

## **STANDARD TRADING CONDITIONS**

**The following Standard Trading Conditions should at all times be read in conjunction with our supporting quotation. All or any information may be revised from time to time by amending and resigning documentation as requested by the CARRIER.**

### **1. GENERAL**

In this document:

- 1.1. Wherever possible defined terms are shown in CAPITAL LETTERS.
- 1.2. The signatories on behalf of the parties warrant their authority to sign.
- 1.3. Paragraph headings in this agreement are for convenience only and shall not be taken into account in the interpretation hereof.
- 1.4. Words importing a particular gender shall be deemed include the other genders, words importing natural persons shall be deemed to include corporate bodies and associations of persons, and words importing the singular shall be deemed to include the plural, and vice versa.
- 1.5. The client accepts all the conditions herein by allowing TK'S TRANSPORT to carry the client's consignment, regardless of what the Client's load confirmation may imply or attempt to vary or ever-ride these conditions that are expressly agreed to. That means that these conditions of trade cannot be unilaterally ambushed.

### **2. BACKGROUND:**

- 2.1. The CLIENT (statement client responsible for payment) appoints the CARRIER (TK'S TRANSPORT) to carry the CARGO from one nominated person/entity (CUSTOMER) to another, specified in writing to the CARRIER.
- 2.2. The CARRIER is appointed to perform the carriage as an independent CARRIER and not as an agent of the CLIENT.
- 2.3. The CARRIER as well as the CLIENT acknowledge to maintain a scrupulous standard of honesty in all dealings.

### **3. PAYMENT TERMS AND GRANTING OF CREDIT:**

As compensation for the services rendered by the CARRIER, in terms of this agreement, the CLIENT shall pay to the CARRIER an amount according to the quotation supplied.

The CARRIER shall submit monthly statements in respect of the CARRIAGE, for services rendered during the preceding month. All invoices shall be accompanied by such supporting documentation in respect of the CARRIAGE, as agreed between the CARRIER and the CLIENT to prove delivery.

#### **Unless agreed to the contrary, payment of the FEE shall be effected:**

- (a) by electronic funds transfer into such bank account within the Republic of South Africa.
- (b) within 30 (THIRTY) days of the CARRIER's date of statement, based on closure of our books on the last calendar day of each month. Overdue amounts shall bear interest at the rate of 2,0% (TWO PERCENT) per month.
- (c) The CARRIER'S Credit Application and Standard Trading Conditions must be completed, initialled, signed and returned to the CARRIER, before an account can be opened by the CARRIER, given the fact that the CLIENT's credit standing is in good order for the credit amount requested.
- (d) Until such time as a new account has been approved by the CARRIER, CARGO will be transported on an approved 'cash on delivery' basis.

#### **Notwithstanding the above provisions contained in this agreement, the CARRIER reserves the right to:**

- (a) Change credit limits and payment terms should it be deemed necessary. The fact that the CLIENT may have enjoyed credit facilities in the past, or the latitude allowed for late payments, shall not constitute a waiver to the rights of the CARRIER to require strict compliance with every provision of this agreement.
- (b) Withdraw credit facilities without reason or notice at any stage, upon which the full outstanding balance becomes due and payable.
- (c) All goods, and documents relating to the goods, which come into the possession or under the control of the CARRIER shall be subject to a special and a general lien and pledge for monies due to the CARRIER in

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respect of services and/or disbursements relating to such goods, and for any other indebtedness to the CARRIER from whatever cause by the CLIENT, sender, owner or consignee of all the goods. If such indebtedness is not paid in full by the debtor within fourteen (14) days of receipt of notice from the CARRIER that it intends disposing of all the goods, the CARRIER may realize the goods either by public auction or private treaty at its entire discretion and apply the proceeds towards the debtor's indebtedness.

