

SEAWAYS (K) LTD TRADING TERMS AND CONDITIONS 2019

1. INTERPRETATION

In these standard trading terms and conditions:

- 1.1 the headings to the clauses are for reference purposes only and shall not aid in the interpretation of the clauses to which they relate;
- 1.2 unless the context clearly indicates a contrary intention, words importing any one gender include the other two genders, the singular includes the plural and vice versa, and natural persons include created entities (corporate or unincorporate) and vice versa;
- 1.3 the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning namely -
 - 1.3.1 "the Company" means Seaways Kenya LTD and all of its subsidiary and associated companies, together with each of their successors in title, or assigns;
 - 1.3.2 "the Carrier" means any transporter, whether by road, rail, sea or air, with whom the Company contracts whether as principal or agent, to move Goods or provide services, and references to Customer or "third parties" includes the Carrier;
 - 1.3.3 "Client" means the same as "Customer";
 - 1.3.4 "Customer" " means any person at whose request or on whose behalf the Company undertakes any business or provides any advice, information or service and includes any holder of a Holding Certificate or similar document evidencing the receipt of Goods;
 - 1.3.5 "Forwarding Services" means those activities and services of any kind provided by the Company including, but not restricted to, the issuing of sea and other transport documents, collecting freight, the release of Goods against presentation of appropriate documents and information, the carriage, consolidation, storage, handling, packing or distribution of Goods and the clearing and forwarding of a Customers Goods and any related and ancillary services and the providing of advice and information relating thereto.
 - 1.3.6 "Goods" means any goods of whatsoever nature handled, transported or dealt with by or on behalf of or at the instance of the Company or which come under the control of the Company or its agents, servants or nominees on the instructions of the Carrier or the Customer, and includes any type of container, transportable tank, flat pallet, package or any other form of covering, packaging, container or equipment used in connection with or in relation to such goods;
 - 1.3.7 "Owner" means the owner of the Goods and any other person who has any risk in and to the Goods and any person who acquires any other interest, financial or otherwise, therein and to whom Forwarding Services are provided;
 - 1.3.8 "Parties" means the Company, the Carrier or the Customer;
- 1.3.9 "Sea Transport Document" means those documents defined in Section 1(a) – (e) inclusive of the Sea Transport Documents Act, 2000 as amended from time to time;
- 1.3.10 "STC's" means these standard trading terms and conditions.

2 RENDERING SERVICES TO THE CUSTOMER

- 2.1 The Company may at its election perform all or any business undertaken or provide advice, information or services, whether gratuitous or not, either itself or it may procure that any other person undertakes such business or provides such advice, information or services as principal upon and subject to the terms and conditions contained herein which shall apply mutatis mutandis to the Customer and any such person.
- 2.2 For the purposes of Clause 2.1, each person shall be deemed to have appointed the Company as its agent for procuring on behalf of any such other person, the benefit of these STC's and the Company shall further be deemed to accept such benefits at the time of accepting any instruction to perform any function in rendering any Forwarding Services to the Customer.

3 APPLICATION OF STC's

- 3.1 Subject to clause 5, all and any business undertaken or advice, information or services provided by the Company, whether gratuitous or not, is undertaken or provided on the terms of these STC's.

- 3.2 The Company deals with Goods only on the basis that it is neither a common carrier nor a public carrier..
- 3.3 To the extent that any of these terms and conditions are repugnant to or are in conflict with any law, they are deemed to be amended to comply with that law, and any such amendment shall not in any way affect the remaining provisions of these STC's.
- 3.4 If any term is unenforceable, then the Company shall be entitled to elect, at any time that such term shall be severed from the remaining terms and conditions, so as to allow the remaining terms and conditions to remain of full force and effect.
- 3.5 These STC's shall prevail over those of any Customer or carrier or any party with whom the Company contracts, even if any applicable terms contain a clause similar in meaning and intention to this one.

4 OWNER'S RISK

- 4.1 All Forwarding Services provided by the Company by or on behalf of or at the request of the Customer and/or the Owner, is provided at the sole risk of the Customer and/or Owner, and the Customer indemnifies the Company against any claim which might be brought against the Company, howsoever arising, whether in contract or delict or otherwise, by any Owner or any other third party.
- 4.2 The Company shall not be liable to any Customer or Owner for any loss or damage of whatsoever nature and, howsoever caused, whether by breach of contract, negligence, gross negligence or the intentional acts of the Company, its servants, agents or sub-contractors.
- 4.3 Notwithstanding any representations made by the Company regarding any times or delivery dates for performance by the Company, these times and delivery dates are estimates only, and it is agreed that insofar as the Company is concerned time shall not be of the essence and any delay in the Company performing any of its obligations will not entitle the Customer to cancel any contract or claim damages.
- 4.4 If the Company is prevented or restricted, whether directly or indirectly, from carrying out all or any of its obligations by force majeure or by any other reason beyond its control, the Company shall be relieved of performing its obligations for the period that such event continues and no liability whatsoever shall attach to the Company for any inability to perform. Force majeure includes, but is not limited to, any strike, lock-out, port closure, industrial dispute, fire, explosion, earthquake, storms, hail, flood, landslide, riot, unrest, act of God, legislation, derailment, regulation or ordinance, act or omission of any port or other authority, or Transnet Ltd.
- 4.5 In the event that the Company is found liable to the Customer and/or owner, despite the operation of Clauses 4.1 to 4.4, then it is agreed that the Company's liability shall not exceed KES 100,000 (One Hundred Thousand Kenyan Shillings) for any one incident or occurrence, or the INCOTERM CIF, or similar, value of the Goods, or the reasonable cost of the repair of the damaged goods, whichever is the lesser.
- 4.6 Any claim against the Company must be instituted within 3 (three) months after the cause of action arose, failing which the claim shall be deemed to have lapsed irrevocably.

