

PRONTO CLEARING cc

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Standard Trading Conditions

1. INTERPRETATION

In these 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. PRONTO CLEARING cc means the Company referred to above, or if it exercises its rights under clause 2, the member of the company in respect of which it exercises its rights;
 - 1.3.2. "customer" means any person at whose request or on whose behalf PRONTO CLEARING cc undertakes any business or provides any advice, information or services;
 - 1.3.3. "goods" means any goods handled, transported or dealt with by or on behalf of or at the instance of PRONTO CLEARING cc, or which come under control of PRONTO CLEARING cc or its agents, servants or nominees on the instructions of the customer, and includes any 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;
 - 1.3.4. "the group" means PRONTO CLEARING cc and any company which is a holding company or subsidiary of PRONTO CLEARING cc from time to time which may render service to the customer in terms of clause 2;
 - 1.3.5. "the owner" means the owner of goods to which any business concluded under these trading terms and conditions relates and any other person who is or may have or acquire any interest, financial or otherwise, therein;
 - 1.3.6. "FIATA" means the "International Federation of Freight Forwarders Associations

2. MEMBERS OF THE GROUP RENDERING SERVICES TO THE CUSTOMER

PRONTO CLEARING cc may at its election perform all and any business undertaken or provide advice, information or services, whether gratuitous or not, either itself or it may procure that any member of the company 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 member of the Company.

3. APPLICATION OF TRADING TERMS AND CONDITIONS

Subject to clause 5, all and any business undertaken or advice, information or services provided by PRONTO CLEARING cc, whether gratuitous or not, is undertaken or provided on these trading terms and conditions.

4. OWNER'S RISK

All handling, packing, loading, unloading, warehousing and transporting of goods by or on behalf of or at the request of PRONTO CLEARING cc are affected at the sole risk of the customer and / or the owner, and the customer indemnifies PRONTO CLEARING cc accordingly.

5. APPLICABLE LEGISLATION

- 5.1 If PRONTO CLEARING cc 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 PRONTO CLEARING cc by complying therewith, shall not be deemed to waive nor abandon any of its rights in terms of these trading terms and conditions.
- 5.2 In addition thereto, in complying with the law, PRONTO CLEARING cc shall not be deemed to have assumed any onus, obligation, responsibility or liability in favour of the customer.
- 5.3 If any of the terms of these trading terms and conditions is repugnant to or in conflict with the law, then and in such event the conflicting term embodied herein shall be deemed to be amended and / or altered to conform therewith, and such amendment and / or alteration shall not in any way affect the remaining provisions of these trading terms and conditions.

6. FIATA COMBINED TRANSPORT BILL OF LADING

PRONTO CLEARING cc shall be entitled to issue in respect of the whole or part of any contract for the movement of goods a FIATA combined transport bill of lading ("FBL") provided that where a FBL is issued these trading terms and conditions shall continue to apply, except insofar as they conflict with the terms and conditions applicable to the FBL. The issue of a FBL by PRONTO CLEARING cc shall entitle it to raise an additional charge, determined by PRONTO CLEARING cc, to cover its additional obligations arising under the FBL.

7. EXCLUSION OF OBLIGATIONS OF COMMON OR PUBLIC CARRIER

PRONTO CLEARING cc deals with the goods on the basis that it is neither a common carrier nor a public carrier.

8. COMPANY'S DISCRETION IN THE ABSENCE OF INSTRUCTIONS

In the absence of specific instructions given timeously in writing by the customer to PRONTO CLEARING cc –

- 8.1 it shall be in the reasonable discretion of PRONTO CLEARING cc 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;
- 8.2. PRONTO CLEARING cc shall have an absolute discretion to determine the means, route and procedure to be followed by it in performing all or any of the acts or services it has agreed to perform;
- 8.3 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 PRONTO CLEARING cc 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.

9. COMPANY'S GENERAL DISCRETION

- 9.1 Should PRONTO CLEARING cc deem it to be in the interests of the customer or in the public interest to depart from any of the instructions of the customer, PRONTO CLEARING cc shall be entitled to do so and shall not incur any liability whatsoever as a result thereof.

9.2 Should it, in the opinion of PRONTO CLEARING cc be impossible or impractical for PRONTO CLEARING cc to comply with the customer's instructions in whole or in part, PRONTO CLEARING cc undertakes to take reasonable steps to inform the customer of the circumstances giving rise to such impossibility or impracticability and the customer shall furnish PRONTO CLEARING cc with further instructions. Should such further instructions not be timeously received in writing, PRONTO CLEARING cc may in its discretion, detain, return, store, sell, abandon, or destroy at the risk and expense of the customer all or any part of the goods involved.

10. INSURANCE

PRONTO CLEARING cc shall endeavour to effect any insurance 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 PRONTO CLEARING cc shall not be obliged to obtain separate cover for any risks to be excluded. Unless otherwise agreed in writing PRONTO CLEARING cc shall not be under any obligation to obtain separate insurance in respect of separate consignments but may insure all or any such consignments under any open or general policy held by PRONTO CLEARING cc from time to time. Should the 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 PRONTO CLEARING cc shall not have any responsibility or liability in relation thereto notwithstanding that the premium paid on such policy may differ from the amount paid by the customer to PRONTO CLEARING cc in respect thereof. Insofar as PRONTO CLEARING cc agrees to arrange insurance PRONTO CLEARING cc acts solely as agent for and on behalf of the customer.

11. COMPANY'S OBLIGATIONS IN THE ABSENCE OF INSTRUCTIONS

Unless specific instructions are timeously given to and accepted by PRONTO CLEARING cc, PRONTO CLEARING cc shall not be obliged to –

11.1 make any declaration for the purpose of any statute, convention, or contract as to the nature or value of any goods or as to any special interest in delivery. In particular, PRONTO CLEARING cc 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.

11.2 arrange for any particular goods to be carried, stored or handled separately from other goods.

12. CUSTOMER'S UNDERTAKINGS

12.1 For the purposes of this clause, the customer shall be deemed to have knowledge of all matters directly relating to its business and the goods and services rendered by PRONTO CLEARING cc in regard thereto, including but without being limited to, all terms of contracts relating thereto and the customer undertakes to supply all relevant information relating thereto to PRONTO CLEARING cc.

12.2 The customer warrants that -

12.2.1 it is the owner of or the duly authorised agent of the owner of the goods which are the subject of the customer's instructions to PRONTO CLEARING cc and, if it is the authorised agent of the owner, that such owner is bound by these terms and conditions.

12.2.2 by authorising the customer to enter into any contract with PRONTO CLEARING cc, the owner, sender or consignee is bound by these terms and conditions and any other person on behalf of whom such owner, sender or consignee is bound by these terms and conditions, and in particular without derogating from the generality of the foregoing, the owner, sender or consignee accepts that it shall be jointly and severally liable with the customer for the due performance by the customer of all its obligations under any agreement between the customer and PRONTO CLEARING cc and under these terms and conditions.

12.2.3 all descriptions, values, marks, brands, weights, numbers, contents, quality and other particulars furnished by it to PRONTO CLEARING cc for customs, consular and other purposes are accurate, and accordingly indemnifies PRONTO CLEARING cc against all claims, losses, penalties, damages

and expenses and fines whatsoever arising out of or in connection with the breach of such warranty, whether negligently or otherwise.

- 12.2.4 all goods subject to any agreement between the customer and PRONTO CLEARING cc and to these terms and conditions shall be properly, adequately and appropriately prepared and packed, stowed, labelled and marked and that such goods are capable of withstanding the normal hazards inherent in the implementation of such agreement;
- 12.2.5 where goods are carried in or on containers, trailers, flats, tilts, railway wagons, tanks, igloos or any other unit load devices specifically constructed for the carriage of goods by land sea or air, (each device hereinafter individual referred to as “the transport unit”) then, save where PRONTO CLEARING cc has been given and has accepted specific written instructions to load the transport unit -
- 12.2.5.1 the transport unit has been properly and completely loaded; and
12.2.5.2 the goods involved are suitable for carriage in or on the transport unit; and
12.2.5.3 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

13 RECOVERY OF DEBTS DUE TO PRONTO CLEARING cc

PRONTO CLEARING cc 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 an agent for a disclosed or undisclosed principal from the customer or the principal, as PRONTO CLEARING cc in its absolute discretion deems fit.

14 COMPANY ENTITLED TO ACT AS AGENT OR PRINCIPAL IN CONTRACTING

- 14.1 Unless otherwise agreed in writing, PRONTO CLEARING cc in procuring the carriage, storage, packaging or handling of goods shall be entitled to act either as an agent for and on behalf of the customer as a principal, as it in its discretion deems fit.
- 14.2 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 PRONTO CLEARING cc acting as an agent for and on behalf of the customer or as principal.
- 14.3 The customer acknowledges that when PRONTO CLEARING cc 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.
- 14.4 Unless otherwise agreed in writing, PRONTO CLEARING cc 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 fulfillment of the customer’s instructions, including, without limitation, contracts for the –
- 14.4.1 carriage of goods by any route or means or person;
14.4.2 storage, packing, transport, shipping, loading, unloading and / or handling of goods by any person at any place whether on shore or afloat and for any length of time;
14.4.3 carriage or storage of goods in break-bulk form or in or on transport units as defined in clause 12.2.5 or with or without other goods of whatsoever nature.

15 SUBCONTRACTING

- 15.1 Any business entrusted by the customer to PRONTO CLEARING cc may, in the absolute discretion of PRONTO CLEARING cc, be fulfilled by PRONTO CLEARING cc itself, by its own servants performing part or all of the relevant services, or by PRONTO CLEARING cc employing, or entrusting the goods or services to third parties on such 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.

15.2 When PRONTO CLEARING cc employs third parties to perform all or any of the functions which it has agreed to perform, the customer agrees that PRONTO CLEARING cc shall have no responsibility or liability to its customer for any act or omission of such third party, even though PRONTO CLEARING cc may be responsible for the payment of such third party's charges; but PRONTO CLEARING cc shall upon being requested to do so cede to the customer any right of action which it may have against such third party.

16 TERMS AND CONDITIONS OF AGENTS AND SUBCONTRACTORS

Notwithstanding anything to the contrary contained herein the customer agrees that all goods shall be dealt with by PRONTO CLEARING cc on the terms and conditions, whether or not inconsistent with these trading terms and conditions, stipulated by the carriers, warehousemen, government departments, and all other parties (whether acting as agents or subcontractors to PRONTO CLEARING cc or not) into whose possession or custody the goods may pass, or subject to whose authority they may at any time be.

17 GOODS REQUIRING SPECIAL ARRANGEMENTS

Except under special arrangements previously made in writing PRONTO CLEARING cc will not accept or deal with bullion, coins, bank notes and other currency, precious stones, jewellery, valuables, antiques, pictures, human remains, livestock or plants. Should the customer nevertheless deliver such goods to PRONTO CLEARING cc or cause PRONTO CLEARING cc to handle or deal with any such goods otherwise than under special arrangements made previously made in writing PRONTO CLEARING cc shall incur no liability whatsoever in respect of such goods, and in particular, shall incur no liability in respect of its negligent acts or omissions in respect of such goods. A claim, if any, against PRONTO CLEARING cc in respect of the goods referred to in clause 17 shall be governed by the provisions of clauses 43 and 44

18 GOODS REQUIRING PRIOR CONSENT OF COMPANY

18.1 The customer shall obtain in advance PRONTO CLEARING cc specific written consent to accept into its possession or control or into the possession or control of any of its servants, agents or employees any goods, including without limitation, radio-active materials, which may become 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 without limitation, goods likely to harbour or attract vermin or other pests. The goods referred to above shall include without prejudice to the generality of the foregoing, all goods falling within the definition of "hazardous and dangerous goods" in the South African Railways Regulations and the International Maritime Dangerous Goods Code (IMCO Code) and any other regulations governing the movement of dangerous and hazardous cargo. The customer warrants that such goods, or the case, crate, box, drum, cannister, tank, flat, pallet, package or other holder or covering of such goods will comply with any applicable laws, regulations, or requirements 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.

18.2 If any such goods are delivered to PRONTO CLEARING cc, whether or not in breach of the provisions of clause 18.1, such goods may for good reason as PRONTO CLEARING cc in its discretion deems fit including, without limitation, the risk to other goods, property, life or health be destroyed, disposed of, abandoned or rendered harmless or otherwise dealt with at the risk and expense of the customer and without PRONTO CLEARING cc being liable for any compensation to the customer or any other party, and without prejudice to PRONTO CLEARING cc 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 PRONTO CLEARING cc against all loss, liability or damage caused to PRONTO CLEARING cc as a result of the tender of goods to PRONTO CLEARING cc and / or out of the foregoing.

19 PERISHABLE GOODS

19.1 Without limiting or affecting any other terms of these trading terms and conditions, goods, (whether perishable or otherwise) in the care, custody or control of PRONTO CLEARING cc may at the

customer's expense be sold or disposed of by PRONTO CLEARING cc without notice to the customer, sender owner or consignee, if –

- 19.1.1 such goods have begun to deteriorate or are likely to deteriorate;
- 19.1.2 such goods are insufficiently addressed or marked;
- 19.1.3 the customer cannot be identified;
- 19.1.4 the goods have not been collected or accepted by the customer or any other person after the expiration of 21 days from PRONTO CLEARING cc notifying the customer in writing to collect or accept such goods, provided that if PRONTO CLEARING cc 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 deductions of those charges and expenses incurred by PRONTO CLEARING cc in respect thereof shall be equivalent to delivery of such goods.

19.2 Should any amount owing by the customer to PRONTO CLEARING cc in respect of any goods referred to in clause 19.1 become due and payable and remain unpaid, PRONTO CLEARING cc shall be entitled and the customer hereby authorises PRONTO CLEARING cc 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 PRONTO CLEARING cc, shall be applied in reduction or discharge, as the case may be, of the customer's obligations to PRONTO CLEARING cc in respect of such goods without prejudice to PRONTO CLEARING cc's rights to recover from the customer any balance which may remain owing to PRONTO CLEARING cc after the exercise of such rights. Should the total amount collected by PRONTO CLEARING cc, after deducting therefrom all costs, charges, and expenses incurred by PRONTO CLEARING cc in respect thereof exceed the full amount of the customer's obligations to PRONTO CLEARING cc shall be obliged to refund such excess to the customer.

20 THE ACCEPTANCE OF DELIVERY

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 –

- 20.1 PRONTO CLEARING cc shall be entitled to store the goods or any part thereof at no risk to PRONTO CLEARING cc and at the expense of the customer;
- 20.2 the provisions of clause 19.2 shall apply mutatis mutandis

21 WAREHOUSING

Pending forwarding and / or delivery by or on behalf of PRONTO CLEARING cc, goods may be warehoused or otherwise held at any place as determined by PRONTO CLEARING cc in its absolute discretion, at the customer's expense.

22 COLLECTION OF EXPENSES AND C O D

- 22.1 Should PRONTO CLEARING cc be instructed by the customer to collect freight, duties, any charges or other expenses from the consignee for any goods or from any other person, the customer shall remain responsible for the payment thereof in the event of the consignee or such person not paying same immediately when due.
- 22.2 If accepted by PRONTO CLEARING cc, instructions to collect payment on delivery shall be subject to the conditions that PRONTO CLEARING cc will be entitled to assume that the recipient will effect payment and in the matter of such collection will not be liable for any negotiable instrument which is not met on the due date for payment.

23 SUNDRY GOODS RECOGNISABLE AS THE CUSTOMER'S

PRONTO CLEARING cc shall have no obligation to take any action in respect of goods which may be recognised as belonging to the customer unless and until it receives suitable instructions relating to those goods together with all necessary documents.

24 EXAMINATION OF LANDED GOODS

- 24.1 Where it is necessary for an examination to be held or other action to be taken by PRONTO CLEARING cc in respect of any discrepancy in the goods which are landed or discharged from any vessel, aircraft, vehicle or transport unit, no responsibility shall attach to PRONTO CLEARING cc for any failure to hold such examination or to take any other action unless PRONTO CLEARING cc has been timeously advised by the landing or discharging agent that such goods have been landed and that such discrepancy exists.
- 24.2 PRONTO CLEARING cc will not be responsible for examining or counting any goods received by it where such goods are bundled, palletised or packed in any other manner such that their number cannot be quickly and easily counted. Should PRONTO CLEARING cc undertake to 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 PRONTO CLEARING cc or otherwise. PRONTO CLEARING cc shall be entitled to levy a charge on the customer for the counting of goods in such circumstances.

25 DUTIES, TAXES, IMPOSTS, LEVIES AND DEPOSITS

- 25.1 The customer, whether or not the payment was due to an act instruction or omission of the sender, owner and / or consignee and their agents, if any, shall be liable for any duties, taxes, imposts, levies, deposits or out-lays of whatsoever nature levied or payable to the authorities, intermediaries or other parties at any port or place for or in connection with the goods and whether at the time of entry and / or at any subsequent time and for any payments, fines, penalties, expenses, loss or damage whatsoever incurred or sustained by PRONTO CLEARING cc in connection therewith or arising thereout.
- 25.2 PRONTO CLEARING cc shall bear no liability in consequence of the fact that there may be a change in the rate of duty, wharfage, freight, railage or cartage, or any other tariff, before or after the performing by PRONTO CLEARING cc of any act involving a less favourable rate or tariff 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.

26 RECOVERY OF DUTIES INCORRECTLY PAID

PRONTO CLEARING cc shall not be liable for any duty, tax, levy, railage charge, wharfage charge, freight, cartage or any other impost or charge incorrectly paid or levied due to any negligent act or omission on the part of PRONTO CLEARING cc unless the customer –

- 26.1 within a reasonable time, having regard to all the circumstances and in particular to the time which it may take for the recovery from the payee of the amount paid advises PRONTO CLEARING cc that an incorrect amount has been paid or levied; and
- 26.2 carries out all such actions as are necessary to enable PRONTO CLEARING cc to effect recovery of the amount incorrectly paid and in this regard the ignorance of the customer that any such amount has been incorrectly paid or levied shall not be taken into account in calculating a reasonable time for the purpose of clause 26.1. Should any act or omission by or on behalf of the customer, whether or not such act or omission was reasonable or justified in the circumstances, prejudice PRONTO CLEARING cc's right to recover the amount incorrectly paid, the customer shall be deemed not to have complied with the provisions of this clause 26.

27 PAYMENT BY THE CUSTOMER

- 27.1 Unless otherwise specifically agreed by PRONTO CLEARING cc in writing the customer shall pay to PRONTO CLEARING cc in cash immediately upon presentation of account all sums due to PRONTO CLEARING cc without deduction or set-off and payments shall not be withheld or deferred on account of any claim or counter claim which the customer may allege.
- 27.2 Payment of all amounts due to PRONTO CLEARING cc shall be made:
- 27.2.1 Free of exchange and any other charges at such address in the Republic of South Africa as PRONTO CLEARING cc may require
 - 27.2.2 In South African currency
 - 27.2.3 Without demand and free of any deductions of set-off on the due date of payment
- 27.3 Any amount not paid on due date for payment shall bear interest at prime plus 2% (two per centum) calculated on daily balances and compounded monthly in arrears. "Prime", for the purposes of this clause, means the publicly quoted basic rate of interest per annum, (as certified by any general manager of The Standard Bank of South Africa Limited, whose appointment it shall not be necessary to prove) at which The Standard Bank of South Africa Limited lends on overdraft from time to time.
- 27.4 All and any monies received by PRONTO CLEARING cc from the customer shall be appropriated by PRONTO CLEARING cc in its sole and absolute discretion in respect of any undisputed indebtedness owing by the customer to PRONTO CLEARING cc, notwithstanding that the customer might, when making payment, seek to appropriate the payment so made to any particular debt or portion of debt.

28 SUSPENSION OF PRONTO CLEARING cc OBLIGATIONS

If any amount owed by the customer to PRONTO CLEARING cc in respect of any claim is not paid on due date then without prejudice to any other right which it may have, PRONTO CLEARING cc may immediately declare all amounts owed to it by the customer to be at once due and payable. It may retain its possession at the expense and risk of the customer, the customer's goods until it has received payments of all amounts owed to it by the customer. It may suspend the carrying out of any of its then uncompleted obligations until payment is made. It may terminate any credit facilities granted to the customer and it may refuse to provide any further services or undertake any further work for the customer.

29 V.A.T.

All amounts owing by the customer to PRONTO CLEARING cc ARE EXCLUSIVE OF Value Added Tax as defined in the Value Added Tax Act 1990. The customer undertakes to pay PRONTO CLEARING cc, together with all payments, Value Added Tax at the then prescribed rate.

30 DEBTING FEES AND DISBURSEMENTS

PRONTO CLEARING cc shall under no circumstances be precluded from raising a debit and obtaining payment in respect of any fee or disbursement due to it, notwithstanding the fact that a previous debit or debits, whether excluding or partly excluding the terms 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.

31 RISK OF POSTED ITEMS

No documents or any matter sent to PRONTO CLEARING cc through the post shall be deemed to have been received by PRONTO CLEARING cc unless they are actually received by PRONTO CLEARING cc.

32 QUOTATIONS

- 32.1 Any instruction given to PRONTO CLEARING cc based on any quotation furnished by PRONTO CLEARING cc to the customer shall be deemed to be an offer by the customer to PRONTO CLEARING cc to conclude a contract between the customer and PRONTO CLEARING cc based on such instructions and quotation. PRONTO CLEARING cc shall not be bound by any instructions or quotation unless it has notified the customer in writing of its acceptance.
- 32.2 Quotations are given on the basis of costs and exchange rates prevailing at the date of the quotation. Should PRONTO CLEARING cc's costs including, without limitation, rates of freight, insurance premiums, equipment rental and labour and any other charges applicable to the goods, increase thereafter for any reason beyond the control of PRONTO CLEARING cc, PRONTO CLEARING cc shall be entitled to increase its charges to the customer to the extent necessary to recoup such additional costs. If the customer disputes any increase in PRONTO CLEARING cc's charges, the dispute shall be determined by PRONTO CLEARING cc's auditors for the time being acting as experts and not as arbitrators and their decision shall be final and binding upon PRONTO CLEARING cc and upon the customer. PRONTO CLEARING cc reserves the right to levy an administration fee of 10% (ten per centum) on such increased or additional charges.

33 NO CLAIMS AGAINST COMPANY DIRECTORS AND EMPLOYEES

The customer shall have no claim whatsoever against any director, servant or employee of PRONTO CLEARING cc (whether such director, servant or employee acted within the course and scope of his or her employment within PRONTO CLEARING cc) should the customer suffer any loss or damage resulting from the rendering of any services in terms of any agreement between the customer and PRONTO CLEARING cc and these terms and conditions.

34 CUSTOMER'S ORAL INSTRUCTIONS

The customer's instructions to PRONTO CLEARING cc shall be precise, clear and comprehensive and in particular, but without limitation, shall cover any valuation or determination issued by customs in respect of any goods to be dealt with by or on behalf of or at the request of PRONTO CLEARING cc. Instructions given by the customer shall be recognised by PRONTO CLEARING cc as valid only if timeously given specifically in relation to a particular matter in question.

PRONTO CLEARING cc shall not be bound by any oral instructions, or general instructions, whether or not PRONTO CLEARING cc comments on such instructions and PRONTO CLEARING cc may in its absolute discretion act partly or in whole or not at all upon such instructions.

35 NEGOTIABLE INSTRUMENTS

No negotiable instrument received by PRONTO CLEARING cc from a customer shall constitute a novation of the debt for which it is given and the customer waives presentment, notice of dishonour and protest where applicable. No negotiable instrument, document or notice shall be deemed to have been received by PRONTO CLEARING cc until the same has been actually delivered to PRONTO CLEARING cc at its principal place of business.

36 VARIATION OF THESE TRADING TERMS AND CONDITIONS

No variation or alteration of these trading terms and conditions shall be binding on PRONTO CLEARING cc unless embodied in a written document signed by a duly authorised director of PRONTO CLEARING cc. Any purported variation or alteration of these trading terms and conditions otherwise than as set out above shall be of no force or effect, whether such purported variation or alteration is written or oral, or takes place before or after the receipt of these trading terms and conditions by the customer.

38 NON WAIVER

No extension of time or relaxation of any of the trading terms and conditions shall operate as an estoppel against any party in respect of its rights under these trading terms and conditions, nor shall it operate so as to preclude such party thereafter from exercising its rights strictly in accordance with these trading terms and conditions.

39 GOVERNING LAW

These trading terms and conditions and all agreements entered into between PRONTO CLEARING cc and the customer pursuant thereto and on the terms thereof shall be governed by and constructed in accordance with the laws of the Republic of South Africa.

40 SUBMISSION TO JURISDICTION

At the option of PRONTO CLEARING cc, any claim arising from these trading terms and conditions or the granting of credit may be recovered in any Magistrate's Court having jurisdiction over the person of the customer, notwithstanding that the amount of the claim may exceed the jurisdiction of the said Court, to which jurisdiction the customer hereby consents. This consent does not oust the jurisdiction of any other competent Court and PRONTO CLEARING cc shall be entitled, in its sole discretion to institute action against the debtor in any Court of competent jurisdiction.

41 BENEFIT OF DISCOUNTS

PRONTO CLEARING cc is entitled to the benefit of any discounts obtained and to retain and be paid all brokerages, commissions, allowances and other remunerations of whatsoever nature and kind and shall not be obliged to disclose or account to the customer, or principal for any such amounts received or receivable by it.

42 LIEN AND PLEDGE

42.1 All goods and documents relating to goods including bills of lading and import permits, as well as refunds, repayments, claims and other recoveries, shall be subject to a special and general lien and pledge either for monies due in respect of such goods or for other monies due to PRONTO CLEARING cc from the customer, sender, owner, consignee, importer or the holder of the bill of lading or their agents, if any. If any monies due to PRONTO CLEARING cc are not paid within 14 days after notice has been given to the person from whom the monies are due that such goods or documents are being detained, they may be sold by auction or otherwise or in some other way disposed of for value at the sole discretion of PRONTO CLEARING cc and at the expense of such person, and the net proceeds applied in or towards satisfaction of such indebtedness.

42.2 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 consent of PRONTO CLEARING cc. The lien and pledge referred to in clause 41.1 shall operate as a first and prior charge against the goods and the documents relating to the goods and no other security shall rank prior to the lien and pledge.

43 INDEMNITY BY THE CUSTOMER

Without prejudice to any of PRONTO CLEARING cc's rights and securities under these trading terms and conditions, the customer indemnifies and holds harmless PRONTO CLEARING cc against all liabilities, damages, costs and expenses whatsoever incurred or suffered by PRONTO CLEARING cc 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 PRONTO CLEARING cc in relation to any goods and in particular, but without limitation of the foregoing, in respect of any liability whatsoever which may be incurred –

- 43.1 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 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;
- 43.2 to any owner or consignee of such goods who is not the customer of PRONTO CLEARING cc where PRONTO CLEARING cc performs the service of a deconsolidation agent, or any other service, and / or
- 43.3 to any carrier of the goods if PRONTO CLEARING cc is the consignor or consignee of the goods, and / or
- 43.4 in respect of any goods referred to in clause 18

44 LIMITATION OF COMPANY'S LIABILITY

- 44.1 Subject to the provisions of clause 43.2 and clause 44.1, PRONTO CLEARING cc shall not be liable for any claim of whatsoever nature (whether in contract or in dilect) and whether for damages or otherwise, howsoever arising including but without limiting the generality of the aforesaid –
 - 44.1.1 any negligent act or omission or statement by PRONTO CLEARING cc or its servants, agents and nominee; and / or
 - 44.1.2 any act or omission of the customer or agent of the customer with whom PRONTO CLEARING cc deals; and / or
 - 44.1.3 any loss, or damage or expense arising from or in any way connected with the marking, labelling, numbering, non-delivery or mis-delivery of any goods; and / or
 - 44.1.4 any loss, damage or expense arising from or in any way connected with the weight, measurements, contents, quality, inherent vice, defect or description of any goods; and / or
 - 44.1.5 any loss damage or expense arising from or in any way connected with any circumstance, cause or event beyond the reasonable control of PRONTO CLEARING cc, including but without limiting the generality of the aforesaid, strike, lock-out, stoppage or restraint of labour; and / or
 - 44.1.6 damages arising from any loss of market or attributable to delay in forwarding or in transit or failure to carry out any instructions given to PRONTO CLEARING cc; and / or
 - 44.1.7 loss or non-delivery of any separate package forming part of a consignment or for loss from a package or unpacked consignment or for damage or mis-delivery; and / or
 - 44.1.8 damage or injury suffered by the customer or any person whatsoever arising out of any cause whatsoever as a result of PRONTO CLEARING cc's execution or attempted execution of its obligations to the customer and / or the customer's requirements or mandate

unless –

- a) such claim is for personal death or injury and arises from a grossly negligent or wilful act or omission on the part of PRONTO CLEARING cc or its servants; and
- b) such claim arises at a time when the goods in question are in the actual custody of PRONTO CLEARING cc and under its actual control; and
- c) PRONTO CLEARING cc receives a written notice within 5 days after the end of the transit where the transit ends in the Republic of South Africa or within 14 days after the end of transit where the transit ends at any place outside the Republic of South Africa.

- 44.2 Notwithstanding anything to the contrary contained in these trading terms and conditions, PRONTO CLEARING cc shall not be liable for any indirect and consequential loss arising from any act or omission or statement by PRONTO CLEARING cc, its agents, servants or nominee, whether negligent or otherwise.

45 MONETARY LIMITATION OF LIABILITY OF PRONTO CLEARING cc

- 45.1 In those cases where PRONTO CLEARING cc is liable to the customer in terms of clause 43.1, in no such case whatsoever shall any liability of PRONTO CLEARING cc, howsoever arising, exceed whichever is the least of the following respective amounts :

- 45.1.1 the value of the goods evidenced by the relevant documentation or declared by the customer for customs purposes or for any purpose connected with their transportation.
- 45.1.2 the value of the goods declared for insurance purposes.
- 45.1.3 double the amount of the fees raised by PRONTO CLEARING cc for its services in connection with the goods, but excluding any amounts payable to sub-contractors, agents and third parties.

44.2 If it is desired that the liability of PRONTO CLEARING cc in those cases where it is liable to the customer in terms of clause 43.1 should not be governed by the limits referred to in clause 44.1 written notice thereof must be received by PRONTO CLEARING cc before any goods or documents are entrusted to or delivered to or into the control of PRONTO CLEARING cc (or its agent or sub-contractor), together with a statement of the value of the goods. Upon receipt of such notice PRONTO CLEARING cc may in the exercise of its absolute discretion agree in writing to its liability being increased to a maximum amount stated in the notice, in which case it will be entitled to effect special insurance to cover its maximum liability and the party giving the notice shall be deemed, by doing so, to have agreed and undertaken to pay PRONTO CLEARING cc the amount of the premium payable by PRONTO CLEARING cc for such insurance. If PRONTO CLEARING cc does not so agree, the limits referred to in clause 41.1 shall apply.

46 GENERAL AVERAGE

The customer indemnifies and holds harmless PRONTO CLEARING cc in respect of any claims of a General Average nature which may be made against PRONTO CLEARING cc and the customer shall provide such security as may be required by PRONTO CLEARING cc in this connection.

47 BREACH

If PRONTO CLEARING cc breaches any of these trading terms and conditions 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 PRONTO CLEARING cc of the obligations it has defaulted in, but shall not be entitled to cancel these trading terms and conditions and any agreement between the customer and PRONTO CLEARING cc.

48 WARRANTIES AND REPRESENTATIONS BY PRONTO CLEARING cc

PRONTO CLEARING cc makes no warranties and representations to the customer save as may be specifically provided herein or as notified in writing by PRONTO CLEARING cc to the customer from time to time. The customer acknowledges that PRONTO CLEARING cc is not in any way bound by oral statement, representation, guarantee, promise, undertaking, inducement or otherwise which may have been made at any time by any salesman, employee or any person acting or purporting to act for and on behalf of PRONTO CLEARING cc, 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 PRONTO CLEARING cc in response to a written enquiry specifying accurately and in complete detail what information is required.

49 CANCELLATION

49.1 PRONTO CLEARING cc shall be entitled to cancel any agreement between it and the customer by written notice if –

- 49.1.1 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 notice to do so;
- 49.1.2 the customer commits any act of insolvency in terms of Section 8 of the Insolvency Act, No. 24 of 1936;
- 49.1.3 the customer is deemed to be unable to pay its debts in terms of Section 345 of the Companies Act, No. 69 of 1973;
- 49.1.4 the customer compromises or attempts to compromise with its creditors;

- 49.1.5 any provisional or final order is granted for the sequestration, winding up or judicial management of the customer;
- 49.1.6 the customer fails to satisfy any default judgement granted against it within 10 (ten) days;

49.2 The rights of PRONTO CLEARING cc under clause 48.1 shall not be exhaustive and shall be in addition and without prejudice to any other rights which it may have whether for damages or otherwise.

49 DISPUTE

- 49.1 Should there be any dispute of any nature whatsoever arising out of or in connection with These terms and conditions, the customer shall be obliged to perform its obligations in terms of these terms and conditions fully as though PRONTO CLEARING cc has performed properly and to the customer's satisfaction.
- 49.2 In the event of any such dispute, PRONTO CLEARING cc shall be deemed to have performed properly and fully in accordance with any agreement between the customer and PRONTO CLEARING cc and in terms of these terms and conditions until such time as the customer proves the contrary.
- 49.3 The customer shall have no claim against PRONTO CLEARING cc until the customer itself has fully performed in terms of any agreement between the customer and PRONTO CLEARING cc and in terms of these terms and conditions and the customer's only remedy against PRONTO CLEARING cc in respect of any breach by PRONTO CLEARING cc of any agreement between PRONTO CLEARING cc and the customer or in terms of these terms and conditions shall be limited to an action against PRONTO CLEARING cc for repayment of either the whole or the relevant portion of the amount which the customer alleges has been paid by the customer to PRONTO CLEARING cc.
- 49.4 In any dispute between PRONTO CLEARING cc and the customer, PRONTO CLEARING cc shall be deemed to have performed its obligations in a proper and workmanlike manner and strictly in accordance with any agreement between in and the customer, until such time as the customer proves to the contrary.

50 TIME FOR PERFORMANCE BY THE CUSTOMER

Time is of the essence for the performance by the customer of all obligations owed to PRONTO CLEARING cc in terms of any agreement with it governed by these terms and conditions.

51 SEVERABILITY

If any provision of these terms and conditions is unenforceable, then PRONTO CLEARING cc 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 terms and conditions which shall not be affected and shall remain of full force and effect.