

GENERAL TRADING TERMS AND CONDITIONS

1. INTERPRETATION

- 1.1 The headings to the clauses contained in this agreement are included 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 the contrary, words importing any one gender include the other two genders, the singular includes the plural and vice versa, and natural persons include created entities and (corporate and unincorporated) and vice versa;
- 1.3 **Clauses which limit the liability of OCTO-LOGISTICS or which may present specific risks to the Customer have been set out in a bold font;**
- 1.4 The following words and terms shall have the meanings assigned to them hereunder:
- 1.4.1 "Authority" shall mean any state or para-statal Ministry, department, organisation, agency or person, whether legal or natural, having ostensible or actual jurisdiction over OCTO-LOGISTICS, the Customer, any Container or Goods;
- 1.4.2 "conditions" shall mean these general trading terms and conditions as amended from time to time;
- 1.4.3 "Container" shall mean any box, canister, case, crate, Container, flexitank, package, trailer, transportable tank, flat, skid or pallet or any other article of transport used to consolidate Goods, as well as any equipment of or connected thereto, constructed to ISO standards and recommendations or those of a similar recognised classification;
- 1.4.4 "Customer" shall mean any person at whose request or on whose behalf OCTO-LOGISTICS undertakes any business or provides any advice, information or service and shall be deemed to include the owner, shipper, consignor and/or consignee of the Goods as hereinafter defined and any person claiming any right to or in respect of any such Goods and anyone acting on their behalf;
- 1.4.5 "day" shall mean the twenty-four hour period from midnight to midnight;
- 1.4.6 "dangerous Goods" shall mean Goods which by reason of their nature, quantity or mode of stowage either singularly or collectively are liable in OCTO-LOGISTICS' sole opinion to endanger the lives or the health of persons or any property including but not restricted to Containers, ships, rolling stock, vehicles, buildings and lifting equipments, as well as all Goods defined as dangerous in any relevant IMO Regulations including the IMDG Code or any Statutes, Statutory Instrument or Order in the Regulations made by any Governmental or other Public Authority or by any Local By Law relating to the handling, storage or carriage of Goods;
- 1.4.7 "Goods" shall mean any Goods in respect of or in relation to which services as defined herein are rendered by or on behalf of OCTO-LOGISTICS and which come under the control or into the custody of OCTO-LOGISTICS or its agents, servants or nominees on the instructions of the Customer, and includes any Container or any other form of covering, packaging, or equipment used in connection with or in relation to such Goods, and any vehicle;
- 1.4.8 "OCTO-LOGISTICS" shall mean OCTO-LOGISTICS (Pty) Limited;
- 1.4.9 "person" shall mean natural person, statutory body, sole proprietorship, firm, partnership, company, close corporation, trust, association or any other legal persona;

- 1.4.10 "service" or "services" shall mean all activities of OCTO-LOGISTICS in the course of business, whether gratuitous or not, including but not limited to receiving, handling, cleaning, repairing, packing, unpacking, transportation, storage and/or delivery;
- 1.4.11 "the Tariff" shall mean the tariff published by OCTO-LOGISTICS, as amended from time to time, which is available from OCTO-LOGISTICS on written request;
- 1.4.12 "vehicle" shall mean any motor vehicle (including but not limited to any forklift, lorry, stacker, van, truck, trailer, or car) in respect of or by which OCTO-LOGISTICS performs or is requested to perform any service or which enters OCTO-LOGISTICS' warehouse in connection with such service "warehouse" means a warehouse operated by OCTO-LOGISTICS and includes the premises on which the warehouse building is situated.

2. APPLICATION OF TRADING TERMS AND CONDITIONS

- 2.1 These conditions shall apply to any service rendered by OCTO-LOGISTICS, whether gratuitous or for reward, and to every Customer or other person for or on whose behalf OCTO-LOGISTICS performs or renders any service in respect of Goods, and to any further or additional work carried out for the Customer or other person;
- 2.2 The Customer warrants that it is either the owner of the Goods or the authorised agent, contractor and/or sub-contractor of the owner of the Goods and that it is authorised to accept and is accepting these conditions not only for itself, but also as agent for and on behalf of the owner of the Goods;
- 2.3 These Conditions are those referred to in all OCTO-LOGISTICS' notices, correspondence, faxes, telexes, emails, quotations, invoices, receipts and other documents;
- 2.4 Unless the parties agree to the contrary in writing, these terms and conditions shall prevail in the event of the Customer itself having standard terms and conditions, whether the latter conditions are apparently or allegedly in existence or incorporated in any agreement with OCTO-LOGISTICS before or after these terms and conditions.

3. AMENDMENTS TO THESE CONDITIONS

- 3.1 OCTO-LOGISTICS shall be entitled to amend or supplement these terms and conditions and whilst OCTO-LOGISTICS will take reasonable steps to publicise amendments, its failure to do so shall not in any way prevent the amendment or supplement taking effect;
- 3.2 No variation of these terms and conditions shall be binding on OCTO-LOGISTICS unless embodied in a written document signed by a duly authorised director of OCTO-LOGISTICS. Any purported variation or alteration of these terms and conditions 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 terms and conditions by the Customer.

4. SERVICES

OCTO-LOGISTICS provides all services subject to these Conditions.

5. QUOTATIONS, RATES AND PAYMENT

- 5.1 Any quotation given by OCTO-LOGISTICS is valid for acceptance for a period of 7 days only;
- 5.2 In the event of the cost to OCTO-LOGISTICS of performing any service increasing for any reason whatsoever which is beyond the control of OCTO-LOGISTICS subsequent to the price to the Customer being agreed, the change agreed with the Customer for such service shall automatically increase accordingly;

- 5.3 Any additional service that OCTO-LOGISTICS is obliged or entitled to provide that has not been quoted for, shall be charged at its usual charge or, if it has no usual charge, at a market-related charge;
- 5.4 In the absence of any written agreement to the contrary, the remuneration payable to OCTO-LOGISTICS by the Customer will be in accordance with the Tariff, which Tariff will be subject to variation by OCTO-LOGISTICS from time to time and without any prior notification to the Customer, and where a service is provided which does not appear in the Tariff OCTO-LOGISTICS shall be entitled to reasonable remuneration at a market-related rate, unless a rate has been specifically agreed in writing;
- 5.5 The Customer shall pay to OCTO-LOGISTICS all sums immediately when due without deduction or deferment on account of any claim, counter-claim or set off and all payments received by OCTO-LOGISTICS may be appropriated by OCTO-LOGISTICS within their sole and absolute discretion and in any manner which it deems fit even if the Customer and/or owner, when making payment, seeks to appropriate such payment to any particular debt or part of a debt;
- 5.6 In the event of the Customer failing to pay any amount to OCTO-LOGISTICS on due date, the whole amount owing by the Customer to OCTO-LOGISTICS (whether at that stage payable or not) shall immediately become due, owing and payable by the Customer to OCTO-LOGISTICS;
- 5.7 On all amounts overdue to OCTO-LOGISTICS, OCTO-LOGISTICS shall be entitled to charge interest at the maximum rate permissible in law from the date on which payment was due and payable until the full amount outstanding is paid;
- 5.8 The Customer is obliged to reimburse all and any costs incurred by OCTO-LOGISTICS in complying with all and any statutory requirements and regulations, notices and any requirements of a competent Authority including, but not limited to movement, permanent removal or destruction of dangerous, infested or contaminated Goods or the treatment of OCTO-LOGISTICS staff or premises or any other persons or premises as a result of any infestation or contamination arising from such Goods;
- 5.9 When OCTO-LOGISTICS is instructed to collect Freight charges, duties, or other expenses from any person other than the Customer, the Customer shall be responsible for the same on receipt of evidence of demand and non-payment by such other person when due.

6. **CONDITIONS APPLICABLE TO OCTO-LOGISTICS'S SERVICES**

- 6.1.1 Goods shall be deemed to have been received by OCTO-LOGISTICS at the later of the time when:
- 6.1.1.1 the Goods enter through the warehouse gates; or
- 6.1.1.2 the process of off-loading the Goods from the vehicle at the warehouse has been completed ;
- 6.1.2 Goods shall be deemed to have been delivered by OCTO-LOGISTICS when they are delivered to the person in possession of a delivery release order by placing the Goods at the disposal of such person at the warehouse; or
- 6.1.3 in the case of Containers the Customer, or his servant and/or agent assumes control of the Container trailer on which OCTO-LOGISTICS has placed a Container by connecting a prime mover to such Container trailer, provided always that OCTO-LOGISTICS shall not be responsible for securing Containers to Container trailers and any loss or damage arising directly or indirectly from any such failure to secure Containers to Container trailers shall be at the risk of the Customer;
- 6.2 An acknowledgment of receipt of any Goods by OCTO-LOGISTICS shall not constitute an acknowledgement or admission with regard to the state, condition, quality or quantity of such

Goods nor as to the correctness of any statement made by OCTO-LOGISTICS on any documentation;

6.3 The Customer shall be entitled to appoint a surveyor to monitor the loading and off-loading of Goods at OCTO-LOGISTICS;

6.4 **OCTO-LOGISTICS shall in no circumstances be responsible or liable for the handling, loading, unloading, securing and/or lashing of Goods and/or Containers and/or other vehicles;**

6.5 If delivery of the Goods is not accepted by the Customer at the appropriate time and place OCTO-LOGISTICS shall be entitled to store the Goods, or any part thereof, at a place convenient to it at the risk and expense of the Customer. Should the Goods not have been collected or accepted by the Customer after the expiration of 21 (twenty-one) days from OCTO-LOGISTICS notifying the Customer in writing to collect or accept such Goods, such Goods sold in the same manner as prescribed in clause 12 in relation to lien, provided that if the Company has no address for the Customer notice shall not be required. Payment or tender to the Customer of the net proceeds if any of the sale after deduction of all amounts due to the Company and costs, charges and expenses incurred by OCTO-LOGISTICS in relation to the sale, shall be deemed due delivery of such Goods;

6.6 Carriers of Goods to the point of receipt by OCTO-LOGISTICS or from the point of delivery by OCTO-LOGISTICS are deemed in all instances, and notwithstanding that OCTO-LOGISTICS might have requested such carrier to carry Goods, the agent of the Customer;

6.7 **The Customer shall be liable to OCTO-LOGISTICS for all costs, charges, expenses, liabilities and/or damages whatsoever and howsoever incurred or suffered by OCTO-LOGISTICS arising out of or incidental to the failure of particular Goods to comply with these terms and conditions;**

6.7.1 Every Customer shall furnish OCTO-LOGISTICS in writing with such particulars of the Goods, including but not limited to weights, measurements, characteristics and description as OCTO-LOGISTICS may reasonably require for the purpose of handling such Goods. OCTO-LOGISTICS shall at all times be entitled to rely for any purposes whatsoever upon all particulars and information furnished in terms of this clause;

6.7.2 Without prejudice to the foregoing, the Customer warrants and guarantees to OCTO-LOGISTICS the accuracy of the following:

6.7.2.1 the marks, numbers and weights and any other information shown on any Container and any documentation pertaining to such Container; and

6.7.2.2 the marks, numbers, weights, description of Goods and packing, shown on all shipping and other documents in respect of any Goods;

6.8 Goods must:

6.8.1 be clearly marked so as to avoid a discrepancy between the Goods and the shipping and other documents relating to the Goods and to render the Goods identifiable with the shipping and other documents;

6.8.2 be securely packaged and sufficiently protected to withstand handling, both human and mechanical, containerisation, transport, storage and delivery; and

6.8.3 be marked in compliance with the relevant IMO and IMDG Code regulations.

6.9 **OCTO-LOGISTICS shall have no liability arising out of services rendered in respect of Goods which do not comply with the provisions of this sub-clause and the Goods shall be handled entirely at the Customer's risk;**

- 6.10 Every Container must be clearly marked so as to be readily identifiable with the Customer's Container manifest, or any other document by which such Container is intended to be identified;
- 6.11 OCTO-LOGISTICS shall at all times be entitled, but not obliged to inspect any Goods, and shall be entitled to refuse to accept any Goods which in its sole discretion appear in any way to be damaged or unsafe for handling, storage or carriage;
- 6.12 **The Customer warrants to and in favour of OCTO-LOGISTICS the suitability and safety of all Goods and vehicles delivered to OCTO-LOGISTICS by or on behalf of such Customer;**
- 6.13 **The Customer warrants to and in favour of OCTO-LOGISTICS, that all Goods shall, where this is not within OCTO-LOGISTICS's control, at all times be carried on, lifted by and stored in vehicles, ships, lifting equipment and warehouses which will be entirely suitable for the safe, adequate and sufficient carriage, lifting and storage thereof and indemnifies OCTO-LOGISTICS against all and any claims for the loss of or damage to property or injury to persons arising from the carriage, lifting or storage of such Goods in breach of such warranty;**
- 6.14 When Goods in a package or Container are delivered to OCTO-LOGISTICS, OCTO-LOGISTICS is entitled, but not obliged, to open the package or Container in order to ascertain the contents thereof, or to ascertain the nature and sufficiency of the packing and to repack the Goods and/or Container. The cost of repacking the Goods and/or Container shall be borne by and the risk lie with the Customer on whose behalf OCTO-LOGISTICS received such Goods and/or Container;
- 6.15 Notwithstanding the foregoing and whenever OCTO-LOGISTICS conducts an external visual inspection of the Container or Goods, **OCTO-LOGISTICS shall not be under any liability in respect of loss or damage resulting from any fact or state of affairs not reasonably ascertainable as a result of such external visual inspection;**
- 6.16 Except under special arrangements previously made in writing, OCTO-LOGISTICS shall not accept or deal with Bullion, Coins, Precious Stones, Jewellery, Valuables, Antiques, Pictures, Human Remains, Live Stock, Post, Parcels or other mail and plants. Should the Customer nevertheless deliver such Goods to OCTO-LOGISTICS or cause OCTO-LOGISTICS to handle or deal in any way with any such Goods otherwise than under special arrangement previously made in writing, OCTO-LOGISTICS 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 which will be handled or otherwise dealt with entirely at the Customer's risk.
- 6.17 **TEMPERATURE CONTROLLED GOODS**
- 6.17.1 Unless otherwise previously agreed in writing, the Customer undertakes that no Goods or Containers requiring temperature control will be delivered to OCTO-LOGISTICS and that OCTO-LOGISTICS shall not be required to deal with or handle such Goods and no liability shall in any event attach to OCTO-LOGISTICS in respect of such Goods or Containers under any circumstances;
- 6.17.2 If OCTO-LOGISTICS agrees in writing to handle Goods which require temperature control, the Customer undertakes to give written notice of the nature of the Goods and a particular temperature range to be maintained and shall warrant that the Container has been properly pre-cooled or pre-heated as appropriate, that the Goods have been properly stuffed in the Container and that its thermostatic controls have been properly set. If the above requirements are not or have not been complied with, OCTO-LOGISTICS shall not be liable for any loss or damage to the Goods;
- 6.17.3 **If the Customer is in breach of 6.17.1 and/or 6.17.2 above, OCTO-LOGISTICS may refuse receipt of the Goods or, if already received, call on the Customer to immediately remove the Goods and failing to do so within 7 days of having been requested in writing to do so, OCTO-LOGISTICS shall be entitled to destroy the Goods or deal with them in any other manner it deems appropriate, without liability and at the risk and expense of the Customer.**

6.18 Without prejudice to any other provisions of these terms and conditions, Goods (whether perishable or otherwise) in the care, custody or control of OCTO-LOGISTICS may at the Customer's expense be sold or disposed of by OCTO-LOGISTICS without notice to the Customer and/or owner if such Goods have begun to deteriorate or are likely to deteriorate.

6.19 **RAIL AND CERTAIN DOCUMENTARY SERVICES ARRANGED BY OCTO-LOGISTICS**

6.19.1 If OCTO-LOGISTICS procures from a third party the carriage of Goods by rail and any handling or storage connected therewith or for any other services, it does so solely as an agent for the Customer and entirely at its risk and shall not be liable for any acts or omissions of OCTO-LOGISTICS or the third party.

6.19.2 Where such services are contracted by OCTO-LOGISTICS, OCTO-LOGISTICS shall be entitled, but not obliged to contract on the basis of the third party's own standard terms and conditions and to bind the Customer thereto, to which the Customer hereby authorises OCTO-LOGISTICS.

6.19.3 OCTO-LOGISTICS acts as the Customer's agent only when providing services in respect of or relating to customs requirements, taxes, licenses, consular documents, certificates of origin, inspection certificates and other similar services;

6.19.4 Nonetheless, the remuneration for such service shall be payable by the Customer to OCTO-LOGISTICS.

6.19.5 With regard to any such service procured by OCTO-LOGISTICS on behalf of the Customer, except to the extent caused by OCTO-LOGISTICS's negligence, the Customer shall defend, indemnify and hold harmless OCTO-LOGISTICS in respect of all liability, loss, damage, costs or expenses arising howsoever out of or in relation to such procurement.

6.19.6 In the event of a claim in respect of such services or procurement, OCTO-LOGISTICS shall provide the Customer with particulars of the identity, services and charges of persons contracted to perform them when reasonably required to do so.

6.20 **INSTRUCTIONS FROM THE CUSTOMER AND THE COMPANY'S DISCRETION**

6.20.1 In the absence of specific instructions given timeously in writing by the Customer to the Company –

6.20.1.1 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;

6.20.1.2 The Company 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.

6.20.2 Unless specific written instructions are timeously given to and accepted by the Company, the Company shall not be obliged to –

6.20.2.1 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, 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;

6.20.2.2 Arrange for any particular Goods to be carried, stored or handled separately from other Goods.

6.20.3 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.

6.20.4 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.

6.21 INSURANCE

6.21.1 **The Customer acknowledges all exclusions from and limitations of liability of the Company contained in these terms and conditions, and that the obligation rests with it to effect appropriate insurance cover for the goods to protect it against any damage or loss.**

6.21.2 **No insurance will be effected on the Customer's behalf except upon express instruction given in writing by the Customer.** All insurance effected by OCTO-LOGISTICS will be subject to the usual exceptions and conditions of the policies of OCTO-LOGISTICS or of underwriters providing the cover;

6.21.3 The Customer will be liable for all premiums for any insurance effected by OCTO-LOGISTICS on the Customer's behalf and will pay them promptly when requested to do so;

6.21.4 Unless otherwise agreed in writing, OCTO-LOGISTICS shall not be under any obligation to effect separate insurance on each consignment, but may declare Goods on any open or general policy;

6.21.5 Should the insurers dispute their liability for any reason, the insured shall have recourse against the insurer only. OCTO-LOGISTICS shall not have any responsibility or liability in relation to the insurance.

7. OCTO-LOGISTICS'S RIGHTS

7.1 OCTO-LOGISTICS may at any time comply with the orders or recommendations given by any Authority. The responsibility of OCTO-LOGISTICS in respect of the Goods, if any, shall cease on the delivery or other disposition of the Goods in accordance with such orders and/or recommendations;

7.2 If at any time the performance of OCTO-LOGISTICS's obligations, in the opinion of OCTO-LOGISTICS or its agent, is or is likely to be affected by any circumstance unavoidable by OCTO-LOGISTICS's reasonable endeavours, OCTO-LOGISTICS may, on giving written notice to the Customer or without notice where it is not reasonably possible to give such notice, treat the performance of its obligations as discharged and place the Goods or any part thereof at the disposal of the Customer at any place which OCTO-LOGISTICS may deem safe and convenient, whereupon the responsibility of OCTO-LOGISTICS in respect of the Goods shall cease. The Customer shall be responsible for any additional costs of carriage to and delivery, handling and storage at such place and for all other expenses incurred by OCTO-LOGISTICS;

7.3 If delivery of the Goods is not taken by the Customer at the time and place when and where OCTO-LOGISTICS is entitled to call upon the Customer to take delivery thereof, OCTO-LOGISTICS

shall be entitled to store the Goods at a place convenient to it in the open or under cover at the sole risk and expense of the Customer;

- 7.4 Notwithstanding clauses 7.2 and 7.3 above, OCTO-LOGISTICS shall be entitled, but not obliged at the risk and expense of the Customer and without liability to the Customer to sell or otherwise dispose of any Container or other Goods which in OCTO-LOGISTICS's opinion cannot be delivered as instructed or which may be reasonably expected to cause loss or damage to any person or property or to contravene any applicable law or regulation;
- 7.5 Notwithstanding anything contained herein and without prejudice to its rights and remedies in terms hereof, OCTO-LOGISTICS shall be entitled at the Customer's risk and expense to open and inspect any Container or packaged Goods at any time and without notice if it believes that the contents of such Container may be illegal or the proceeds of or being used in and/or evidence of any unlawful activity.

8. SUBCONTRACTING

- 8.1 Any business entrusted by the Customer to OCTO-LOGISTICS may, in the absolute discretion of OCTO-LOGISTICS, be fulfilled by OCTO-LOGISTICS itself, by its own servants performing part or all of the relevant services, or by OCTO-LOGISTICS 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.
- 8.2 Where OCTO-LOGISTICS employs third parties to perform all or any of the services it has agreed to perform, it 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.
- 8.3 The Customer acknowledges that when OCTO-LOGISTICS, 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.
- 8.4 The Customer agrees that OCTO-LOGISTICS shall have no responsibility or liability to the Customer for any act or omission of such third party, even though the company may be responsible for the payment of such third party's charges.

9. WAREHOUSING

- 9.1 While OCTO-LOGISTICS undertakes to take reasonable steps to properly secure its premises at all times, the Goods remain at the sole risk of the Customer while on OCTO-LOGISTICS's premises or in OCTO-LOGISTICS's custody, and the Customer shall take all reasonable steps to adequately insure them for its own account.
- 9.2 The Customer acknowledges that its Goods may be stored in the open or in open-sided warehouses. The Customer shall be entitled by arrangement to inspect OCTO-LOGISTICS's premises but shall in any event be deemed to have inspected the area where its Goods will be stored and to have accepted its suitability. OCTO-LOGISTICS will accordingly not be liable for any loss of or deterioration in the Goods due to unsuitability of the storage area for the particularly Goods in question.
- 9.3 In the event that the Goods require special care of whatsoever nature, the Customer shall advise OCTO-LOGISTICS in writing at the time of contracting, failing which OCTO-LOGISTICS shall not be in any way responsible for loss of, damage to or deterioration in the Goods caused through failure to provide such special care.
- 9.4 The obligation to fumigate the Goods if required shall be on the Customer, and OCTO-LOGISTICS shall not be liable for failure to fumigate Goods under any circumstances. OCTO-LOGISTICS may at the Customer's expense arrange fumigation on the Customer's behalf on written request but shall not be liable in any way whatsoever for the adequacy or effectiveness of such fumigation.

9.5 OCTO-LOGISTICS shall not be obliged to deliver or release the Goods to any party other than one holding a OCTO-LOGISTICS warehouse or holding certificate or other receipt issued by it, or express written authorisation from the Customer together with suitable identification; where delivery is made to a person holding such a certificate, receipt or authorisation, delivery shall be deemed to have been properly made in accordance with the Customer's instructions.

9.6 The Customer shall at its own expense provide all pallets or other equipment for packing, storage or transporting purposes; where for any reason OCTO-LOGISTICS is required to provide such pallets or other equipment, it shall be entitled to recover from the Customer the reasonable cost thereof.

10. CONTAINERS

10.1 Where OCTO-LOGISTICS is required to pack or stuff Goods into containers for transport whether on an FCL or LCL basis, such Goods shall in the absence of express written instructions from the Customer be stuffed into ordinary containers and shall be deemed to be suitable for carriage in such containers without any specific ventilation or temperature requirements, and OCTO-LOGISTICS shall not be liable for any loss of or damage to the Goods resulting from any failure to provide special containers or conditions within those containers.

10.2 Unless otherwise agreed in writing, the cost of all pallets, packing materials, equipment, dunnaging, lashing materials or the like shall be borne by the Customer.

10.3 Where sealed or packaged items are given to OCTO-LOGISTICS for consolidation, the Customer shall clearly mark such items, shall where required declare to OCTO-LOGISTICS in writing their contents and shall warrant that they have been properly packed; OCTO-LOGISTICS shall not be liable for any loss of or damage to such items due to insufficient packaging, or for misdelivery due to inadequate markings.

11. PACKAGING

11.1 Where OCTO-LOGISTICS is required to package or bag bulk or other Goods the client shall prior to accepting OCTO-LOGISTICS's quotation be afforded a reasonable opportunity of inspecting the equipment, methods and / or materials to be employed and shall in any event be deemed to have done so and to have expressly approved the use of such equipment, methods and materials, and OCTO-LOGISTICS shall not be liable for any loss of or damage to the Goods or for any other consequences of whatsoever nature in the event that these are found to have been inadequate or inappropriate for the purposes concerned.

11.2 Materials used in the packaging or bagging of Goods if not provided by the Customer may be provided by OCTO-LOGISTICS at the Customer's expense.

11.3 OCTO-LOGISTICS shall in the absence of express written instructions be entitled to pack or bag Goods into whatever individual quantities it deems appropriate.

11.4 The Customer shall provide clear written instructions as to the marking of packages, bags or other units and OCTO-LOGISTICS shall not be liable for any losses of whatsoever nature resulting from the Customer's failure to do so or for the inadequacy or inaccuracy of markings placed on Goods in accordance with or in the absence of such instructions.

11.5 OCTO-LOGISTICS shall not be liable to the Customer for the loss in quantity or weight through handling of Goods delivered to it for packaging or bagging unless such loss is proven by the client and represents more than 5% in weight of the total consignment concerned, subject always to all other terms and conditions herein.

11.6 Where OCTO-LOGISTICS is obliged to store Goods delivered to it for packaging or bagging either before or after that process, it shall be entitled to charge the Customer for such storage at its

usual rates, such storage being otherwise in all respects subject to OCTO-LOGISTICS's standard terms and conditions relative to warehousing.

12. OCTO-LOGISTICS'S LIEN

12.1 **OCTO-LOGISTICS will have a special and general lien over all Containers, Goods and documents relating thereto, for any sum due by the Customer whether in relation to such Containers, Goods or documents or otherwise.**

12.2 **In the event that any such sum remains unpaid after 14 days of OCTO-LOGISTICS's written notice to the Customer that a lien has been exercised in relation to such sum, OCTO-LOGISTICS may, without further notice, sell the whole or part of the Goods** liened either by public auction or by private treaty and to apply the proceeds of such sale, after deducting all expenses thereof, in payment of any sum whatsoever which may be due to OCTO-LOGISTICS by the Customer at the time of sale. Any surplus will be paid over to the Customer without interest within thirty days after such sale or, in the event of OCTO-LOGISTICS being unaware of the address of the Customer, on written request by the Customer.

12.3 Where OCTO-LOGISTICS has, in accordance with the provisions of clause 12.2 sold part only of the Goods stored by the Customer, and the proceeds of such sale are sufficient to pay to OCTO-LOGISTICS all monies due to it by the Customer up to the date of sale, the Customer will be entitled to take delivery of the remainder of the Goods. Pending such delivery OCTO-LOGISTICS will have the right to charge for the storage of any Goods forming part of such remainder and without notice to the Customer to sell such remainder to recover any such remuneration if the Customer does not take delivery within 14 days of written notice by OCTO-LOGISTICS to do so.

12.4 The exercise by OCTO-LOGISTICS of any of the rights accorded to it by this clause will be without prejudice to any other rights which it may have under this agreement or at common law in respect of non-payment by the Customer of OCTO-LOGISTICS's remuneration and it shall remain entitled to recover any difference and/or shortfall from the Customer.

13. DANGEROUS GOODS

The Customer will not deliver for handling or storage any Goods which are dangerous or likely to encourage vermin or other pests or to cause infection or contamination. In the event of any such Goods being so delivered, without the knowledge and express written consent of OCTO-LOGISTICS, the Customer will indemnify OCTO-LOGISTICS against all liability, loss or damage suffered by OCTO-LOGISTICS or any third party directly or indirectly caused by such Goods. OCTO-LOGISTICS may remove, sell, destroy or otherwise dispose of any such Goods without notice or liability to the Customer.

14. INDEMNITY BY THE CUSTOMER

14.1 Without prejudice to any of OCTO-LOGISTICS's rights under these Conditions, the **Customer indemnifies OCTO-LOGISTICS in respect of and holds it harmless against any liability, claims, costs (including legal costs on the attorney and own client scale), expenses, losses and/or damages whatsoever arising directly or indirectly from or relating to:**

14.1.1 mis-delivery of Goods;

14.1.2 duties, fines, penalties, taxes (including customs duty and VAT), imposts, detention charges, levies by or paid to any Authority including but not limited to Transnet National Ports Authority and the South African Revenue Service and any liability which OCTO-LOGISTICS may incur as a consignee as defined in the National Road Traffic Act 93 of 1996 or the regulations of that Act;

14.1.3 any breach of warranty or obligation by the Customer;

14.1.4 any act or omission by the Customer or any person acting on its behalf;

- 14.1.5 OCTO-LOGISTICS's compliance with instructions given by or on behalf of the Customer, whether express, tacit or implied;
- 14.1.6 OCTO-LOGISTICS's compliance with the instructions of an Authority or with any common law or legislative enactment or regulation or other lawfully imposed obligations of any nature whatever in respect of the Goods;
- 14.1.7 the defective condition or excess weight of Containers, Goods or vehicles;
- 14.1.8 any duty, Value Added Tax, penalty, amount raised in forfeiture, or any other fines, levies or charges raised by the South African Revenue Services in respect of Goods stored in OCTO-LOGISTICS's Customs bonded warehouse or otherwise;
- 14.1.9 loss of or damage to property or injury to persons arising directly or indirectly from infestation or contamination of any Goods;
- 14.1.10 claims arising from or in connection with the loading, unloading, securing and/or lashing of Goods, whether or not such claims arose as a result of breach and/or negligence on the part of OCTO-LOGISTICS;
- 14.1.11 any demurrage or other charges arising from the delay of any Goods, Container or vehicle at the warehouse;
- 14.1.12 general average;

unless arising solely from OCTO-LOGISTICS's gross negligence.

- 14.2 The Customer undertakes that no claim shall be made against any servant or agent of OCTO-LOGISTICS which imposes or attempts to impose upon any of them any liability whatsoever in connection with the Goods, and if any such claim should nevertheless be made, to indemnify OCTO-LOGISTICS against all consequences thereof.
- 14.3 Without prejudice to the foregoing, every such servant or agent of OCTO-LOGISTICS shall have the benefit of all immunities, indemnities, defences, exceptions and/or limitations of liability contained in these conditions, as if such provisions were expressly agreed for their benefit. OCTO-LOGISTICS agrees such provisions in this contract not only on its own behalf but also as agent and trustee for such servants and agents.
- 14.4 In this clause, "agent" includes direct and indirect sub-contractors and their respective servants and agents.
- 14.5 Advice and information in whatever form it may be given is provided by OCTO-LOGISTICS for the Customer only and the Customer shall defend, indemnify and hold harmless OCTO-LOGISTICS for all liability, loss, damage, costs and expenses arising out of any other person relying on such advice or information. The Customer shall not pass such advice or information to any third party without OCTO-LOGISTICS's written agreement and the Customer shall indemnify OCTO-LOGISTICS against any loss suffered because of a breach of this condition.
- 14.6 Should any claim be made by any person against OCTO-LOGISTICS, arising out of the performance or non-performance of its obligations to the Customer, the Customer shall indemnify OCTO-LOGISTICS for all and any claims and/or amounts for which OCTO-LOGISTICS may be held liable in excess of the liability provided for in these conditions. The Customer shall also reimburse OCTO-LOGISTICS for legal costs (on the attorney and own client scale) incurred by OCTO-LOGISTICS in defending such a claim.
- 14.7 The Customer's bill of lading, waybill or other contract of carriage, handling and/or storage shall include a provision prohibiting the making of a claim against OCTO-LOGISTICS, its servants or

agents and a provision that OCTO-LOGISTICS, its servants and agents shall have the benefit of all defences, exclusions and limitations of liability contained in any such contracts.