5 APPLICABLE LEGISLATION

- 5.1 If the Company is obliged, in the execution of any of its duties and/or responsibilities to comply with any common law or legislative enactment ("the law") of any nature whatsoever, then the Company by so complying shall not be deemed to waive nor abandon any of its rights contained in these STC's.
- 5.2 In addition, in complying with the law, the Company shall not be deemed to have assumed any onus, obligation, responsibility or liability in favour of the Customer.

6 COMPANY'S DISCRETION IN THE ABSENCE OF INSTRUCTIONS

- 6.1 In the absence of specific instructions given timeously in writing by the Customer to the Company -
- 6.2 it shall be in the reasonable discretion of the Company to decide at what time to perform or to procure the performance of any or all of the acts which may be necessary or requisite for the discharge of its obligations to the Customer;
- 6.3 the Company shall have an absolute discretion to determine the means and procedure to be followed by it in performing all or any of the acts or services it has agreed to perform; and
- 6.4 in all cases where there is a choice of tariff rates or premiums offered by any carrier, warehouseman, underwriter, or other person depending upon the declared value of the relevant goods or the extent of the liability assumed by the

carrier, warehouseman, underwriter or other person, it shall be in the discretion of the Company as to what declaration, if any, shall be made, and what liability, if any, shall be imposed on the carrier, warehouseman, underwriter or other person.

7 COMPANY'S GENERAL DISCRETION

- 7.1 Notwithstanding anything to the contrary herein contained, if at any time the Company should consider it to be in the Customer's interests or for the public good to depart from any of the Customer's instructions, the Company shall be entitled to do so and shall not incur any liability in consequence of doing so.
- 7.2 If events or circumstances come to the attention of the Company, its agents, servants, or nominees which, in the opinion of the Company, make it in whole or in part, impossible or impracticable for the Company to comply with a Customer's instructions the Company shall take reasonable steps to inform such Customer of such events or circumstances and to seek further instructions. If such further instructions are not timeously received by the Company in writing, the Company shall, at its sole discretion, be entitled to detain, return, store, sell, abandon, or destroy all or part of the goods concerned at the risk and expense of the Customer.

8 INSURANCE

- 8.1 The Company shall have no obligation whatsoever to obtain any form of insurance cover on behalf of the Customer in respect of the Goods.
- 8.2 Subject to the provisions of clause 8.4, the Company shall endeavour to place any insurance cover the Customer timeously and in writing instructs it to effect. Such insurance will be subject to such exceptions and conditions as may be imposed by the insurance company or underwriter taking the risk and the Company shall not be obliged to obtain separate cover for any risks so excluded. Unless otherwise agreed in writing the Company shall not be under any obligation to obtain separate insurance in respect of separate consignments but may insure all or any of such consignments under any open or general policy held by the Company from time to time.
- 8.3 Should any insurer dispute its liability in terms of any insurance policy in respect of any Goods, the Customer concerned shall have recourse against such insurer only and the Company shall not have any responsibility or liability whatsoever in relation thereto notwithstanding that the premium paid on such policy may differ from the amount paid by the Customer to the Company in respect thereof. Insofar as the Company agrees to arrange insurance the Company acts solely as agent for and on behalf of the Customer.
- 8.4 Notwithstanding anything to the contrary herein contained the Company shall in no circumstances be liable for any consequences of any failure to obtain any insurance cover, whether requested to do so by the Customer, or otherwise and the liability of the Company in respect of any claim brought against the Company arising out of or connected with the provisions of this clause 8 shall be regulated and determined in accordance with the provisions of clause 4 of these conditions.

9 COMPANY'S OBLIGATIONS IN THE ABSENCE OF INSTRUCTIONS

- 9.1 Unless specific written instructions are timeously given to and accepted by the Company, the Company shall not be obliged to -
- 9.2 make any declaration for the purpose of any statute, convention, or contract, as to the nature, weight or value of any goods or as to any special interest in delivery. In particular, the Company shall be under no obligation to make any declaration or to seek any special protection or cover from any carrier in respect of any goods which are, or fall within the definition ascribed thereto by that body of dangerous goods or other goods which require special conditions of handling or storage; and
- 9.3 arrange for any particular goods to be carried, stored or handled separately from other goods.

