INTERNATIONAL COURIERS

STANDARD TERMS AND CONDITIONS OF TRADE

1. INTRODUCTION

1.1. This document contains the terms and conditions of trade ("**the Terms**") between yourself ("**the Customer**") and X International Couriers Proprietary Limited (Registration 1996 / 001037 / 07) ("**X International**"), (collectively, "**the Companies**", and "**Company**" shall refer to X International and its Independent Service Providers from time to time as the context may indicate).

1.2. These Terms govern:

1.2.1. the service relationship between the Customer and the Companies; and

1.2.2. the deferred payment relationship between the Customer and any one or more of the Companies following the approval by such Company of the deferred payment application to which these Terms are attached ("**Deferred Payment Application**").

1.3. For the avoidance of doubt:

1.3.1. no service relationship shall be created between the Customer and any one or more of the Companies, as the case may be, until the relevant Company has accepted an order for such services in writing. The Company, in its sole discretion, reserves the right not to accept any order and to refuse to accept any Consignment; and

1.3.2. deferred payment facilities will only be granted by the Company to the Customer on approval by the Company in writing of the Deferred Payment Application, and any deferred payment facility granted by the Company to the Customer shall be at the Company's sole discretion and granted in accordance with applicable legislation and these Terms.

1.4. The Company is not a public carrier or common carrier and any Consignment (as defined in clause 4.3 below) is subject to these Terms.

1.5. In the event of any conflict, inconsistency or variance of any nature between these Terms, and any other terms and conditions which may be or become applicable to the Customer from time to time, the provisions of these Terms shall prevail to the extent of any such conflict, inconsistency or variance.

1.6. **THE CUSTOMER HEREBY WARRANTS AND UNDERTAKES TO AND IN FAVOUR OF THE COMPANY THAT** it is authorised to accept and hereby accepts these Terms on behalf of itself and as agent for and on behalf of all other persons who are (or may become) interested in the arrangement(s) contemplated herein.

PART A: GENERAL TERMS

2. DEFERRED PAYMENT – APPLICABLE WHEN CUSTOMER OPENS A DEFERRED PAYMENT ACCOUNT

2.1. If the Customer wishes to apply for a deferred payment arrangement with the Company the Customer shall complete the Deferred Payment Application (inclusive of the provision of all documentation and information sought) for consideration by the Company.

2.2. Should the Deferred Payment Application be successful following an assessment of the creditworthiness of the Customer and subject to the Customer being able to provide the cession and suretyship contemplated in clauses 18 and 19 below (or such other security as the Company in its sole discretion may deem necessary), the Company shall notify the Customer in writing of the terms and conditions applicable to the deferred payment arrangement provided to it by the Company ("**Deferred Payment Facility**"), and such written notification shall form part of these Terms.

2.3. The Company may at any time, upon 5 (five) days prior written notice to the Customer, amend the terms upon which the Deferred Payment Facility is provided, including without limitation, by decreasing, or terminating the Customer's deferred payment privileges, subject to applicable laws and the remaining provisions of these Terms. The Company shall be entitled, in its sole and absolute discretion, to increase the Customer's deferred payment limits, without prior notice to the Customer, subject to applicable laws and the remaining provisions of these Terms.

2.4. The Customer hereby confirms that the information furnished in terms of the Deferred Payment Application is true and correct and that such information is being furnished to the Company for the purpose of inducing the Company to extend the Deferred Payment Facility and understands that the Company intends to rely upon such information as correct. The Customer is obliged to forthwith inform the Company in writing if there are any changes to the information furnished by it in the Deferred Payment Application.

2.5. The Company may, with the prior written consent of the Customer and subject to applicable laws, from time to time disclose the information furnished in the Deferred Payment Application relative to the Customer, to third parties for informational purposes only.

2.6. Upon submitting the Deferred Payment Application to the Company for consideration, the Customer shall disclose to the Company whether the National Credit Act 34 of 2005 ("**NCA**") is applicable to the relevant credit arrangement being applied for, or if it should at any time become applicable.

3. PROTECTION OF PERSONAL INFORMATION

3.1. The parties acknowledge that in providing and receiving the Services, the parties may process personal information, as defined in the Protection of Personal Information Act 4 of 2013 ("**POPI**").

3.2. The parties specifically record that all personal information received by a party, or to which a party may be exposed, shall constitute Confidential Information and as such, the parties shall comply with all the provisions of clause 15 with regard to such personal information.

3.3. The parties hereby warrant in favour of each other that they will at all times strictly comply with all applicable data privacy legislation and with all the provisions and requirements of the Companies' data protection policies and procedures (including encryption standards) in force, from time to time, and any further requirements of which the Companies may, from time to time, advise the Customer in writing, or which may be required by legislation, regulation or any relevant industry body, whether within the Republic of South Africa or elsewhere in the world.

3.4. The parties shall take, implement and maintain all such technical and organisational security procedures and measures necessary or appropriate to preserve the security and confidentiality of personal information processed by it and protect such personal information against unauthorised or unlawful disclosure, access or processing, accidental loss, destruction or damage.

3.5. The Customer shall promptly return or destroy any personal information in the possession or control of the Customer, at the request of and on instruction from the Companies in accordance with any specific retention, destruction and purging requirements as may be prescribed by the Companies.

