



NEW ENTERPRISE TRADING LOGISTICS (PTY) LTD

STANDARD TERMS AND CONDITIONS

1. Definitions

In these conditions, the following words shall bear the meanings assigned to them below:

- 1.1 "Agreement" means the Application for duly completed and signed by the Customer read together with these terms and conditions.
- 1.2 "the Carrier" means NEW ENTERPRISE TRADING LOGISTICS (PTY) LTD (NET LOGISTICS) and includes the Carrier's servants, sub-contractors, agents and any person or person carrying any Goods forming the subject matter of this contract under and in terms of a subcontract with the Carrier.
- 1.3 "the Customer" means the firm or business contracting for the services of the Carrier and includes the person who instructs the Carrier to perform a service in terms of a contract and/or who accepts the quotation to perform a contract of carriage or the party reflected on the dispatch document as the sender of the Goods, whether acting on his own behalf or in his capacity as agent or in any other capacity for a third party;
- 1.4 "the Goods" means the Goods forming the subject matter of this agreement, whether contained in one or more parcels or packages and whether consigned singly or in parcels or in bulk;
- 1.5 "Dangerous goods" includes Goods that are considered by the Carrier to be dangerous in terms of Chapter VIII of the National Road Traffic Act, 1996.
- 1.6 "the handling of the Goods" includes the Goods being handled, warehoused, held, controlled, loaded or unloaded, carried or otherwise passed by the Carrier for any purpose whatsoever.
- 1.7 "Customer Account" means the account opened in the name of the Customer in the Carrier's books of account.

2. Credit Facility Application

- 2.1 The Customer may apply to the Carrier, on the Carrier's prescribed application form, for credit facilities. The Carrier shall assess the application within a reasonable period of time after submission thereof and, if approved by the Carrier, a Customer Account shall be established in the name of the Customer for use by it.
- 2.2 The Customer hereby irrevocably authorises the Carrier to perform any credit checks into the Customer's creditworthiness and financial affairs to the extent that the Carrier may consider appropriate.
- 2.3 The Customer warrants to the Carrier that all information supplied and documents delivered to the Carrier, including the application form for credit facilities, is true, accurate and relevant. The Customer acknowledges and understands that the Carrier will rely on the information supplied and documents provided by the Customer to assess the grant of any credit facilities.

3. Credit Facility

- 3.1 The credit limit applicable to the Customer shall be:
 - 3.1.1 the amount as may be fixed by the Carrier in its sole discretion from time to time and notified to the Customer in writing;
 - 3.1.2 reduced upon the Customer's written request to the Carrier and which written request shall stipulate the reduced credit facility required by the Customer. The Carrier shall confirm the reduced credit facility in writing to the Customer and stipulate the commencement date thereof which date shall not be more than 30 (thirty) days after the Customer's written request.

4. Customer's Obligations

- 4.1 The Customer shall:
 - 4.1.1 strictly observe the credit facility limits applicable to the Customer Account.
 - 4.1.2 pay the Carrier all amounts debited to the Customer Account as set in paragraph 5 below; and
 - 4.1.3 only be entitled to terminate the Customer Account by giving the Carrier 30(thirty) days written notice of its intention to do so.
 - 4.1.4 Inform the Carrier forthwith upon changes of the status of the legal entity and/or the shareholders shareholding in the Customer
- 4.2 Any amendment or extension of credit facilities for the Customer will be in the sole discretion of the Carrier

- 4.3 Not cede, assign or make over any of its rights, title or interest in or to the Customer Account to any person, without the prior written consent of the Carrier, which the Carrier shall be entitled to withhold without giving any reasons therefore.
- 4.4 In the event of the Customer, with the prior written consent of the Carrier, authorising any other person to instruct the Carrier to render its services on the Customer Account, then and in that event, the Customer shall be liable to the Carrier for the debits raised against the Customer Account in respect thereof as if such debits had been incurred by the Customer.