10 CARRIER'S AND CUSTOMER'S UNDERTAKINGS

- 10.1 The Carrier warrants that:
 - 10.1.1 the person who represents the Carrier in entering any agreement with the Company is duly authorised to do so and to bind the Carrier to these STC's;

- 10.1.2 any vehicle, trailer, ship, vessel or aircraft used by it to convey the Goods is in sound mechanical condition and will be operated only by duly licensed persons who are not under the influence of alcohol or other drug which tends to or does impair the performance of that person;
- 10.1.3 it has and will maintain adequate carriers liability insurance in place to cover any claim for loss, damage or delay to any Goods and any consequential losses, which may be brought against it by a person with an interest in the Goods carried by it;
- 10.1.4 it will indemnify the Company for the full amount of any claim against the Company for loss, damage and consequential loss arising from or in connection with any services rendered by the Carrier or by any person who subcontracts its obligations;
- 10.1.5 for all purposes hereunder the Carrier and Customer shall be deemed to have in relation to the Carrier's and the Customer's business, the Goods and the Forwarding Services to be rendered by the Company in regard thereto, reasonable knowledge of all matters directly or indirectly relating thereto or arising therefrom including, without limitation, terms of sale and purchase and all matters relating thereto and the Carrier and the Customer undertakes to supply all pertinent information to the Company.

10.2 The Customer warrants that -

- 10.2.1 it is either the Owner or the authorised agent of the Owner, sender, shipper or consignee of any Goods, or holder of any Holding Certificate, in respect of which the Customer instructs the Company and that each such person is bound by these STC's. In the event that any such person is not, for whatever reason, found to be bound by these STC's, the Customer shall indemnify the Company in full against all and any liability that the Company shall incur to such person.
- 10.2.2 in authorising the Customer to enter into any contract with the Company and/or in accepting any document issued by the Company in connection with such contract, the Owner, sender, shipper or consignee is bound by these STC's for itself and its agents and for any parties on whose behalf it or its agents may act, and in particular, but without prejudice to the generality of the foregoing, it accepts that the Company shall have the right to enforce against them jointly and severally any liability of the Customer under these STC's or to recover from them any sums to be paid by the Customer which upon proper demand have not been paid;
- 10.2.3 all information and instructions supplied or to be supplied by it to the Company is and shall be accurate, true and comprehensive, and in particular, without derogating from the generality of the foregoing, the Customer shall be deemed to be bound by and warrants the accuracy of all descriptions, values, heights, weights and other particulars furnished to the Company for Customs, consular, carriage and other purposes, and the Customer warrants that it will not withhold any necessary or pertinent information, and indemnifies the Company against all claims, losses penalties, damages, expenses and fines whatsoever, whensoever and howsoever arising as a result of a breach of the foregoing whether negligently or otherwise including, without derogating from the generality of the foregoing, any assessment or reassessment;
- 10.2.4 the Goods will be properly, adequately and appropriately prepared and packed, stowed, labelled and marked, having regard, inter alia, to the implementation by or on behalf of the Company or at its instance of the contract involved, and the hazardous or other characteristics of the Goods involved and are capable of withstanding the normal hazards inherent in the implementation of such contract;
- 10.2.5 the Goods are accompanied by all necessary completed documents, save to the extent that the Company has undertaken to prepare or procure this, failing which the Company shall be entitled to refuse acceptance of the Goods, or to order the removal of Goods in storage or to refuse delivery of the Goods until the correct documents have been provided.
- 10.2.6 where Goods are carried in or on containers, trailers, flats, tilts, railway wagons, tanks or any other unit load devices specifically constructed for the carriage of goods by land, sea or air, (each such device hereinafter individually referred to as "the transport unit") then save where the Company has been given and has accepted specific written instructions to load the transport unit -
 - 10.2.7 that the transport unit has been properly and competently loaded;
 - 10.2.8 that the Goods involved are suitable for carriage in or on the transport unit; and
 - 10.2.9 that the transport unit is itself in a suitable condition to carry the Goods loaded therein and complies with the requirements of all relevant transport authorities and carriers.

11 RECOVERY OF DEBTS DUE TO THE COMPANY

- 11.1 The Company shall be entitled to recover any amounts due to it by the Customer in respect of instructions relating to or in terms of any contract in respect of particular goods from the Customer, or if the Customer acts as agent for a disclosed or undisclosed principal from the Customer or the principal, as the Company in its absolute discretion deems fit.
- 11.2 The Customer agrees that in the event of the Company instituting legal proceedings against the Customer to recover amounts due in terms of any agreement or for breach of these STC's or for enforcement of any other obligations or for the recovery of damages owed by the Customer to the Company in terms of such agreement, the Customer shall be liable for all legal costs incurred by the Company, on the scale as between attorney and own client, as well as collection commission and tracing agent's fees.