#### 4. RATE:

- 4.1. The TRANSPORT FEE shall be determined from the quoted price of the carrier from time to time.
  - (a) The CARRIER may at the request of the CLIENT, provide ad hoc pricing for specific orders (AD HOC FEE).
  - (b) The AD HOC FEE shall be specific to the CARRIAGE for which it has been quoted and shall in no other respects amend the standard TRANSPORT FEE quoted.
- 4.2 The TRANSPORT FEE is the sum total of the BASE PRICE plus the FUEL SURCHARGE that varies according to fuel 'increase/decrease index' calculation. In addition to the quoted TRANSPORT FEE, a documentation fee, and other fees will be levied as specified on every waybill used by the CARRIER.
- 4.3 The conditions on the CARRIER'S quotations and distribution lists, as updated and altered from time to time, is an integral part of this agreement.
- 4.4 All quotes by the CARRIER are based on an 'one-stop'/'one stop' per waybill basis, i.e. one pick-up and one delivery address. Any additional stops, as may be agreed between the parties, will be subjected to an additional charge per stop.
- 4.5 CARGO is transported on an actual weight or volumetric mass basis, whichever is the greater. Volumetric mass calculated L x B x H divided by 400. Goods may be weighed and/or measured by the CARRIER. The measurements and weight of the CARRIER will be applicable and final.
- 4.6 If CARGO is dispatched for account of the RECEIVER/CUSTOMER and are not accepted on such a basis, CARGO will be returned to sender and all charges (including return trip charges) will revert back to the CLIENT.
- 4.7 The CARRIER reserves the right to increase its FEES as market conditions dictate as and when necessary.

#### 5. LIABILITY FOR DAMAGE, INSURANCE & FINES & the Hazchem charge:

- 5.1. Unless specifically stated otherwise, the CARRIER shall not be liable for any loss of or damage to CARGO for any reason whatsoever, be it direct, indirect or consequential, arising out of any act or omission on the part of the CARRIER or its agents whether or not the act or omission was one of negligence. However, insurance cover is provided as stated in clause 5.2. Carrier's liability as per Common Law rules of Bailee and Sub-Bailee are expressly excluded.
- 5.2 The CARRIER, as part of the TRANSPORT FEE, shall maintain goods in transit insurance cover of no more than R750 000 (SEVEN HUNDRED AND FIFTY THOUSAND RAND) VAT inclusive per single CARRIAGE incident (the TRIP INSURANCE), and then only to the extent that any loss the CLIENT may suffer shall be recoverable at 'cost price' in terms of such TRIP INSURANCE. Proof of cost price is required by the insurance company. Additional insurance, exceeding R750 000 is at the CLIENT'S peril.
 

The 'Excess Amount' in terms of this policy, has the effect that there is no cover for the first R10 000 per each insurance claim. Alternatively CLIENTS, excluding COD CLIENTS, may elect to pay a **2.5% insurance fee on the 'Transport Fee'** as per the waybill. The Transport Fee being the **Base Price plus the Fuel Surcharge** amount. A written confirmation by the CLIENT to this effect is needed to provide cover for the 'Excess Amount' of R10 000.
- 5.3 The TRIP INSURANCE shall be per mixed load per truck apportioned pro-rata over all the customers pertaining to a specific load and relates to the "Cost Price" value of each CLIENT'S CARGO.
- 5.4 The CARRIER is fully compliant to transport hazardous chemicals and materials. This service will carry automatically an **additional surcharge of 10% of the 'Transport Fee'**. The Transport Fee being the **Base Price plus the Fuel Surcharge** amount.
- 5.5 It shall be incumbent upon the CLIENT to inquire from the CARRIER to what extent the CLIENT shall be insured by the TRIP INSURANCE, as also to personally insure its CARGO should the value of such CARGO exceeds its pro rata portion of or the whole TRIP INSURANCE, whatever the case might be.
- 5.6 The CLIENT shall be entitled to request, in writing, that insurance be obtained in respect of the CARGO.

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as specified above to be carried by the CARRIER. The CLIENT shall be responsible for any premium in relation to such additional INSURANCE.

- (a) The INSURANCE and TRIP INSURANCE taken shall be subject to the exceptions and conditions of the policies of the insurance company or underwriters accepting the risk.
  - (b) The CARRIER shall not be liable for any loss or damage suffered by the CLIENT which is not recoverable from either the TRIP INSURANCE or the INSURANCE, should any claim on such TRIP INSURANCE or INSURANCE be repudiated for whatsoever reason.
  - (c) The CARRIER shall not be under any obligation to effect separate INSURANCE cover in respect of each consignment of CARGO, but may declare it on any open or general policy.
  - (d) A copy of the policy of INSURANCE and TRIP INSURANCE shall be available for inspection by the CLIENT to familiarise itself with the terms thereof, as also any exceptions which may be relevant.
- 5.7 Should the insurers or Underwriters dispute their liability for any reason under the INSURANCE or TRIP INSURANCE, the CLIENT shall have recourse against the insurers or Underwriters only and the CARRIER shall not be under any responsibility or liability in relation thereto.
- 5.8 When full trailers (6 meters = 10 tons) or (12 meters = 22 tons) are ordered and loaded by CLIENT, all overloading fines by the traffic authorities in relation to such cargo will be for the account of the CLIENT.
- 5.9 The CARRIER does not take any responsibility or be liable in any respect for loading weight which is represented inaccurately on documents furnished by the CLIENT to the CARRIER, and/or the overloading of any of the CARRIER'S vehicles as a result.

## **6. OBLIGATIONS OF THE CLIENT:**

### **6.1. In respect of all CARGO to be delivered by the CARRIER, the CLIENT shall ensure that:**

- (a) the CARGO is suitably packed and ready for loading at all times, dates and places specified in the CLIENT'S faxed notice to the CARRIER.
- (b) all intended recipients/the consignee of the CARGO are available to receive the CARGO in accordance with the provisions specified in the notices supplied to the CARRIER by the CLIENT in the faxed notice referred to in 6.1. (a) above.

### **6.2. It shall be the CLIENT'S responsibility to ensure that:**

- (a) the CARGO is packed suitably and adequately to handle the demand of bulk CARRAIGE by way of heavy duty truck by road.
- (b) such packaging are suitable to contain the CARGO to be moved by way of heavy duty truck by road.
- (c) such packaging adequately reflects standardized handling requirements for the CARGO in question.

### **6.3. The CLIENT shall ensure that, in the case of any claim or credit request against the CARRIER:**

- (a) Any shortages or damages will be noted on the 'Proof of Delivery' on date of receipt and signed by the CLIENT and CARRIER.
  - (b) In respect of damages or shortages a full written report, including all relevant documentation, has to be submitted as proof an in possession of the CARRIER, within 14 days of receipt of goods. This is a requirement of the INSURER and no late claims can thus be accepted.
  - (c) The CLIENT is not entitled to apply set-off or to withhold monies due to the CARRIER where a claim is lodged, as it is a separate matter that is subject to the acceptance of the INSURER who carries the risk as stated in clause 5.2.
  - (d) In respect of possible pricing errors on an invoice, a written credit request has to be submitted to the CARRIER within 21 days from the CARRIER'S date of statement. No late applications will be entertained.
- 6.4 Should the CARRIER entertain any claim for damaged goods, all damaged goods will be regarded as the property of the CARRIER, and the CLIENT will make the damaged goods forthwith available to the CARRIER to inspect. If immediate inspection is denied, it is expressly agreed that there will be no claim. The CARRIER will require a VAT invoice form the CLIENT at the cost price of the goods and no set-off against the debtors' account will apply.
- 6.5 The Client will advise the CARRIER in writing within 14 days should there be any change in ownership or control, bank account particulars, addresses or telephone numbers of the CLIENT.