5. No variation of conditions

The services rendered by the Carrier to the Customer shall be subject to the conditions stated in this Agreement unless specifically varied by the Carrier in writing, and these conditions shall at all times take precedence over any terms, condition or stipulations contained in any of the Customer's documentation

6. Remuneration

- 6.1 In the absence of any written agreement to the contrary, the remuneration payable to the Carrier by the Customer will be in accordance with the standard tariffs of the Carrier. The Standard tariffs applicable as at the date of the signing of this Agreement is attached hereto as Schedule 1.
- 6.2 The Carrier's standard tariffs in Schedule 1 are subject to review by the Carrier without prior notice to the Customer. Without limitation to a foregoing, the Carrier shall be entitled to charge additional remuneration in proportion to any increase in the cost of tyres, spares, insurance, salaries, wages, sub-contractors, railage, airfreight, shipping, taxes, equipment specifically acquired for the purposes of the Agreement or any other costs effecting the provision of the service.
- 6.3 The Customer shall be liable for any duty, tax, import, fine or outlay of whatever nature levied by the authorities at any port or place in connection with the Goods and shall reimburse the Carrier for any such amount disbursed or loses sustained by the Carrier in connection therewith.
- 6.4 In the event of the Carrier being obliged to take out or obtain any licenses or permits or to comply with the requirements of any lawful authority, the Carrier shall be entitled to make an additional charge to cover any expenses resulting therefrom not already included in the Carrier's standard tariffs.
- 6.5 In the event of the Carrier being obliged to deviate from the route selected by it, or to carry the Goods over another route, for any reason whatsoever, including but not limited to adverse weather conditions, impassable or dangerous roads, bridges, pontoons and ferries, or the instructions of any competent authority the Carrier shall be entitled to charge an additional remuneration in proportion to the resulting extra distance travelled.

7. Payments of remuneration

- 7.1 The Carrier shall render a monthly statement to the Account Holder, the contents of which shall evidence the amount owing by the Account Holder.
- 7.2 All amounts debited against the Customer Account during any particular month and set out in the monthly statement, shall be paid by the Account Holder to the Carrier without demand, deduction or set-off no later than 30 (thirty) days from the date of the monthly statement. If the stipulated date for payment falls on either a Sunday or a South African public holiday, payment shall be made on the next working day.
- 7.3 The Account Holder shall not be entitled to withhold payment of any amount for the services rendered by the Carrier or for any other reason;
- 7.4 The Account Holder shall query any debit raised on the monthly statement within a period of 14(fourteen) days of the statement date, failing which all debits appearing on the monthly statement shall be deemed correct and lawfully raised against the Account Holder;
- 7.5 In the event of the Account Holder at any time exceeding the credit limit in sub-paragraph 3.1.1 above, or in the event of any amount which is due and payable by the Account Holder not being paid on the due date as stipulated in this paragraph, the Carrier, in its sole discretion, may suspend its services, refuse any further consignments, refuse to accept and/or handle any cargo, stop all further deliveries and pick up and transport of the goods, without incurring any liability to any person in respect of such actions of the Carrier and the Account Holder does hereby indemnify and hold harmless the Carrier against any claim of whatsoever nature which may be made against it by any person as a result of the Carrier exercising the rights afforded herein
- 7.6 It is specifically agreed that the Account Holder shall not be entitled to withhold payment, or claim set-off, of any amount owing to the Carrier by virtue of any claim which the Account Holder may have against the Carrier for compensation for the loss of or damage to its consignments, goods, cargo, property or for any other reason whatsoever, nothing whatever excepted.
- 7.7 In the absence of any special provisions to the contrary, payment shall be effected by the Customer in cash or bank transfer in advance and not by cheque.
- 7.8 The Customer will remain liable for payment of the Carrier's remuneration even if the Goods are consigned as "carriage forward" or the Carrier has agreed to collect payment from the Consignee or another person, and (without prejudice to any other rights of the Carrier) shall pay the Carrier's remuneration on demand if the Consignee or other person fails or refuses to pay the remuneration upon delivery of the Goods
- 7.9 The Carrier shall in its absolute discretion be entitled to appropriate all payments made by the Customer towards the payment of any debt or obligation whatsoever nature owing by the Customer to the Carrier, irrespective of when such debt or obligation arose.

- 7.10 A certificate in writing signed by a manager of the Carrier, who's position and authority need not be proved, certifying the amount due by the Customer to the Carrier at any one time, shall be prima facie proof of the amount owing and due and payable by the Customer as at the date of the certificate.

