk form in or on transport units as defined in clause 12.2.8 or with or without other goods of whatsoever nature.

15. SUBCONTRACTING

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 part 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 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 SUBCONTRACTORS

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 terms and conditions, stipulated by the carriers, warehousemen, government departments, and all other parties (whether acting as agents or subcontractors 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 ARRANGEMENTS

Except under special arrangements previously made in writing the company will not accept or deal with bullion, currency, precious stones, jewellery, valuables, antiques, pictures, human remains, livestock, 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.

A claim, if any, against the company in respect of the goods referred to in this clause 17 shall be governed by the provisions of clauses 40 and 41.

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 radio-active materials, which may be or become perishable, dangerous, inflammable or noxious, or which by their nature may injure, damage, taint or contaminate, or in any way whatsoever adversely affect any person, goods or property, including goods likely to harbour or attract vermin or other pests. The customer warrants that such goods, or the case, crate, box, drum canister, tank, flat, pallet, package or other holder or covering of such goods will comply with any applicable laws, regulations or requirement of any authority or carrier or of the company 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 or otherwise dealt with at the risk and expense of the customer and without the company being liable for any compensation to the customer or any other party, and without prejudice to the company's rights to recover its charges and/or fees including the costs of such destruction, disposal, abandonment or rendering harmless or other dealing with the goods. The customer indemnifies the company against all loss, liability or damage caused to the company as a result of the tender of goods to the company and/or out of the aforegoing.

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 for the customer such notice period shall not be necessary, and payment or tender of the net proceeds, if any, of the sale thereof after deduction of those charges and expenses incurred by the company in respect thereof shall be equivalent to delivery of such goods.

19.2 Should any amount owing by the customer to the company in respect of any referred to in clause 19.1 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

14 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 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.

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 any 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 effect payment and in the matter of such collection will not be liable for any negotiable instrument which is not met on 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 discharge agent that such goods have been landed and that such a 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 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.

24.3 The company shall have the right, but shall not be obliged, to examine or cause to be examined any goods, and to enquire into the correctness or sufficiency of information or documentation submitted in respect of such goods and the customer shall co-operate promptly and fully with any such examination or enquiry.

25. DUTIES, TAXES, IMPOSTS, 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 out-lays of whatsoever nature levied by or payable to the authorities, intermediaries or other parties at any port or place 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 or paid by the company in connection therewith or arising thereout.

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 effected 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 or at the instance of the company and whether or not such act or omission was negligent, any duty, tax, levy, railage, wharfage, freight, cartage or any other impost or charge has been paid or levied in an incorrect amount, then any responsibility or liability to the customer which the company may otherwise have will cease and fall away if the customer does not –
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 a reasonable time is 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, 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 27.1 Unless otherwise specifically agreed by the Company in writing the Customer shall pay in cash immediately upon presentation of account all sums due to the Company without deduction or set-off and payments shall not be withheld or deferred on account of any claim or counterclaim which the Customer may allege.

27.2 Payments of all amounts due to the Company shall be made:

27.2.1 Free of exchange and any other charges at such address as the Company may require

27.2.2 In such currency as the Company may direct

27.2.3 Without demand and free of any deduction or set off on the due date of the payment

27.3 Any amount not paid on due date for payment shall bear interest at the maximum permissible rate allowed by law on accounts not settled within the agreed terms of credit and calculated on daily balance and compounded monthly in arrears.

27.4 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 debt.

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

27.6 In the event of the Company having granted any credit terms or facilities to the Customer whether in writing, verbally, impliedly or by established conduct and practice, which provide the Customer a deferred period of time to effect payment of any amount due to the Company, and in the event of the Customer not being a consumer as defined in the National Credit Act (34 of 2005) ("The Credit Act"), being in default of payment of any one or more amount due and payable, or being in default of any other term and condition on which such credit facility was granted, then notwithstanding any other term to the contrary where-so-ever contained, the Company shall be entitled to forthwith revoke such credit facilities and declare all amounts immediately due and payable and proceed for recovery of all amounts which would be due and payable to the Company, where it not for the credit terms or facilities granted to the customer.