3.6. The Customer shall ensure and warrants that it has obtained the necessary written consent for personal information to be processed by the Companies and also to be transferred or processed outside of the borders of the Republic of South Africa. The Customer shall keep a record of all consents required in terms of this clause.

3.7. The parties shall notify each other as soon as possible after a party becomes aware of or suspects any loss, unauthorised access or unlawful use of any personal information and shall, at its own cost, take all necessary remedial steps to mitigate the extent of the loss or compromise of personal information. The parties shall cooperate in any investigation relating to security of personal information which is carried out by or on behalf of another party.

3.8. The Customer warrants that:

3.8.1. it has obtained all necessary consents contemplated in this clause 3 and as may be required in terms of POPI:

3.8.2. The Customer indemnifies and holds the Companies harmless against any damages or losses of whatsoever nature (including penalties and/or fines and legal costs on the scale of attorney and own client) suffered by the Companies as a result of a breach of its obligations set out in this clause 3.

4. LIMITATION ON THE COMPANIES' LIABILITY AND RESPONSIBILITIES

4.1. The provisions of this clause 4 apply generally to all of the Companies, save if and to the extent specifically provided otherwise in writing.

4.2. The Companies and each of the carriers, providers of warehousing facilities, sub-contractors, handlers and any other parties engaged by the Company as service providers in order to discharge its obligations towards the Customer (each, an "**Independent Service Provider**"), (collectively, the "**Indemnified Parties**") shall not be liable for any indirect and/or consequential loss and/or damages (of any nature whatsoever) suffered by the Customer or any third party, including (without limiting the generality of the aforegoing) loss of profits, loss of sales, loss of revenue, loss of opportunity and/or loss of contracts, howsoever caused.

4.3. All handling, packaging, loading, warehousing and transporting of the Customer's goods ("**Consignment**") by the Indemnified Parties on behalf of or at the request of the Customer shall be at the sole risk of the Customer, and the Customer hereby acknowledges that it shall have no claims against the Indemnified Parties of any nature whatsoever arising out of or in connection with the aforegoing, other than as imposed by any applicable law and subject to the remaining provisions of these Terms.

4.4. The various limitation of liability set out in these Terms shall be cumulative.

5. LOSS OR DAMAGE TO CONSIGNMENTS

5.1. Without derogating from the provisions of clause 4 above, **NO RESPONSIBILITY OR LIABILITY WHATSOEVER SHALL ATTACH TO THE INDEMNIFIED PERSONS** for any loss or damage to a Consignment unless such loss or damage:

5.1.1. occurs whilst the Consignment is in actual physical care of the Company; and

5.1.2. is due to the intentional and wilful act or omission of the Company and/or its employees.

5.2. In the event that the Customer alleges that any goods have been damaged, the Customer shall make such goods available upon demand to the Company for inspection.

5.3. **THE COMPANY SHALL UNDER NO CIRCUMSTANCES BE LIABLE** for any loss or damage whatsoever incurred or caused or contributed to:

5.3.1. by the perishable, fragile or brittle nature of the Consignment or any defective and/or inadequate packaging of any Consignment and/or the transport of any items referred to in clause 8; or

5.3.2. subject to any applicable law, **due to the negligent and/or grossly negligent acts or omissions of the Company and/or its employees**.

5.4. Notwithstanding anything to the contrary contained herein and unless insurance is specifically requested, facilitated by the Company and paid for by the Customer, the Company's **LIABILITY SHALL NOT EXCEED** an aggregate of R50.00 (fifty rand) per order received from a Customer.

6. OPERATIONAL PROCEDURES

6.1. The Company reserves the right to carry and warehouse any Consignment by any means at its disposal and may use any Independent Service Provider to perform these duties.

6.2. All Consignments which require forwarding to facilitate delivery may be held at the Company's discretion and at the Customer's cost, until suitable delivery arrangements can be arranged. The costs associated with taking such action shall be for the account of the Customer and are payable on demand.

7. OBLIGATIONS OF THE CUSTOMER IN RESPECT OF CONSIGNMENTS

7.1. The Customer undertakes to and in favour of the Company, and agrees that it is solely responsible for ensuring, that:

7.1.1. the Consignment is adequately packaged (including the placing of the Consignment into any container supplied to the Customer by the Company), and the Company shall have no liability for any loss or damage whatsoever incurred or caused as a result of the Customer failing to adequately package the Consignment;

7.1.2. the Consignment is accurately, clearly and adequately addressed to enable the effective delivery or warehousing thereof by the Company, and the Company shall have no liability for any loss or damage whatsoever incurred or caused as a result of a Consignment being delivered to the address specified by the Customer, but which address is incorrect;

7.1.3. timeous, accurate and clear instructions shall be given to the Company in writing in order to enable the Company to comply with such instructions. The Company shall be entitled, but not obliged, to act on oral instructions alone. If there is a conflict between any oral or written instructions or between the various written instructions themselves, or in the absence of instructions, the Company shall determine the best course of action to be adopted, in its sole discretion, having regard to the Customer's known requirements, if any, and the Company shall not incur any liability for any such course of action adopted by it; and

7.1.4. the Consignment complies with all applicable laws, including any regulations, security requirements and/or any other obligations pertaining to the Consignment. The Company (or any of its nominees) reserves the right to open and examine any Consignment tendered for carriage or warehousing by the Company, in order to fulfil such security and/or regulatory obligations and requirements as may be applicable at any time, provided that the Company shall have no liability for any failure, whether through its negligent and/or grossly negligent act, omission or otherwise, to make such examination or take any other action, and the responsibility for ensuring compliance of the Consignment with all applicable laws remains at all times with the Customer.