12 COMPANY ENTITLED TO ACT AS AGENT OR PRINCIPAL IN CONTRACTING

- 12.1 Unless otherwise agreed in writing, the Company in procuring the Forwarding Services shall be entitled to act either as an agent for and on behalf of the Customer or as a principal, as it in its absolute discretion deems fit.
- 12.2 The offer and acceptance of a fixed price for the accomplishment of any task shall not itself determine whether such task is to be arranged by the Company acting as agent for and on behalf of the Customer or as a principal.
- 12.3 The Customer acknowledges that when the Company, as agent for and on behalf of the Customer, concludes any contract with a third party, such agreement is concluded between the Customer and the third party.
- 12.4 Unless otherwise agreed in writing, the Company, when acting as agent for and on behalf of the Customer, shall be entitled to enter into any contract it reasonably deems necessary or requisite for the fulfilment of the Customer's instructions.

13 SUBCONTRACTING

- 13.1 Any business entrusted by the Customer to the Company may, in the absolute discretion of the Company, be fulfilled by the Company itself, by its own servants performing part or all of the relevant services, or by the Company employing, or entrusting the Goods or any services to third parties on such terms and conditions as may be stipulated by, or negotiated with, such third parties for the purposes of such services, or such part thereof as they may be employed to carry out.
- 13.2 Where the Company contracts with third parties to perform all or any of the functions which it has agreed to perform, the Customer agrees that the Company shall have no responsibility or liability to the Customer for any negligent, grossly negligent or intentional act or omission of such third party, even though the Company may be responsible for the payment of such third party's charges. Notwithstanding the foregoing, the Company may, at its election, cede any right of action which it may have against such third parties to the Customer upon demand, the Customer hereby indemnifying the Company against any loss, damage or expense which might arise from the Customer prosecuting such claims or right of action.

14 TERMS AND CONDITIONS OF AGENTS AND SUBCONTRACTORS

- 14.1 Notwithstanding anything to the contrary contained herein the Customer agrees that all Goods shall be dealt with by any third party appointed to perform any function in terms of Clause 13, on the terms and conditions, whether or not inconsistent with these STC's, stipulated by any such third party, including any carriers, warehousemen, government departments, and all other parties (whether acting as agents or subcontractors to the Company or otherwise) into whose possession or custody the Goods may pass, or subject to whose authority they may at any time be.
- 14.2 If, notwithstanding the provisions of 13.2, it should be held that the Company in any way retains any obligations or responsibilities with regard to the performance of the obligations by a third party, then to the extent that the terms and conditions stipulated by the third party carrier, warehouseman, government department and any other such party, impose a liability, obligation or responsibility on the Company, more onerous than those imposed by these STC's, then such provision shall not apply as between the Company and the Customer or owner and the provisions of these STC's and conditions shall have precedence. In all other instances the third party's terms and conditions shall apply
- 14.3 Where the Company signs or issues any Sea Transport Document, it does so only as agent only and not as principal, common carrier, contractual carrier, depository or bailee.

15 GOODS REQUIRING SPECIAL ARRANGEMENTS

Except under special arrangements previously made in writing the Company will not accept or deal with bullion, coins, banknotes, securities or other currency, precious stones, jewellery, valuables, antiques, pictures, human remains, livestock, plants, tobacco products, spirits, wine, mobile telephones and their components, or computers and their components or parts. Should the Customer nevertheless deliver such goods to the Company or cause the Company to handle or deal with any such goods otherwise than under special arrangements previously made in writing then the Company shall deal with the Goods in accordance with the terms set out in Clause 4 of these STC's.

16 GOODS REQUIRING PRIOR CONSENT OF THE COMPANY

- 16.1 The Customer shall obtain in advance the Company's specific written consent to accept into its possession or control or into the possession or control of any of its servants, sub-contractors, agents or employees any Goods, including radioactive materials, which are or may become perishable, dangerous, inflammable or noxious, or which by their nature may injure, damage, taint or contaminate, or in any way whatsoever adversely affect any person, goods or property, including goods likely to harbour or attract vermin or other pests, or any goods defined as hazardous and/or dangerous in the Tariff or rules for carriage of Transnet Limited, or so classified in the IMDG Code or any other code or regulations of, or published by, any other International Organisation. The Customer warrants that such Goods, or the case, crate, box, drum canister, tank, flat, pallet, package or other holder or covering of such goods will comply with any applicable laws, regulations or requirement of any authority or carrier and that the nature and characteristics of such goods and all other data required by such laws, regulations or requirements will be prominently and clearly marked on the outside cover of such Goods.
- 16.2 If any Goods delivered to the Company, whether or not in breach of the provisions of clause 16.1, become, at the sole discretion of the Company a risk to other goods, property, life or health, then the Company may arrange for the Goods to be destroyed, disposed of, abandoned or rendered harmless or otherwise dealt with. Such action by the Company shall be at the risk and expense of the Customer or Owner who shall indemnify the Company accordingly. The Company shall not be liable for any compensation to the Customer or any other party and without prejudice to the Company's rights to recover its charges and/or fees including the costs of such destruction, disposal, abandonment or rendering harmless or other dealing with the Goods. The Customer indemnifies the Company against all loss, liability or damage caused to the Company as a result of the tender of such Goods to the Company.