8. Carrier's lien

- 8.1 As security for all moneys (whether past or present) owing for the handling of Goods, whether forming the subject matter of this agreement or otherwise, the Carrier shall have a lien over all Goods, documents, bills of lading, Import permits as well as all repayments, refunds, claims or recoveries in its possession or under its control.
- 8.2 In addition, the Carrier shall be entitled to hold all Goods as security for any other moneys which may be owing to it by the Customer from any cause whatsoever.
- 8.3 Notwithstanding that credit may have originally been granted by the Carrier to the Customer, the Carrier may at any time in its sole discretion retain possession of any Goods pending the discharge of all the Customer's indebtedness to the Carrier whether or not such indebtedness is related to the handling of the Goods in question.
- 8.4 In the event of the Carrier retaining possession of the Goods in terms of 6.1 and/or 6.2 and/or 6.3, the Carrier shall be entitled to store or warehouse the Goods at such place as it deems fit, at the Customer's risk and expense
- 8.5 If any money owing to the Carrier is not paid by the Customer within 30 (thirty) days after they have become due, the Carrier shall be entitled without further notice
- 8.5.1 to open and examine the Goods
- 8.5.2 to sell the whole or any part of the Goods in such a manner and on such terms and conditions as it deems fit
- 8.5.3 to apply the proceeds of any sale after deducting all expenses thereof in payment or reduction of any amount due by the Customer to the Carrier (including the storage charges envisaged in 8.4) provided that any surplus shall be paid over to the Customer without interest immediately after the sale, if the Customer's address is known, and if not, upon demand made by the Customer within 90 (ninety) days of the sale.
- 8.6 The Carrier shall not be liable for any loss, damage or deterioration of Goods attributable to the implementation of this clause
- 8.7 The Carrier's rights under this clause are not exhaustive and are in addition to any other rights that it may have against the Customer

9. Customer's warranties

The Customer is bound by and warrants in favour of the Carrier

- 9.1 the accuracy of all descriptions, values and other particulars furnished to the Carrier for custom, railage and other purposes. The Customer indemnifies the Carrier against all expenses, claims or fines arising from any inaccuracy or omission of descriptions, values or other particulars (even if the inaccuracy or omission of descriptions, values or other particulars occurs without negligence)
- 9.2 that the carriage of the Goods will not violate or infringe any Act, regulation or law. The Customer indemnifies the Carrier against any claims and/or damages which the Carrier may suffer by virtue of the Customer's breach of this warranty;
- 9.3 that the Goods are the Customer's sole property, alternatively, the Customer is authorised by the person owning the Goods to enter into this contract subject to these terms and conditions. The Customer hereby indemnifies the Carrier against any claim of any nature made by the owner.

10. Condition of Goods

The onus of proving the quantity, type, physical properties, composition and condition of the Goods and/or condition of any container at the time of receipt thereof by the Carrier shall at all times remain with the Customer, and no delivery note, receipt or other document furnished or signed at such time by or on behalf of the Carrier shall constitute conclusive proof thereof

11. Dangerous goods

- 11.1 Unless otherwise agreed in writing, the Customer warrants that all Goods handled are fit to be so handled in the ordinary manner and are not dangerous
- 11.2 Unless otherwise agreed in writing, the Carrier will not handle any dangerous, corrosive, noxious, hazardous, inflammable or explosive Goods or any Goods which in the Carrier's opinion are likely to cause damage.
- 11.3 The Customer shall be liable for all losses or damage caused to the Carrier and/or third parties by all Goods handled. The Customer indemnifies the Carrier against any claim arising in connection therewith.
- 11.4 Should the Carrier agree to handle any Dangerous goods for any purpose:
- 11.4.1 the Customer shall furnish with the Goods a written declaration detailing the trade name, chemical composition and character of the Goods; and
- 11.4.2 such declaration shall define the precise respects or circumstances in which the Goods are dangerous; and
- 11.4.3 the Customer shall ensure that the Goods bear the warning labels and declarations required in terms of the laws and regulation applicable to the transportation of Dangerous goods; and
- 11.4.4 without in any way limiting the generality of the foregoing provisions, the Customer shall comply, and shall ensure that the Customer's Consignee/s and/or Consignor, as the case may be, comply with the National Road Traffic Act, No 93 of 1996, the Regulations relating to the transportation of Dangerous goods promulgated in terms of the said Act and SABS Code of Practice No Q231 relating to the transportation of Dangerous goods – operational requirements for road vehicles, insofar as they apply to the Consignor/Consignee.