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 OR ELECTRONIC ITEMS

Notwithstanding any prior dealings between the company and the customer all documents, cash, cheques, bank drafts, transfers, payments or other remittances, sent to the company through the post or made electronically shall be deemed not to have been received by the company unless and until they are actually received by the company.

30. QUOTATIONS

30.1 The company shall be entitled at any time by notice to the customer to cancel or resile 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 resiling 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 revision of rates as aforesaid will be commensurate with the change in the currency exchange rate or the increase in such amounts payable. Any such increase shall, failing agreement between the parties, be determined by the then auditors of the company or any other auditors nominated by the company, who in such determination shall act as experts and not as arbitrators and whose decision shall be final and binding on the parties.

30.3 Where a fee is based on the weight of the goods, the fee may be calculated, at the sole discretion of the company, according to the higher of actual or volumetric weight. The company shall have the right to re-weigh and to re-measure any goods and to correct any under-declaration of weight.

31. NO CLAIMS AGAINST COMPANY DIRECTORS AND EMPLOYEES

The customer undertakes that no claims 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 waive all and any such claims.

32. CUSTOMER'S INSTRUCTIONS

The customer's 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 mater 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. Notwithstanding any law to the contrary, the company shall only be deemed to have received electronic data or messages to the extent that they been retrieved, processed and read by the addressee of the company.

33. VARIATION OF THESE TRADING TERMS AND CONDITIONS

No variation 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 and effect, whether such purported variation or alteration is written or oral, or takes place before or after receipt of these standard 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 shall be brought in the division of the Magistrate Court or High Court where the company's head office is situated at the commencement of the proceedings, and the customer irrevocably submits to the non-exclusive jurisdiction of such court.

37. BENEFIT OF DISCOUNTS

The company is entitled to the benefits of any discounts or preferential tariffs 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 or benefits received or receivable by it.

38. LIEN

38.1 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 or pledge for monies due in respect of such goods or 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.

38.2 In delivering the goods into the custody of the Company or its agents for any purpose whatsoever, such delivery shall for the purposes hereof be deemed to be delivery of the same in pledge and as security for all amounts owed to the Company at that time or which become payable in the future. In the event of the Company utilizing the services or premises of any party for any purpose including the transportation or storage of any goods, such third party shall be the agent of the Company for purposes of exercising the Company’s right to retention under lien and/or pledge.

38.3 If any monies due to the Company are not paid within 14 days after notice has been given to the person from whom the monies are due that such goods or documents are being detained, the goods may be sold by public auction or by private treaty 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 nett proceeds (if any) applied in or towards satisfaction of such indebtedness.

38.4 The Customer shall not be entitled to effect or allow to be effected any security in respect of the goods or the documents relating to the goods, including without limitation, any general or special notarial bond, pledge, hypothec, right of retention, or lien and pledge, without the prior written consent of the Company. The lien and pledge and right of retention in favour of the Company referred to above in

38.1 and 38.2 shall operate as a first and prior change against the goods and the documents relating to the goods and no other security shall rank prior to the Company's lien, pledge or right to retention.

39. SURETYSHIP

In the event of the signatory signed on behalf of the Company, partners, firm or association of any kind whatsoever, then such person by their signature on behalf of the customer, in the space provided under this clause, expressly bins themselves personally as surety and co-principal debtor in solidum in favour of the company for all or any amounts which the customer may be indebted to the Company in respect of this agreement in this respect for this agreement.

I have read, understood and agree to the surety

Signature: ……

40. 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 of the aforegoing, in respect of any liability whatsoever which may be incurred-

40.1 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 by 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

40.2 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

40.3 to any carrier of the goods if the company is the consignor or consignee of the goods; and/or

40.4 in respect of any goods referred to in clause 18; and/or

40.5 in terms of any applicable law, as a result of the company acting on behalf of the customer; and/or

40.6 as a result of a breach of any warranty referred to in clause 12.