8. DANGEROUS AND PROHIBITED CONSIGNMENTS

8.1. For purposes of this clause 8, "**Prohibited Consignments**" means any dangerous, hazardous or combustible materials which are or may become (by their nature) liable to cause injury or damage to persons, goods or property, or are valuable and increase the risk (and/or risk profile) of the conveyance of cargo by the Company including but not limited to electronic and/or mechanical goods (inclusive of cellular telephones, televisions, computers, tablets, hard drives and data storage and/or transmission devices, medical equipment, tools, parts and/or machines), fluids, paints, acids, chemicals, explosives or radioactive material, fire-arms or parts thereof, drugs, live or dead plants or animals, perishable foods, cosmetics and liquor, fine arts and antiques, literature or materials that may be pornographic, offensive, or politically sensitive, precious stones or jewellery including commercial carbons or industrial diamonds, precious metals, gold or silver in the form of bullion, coin, dust, cyanides, precipitates or any other form, currency (paper or coin) of any nationality, negotiable securities, tender responses, identity documents and passports, stock, bonds, certificates, coupons or stamps, negotiable cashier's cheques, money orders or traveller's cheques and any other carriage of goods which is prohibited by any applicable laws, rules and/or regulations.

8.2. No Prohibited Consignments will be received or accepted by the Company without the prior written consent of a duly authorised director of the Company. Should the Company consent to the carriage or warehousing of any Prohibited Consignments, the containers or packaging in which the Prohibited Consignments are stored must be marked in accordance with any applicable legislation, regulations or other requirements of any relevant authorities.

8.3. Should the necessary consent from the Company not be timeously obtained, the Company:

8.3.1. may notify the Customer in writing to forthwith collect the Prohibited Consignment at the cost of the Customer; and/or

8.3.2. may notify the relevant public authorities; and/or

8.3.3. reserves the right to deal with such Prohibited Consignment as it deems fit in the given circumstances, including to destroy, dispose of or abandon any Prohibited Consignments at the cost of the Customer.

8.4. Whether or not the Customer was aware of the nature of the Prohibited Consignments and whether or not the written consent of the Company was obtained, **THE CUSTOMER HEREBY INDEMNIFIES THE COMPANY AGAINST ALL LOSS, DAMAGE OR LIABILITY ARISING AS A DIRECT OR INDIRECT RESULT OF THE TENDER OF THE PROHIBITED CONSIGNMENTS TO THE COMPANY**.

8.5. **THE CUSTOMER SHALL BE RESPONSIBLE AND LIABLE, WITHOUT LIMITATION, FOR ALL COSTS, FINES, DAMAGES, LOSS OF INCOME AND/OR LEGAL COSTS WHICH THE COMPANY MAY INCUR AS A RESULT OF THE CUSTOMER'S BREACH OF THIS CLAUSE 8.**

9. DELIVERY OF CONSIGNMENTS

9.1. The onus of establishing the condition of the Consignment at the time of delivery thereof by the Company shall rest with the Customer.

9.2. The Company shall, in its sole discretion, be entitled to reasonably delay or expedite the date of dispatch of any Consignment.

9.3. The Company will only deliver Consignments which are the property of the Customer and/or in respect of which the Customer has the right of dealing with the Consignment. The Customer warrants that it has the authority to instruct the Company to deliver the Consignment.

9.4. If the Company is for any reason unable to effect delivery or secure warehousing of the Consignment in accordance with the instructions of the Customer, reasonable steps shall be taken to return the Consignment to the Customer. The Customer shall be responsible for the costs of carriage and warehousing of the attempted delivery and return of the Consignment.

9.5. It is the Customer's responsibility to establish the condition of the Consignment upon Delivery. An unendorsed Proof of Delivery of any Consignment shall constitute conclusive proof that the Consignment was delivered intact and undamaged and shall serve as conclusive proof of successful delivery of the Consignment.

10. COLLECTION OF CONSIGNMENT

10.1. If any Consignments have not been accepted or collected by the intended receiver (or its nominee) within 1 (one) calendar month after the Company has tendered collection thereof, the Company shall notify the Customer via email of any such non-collection. For the purposes hereof, notification to the intended receiver of the fact that the Consignments are available for collection, or that the Company is willing to deliver the Consignments, shall be deemed to be a good and sufficient tender for collection.

10.2. After the expiration of 10 (ten) business days from the date of emailing such written notice to its last known email address and unless the Customer has provided the Company with specific instructions to redeliver the Consignment to the intended receiver (at the Customer's expense), the Company is entitled and authorised irrevocably and at its sole discretion, to sell or dispose of the Consignment and retain from the proceeds the charges, expenses and costs incurred in the carriage thereof. The surplus balance of such proceeds shall be repaid to the Customer, without interest, within 60 (sixty) business days after such sale whereupon the COMPANY SHALL BE RELEASED OF ANY AND ALL LIABILITY whatsoever in respect of the Consignment carried or warehoused, as the case may be.