- 11.5 If, in the opinion of the Carrier any Goods (whether they have been declared as dangerous or not) become a danger to any Person or property, the Carrier shall be entitled immediately and without notice to the Customer to dispose of the Goods in question or take such other steps as it in its sole discretion deems prudent to avert danger. In such event the Carrier shall:
- 11.5.1 Not be liable under any circumstances for the value of the Goods or for any other loss or damage whether direct or consequential sustained by the Customer or owner as a result of such disposal; and
 - 11.5.2 still be entitled to recover from the Customer its remuneration for the handling of the Goods together with any cost incurred by it in disposing of them or taking other steps.
- 11.6 Unless written instructions are given to the Carrier, it shall be under no obligation to make any declaration or to seek any special protection or cover in respect of:
- 11.6.1 dangerous or hazardous goods; or
 - 11.6.2 Goods liable to be stored in the open

12. Perishable Goods

Perishable goods which are not taken up immediately upon arrival at their destination or which are insufficiently marked or otherwise not identifiable may be disposed of without notice to the Customer, and the payment or tender to the Customer of the net proceeds of a disposition (after deduction of all charges incurred by the Carrier) shall be equivalent to delivery.

13. Loading and off-loading

- 13.1 The Customer shall ensure that:
- 13.1.1 the Goods shall be ready for loading on the date specified;
 - 13.1.2 the documentation necessary in connection with the Goods and the transportation thereof shall be fully and correctly prepared;
 - 13.1.3. at all places where the Carrier is to collect and off-load the Goods there will be safe, suitable and adequate access and loading and off-loading facilities, and that it is possible for the Carrier to do so without any unreasonable delay by means of ordinary staircases and/or doorways, without need for any special or additional tackle, plant, power, labour or equipment;
 - 13.1.4 the Goods will be sufficiently packed and prepared for carriage;
 - 13.1.5 the Customer shall sign such certificates and receipts on loading and off-loading as the Carrier may require.
- 13.2 The Carrier shall not be under any obligation to provide any plant, power or labour which in addition to its vehicle crew is required for the loading or unloading of any Goods. Any assistance given by the Carrier in such loading or unloading shall be at the risk of the Customer.
- 13.3 The Customer or agent of the Customer conducting any packing or other operation or activity in an area or premises provided by the Carrier shall do so at his own risk. The Customer indemnifies the Carrier against all claims or losses arising out of the presence of the Customer in such area or premises.
- 13.4 Without prejudice to any of the Carrier's rights in terms of this Agreement, in the event that the provisions of this Agreement relating to off-loading of the Goods not of the Goods, the Carrier shall in its discretion be entitled to abandon the Goods on site or to store or warehouse them as the Carrier deems fit, at the Customer's risk and expense, and the Carrier shall not be liable for any consequent loss, damage or detonation of the Goods.

14. Route when carrying Goods

The Carrier shall in its sole discretion decide what route to follow.

15. Carriers liability for damage or loss

The Goods shall be carried at the sole risk of the Customer (or owner). The Customer indemnifies the Carrier against all liability of whatsoever nature arising directly or indirectly from the handling of the Goods. This indemnity includes, but is not restricted to, any liability for direct and/or consequential loss or damage having moved the Goods timeously, adequately or at all, or from or to the correct address, or from any other cause arising whether any such liability, loss or damage is caused by or arises from breach of contract, negligence or gross negligence, on the part of the Carrier, its servants, agents or employees, or others.

16. Demurrage

- 16.1 The Carrier shall not be liable for demurrage or storage charges of any nature whatsoever and howsoever arising.
- 16.2 Notwithstanding the provisions of sub-paragraph 14.1 above and in the event that demurrage and/or storage charges are paid by the Carrier, such charges shall be refunded to the Carrier by the Customer on demand. The Customer hereby appoints the Carrier irrevocably and in rem suam as its lawful agent and in its name, place and stead, to contract with any third party for the storage of the Goods upon such terms and conditions as the Carrier may, in its sole discretion determine, and without any liability whatsoever accruing to the Carrier. The Customer hereby indemnifies and holds harmless the Carrier against any claim of whatsoever nature which may be made against it (Carrier) by any person as a result of the Carrier exercising the rights set out herein

17. Subcontracting

The Carrier reserves the right to employ sub-contractors or agents to act for it. Where the Carrier employs independent third parties to perform all or any of the function required of the Carrier, the Carrier shall have no responsibility or liability to the Customer for any acts or omission of such third parties, even though the Carrier may be responsible for the payment of their charges. However, if the Carrier is suitably indemnified against all costs (including attorney and own client costs) the Carrier shall take such action against the third party concerned on the Customer's behalf as the Customer may direct

18. Insurances

The Carrier shall only, if requested to do so in writing by the Customer and at the Customer's expense, effect insurances on any Goods being handled by it. Any such insurance effected by the Carrier shall be subject to the usual terms and conditions of the policies of the insurer or underwriter taking the risk. The Carrier shall not be under any obligation to effect a separate insurance on each consignment but may declare it on any open or general policy. Should the insurer dispute liability for any reason, the insured shall have recourse against the insurer only and the Carrier shall not be under any liability to relations thereto.