17 DISPOSAL OF GOODS

- 17.1 Without limiting or affecting any other terms of these STC's, Goods (whether perishable or otherwise) in the care, custody or control of the Company may at the Customer's expense be sold by private treaty or public auction or otherwise disposed of by the Company, in its sole discretion, without notice to the Customer, Owner or Consignee if -
- 17.1.1 such Goods have begun to deteriorate or are likely to deteriorate;
 - 17.1.2 such Goods are insufficiently addressed or marked;
 - 17.1.3 the Customer cannot be identified; or
 - 17.1.4 the Goods have not been collected or accepted by the Customer or any other person after the expiration of 21 days from the Company notifying the Customer in writing to collect or accept such Goods, provided that if the Company has no address for the Customer such notice period shall not be necessary, and payment or tender of the net proceeds, if any, of the sale thereof after deduction of those charges and expenses incurred by the Company in respect thereof shall be equivalent to delivery of such Goods.
- 17.2 Should any amount owing by the Customer to the Company in respect of any matters referred to in clause 17.1 become due and payable and remain unpaid, or in the event that any Goods are not accepted for delivery as provided for in Clause 18 below, the Company shall be entitled and the Customer hereby authorises the Company and without first obtaining an order of court, to sell all or any of the goods by public auction or on reasonable notice not exceeding 14 days by private treaty. The net proceeds of any such sale, after deducting therefrom all costs, charges and expenses incurred by the Company, shall be applied in reduction or discharge as the case may be, of the Customer's obligations to the Company in respect of such Goods without prejudice to the Company's rights to recover from the Customer any balance which may remain owing to the Company after the exercise of such rights. Should the total amount collected by the Company, after deducting therefrom all costs, charges and expenses incurred by the Company in respect thereof, exceed the full amount of the Customer's obligations to the Company in respect of such goods, the Company shall be

obliged to refund such excess to the Customer. In the event that the Goods are destroyed or otherwise disposed of, the Customer shall indemnify the Company against all expenses, fees and other costs incurred by the Customer.

18 THE ACCEPTANCE OF DELIVERY

- 18.1 If delivery of any Goods is not accepted by the Customer, consignee or party nominated by the Customer at the appropriate time and place then: -
- 18.2 the Company shall be entitled to store the Goods or any part thereof at no risk whatsoever to the Company and at the expense of the Customer; and
- 18.3 the provisions of clause 17.2 shall apply mutatis mutandis.

19 COLLECTION OF EXPENSES AND C.O.D

- 19.1 When Goods are accepted or dealt with by the Company upon instructions to collect freight, duties, charges or other expenses from the consignee or any other person, the Customer shall remain responsible therefore if they are not paid by such consignee or any other person immediately when due.
- 19.2 If accepted by the Company, instructions to collect payment on delivery shall be subject to the condition that the Company will be entitled to assume that the recipient will effect payment and in regard to the collection will not be liable for any negotiable instrument which is not met on due date for payment. Such payment is collected by the Company at the Customer's risk.

20 SUNDRY GOODS RECOGNISABLE AS THE CUSTOMER'S

The Company shall have no obligation to take any action in respect of any Goods which may be recognisable as belonging to the Customer unless and until it receives suitable instructions relating to those Goods together with all necessary documents.

21 EXAMINATION OF GOODS

- 21.1 Where it is necessary for an examination to be held or other action to be taken by the Company in respect of any discrepancy in the Goods, no responsibility or liability shall attach to the Company for any failure to hold such examination or to take any other action unless the Company has been timeously advised by the Customer that such goods require examination and that such a discrepancy exists.
- 21.2 The Company will not be responsible for examining or counting any Goods received by it where such Goods are bundled, palletised or packed in any manner such that their number cannot be quickly and easily counted. Should the Company undertake to examine or count Goods so received, it shall incur no liability in respect of any error or inaccuracy in such counting, whether such error or inaccuracy is the result of negligence on the part of the Company or otherwise. The Company shall be entitled to levy a charge on the Customer for the counting of Goods in such circumstances.

22 DUTIES, TAXES, IMPOSTS, LEVIES AND DEPOSITS

- 22.1 The Customer shall, in all instances, be liable for and make payment of any duties, taxes, imposts, levies, deposits or outlays of whatsoever nature levied by or payable to the authorities, intermediaries or other parties at any port or place for or in connection with the Goods and whether incurred or sustained by the Company at the time of entry and/or at any subsequent time and the Customer shall indemnify the Company for all such costs.
- 22.2 The Company shall bear no liability in consequence of the fact that there may be a change in the rate of duty, wharfage, cargo dues, freight, railage or cartage or any other tariff, before or after the performance by the Company of any act involving a less favourable rate or tariff or by virtue of the fact that a saving might have been effected in some other way had any act been performed at a different time.

23 RECOVERY OF DUTIES INCORRECTLY PAID

- 23.1 Where as a result of any act or omission by or on behalf of or at the instance of the Company and whether or not such act or omission was negligent, grossly negligent or intentional, any duty, tax, levy, railage, wharfage, cargo dues, freight, cartage or any other impost or charge has been paid or levied in an incorrect amount, then any responsibility or liability to the Customer which the Company may otherwise have will cease and fall away if the Customer does not-

- 23.1.1 within a reasonable time having regard to all the circumstances, and in particular to the time allowed for the recovery from the payee of the amount overpaid, advise the Company that an incorrect amount has been paid or levied; and
- 23.1.2 do all such acts as are necessary to enable the Company to effect recovery of the amount incorrectly paid or levied.
- 23.2 The fact that the Customer may not be aware that any such incorrect payment has been made shall not constitute a circumstance to be taken into account in calculating what is a reasonable time for the purpose of clause 23.1.1. Should any act or omission by the Customer, whether or not such act or omission was due to ignorance on the part of the Customer, and whether or not such ignorance was reasonable or justified in the circumstances, prejudice the Company's right of recovery, the Customer shall be deemed not to have complied with the provisions of Clauses 23.1.1. and 23.1.2.

24 PAYMENT BY THE CUSTOMER

- 24.1 Unless otherwise specifically agreed by the Company in writing the Customer shall pay to the Company in cash immediately upon presentation of account all sums due to the Company without deduction or set-off and payments shall not be withheld or deferred on account of any claim or counterclaim which the Customer may allege.
- 24.2 Payment of all amounts due to the Company shall be made :
- 24.3 Free of exchange and any other charges at such address as the Company may require.
- 24.4 In such currency as the Company may direct.
- 24.5 Without demand on the due date of payment.
- 24.6 Any amount not paid on due date for payment shall bear interest at a rate of 2% (two percent) above the overdraft rate as charged by the Company's bank on unsecured overdraft at the date payment was due and calculated on a daily basis and compounded monthly in arrears.
- 24.7 All and any moneys received by the Company from the Customer shall be appropriated by the Company in its sole and absolute discretion in respect of any undisputed indebtedness owing by the Customer to the Company, notwithstanding that the Customer might, when making payment, seek to appropriate the payment so made to any particular debt or portion of a debt.
- 24.8 The Customer undertakes to pay the Company Value Added Tax at the then prescribed rate, payable in respect of the exclusive amount reflected in any invoice.
- 24.9 The Customer agrees that a certificate signed by a director of the Company, whose appointment need not be proved, showing the amount due and owing at any given time, shall constitute prima facie proof of the facts therein stated and the balance owing for the purpose of all legal proceedings against the Customer for the recovery of the said amount.
- 24.10 In the event of the Company having granted any credit terms or facilities to the Customer in writing, which provide the Customer a deferred period of time to effect payment of any amount due to the Company, and in the event of the Customer being in default of payment of any one or more amount due and payable, or being in default of any other term or condition on which such credit facility was granted, then notwithstanding any other term to the contrary where-so-ever contained, the Company shall be entitled to immediately revoke such credit facilities and declare all amounts immediately due and payable and proceed for recovery of all amounts which would be due and payable to the Company, were it not for the credit terms or facilities granted to the Customer.

25 DEBITING FEES AND DISBURSEMENTS

The Company shall under no circumstances be precluded from raising a debit and obtaining payment in respect of any fee or disbursements due to it notwithstanding the fact that a previous debit or debits, whether excluding or partly excluding the items subsequently requiring to be charged or recovered, had been raised and whether or not any notice had been given that further debits were to follow.

26 RISK OF ITEMS POSTED OR ELECTRONICALLY TRANSMITTED

- 26.1 Subject to the provisions of clause 42, and notwithstanding any prior dealings between the Company and the Customer all documents, cash, cheques, bank drafts or other remittances, sent to the Company through the post or electronically transmitted shall be deemed not to have been received by the Company unless and until they are actually received by the Company.

26.2 In the event that any payment to the Company is effected electronically, then the Customer bears the risk in respect of such payment until such time as the payment is received and cleared into the Company's bank account.

27 QUOTATIONS & ESTIMATES

27.1 All quotations or estimates given by the Company shall be valid for 7 (seven) calendar days and the company shall be entitled at any time by notice to the Customer to cancel, amend or resile from any quotation or estimate in circumstances where it becomes impracticable or uneconomical for the Company to carry out the contract at the quoted or estimated rate and the Customer shall have no claim of any nature whatsoever against the Company for any loss that the Customer might incur as a result of the Company cancelling, amending or resiling from the quotation or estimate.