40.7 as a result of the company acting as the customers South African representative for customers purposes and/or as its agent in respect of suppliers made to the customer by vendors

41. LIMITATION OF COMPANY'S LIABILITY

41.1 Subject also 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 -

unless –
a) such claim arises from a grossly negligent act or grossly negligent omission on the part of the company or its servants; and

b) if the claim relates to the loss of, damage to or delay in the handling of goods, such claim in addition arises at a time when the goods in question are in the actual custody of the company and under its actual control.

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 or advice by the company, its agents, servants or nominees, whether negligent or otherwise.

42. MONETARY LIMITATION OF LIABILITY OF THE COMPANY

42.1 In those cases where the company is liable to the customer in terms of clause 40.1, or for any other reason, in no such case whatsoever shall any liability of the company, howsoever arising, exceed whichever is the least of the following respective amounts –

42.1.1 if applicable, 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;

42.1.2 if applicable, the value of the goods declared for insurance purposes;

42.1.3 double the amount of the fees raised by the company for its services in connection with the goods, information, advice or other service provided by it, but excluding any amount payable to sub-contractors, agents and third parties.

42.2 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 42.1 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 agents or sub-contractors), 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 it will be entitled to effect special insurance to cover its maximum liability and the party giving the notice shall be deemed, by so doing, to have agreed and undertaken to pay 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 42.1 shall apply.

42.3 If no fee is raised by the company for the information, advice or service provided by it then, for the purposes of clause 42.1.3, the company shall be deemed to have raised a fee equivalent to the fee that it would usually have raised for such information, advice or service or, failing this, an amount of R1 000.00.

43. 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.

44. 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 30 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 these trading terms and conditions and any agreement between the customer and the company.

45. 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 or 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 of the board of directors of the company in response to a written enquiry specifying accurately and in complete detail what information is required.

46. DISPUTES

46.1. 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.

46.2. The customer's remedy, having performed its obligations as provided in clause 46.1, 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.

46.3. Without affecting the generality of clauses 46.1 and 46.2 the customer shall not be entitled to withhold payment of any amounts, by reason of any dispute 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 he may have against the company.

46.4. 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.

46.5. At the option of the company, any dispute of any nature whatsoever between the company and the customer may be referred for final resolution in the city or town in which the company's head office is situated, in accordance with the Rules of the Arbitration Foundation of Southern Africa, by an arbitrator or arbitrators appointed by the Foundation.

47. TIME FOR 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 terms and conditions.

48. CLAIMS

48.1 Any claim against the company must be notified to the company in writing within 30 days of the event giving rise to the claim, failing which it shall be deemed to have been extinguished for all purposes.

48.2 Subject to compliance with clause 47.1, any claim against the company shall be extinguished for all purposes 365 days after the event giving rise to the claim, unless prior to the expiry of the period a summons or other process instituting legal action has been served on the company.

48.3 Should any applicable terms and conditions as contemplated by clause 16 contain a shorter time period for the notification of claims than that referred to in clause 47.1 then, for the purposes of clause 47.1, that shorter time period shall apply.

49. SEVERABILITY

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

50. POPI

50.1 The parties shall fully comply with the statutory obligations contained in POPI, with which Parties warrant that they are fully conversant with its provisions when processing Personal Information obtain by a Responsible Party and such Personal Information is entered into a Record.
50.2 Each Party indemnifies and hold the other party harmless from any liability whatsoever arising from the indemnifying Party's failure to comply with its statutory obligations contained in POPI.
50.3 Each Party shall only provide, collect, use, store or process Personal information in compliance with POPI

51. EMBARGO

DACHSER fulfils its obligations subject to the continuous compliance and adherence of all respective relevant national and international legal requirements and/or official demands concerning the security and traceability applicable for trade and/or the chain of transport (especially with respect to European and American embargo sanctions). Customer represents and warrants that all legal obligations relevant to its business – in particular: foreign trade and customs related regulations; all relevant embargos on goods/countries/persons – are known to the customer and complied with in full, without restrictions or reservations. In this respect, DACHSER shall assume that all consigned shipments have undergone any such due and necessary verification by customer.

Trading Conditions have been read and agreed to:

Date:……

Company Name: …….

Reg no: ……..

Name & Surname: ……

Company Stamp: