

# **STANDARD CONDITION OF CARRIAGE**

(to be read and as incorporated in the customers credit application)

For:

**VERSITRADE 540 (PTY) LTD t/a  
SUTHERLAND TRANSPORT  
(Registration Number 1997/07689/23)  
KLEIN ROOIPOORT  
EASTERN CAPE  
(hereinafter referred to as "the Carrier")**

**18 September 2009  
Tel: 041-463 3231  
Fax: 041-463 1604**

## **1 DEFINITIONS**

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

1.1 "the Carrier"

means VERSITRADE 540 (PTY) LTD t/a SUTHERLAND TRANSPORT (Registration Number 1997/07689/23)

1.2 "the Customer"

means the entity described on the order confirmation, alternatively as described in the Credit Application of the customer, as the case may be.

1.3 "the Goods"

means the goods forming the subject matter of this agreement and includes any article including any container, pallet or similar article for transport or packaging supplied by the customer which is accepted by the carrier for transport.

1.4 "Dangerous goods"

includes those classified as such by Spoornet, the Marine Division of the Department of Transport, or which are considered by the carrier to be dangerous;

1.5 "the handling of the goods"

includes the goods being handled, warehoused, held, controlled, loaded or unloaded, carried or otherwise possessed by the carrier for any purpose whatsoever.

6. "Commencement date"

means the date upon which the carrier approves the customers credit application; these STANDARD CONDITIONS OF CARRIAGE to be incorporated therein *mutatis mutandis* and so deemed by the parties hereto.

7. "Container"

means any container (other than a vehicle) in which the goods are conveyed and/or stored.

8. "Date of signature"

means the date on which the last signing party to this agreement so signs.

9. "Day"  
means the period of 24 consecutive hours from one midnight to the next.
10. "Delivery"  
means the conveyance of one load of the goods pursuant to this agreement in the dedicated vehicle from the loading point to the off-loading point.
11. "Freight charges"  
means the carrier's standard charges or such other consideration payable to the carrier by the customer in terms of this agreement and as per the carriers invoices from time tot time.
12. "Loading point"  
means the premises of the customer or the customer's applicable supplier of the goods as specified by the customer in writing.
13. "Month"  
means a calendar month.
14. "Off-loading point"  
means the consignor's premises as specified by the customer in writing.
15. "Vehicle"  
means any vehicle used by the carrier in connection with this agreement upon which or in which the goods and/or containers are conveyed.
16. "Week"  
means the period of seven consecutive days commencing on a Monday and expiring on the following Sunday.
17. "Year"  
means each period of 12 months commencing on the commencement date and each anniversary thereof.

## 2 NO VARIATION OF CONDITIONS

The handling of the goods shall be subject to the conditions stated herein unless specifically varied by the carrier in writing, and these conditions shall at all times take precedence over any terms, conditions or stipulations contained in any of the customer's documentation. Should the customer in any way purport to attach any conditions which vary, amend or are in conflict with the conditions set forth herein, then, notwithstanding anything to the contrary stipulated by the customer, the conditions set forth herein shall prevail and be of full force and effect unless specifically varied in writing with specific reference to the customer's contrary documentation.

## 3 TERM OF AGREEMENT

This agreement shall commence on the commencement date and shall endure for a period as defined per accepted quotation, service agreement or customer order ("the initial period") whereafter

it shall automatically be renewed for a similar further period unless either party shall give the other written notice of its termination, no later than two months prior to the end of the initial period.

#### 4 **REMUNERATION**

- 4.1 In the absence of any written agreement to the contrary, the remuneration payable to the carrier by the customer will be in accordance with the standard tariffs of the carrier.
- 4.2 The carrier's standard tariffs are subject to review by the carrier without prior notice to the customer.
- 4.3 The customer shall be liable for any duty, tax, impost, fine or outlay of whatsoever nature levied by the authorities at any port or place in connection with the goods and shall reimburse the carrier for any such amount disbursed or losses sustained by the carrier in connection therewith.
- 4.4 In the event of the carrier being obliged to take out or obtain any licences or permits, or to comply with the requirements of any lawful authority, the carrier shall be entitled to make an additional charge to cover any expenses resulting therefrom not already included in the carrier's standard tariffs.
- 4.5 In the event of the carrier being obliged to deviate from the route selected by it, or to carry the goods over another route, for any reason whatsoever, including but not limited to adverse weather conditions, impassable or dangerous roads, bridges, pontoons and ferries, or the instructions of any competent authority the carrier shall be entitled to charge an additional remuneration in proportion to the resulting extra distance travelled.

#### 5 **PAYMENT OF REMUNERATION**

- 5.1 In the absence of any special provisions or written agreement to the contrary, payment shall be effected by the customer in cash and not by cheque, in advance (or against tender of delivery of the goods or as agreed per credit application/credit approval).
- 5.2 The carrier shall in its absolute discretion be entitled to appropriate all payments made by the customer towards the payment of any debt or obligation of whatsoever nature owing by the customer to the carrier, irrespective of when such debt or obligation arose.
- 5.3 Interest will accrue on all payments not made on due date at the maximum rate allowed by law from the due date for payment to the date on which payment is effected.
- 5.4 The customer may not raise any claim, dispute or counter-claim as a reason for deferring payment and the customer may not withhold any payment or set off any claim or counter-claim which it may wish to raise against the amount invoiced by the carrier.

#### 6 **CARRIER'S LIEN**

- 6.1 As security for all moneys (whether past or present) owing for the handling of goods, whether forming the subject matter of this agreement or otherwise, the carrier shall have a lien over all goods, documents, bills of lading, import permits as well as all repayments, refunds, claims or recoveries in its possession or under its control.

- 6.2 In addition, the carrier shall be entitled to hold all goods as security for any other moneys which may be owing to it by the customer from any cause whatsoever.
- 6.3 Notwithstanding that credit may have originally been granted by the carrier to the customer, the carrier may at any time in its sole discretion retain possession of any goods pending the discharge of all the customer's indebtedness to the carrier, whether or not such indebtedness is related to the handling of the goods in question.
- 6.4 In the event of the carrier retaining possession of the goods in terms of 6.1 and/or 6.2 and/or 6.3, the carrier shall be entitled to store or warehouse the goods at such place as it deems fit, at the customer's expense.
- 6.5 If any moneys owing to the carrier are not paid by the customer within 30 days after they have become due, the carrier shall be entitled without further notice:
- 6.5.1 to open and examine the goods;
  - 6.5.2 to sell the whole or any part of the goods in such a manner and on such terms and conditions as it deems fit in its sole and absolute discretion;
  - 6.5.3 to apply the proceeds of any sale after deducting all expenses thereof in payment or reduction of any amount due by the customer to the carrier (including the storage charges envisaged in 6.4), provided that any surplus shall be paid over to the customer without interest immediately after the sale, if the customer's address is known, and if not, upon demand made by the customer within 90 days of the sale.
- 6.6 The carrier shall not be liable for any loss, damage or deterioration of such goods attributable to the implementation of this clause.
- 6.7 The carrier's rights under this clause are not exhaustive and are in addition to any other rights in law which it may have against the customer.

## 7 CUSTOMER'S WARRANTIES

The customer is bound by and warrants in favour of the carrier:

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

## 8 CONDITION OF GOODS

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

## 9 DANGEROUS GOODS

- 9.1 Unless otherwise agreed in writing, the customer warrants that all goods handled are fit to be so handled in the ordinary way and are not dangerous.
- 9.2 Unless otherwise agreed in writing, the carrier will not handle any dangerous, corrosive, noxious, hazardous, inflammable or explosive goods or any goods which in its opinion are likely to cause damage.
- 9.3 The customer shall be liable for all losses or damage caused to the carrier and/or third parties by all goods handled and hereby indemnifies the carrier against any claims arising in connection therewith.
- 9.4 Should the carrier agree to handle any dangerous goods for any purpose:
  - 9.4.1 the customer shall furnish with the goods a written declaration detailing the trade name, chemical composition and characteristics of the goods; and
  - 9.4.2 such declaration shall define the precise respects or circumstances in which the goods are dangerous; and
  - 9.4.3 the customer shall ensure that the goods bear the warning labels and declarations required in terms of the laws and regulations applicable to the transportation of dangerous goods.
- 9.5 If, in the opinion of the carrier any goods (whether they have been declared as dangerous or not) become a danger to any person or property, the carrier shall be entitled immediately and without notice to the customer to dispose of the goods in question or take such other steps as it in its sole discretion deems prudent to avert danger. In such event the carrier shall:
  - 9.5.1 not be liable under any circumstances for the value of the goods or for any other loss or damage whether direct or consequential sustained by the customer or owner as a result of such disposal or other steps; and
  - 9.5.2 still be entitled to recover from the customer its remuneration for the handling of the goods together with any costs incurred by it in disposing of them or taking other steps.
- 9.6 Unless written instructions are given to the carrier, it shall be under no obligation to make any declaration or to seek any special protection or cover from Spoornet in respect of any goods falling within the definition by that body:
  - 9.6.1 of dangerous or hazardous goods; or
  - 9.6.2 of goods liable to be stored in the open.

## 10 PERISHABLE GOODS

Perishable goods which are not taken up immediately upon arrival at their destination or which are insufficiently marked or otherwise not identifiable may be disposed of without notice to the customer,

and the payment or tender to the customer of the net proceeds of any disposition (after deduction of all charges incurred by the carrier) shall be equivalent to delivery.

## 11 **LOADING AND OFF-LOADING**

11.1 The customer shall ensure that:

11.1.1 the goods shall be ready for loading on the date and time specified;

11.1.2 all documentation necessary in connection with the goods and the transportation thereof shall be fully and correctly prepared on time;

11.1.3 at all places where the carrier is to collect and off-load the goods there will be safe, suitable and adequate access and loading and off-loading facilities, and that it is possible for the carrier to do so by means of ordinary staircases and/or doorways, without need for any special or additional tackle, plant, power, labour or equipment;

11.1.4 the goods will be sufficiently packed and prepared for carriage;

11.1.5 the customer shall sign such certificates and receipts on loading and off-loading as the carrier may require.