27.2 Without in any way limiting the provisions of clause 27.1 all quotations, estimates and agreements are subject to revision without notice, having regard to changes in currency exchange rates and upward movements in amounts payable by or on behalf of, or at the instance of the Company to third parties, including, without limitation, freight, surcharges, insurance premiums, equipment rental and labour which charges and upward movements take place after quotation. Any revision of rates as aforesaid will be commensurate with the change in the currency exchange rate or the increase in such amounts payable. Any such increase shall, failing agreement between the parties, be determined by the then auditors of the Company or any other auditors nominated by the Company, who in such determination shall act as experts and not as arbitrators and whose decision shall be final and binding on the parties.

28 NO CLAIMS AGAINST COMPANY DIRECTORS AND EMPLOYEES

The Customer undertakes that no claim shall be made against any director, servant or employee of the Company which imposes or attempts to impose upon him any liability in connection with the rendering of any services which are the subject of these STC's and the Customer hereby waives all and any such claims.

29 CUSTOMER'S ORAL INSTRUCTIONS

The Customer's instructions to the Company shall be precise, clear and comprehensive and in particular, but without limitation, shall cover any valuation or determination issued by the Customer in respect of any goods to be dealt with by or on behalf of or at the request of the Company. Instructions given by the Customer shall be recognised by the Company as valid only if timeously given specifically in relation to a particular matter in question. Oral instructions, standing or general instructions or instructions given late, even if received by the Company without comment, shall not in any way be binding upon the Company, but the Company may act thereupon in the exercise of its absolute discretion.

30 VARIATION OF THESE STC'S

No variation or addition to, or alteration or waiver of these STC's shall be binding on the Company unless expressly recorded in writing and signed by a director of the Company. Any purported variation or alteration of these STC's otherwise than as set out above shall be of no force and effect, whether such purported variation or alteration is written or oral, or takes place before or after receipt of these STC's by the Customer.

31 NON WAIVER

No waiver of any of these STC's shall be binding or effectual for any purpose unless expressly recorded in writing and signed by or on behalf of the party giving that waiver. Any such waiver will be effective in a specific instance and for the purpose given. No failure or delay on the part of either party hereto in exercising any right, power or privilege hereunder will constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

32 GOVERNING LAW

These STC's and all agreements entered into between the Company and the Customer pursuant thereto and on the terms thereof shall be governed in all respects by and shall be interpreted in accordance with the substantive laws of the Republic of Kenya, save for any provisions of those laws relating to choice of law which, but for this provision, would result in the application of any foreign law.

33 SUBMISSION TO JURISDICTION

The Parties irrevocably consent and submit to the jurisdiction of the republic of Kenya, Nairobi in respect of any claim, legal action or proceedings arising out of or in connection with these STC's, or the granting of any credit, being the jurisdiction in which the Company's registered office is situated, and the Customer irrevocably submits to the non-exclusive jurisdiction of that court. The Company shall have the option within that jurisdiction, or any other competent jurisdiction, of proceeding either in the High Court or in a Magistrate's Court, notwithstanding that the amount of the claim may exceed the jurisdiction of that Magistrate's Court, to which jurisdiction the Customer hereby consents.

34 BENEFIT OF DISCOUNTS

The Company is entitled to the benefits of any discounts obtained and to retain and be paid all commissions, allowances and other remunerations of whatsoever nature and kind whether or not they are customarily retained by or paid to freight forwarders, shipping lines warehousemen or transporters and shall not be obliged to disclose or account to the Customer, or any other person for any such amounts received or receivable by it.

35 LIEN

- 35.1 All Goods and documents relating to any Goods including without limitation, any Sea Transport Document, Holding Certificate and Import Permit ["the Documents"], as well as all refunds, repayments, claims and other recoveries, shall be subject to a special and general lien or pledge either for moneys due in respect of such Goods or for any other moneys due to the Company by the Customer, sender, Owner, consignee, importer or the holder of the bill of lading or their agents, if any.
- 35.2 In delivering the Goods or Documents into the custody of the Company or its agents for any purpose whatsoever, such delivery shall for the purposes hereof be deemed to be delivery of the same in pledge and as security for all amounts owed to the Company at that time or which become payable in the future. In the event of the Company utilising the services or premises of any third party for any purposes including the transportation or storage of any Goods or Documents, such third party shall be the agent of the Company for purposes of exercising the Company's right to retention under lien and/or pledge.
- 35.3 If any moneys due to the Company are not paid within 14 days after notice has been given to the person from whom the moneys are due that such Goods or Documents are being detained, they may be sold by public auction or by private treaty or in some other way disposed of for value at the sole discretion of the Company and at the expense of such person, and the net proceeds (if any) applied in or towards satisfaction of such indebtedness.
- 35.4 The Customer shall not be entitled to effect or allow to be effected any security in respect of the Goods or the Documents relating to the Goods, including without limitation, any general or special notarial bond, pledge, hypothec, right of retention, or lien and pledge, without the prior written consent of the Company. The lien and pledge and right of retention in favour of the Company referred to above in Clauses 35.1 and 35.2, shall operate as a first and prior charge against the Goods and the Documents and no other security shall rank prior to the Company's lien, pledge or right of retention.