19. Permits and consents

If any permit or approval to handle Goods is required under any law, by-law or regulations, the Customer shall provide all assistance and information required by the carrier for the purpose of applying for or obtaining any such permit, consent or approval.

20. Delay – Police instructions

The Carrier shall not be liable for any delay occasioned by compliance with any instruction issued by the police or any other competent authority. Any extra costs incurred by the Carrier as a result of compliance with any such instruction shall be added to the Customer Account.

21. Jurisdiction

The parties agree that any magistrates' court which has jurisdiction over the person of the defendant shall have jurisdiction in terms of section 29 of the magistrates Courts Act 32 of 1944, to entertain any cause of action in terms of this agreement notwithstanding that the amount of such claim may exceed the jurisdiction of the Magistrates' Court.

22. Legal

- 22.1 The Customer shall be liable on the scale as between attorney and client for all legal costs which the Carrier may incur in the enforcement of its rights in terms of this Agreement, including collection fees, collection costs and tracing fees.
- 22.2 All documents, including photocopies thereof, which at face value appears to have been compiled by the Carrier in the execution of its services in terms of this agreement and in respect of which debits have been raised on the Customer Account shall be admissible in litigation between the parties and shall be deemed to be prima facie proof of the contents thereof.
- 22.3 Should the Customer be declared insolvent, placed under Business Rescue (voluntary or compulsory) or placed under liquidation (provisionally or finally) or enter into a compromise with its creditors or remain or permit any judgement to remain unsatisfied for 7(seven) days after the granting thereof, the Customer shall immediately notify the Carrier of such an occurrence and furnish full details thereof.
- 22.4 In the event of a breach of any of the terms and conditions of this Agreement by the Customer, and which breach is not remedied within 7(seven) days of written notice to it by the Carrier, the Carrier shall be entitled, without prejudice to its other rights in law, cancel this Agreement or to claim specific performance, in either event, without prejudice to the Carrier's right to claim damages.

23. Authority

The signatories to this Agreement warrant that they are duly authorised to sign this agreement on behalf of the parties thereto.

24. Sole agreement

This agreement constitutes the sole of the agreement between the parties and supersedes all other agreements or understandings, written or verbal, that the parties may have had with regard to the subject matter of this Agreement.

25. Variation

No addition to, variation of or agreed cancellation of this agreement shall be of any force or effect unless recorded in writing and accepted by the Carrier in writing and signed by the Carrier. It is specifically recorded that any such writing in terms of this clause shall exclude writing sent and received by any party via e-mail and/or short messaging system ("SMS").

26. Cession

The Customer shall not be entitled to cede or assign this Agreement without the Carrier's consent. The Carrier shall however have the right to cede and assign this Agreement without the Customer's consent.

27. Indulgence and waiver

No relaxation or indulgence that the Carrier may grant to the Customer shall constitute a waiver of the rights of the Carrier nor shall it preclude the Carrier from exercising any of its rights that may have arisen in the past or that might arise in the future.

28. Applicable law

The proper law of this agreement is the law of the Republic of South Africa, and accordingly any dispute about this agreement, including any dispute about its validity existence, interpretation, rectification, breach or termination or any dispute about any matter arising out of this agreement, its avoidance, interpretation, rectification breach of termination shall be determined according to the laws of the Republic of South Africa.

29. Domicilium and notices

The Customer chooses its street address set out in the application form as its domicilium citandi et executandi (“domicilium”) for all purposes under this agreement whether for serving any court process or documents, giving any notice, or making any other communications of whatsoever nature and for any other purpose arising from this agreement.

30. Presumptions as to notices

Any notice required to be given by the Carrier to the Customer will be deemed to have been validly given if posted by registered post to the domicilium of the Customer and will be deemed to have been received by the Customer within 7 (seven) days of the date of posting.

31. Border clearance

NET Logistics (Pty) Ltd in partnership with its clearing partners at the South African, Zimbabwean and Zambian borders will ensure that the entire clearing/customs process are managed in accordance with the mandate given by our customer and its supplier/s in South Africa. All border/customs related enquiries and queries will be dealt with directly by NET Logistics (Pty) Ltd. Border/customs related charges including VAT, Import Duties and clearing fees will be for the account of the importing customer