11. FEES AND QUOTATIONS

11.1. The Company shall be entitled to revise or withdraw quotations or agreed rates at any time upon reasonable notice in writing to the Customer, and the Customer shall have no claim whatsoever against the Company therefor.

11.2. All fees and quotations are subject to additional surcharges charged from time to time by the Company, inclusive of its currency and fuel surcharges and such duties and taxes as may be payable in respect of the Consignment. The Company's surcharges are subject to revision by the Company in its sole and absolute discretion, without notice to the Customer. Duties and taxes are subject to the determination by the appropriate statutory and/or legislative body.

11.3. All prices quoted by the Company will increase annually by such percentage as the Company may in its discretion determine. The Customer shall be notified in writing at least 15 (fifteen) business days prior to the aforementioned increase being effected.

12. CONDITIONS OF PAYMENT

12.1. Unless otherwise set out herein, agreed in writing, the provision of cross border (import / export) services the payment terms of which are regulated in terms of clause 29 and save for Prepaid Accounts, X International's terms of payment are 30 (thirty) days from date of the relevant invoice.

12.2. In addition to any other rights which X International may have, in the event of non-payment by the Customer of any amount owing by it to X International, and provided X International has in its possession the Consignment in respect of which such non-payment relates, X International shall be entitled to charge the Customer for warehousing the Consignment:

12.2.1. from the earlier of the date on which payment of the outstanding amount became due, and the date on which the Consignment was tendered for delivery;

12.2.2. up to and including the later of the date on which payment is made by the Customer of all outstanding amounts due by it to the Company, and collection of the warehoused Consignment by the Customer.

12.3. The relevant Company shall, from time to time, issue written invoices to the Customer in respect of services provided by such Company, which invoices are to be paid by the Customer in accordance with the relevant Company's payment terms.

12.4. Unless specifically stated otherwise herein, payment of any amount due by the Customer to any Company shall be made by way of cash, electronic funds transfer, free of exchange or bank charges and without deduction or set-off.

12.5. The Customer agrees that it will not defer or withhold payment pursuant to any invoice or deduct any amount from the account of any Company by reason of any claim which the Customer may allege against such Company.

12.6. If any amounts owing by the Customer to the Company remains unpaid on the due date therefor:

12.6.1. all other amounts owing by the Customer to the Company, whether due and payable or not, shall become due and payable immediately; and

12.6.2. the Company shall be entitled, but not obliged (without prejudice to any other rights it may have against the Customer) to:

12.6.2.1. rescind or suspend performance of any of its obligations to deliver or further warehouse the Consignment;

12.6.2.2. forfeit all discounts granted to the Customer; and

12.6.2.3. to charge interest on all overdue amounts at 2% (two percent) per month, calculated from the date of default until such time as the final payment in relation to the outstanding amount (including interest thereon, calculated daily and compounded daily in arrears) has been fully paid.

12.7. A certificate signed by a director of the creditor Company shall be deemed to be sufficient proof of any indebtedness to that Company, and if the Customer does not query an invoice sent to it by that Company in writing within 15 (fifteen) business days from the date of the invoice, such invoice will be deemed to be correct in all circumstances.

13. INSURANCE, DELIVERY GUARANTEE AND LIABILITY

13.1. IN ORDER TO ARRANGE COVER FOR ANY SHIPMENT, YOU HAVE TO SELECT THE COVERAGE OPTION AND INDICATE THE VALUE OF THE CONSIGNMENT INSURED. YOU WILL BE CHARGED AN INSURANCE PREMIUM FOR THIS OPTION.

13.2. THE COMPANY SHALL HAVE NO OBLIGATION TO OBTAIN ANY FORM OF INSURANCE COVER ON BEHALF OF A CUSTOMER IN RELATION TO ANY CONSIGNMENT, UNLESS SPECIFICALLY REQUESTED TO DO SO BY THE CUSTOMER, AND ALL INSURANCE COVER SHALL BE AT THE EXPENSE OF THE CUSTOMER. SUCH COVER SHALL ONLY BE ARRANGED WHEN AGREED IN WRITING BY THE COMPANY.

13.3. THE CUSTOMER ACKNOWLEDGES AND AGREES THAT, INSOFAR AS THE COMPANY AGREES TO ARRANGE INSURANCE FOR AND ON BEHALF OF THE CUSTOMER, THE COMPANY WILL ACT SOLELY AS AGENT FOR AND ON BEHALF OF THE CUSTOMER, AND THE CUSTOMER SHALL HAVE NO CLAIM OF WHATSOEVER NATURE AGAINST THE COMPANY, ITS EMPLOYEES, OFFICERS, AGENTS AND/OR SUB-CONTRACTORS IN RESPECT OF SUCH INSURANCE, INCLUDING BUT NOT LIMITED TO ANY CLAIM IN RELATION TO LOSS SUFFERED BY THE CUSTOMER AS A RESULT OF THE INSURER CONCERNED DISPUTING ITS LIABILITY UNDER THE RELEVANT INSURANCE POLICY.