11.2 The carrier shall not be under any obligation to provide any plant, power or labour which in addition to its vehicle's crew is required for the loading or unloading of any goods. Any assistance given by the carrier in such loading or unloading shall be at the sole risk of the customer.

11.3 Any customer (or owner) conducting any packing or other operation or activity in any area or premises provided by the carrier shall do so at its own risk, and the customer indemnifies the carrier against all claims or losses arising out of the presence of the customer in such area or premises.

## 12 **ROUTE**

When carrying goods, the carrier shall in its sole discretion decide what route to follow.

## 13 **CARRIER'S LIABILITY FOR DAMAGE OR LOSS**

The goods shall be carried at the sole risk of the customer (or owner). The customer hereby exempts the carrier from and indemnifies the carrier against all liability of whatsoever nature, arising directly or indirectly from the handling of the goods. This exemption and indemnity includes, but is not restricted to, any liability for direct and/or consequential loss or damages arising from loss of the goods, damage to the goods, the failure to collect or deliver the goods timeously, adequately or at all, or from or to the correct address, or from any other cause arising, whether any such liability, loss or damage is caused by or arises from breach of contract, negligence or gross negligence, on the part of the carrier, its servants, agents or employees, or otherwise.

## 14 **DEMURRAGE**

The carrier shall not be liable for demurrage or storage charges of any nature whatsoever and howsoever arising. Where any such demurrage and/or storage charges are paid by the carrier, such charges shall be refunded to the carrier by the customer on demand. The customer hereby appoints the carrier irrevocably and in rem suam as its agent and in its name, place and stead, to contract for the storage of the goods upon such terms and conditions as the carrier may, in its sole discretion elect, and without any liability whatsoever attaching to the carrier to attend to such storage.

## 15 **SUBCONTRACTING**

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

16 **INSURANCE**

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

17 **PERMITS AND CONSENTS**

If any permit, consent or approval to handle goods is required under any law, by-law or regulation, none of the carrier's obligations or duties shall take effect unless and until it obtains the relevant permit, consent or approval. The customer shall provide all assistance and information required by the carrier for the purpose of applying for or obtaining any such permit, consent or approval.

18 **DELAY - POLICE INSTRUCTION**

The carrier shall not be liable for any delay occasioned by compliance with any instructions issued by the police or any other competent authority, but any extra costs incurred by the carrier as a result of compliance with any such instructions shall be added to its charges.

19 **SOLE AGREEMENT**

The Parties hereto agree and acknowledge that these STANDARD CONDITIONS OF CARRAIGE form part of and are to be read together with the customers credit application and are deemed to be incorporated therein *mutatis mutandis*.

The carrier shall not be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.

No variation hereof or the credit application shall be valid and / or binding as between the Parties hereto unless reduced to writing and signed by both parties hereto.

20 **VARIATION**

No addition to, variation of or agreed cancellation of these STANDARD CONDITIONS OF CARRAIGE shall be of any force or effect unless recorded in writing and accepted by the carrier in writing.

21 **INDULGENCE AND WAIVER**

No relaxation or indulgence which the carrier may grant to the customer shall constitute a waiver of the rights of the carrier and shall not preclude the carrier from exercising any of its rights which may have arisen in the past or which might arise in the future.

22 **APPLICABLE LAW**

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

23 **DOMICILII AND NOTICES**

- 23.1 The parties chooses their respective street addresses set out in the credit application as their *domicilii citandi et executandi* ("domicilium") for all purposes under this agreement and the credit application, whether for serving any court process or documents, giving any notice, or making any other communications of whatsoever nature and for any other purpose arising from this agreement.
- 2. Either party shall have the right to change its domicilium by giving to the other party written notice of such change of address.

24 **PRESUMPTIONS AS TO NOTICES**

Any notice required to be given by the carrier to the customer will be deemed to have been validly given if posted by registered post to the domicilium of the customer and will be deemed to have been received by the customer within 7 days of the date of posting.

25 **BREACH**

- 1. The customer agrees and acknowledges that in the event of:
  - 1.1. the customer breaching any of the terms of this agreement;
  - 1.2. the customer failing to pay any amount due and payable on the due date thereof;
  - 1.3. the customer suffering any civil judgment to be taken or entered against it;
  - 1.4. the customer's estate being placed under any order of provisional or final sequestration, winding-up or judicial management, as the case may be;

then the entire amount owing by the customer to the carrier shall immediately become due and payable, and the carrier shall, without detracting from any other remedies which may be available to it, be entitled to summarily cancel this agreement and any order accepted in terms of this agreement without notice to the customer, or to claim specific performance of all the customer's obligations whether or not otherwise then due for performance, in either event without prejudice to the carrier's right to claim damages.

.....