36 INDEMNITY BY THE CUSTOMER

- 36.1 Without prejudice to any of the Company's rights and securities under these STC's, the Customer indemnifies and holds harmless the Company against all liabilities, damages, costs and expenses whatsoever incurred or suffered by the Company arising directly or indirectly from or in connection with the Customer's express or implied instructions or their implementation by or on behalf of or at the instance of the Company in relation to any Goods and in particular, but without limitation of the foregoing, in respect of any liability whatsoever which may be incurred-
- 36.2 arising from the failure of any warranty given to the Company in respect of the Goods being true and correct; and/or
- 36.3 to any haulier, carrier, warehouseman or other person whatsoever at any time involved with such Goods arising out of any claim made directly or indirectly against any such person by the Customer or by any consignor, consignee or Owner of such goods or by any person having an interest in such Goods or by any other person whatsoever; and/or
- 36.4 to any Owner or consignee of such goods who is not the Customer of the Company where the Company performs the service of a de-consolidation agent, or any other service; and/or
- 36.5 to any carrier of the Goods if the Company is the consignor or consignee of the Goods; and/or

36.6 in respect of any goods referred to in Clauses 15 and 16.

36.6.1 Notwithstanding that the Company may seek recovery of any amount due to it, from any person other than the Customer, the Customer shall remain liable to make payment of the said amount to the Company upon demand, at any stage.

37 BREACH

37.1 If the Company breaches any of these STC's or any agreement between it and the Customer and fails to remedy such breach within 30 days of the date of receipt of written notice requiring it to do so then the Customer shall be entitled to compel performance by the Company of the obligations it has defaulted in, but shall not be entitled to cancel these STC's or any agreement between the Customer and the Company.

37.2 No provision in these STC's shall derogate from the Company's common law rights in the event that the Customer breaches any term or condition of the agreement.

37.3 The Company shall be entitled to cancel any agreement between it and the Customer by written notice if –

37.4 The Customer commits any breach of its obligations under the agreement and fails to remedy that breach within 7 (seven) days of its being given written notice to do so;

37.5 The Customer commits any act of insolvency in terms of any applicable Insolvency Legislation;

37.6 The Customer is deemed to be unable to pay its debts in terms of any deeming provision of any applicable legislation relating to Companies or Insolvency;

37.7 The Customer compromises or attempts to compromise with its creditors ;

37.8 Any provisional or final order is granted for the sequestration, winding up, bankruptcy or judicial management, of the customer, or any equivalent order is made in terms of any applicable law with regard to the status of the Customer;

37.9 The Customer fails to satisfy any default or other judgement granted against it, within 10 (ten) days.

38 WARRANTIES AND REPRESENTATIONS BY THE COMPANY

38.1 The Company makes no warranties and representations to the Customer save as may be specifically provided herein or as notified in writing by the Company to the Customer from time to time. The Customer acknowledges that the Company is not in any way bound by any oral statement, representation, guarantee, promise, undertaking, inducement or otherwise which may have been made at any time by any salesman, employee, representative or any person acting or purporting to act for or on behalf of the Company, whether negligently or otherwise unless such statements, representations, guarantees, promises, undertakings, warranties or inducements are supplied or made in writing by an employee duly authorised by written resolution of the board of directors of the Company in response to a written enquiry specifying accurately and in complete detail what information is required.

39 TIME FOR PERFORMANCE BY THE CUSTOMER

Time is of the essence for the performance by the Customer of all obligations owed to the Company in terms of any agreement with it governed by these STC's.

40 SEVERABILITY

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

41 NOTICES

All notices in terms of these STC's shall be given in writing and delivered by hand or sent by telefax. The Customer appoints as his/her/its domicilium citandi et executandi for all purposes under these STC's its physical address and telefax number provided by the Customer to the Company on any letterhead, order or other document generated or completed by the Customer.

42 SPECIAL CONDITIONS RELATED TO ELECTRONIC DATA

- 42.1 Notwithstanding the provisions of any legislation or other law regulating electronic communications and transactions, the Company shall only be deemed to have received electronic data and/or messages when such electronic data and/or messages have been retrieved, processed and read by the addressee.
- 42.2 Under no circumstances whatsoever and howsoever arising (including negligence on the part of the Company or its employees) shall the Company be liable for any loss or damage arising from or consequent upon the provision by the Company to the Customer in whatever manner and/or form, of incorrect information, including electronically communicated information or data, where such incorrect information or data has been generated by and provided to the Company by any person with whom the Company conducts business, and/or any other third party.
- 42.3 The Company shall furthermore under no circumstances whatsoever be liable for any loss or damage arising from or consequent upon any failure and/or malfunction, for whatever reason, and regardless of negligence in whatever degree on the part of the Company, of the Company's computer systems and/or software programmes, provided and/or operated by the Company and/or by any person with whom the Company conducts business, and/or any third party, and which systems shall include the Company's electronic automated information service provided to its Customers.