13.4. THE CUSTOMER ACKNOWLEDGES AND AGREES THAT IT IS RESPONSIBLE FOR ACQUAINTING ITSELF WITH THE TERMS AND CONDITIONS UPON WHICH THE COMPANY UNDERTAKES THE CARRIAGE OF THE GOODS, THE TERMS AND CONDITIONS OF THE STANDARD INSURANCE COVER OFFERED BY THE COMPANY, AND ANY OTHER TERMS AND CONDITIONS STIPULATED BY THE COMPANY AND/OR ITS INSURERS IN THIS REGARD.

13.5. CLAIMS SUBMISSION (BOTH LIABILITY CLAIMS AND INSURANCE CLAIMS):

13.5.1. The Customer shall submit all liability and/or insurance claims to the Company in writing, within 7 (seven) business days of the Consignment being delivered – **LATE CLAIMS WILL BE REPUDIATED**;

13.5.2. All supporting documents (proof of value, proof of damages, proof of incident) must be provided within 2 (two) business days of the submission of the claim in clear and legible PDF format – **UNSUPPORTED CLAIMS WILL BE REPUDIATED**;

13.5.3. A claims administrator will be allocated to your claim and will be in contact with you once your claim has been submitted in full;

13.5.4. A claim may take (depending on the complexity thereof, whether an assessor is appointed and whether any disputes arise) 45 – 180 days to finalize;

13.5.5. Once your claim has been approved, the claim amount minus excess will be credited to your account, alternatively a voucher equal to the claim minus excess will be issued to you.

14. MONTREAL CONVENTION

When carriage is tendered for international destinations, the provisions of and law relating to the Montreal Convention apply.

15. CONFIDENTIALITY

15.1. The Parties acknowledge and agree that the nature of the relationship between the Parties may require the exchange of confidential information, requiring the exercise of caution, discretion and good faith in the use and dissemination of such confidential information. It is envisaged that the Company on the one hand and/or the Customer on the other shall from time to time disclose and make available to each other certain confidential information (Discloser of information hereinafter referred to as the "**Discloser**") (Recipient of information hereinafter referred to as the "**Recipient**"). The Discloser wishes to protect the confidentiality of such confidential information, in order to protect and maintain its property, goodwill, business and proprietary interests. Accordingly, the Parties hereby agree to the protection of the Discloser's confidential information on the terms recorded herein below

CONFIDENTIALITY UNDERTAKINGS BY THE RECIPIENT

15.2. The Recipient hereby warrants, agrees and undertakes to and in favour of the Discloser that as at the date of signature hereof and at all times hereafter:

15.2.1. it shall maintain the Confidential Information as confidential and shall not (whether directly or indirectly) disclose or divulge the Confidential Information in any form whatsoever to any person or entity other than as provided for in clause 15.2.4 hereunder or with the express written permission of the Chief Executive Officer of the Discloser;

15.2.2. it shall not (directly or indirectly) use, exploit, permit the use of or in any other manner whatsoever apply the Confidential Information disclosed to it pursuant to the provisions of this Agreement for any purpose whatsoever other

than for the purpose for which it was disclosed and then in accordance with the provisions of this Agreement and shall process same strictly in accordance with the Protection of Personal Information Act 4 of 2013;

15.2.3. it shall not (directly or indirectly) sell, license, create, manufacture or otherwise deal in or use, whether for its own account or that of any other party's account, any of the Confidential Information without the express written consent of the Chief Executive Officer of the Discloser;

15.2.4. it shall not disclose any of the Confidential Information to any of its agents and/or employees unless the disclosure is strictly necessary and/or required to comply with any business transaction between the Parties. The Recipient warrants and undertakes to and in favour of the Discloser that it will inform its agents and/or employees of the terms and effect of this Agreement.

15.2.5. it will take all such steps as may reasonably be necessary and/or required by the Discloser to protect against unauthorised reproduction of the Confidential Information;

15.2.6. it acknowledges and agrees that the Confidential Information is the exclusive property of the Discloser and its unauthorised use or disclosure can irreparably harm the Discloser. The Recipient consents never to challenge the validity of the Discloser's ownership in the Confidential Information or in any of its intellectual property rights in relation thereto.

15.3. The Recipient acknowledges that the Discloser will suffer financial harm and loss if the Recipient breaches any provisions of this Agreement.

15.4. Should it be decided not to enter into any business transaction and/or should negotiations be terminated and/or within 14 (fourteen) days after receipt of a written request from the Discloser, the Recipient shall:

15.4.1. return to the Discloser all Confidential Information disclosed and all copies and extracts thereof, including all Confidential Information held in any form of information storage system (including, but not limited to, any computer-based system), and if and to the extent that the information is incapable of being returned, irretrievably destroy all such Confidential Information and all copies and extracts thereof;

15.4.2. destroy all reports, analysis, studies, notes or other documents of any nature, whether written, electronic or otherwise, that incorporates all or part of any Confidential Information; and

15.4.3. provide the Discloser, after receipt of a written request to this effect, with a certificate from one of the Recipient's authorised officers confirming that all Confidential Information held by the Recipient (and its agents and employees) has been returned to the Discloser or destroyed as contemplated above.

15.5. The Recipient shall be entitled to disclose Confidential Information which:

15.5.1. is at the time of disclosure to the Recipient lawfully and without breach of any confidentiality obligations within the public domain;

15.5.2. is at the time of such disclosure already within the possession of the receiving party or it has been independently developed by the Recipient; or

15.5.3. it is legally obliged to produce pursuant to a court order or statute

provided that the onus shall at all times rest on the Recipient to establish that such information falls within the exceptions above and provided further that the Recipient will provide the Discloser with prompt notice of its intention to disclose the information (and the content of the information that it seeks to disclose) in order that the Discloser may either seek appropriate protective relief or waive the Recipient's compliance with the provisions of this Agreement with respect to all or part of such information.

16. NO PARTNERSHIP

Save as otherwise expressly provided in these Terms, the Companies shall at all times act as independent contractors, and nothing in these Terms shall constitute a partnership, joint venture or agency agreement between the Companies themselves and/or between the Companies and the Customer in any way.

17. ADDRESS FOR NOTICES

The Customer hereby chooses its registered address as its address for purposes of receiving any notices from the Company.

18. CESSION

18.1. THE CUSTOMER HEREBY IRREVOCABLY CEDES AND ASSIGNS AND TRANSFERS IN FAVOUR OF EACH OF THE COMPANY(IES), ALL THE CUSTOMER'S RIGHTS, TITLES AND INTEREST IN AND ITS CLAIMS AGAINST ITS DEBTORS, BOTH PRESENT AND FUTURE AND FROM WHATSOEVER CAUSE ARISING, AS SECURITY FOR ALL OR ANY OF THE AMOUNTS WHICH THE CUSTOMER MAY NOW OR AT ANY TIME IN THE FUTURE OWE TO ANY OF THE COMPANIES.

18.2. To the extent that the Customer has already ceded in security its said claims to a third party whether prior to or subsequent to the date hereof, the Customer hereby cedes, transfers and makes over to the Company(ies) all its reversionary rights in and/or to such claims.

18.3. The Customer hereby irrevocably authorizes the Company, in its sole and absolute discretion, to:

18.3.1. claim from all or any of the Customer's debtors, the whole or any portion of the indebtedness of any one or more of them;

18.3.2. give a valid receipt or discharge for such indebtedness;

18.3.3. take any action in the Customer's name in any court of competent jurisdiction and to proceed in execution thereunder against all or any of the said debtors to cede, transfer, negotiate, pledge or otherwise deal with all or any of the said debtors; and

18.3.4. exchange promissory notes, cheques, agreements, documents or title or any other security held by the Customer.

18.4. This security created by the cession shall be a continuing one, despite any fluctuation in the amount of indebtedness of the Customer to any of the Company. The Customer undertakes to:

18.4.1. furnish the Company, on demand, with such information concerning its debtors as may be reasonably required to enable the Company to give effect to the provisions of this clause 18; and

18.4.2. pay the cost of the cession contained herein and agrees that such costs can be debited to its account.

19. SURETYSHIP

The Customer hereby undertakes to and in favour of the Company that it shall, at the Company's request, procure that each of the members or shareholders of the Customer, as the case may be, undertakes to sign a personal suretyship as security for all or any of the amounts which the Customer may at any time owe to the Company. The form of the suretyship shall be provided by the Company to the Customer at the relevant time.

20. LIEN

20.1. In addition to the cession and security granted in terms of clauses 18 and 19 above, THE CUSTOMER ACKNOWLEDGES and agrees that the Company shall have both a special and a general lien (i.e. a security right of retention) over the Consignment or any other item or sum consigned to it by, or collected by it on behalf of, the Customer, including but not limited to all goods (regardless of whether the Customer is the owner thereof), documentation (including bills of lading and import permits), and monies recovered on behalf of the Customer (collectively, "the Lien Items"), for the due and proper fulfilment of the Customer's obligations in terms of these Terms, whether present or future.

20.2. The sub-contracting by the Company of any portion of the services, as contemplated in clause 6.1 above, shall not affect the validity of the lien over the Lien Items, as contemplated in clause 20.1 above.

20.3. The Customer shall not, once any goods have been consigned to the Company, effect or permit to be affected any security or encumbrance of whatsoever nature over, or in respect of, the Lien Items, without the prior written consent of the Company, which consent the Company shall be entitled to withhold in its sole discretion.

20.4. The Customer agrees and undertakes that, insofar as may be legally possible, the lien in favour of the Company shall operate as a first-ranking claim in respect of the Lien Items, and no other security shall rank prior to the Company's lien.

20.5. In the event that any amounts due to the Company remain outstanding 10 (ten) business days after demand for payment thereof by the Company, the Company shall be entitled, but not obliged, to arrange for the sale of any goods forming part of the Lien Items, at the expense of the Customer, and the net proceeds of the sale shall be applied firstly toward defraying the costs of such sale, and thereafter towards satisfaction of the Customer's indebtedness to the Company.

20.6. The Customer agrees to execute, deliver to the Company, and permit the Company to file any financing statements necessary in the Company's sole determination to perfect the Company's lien.

21. FORCE MAJEURE

The Company shall not be responsible for delays in deliveries due to events of force majeure or other matters, facts or circumstances beyond its reasonable control, including, but not limited to, acts of G-d, fire, flood, tornado, earthquake, war, riot, insurrection, strike, lockout, slowdown, epidemic, quarantine restriction, delay in transportation, labour shortage or strikes, materials or manufacturing facility shortage, accidents, boycott, embargo or any act or regulation of government or governmental authority and other contingencies beyond the Company's control resulting in impossibility or delay of performance of the Company.

22. SEVERABILITY

22.1. Each of the undertakings set out in these Terms shall be deemed to be a separate and independent undertaking severable from each of the other undertakings and shall be separately enforceable, notwithstanding that it may appear with any other undertaking or is expressed conjunctively with or disjunctively from or alternatively to any other undertaking.

22.2. If the whole or any part of an undertaking in this Agreement is invalid or unenforceable for any reason, the validity of the rest of the undertakings shall not be affected.

23. GENERAL

23.1. No relaxation or indulgence of these Terms shall in any way prejudice the Company's rights, nor shall they be deemed to be a waiver of any of the Company's rights in terms of these Terms and no variation, waiver, indulgence and/or relaxation of these Terms shall be binding upon the Company.

23.2. These Terms do not alter the Customer's statutory rights, in respect of the Consumer Protection Act, 68 of 2008 (as amended) and the National Credit Act, 34 of 2005 (as amended), each to the extent applicable, and insofar as any provision of these Terms is found by a court to contravene the provisions of any applicable law, the offending provision shall be deemed to be amended and/or altered and/or severed to conform with the applicable law, and such amendment and/or alteration shall not in any way affect the remaining provisions of these Terms.

24. DISPUTE RESOLUTION: NEGOTIATION, MEDIATION AND THEN ARBITRATION

24.1. Should any dispute, disagreement or claim arise between the parties ("**the dispute**") concerning these Terms, the parties shall endeavour to resolve the dispute by negotiation.

24.2. This entails one of the parties inviting the other in writing to meet and to attempt to resolve the dispute within 14 (fourteen) business days from date of written invitation.

24.3. If the dispute has not been resolved by such negotiation within 14 (fourteen) business days of the commencement thereof by agreement between the parties, then the parties shall:

24.3.1. submit the dispute to mediation to be administered by the Arbitration Foundation of Southern Africa NPC ("**AFSA**"), upon such terms as agreed between the parties and the secretariat of AFSA; and

24.3.2. failing agreement as aforesaid within 14 (fourteen) business days of the dispute being submitted to mediation, the parties shall refer the dispute to arbitration as provided in clause 24.5 below.

24.4. The decision of the mediator shall become final and binding within 14 (fourteen) business days of delivery thereof to the parties, unless one or either of the parties disputes the mediator's decision by written notice to the other party within the aforesaid 14 (fourteen) day period, in which event the dispute shall be referred to arbitration in accordance with the provisions of clause 24.5 below.

24.5. Failing agreement as referred to in clause 24.3.1 above or in the event of either of the parties furnishing its notice of dispute within 14 (fourteen) business days of the mediator's decision as envisaged in terms of clause 24.4 above, the dispute shall be submitted to arbitration for final resolution in accordance with the rules of AFSA by an arbitrator or arbitrators appointed by it.

24.6. Unless otherwise agreed in writing by the parties, any such negotiation, mediation or arbitration shall be held in Cape Town.

25. LAW AND JURISDICTION

25.1. These Terms shall be governed by and construed in accordance with the laws of the Republic of South Africa. The Parties agree to the non-exclusive jurisdiction of the Western Cape High Court. The Parties further agree that the conclusion of these terms occur in Epping, Cape Town, Western Cape, South Africa, by virtue of the Company's acceptance of the Customer's offer to do business contained in its signed credit application, incorporating these Terms.

25.2. Despite the provisions contained in clause 24 above, the Company shall be entitled, in their sole discretion, to institute any proceedings against the Customer (who consents to this entire clause 25) in any Magistrates' Court with relevant jurisdiction, even though the cause of action arose, or the amount claimed, is beyond the jurisdiction of such court.

26. COSTS

26.1. **THE CUSTOMER SHALL BE LIABLE** for all costs incurred by the Company in the recovery of any amount or the enforcements of any rights which it has hereunder, including collection charges and costs on an attorney and own client scale and cost of counsels as on brief (whether incurred prior to or during the institution of legal proceedings), or if judgement has been granted in connection with the satisfaction or enforcement of such judgements.

26.2. **THE CUSTOMER UNDERTAKES TO PAY THE COST OF THE SURETYSHIP AND CESSION CONTAINED HEREIN AND AGREES THAT SUCH COSTS CAN BE DEBITED TO ITS ACCOUNT.**

INTERNATIONAL SHIPPING, CLEARING AND FORWARDING:

27. SHIPPING INSTRUCTIONS

27.1. The Customer may, from time to time and in writing, place a written shipping instruction on X International, requesting X International to perform the services in accordance with these Terms, in relation to specific goods ("Shipping Instruction").

27.2. X International may, in its sole discretion, accept any Shipping Instruction placed by notifying the Customer in writing of such acceptance. Where X International does not notify the Customer in writing of its acceptance of the Shipping Instruction, X International shall be deemed not to have accepted the Shipping Instruction, and **NEITHER X International** nor its employees, officers, agents and/or sub-contractors **SHALL BE LIABLE** to the Customer to provide any services requested therein.

27.3. No goods shall be consigned to X International by the Customer until such time as X International has accepted the relevant Shipping Instruction in writing, as contemplated in clause 27.2 above.