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**7. OBLIGATIONS OF THE CARRIER:**

- 7.1 The CARRIER shall be obliged to ensure that, at all relevant times
- (a) All vehicles utilized by the CARRIER for purposes of providing CARRIAGE are properly licensed
  - (b) All vehicles utilized by the CARRIER will be in a roadworthy condition.
  - (c) All drivers used by the CARRIER in relation to the CARRIAGE are in possession of valid and appropriate driver's license, which shall not be subject to any suspension.
- 7.2 The CARRIER shall not be liable to the CLIENT in respect of any damages the CLIENT may suffer as a result of a delay beyond the control of the CARRIER to load or deliver CARGO.
- 7.3 The CARRIER shall not be liable to the CLIENT for goods gone missing where it was packed, wrapped, sealed or enclosed in such a way that positive counting or identification was not possible, and the fact that the CARRIER signed for the receipt of goods in good faith, does not wave our express right to the clause. Neither the CARRIER nor the INSURER will entertain unsubstantiated, dubious or fraudulent claims.

**8. INDEMNITY:**

- 8.1 The CLIENT indemnifies the CARRIER against any claim that any party may have against the CARRIER arising out of the provision of CARRIAGE in terms of this agreement.
- 8.2 The CLIENT indemnifies the CARRIER against any claims that may be lodged by a 3<sup>rd</sup> party that may have a contractual agreement with the CARRIER, which we are not aware of and are not party to this agreement.
- (a) The CLIENT warrants that all CARGO conveyed by the CARRIER shall be legal.
  - (b) If it be found that any CARGO being carried contravenes any law, the CARRIER shall not be a party to or regarded as an accomplice to such contravention.
- 8.3 This agreement shall not be construed as imposing a liability on the CARRIER for any loss, damage or personal injury, whether occasioned to any third party or to any CARGO or agent of the CLIENT arising out of any act or omission of the CLIENT, its servants or agents.

**9. SETTLEMENT OF DISPUTE:**

It is herewith agreed between the CLIENT and the CARRIER that should a dispute or claim against the CARRIER arise:

- (a) The amount involved in the dispute, nor any other amount, will under no condition be subtracted or withheld in any way by the CLIENT from the amount owing to the CARRIER or for transporting the balance of the goods.
- (b) Should it become necessary for the CARRIER to institute legal proceedings against any of its CLIENTS, the CLIENT shall be liable to pay to the CARRIER its costs on a scale as between attorney and own client in addition to any collection charges, interest and other expenses.
- (c) In the event of the CARRIER instituting legal proceedings against any of its CLIENTS, then the CARRIER shall be entitled to institute such proceedings in the Magistrate's Court notwithstanding the fact that such court would otherwise not have competent jurisdiction. This clause, in any way, shall not preclude the CARRIER from instituting proceedings against a CLIENT in the Supreme Court of the Republic of South Africa, and in such event the CARRIER shall not be penalised insofar as the costs of such proceedings are concerned.

**10. FORCE MAJEUR:**

The CARRIER shall not be liable for any failure to perform its obligations under this agreement where such performance has been delayed, hindered or prevented by any circumstance beyond the control of that party, including but not limited to Acts of God, strikes, lock outs, trade disputes, fire, government directions and/or war.

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10. **PERMISSION GRANTED:**

I/We the undersigned hereby agrees and permit that the CARRIER is entitled to:

- (a) Make any reasonable enquiries to any third party, including your Account/Auditor to verify and research the CLIENT's credit worthiness.
- (b) Use any Credit Bureau to ascertain the CLIENT's and its director's or member's credit standing.
- (c) Disclose the existence and the conduct of the CLIENT's account with the CARRIER, whether still or not, to any credit Bureau or other credit grantor for publication.

I/We herewith declare that I am/we are authorized to apply for credit facilities and to sign this contract on behalf of the said business or company.

I/We hereby acknowledge and confirm that the above information is true and correct to the best of my knowledge.

1. SIGNATURE: .....

2. SIGNATURE: .....

FULL NAME: .....

FULL NAME: .....

ID NR: .....

ID NR: .....

DESIGNATION: .....

DESIGNATION: .....

DATE: .....

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