27.4. Where X International accepts a Shipping Instruction placed by the Customer and the Customer thereafter, by written notice to X International (once the goods have been consigned to X International), cancels the Shipping Instruction concerned, X International shall be entitled, in its sole discretion and without prejudice to any other remedy it may have, in terms of these Terms or in law, to levy a cancellation fee in the amount of 5% (five percent) of the preliminary quotation amount as determined in accordance with clause **Error! Reference source not found.** above, which amount the Customer shall pay to X International not later than 7 (seven) business days after demand therefor.

28. INSTRUCTIONS

28.1. The Customer shall, for every Shipping Instruction placed, provide X International with adequate and sufficiently detailed instructions as to the services required in relation to the Shipping Instruction concerned.

28.2. **THE CUSTOMER WARRANTS** to and in favour of X International that all information and instructions supplied by it to X International are accurate, true and comprehensive, including, without limitation, all descriptions, values and other particulars in relation to any goods, furnished by it to X International for customs and related purposes.

28.3. The Customer agrees that, where X International, in its sole discretion, has not received adequate instructions from the Customer as contemplated in clause 28.1 above:

28.3.1. X International shall be entitled, but not obliged, to make written request to the Customer for adequate instructions; and

28.3.2. where no adequate response is received within 3 (three) business days of such request, X International shall be entitled to take all such steps as may, in its sole discretion, be reasonably necessary and commercially expedient in order to transport the goods in question, in accordance with the instructions contained in the Shipping Instruction concerned, including but not limited to making such declarations as to the value of the goods as may be required by carriers or any other parties from time to time.

28.4. In the event that X International:

28.4.1. elects to exercise its discretion to proceed with the Shipping Instruction, as contemplated in clause 28.3.2 above, X International shall notify the Customer accordingly; or

28.4.2. elects not to proceed with the Shipping Instruction, X International shall be entitled, but not obliged, to:

28.4.2.1. arrange for storage of the goods in question, at the Customer's expense; and

28.4.2.2. call upon the Customer to collect the goods in question by a certain date, provided that where the Customer fails to collect the goods by the date in question, X International shall be entitled to dispose of the goods in any way it deems fit, including but not limited to by destroying or selling the goods.

28.5. In the event that X International sells the goods, as contemplated in clause 28.4.2 above, it shall be entitled to set off the proceeds of such sale against any storage or other costs of whatsoever nature, incurred by it as a result of the Customer's failure to provide X International with any instructions, or with timeous, adequate instructions, as the case may be. The surplus balance of such proceeds shall be repaid to the Customer, without interest, within 60 (sixty) business days after such sale whereupon **X INTERNATIONAL SHALL BE RELEASED OF ANY AND ALL LIABILITY** whatsoever in respect of the goods carried or warehoused, as the case may be.

29. DUTIES, TAXES, IMPORTS, LEVIES AND DEPOSITS

29.1. **THE CUSTOMER SHALL BE LIABLE (ON DEMAND)** to X International for:

29.1.1. any and all duties, taxes, imposts, levies, deposits or out-lays of whatsoever nature levied by or payable to any authorities, intermediaries or other parties at any port or place, for or in connection with, the goods; and

29.1.2. any payments, fines, penalties, expenses, loss or damage incurred or sustained by X International in connection therewith or arising therefrom, irrespective of its cause,

and the Customer shall pay such amounts to X International immediately on written demand by X International.

29.2. The provisions of clause 4 above shall apply, together with the necessary amendments thereto, in respect of any loss or damage suffered by the Customer, whether directly or indirectly, as a result of any change in the rate of duty, wharfage, cargo dues, freight, railage or cartage or any other tariff or charge of a similar nature, whatsoever.

29.3. In the event that any duty, tax, levy, railage, wharfage, cargo dues, freight, cartage or any other amount has been incorrectly charged to the Customer by X International, then:

29.3.1. the party becoming aware thereof shall immediately notify the other in writing;

29.3.2. in the event that the Customer has overpaid X International, the amount of such overpayment shall be set off against any amounts owing by the Customer to X International, and the Customer shall take all such steps and do all such things as may be reasonably requested by X International, to enable it to recover any corresponding overpayment it may have made to any third party; and

29.3.3. in the event that the Customer has underpaid X International, the Customer shall pay the difference owed to X International within 7 (seven) business days of demand, or such later date as the parties may agree in writing.

29.4. Should any negligent or wilful act or omission by the Customer prejudice X International's right of recovery from a third party, as contemplated in clause 29.3.2 above, then X International shall only be obliged to set off against amounts owed to it by the Customer, the amount that X International is able to recover from the third party, and the unrecovered balance shall be borne by the Customer.

29.5. In the event that X International, in discharging an instruction issued by the Customer, has incurred any disbursements on behalf of the Customer, the Customer shall re-imburse any such amounts to X International together with the payment of any invoices raised by X International for its services on demand.

30. INCOTERMS

30.1. The parties record and agree that these Terms shall not be subject to, or interpreted in accordance with, any Incoterm (i.e. a set of rules which define the responsibilities of sellers and buyers for the delivery of goods under sales contracts, as published by the International Chamber of Commerce), unless the parties have agreed otherwise in writing in advance of X International accepting any Shipping Instruction.