15. LIMITATION OF OCTO-LOGISTICS'S LIABILITY

15.1 **OCTO-LOGISTICS shall not be liable for any claims (whether in contract or in delict), damages, loss and/or expense of whatsoever nature arising from or relating to:**

- 15.1.1 any negligent act or omission or statement by OCTO-LOGISTICS or its employees, servants, agents, nominees, contractors or sub-contractors; and/or
- 15.1.2 any act or omission of the Customer or its servants or agents; and/or
- 15.1.3 any loss, damage or expense arising from or in any way connected with the marking, labelling, numbering, non-delivery or mis-delivery of any Goods, including but not limited to any mis-delivery brought about pursuant to the submission of fraudulent documentation; and/or
- 15.1.4 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
- 15.1.5 any loss, damage or expense arising from or in any way connected with any circumstance, cause or event beyond the reasonable control of OCTO-LOGISTICS, including but without limiting the generality of the aforesaid, any strike, lock-out, stoppage or restraint of labour; and/or
- 15.1.6 any loss, damage or expense arising from theft, vehicle hijacking, accident, storm, tempest, flood, lightning or other *vis maior* or Act of God; fire, explosion, or any act done with malicious intent; and/or
- 15.1.7 any loss, damage or expense attributable to failure to carry out any instructions given to OCTO-LOGISTICS; and/or
- 15.1.8 damage or injury suffered by the Customer or any person whatsoever arising out of any cause whatsoever as a result of OCTO-LOGISTICS's execution or attempted execution of its obligations to the Customer and/or the Customer's requirements or mandate; and/ or
- 15.1.9 any demurrage or other charges arising from the delay of any Goods, Container or vehicle at the warehouse;

unless-

- 15.1.10 such claim **arises from a grossly negligent act or omission on the part of OCTO-LOGISTICS** and its servants, employees or agents where such persons are acting within the scope of their employment or mandate; and
 - 15.1.11 such claim **arises at a time when the Goods in question are in the custody of OCTO-LOGISTICS and under its control.**
- 15.2 **OCTO-LOGISTICS shall under no circumstances be liable for any claims (whether in contract or in delict), damages, loss and/or expenses, howsoever arising and regardless of the negligence of OCTO-LOGISTICS, its servants, agents, nominees, contractors and/or sub-contractors, in whatever degree, which are in any way whatsoever attributable to delay, loss of profit and/or market, and/or consequential or indirect in nature.**

16. **PERIOD OF OCTO-LOGISTICS'S LIABILITY**

- 16.1 The Goods shall be regarded as in the custody of OCTO-LOGISTICS and under its control from the time the Goods are received by OCTO-LOGISTICS to the time that they are delivered to the Customer or its nominee, subject to clauses 6.1.2 and 6.1.3.

17. **MONETARY LIMITATION OF LIABILITY OF THE COMPANY**

- 17.1 **In those cases where OCTO-LOGISTICS is liable to the Customer in terms of clause 15, in no such case whatsoever shall its liability, howsoever arising, exceed whichever is the least of the following respective amounts -**

- 17.1.1 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;

- 17.1.2 the **value of the Goods declared for insurance purposes**;

- 17.1.3 **double the amount of the fees raised by OCTO-LOGISTICS** for its services in connection with the Goods, but excluding any amount payable to sub-contractors, agents and third parties.

- 17.2 **If it is desired that the liability of the company in those cases where it is liable to the Customer in terms of clause 17.1 should not be governed by the limits referred to in clause 17.1, written notice thereof must be received by OCTO-LOGISTICS before any Goods or documents are entrusted to or delivered to or into its control (or that of its agents or sub-contractors), together with a statement of the value of the Goods.** Upon receipt of such notice OCTO-LOGISTICS may in the exercise of its absolute discretion agree in writing to its liability being increased to a maximum amount equivalent to the 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 so doing, to have agreed and undertaken to pay OCTO-LOGISTICS the amount of the premium payable by it for such insurance. If OCTO-LOGISTICS does not so agree the limits referred to in clause 17.1 shall apply.

18. **DISPUTES**

- 18.1 Should there be any dispute of any nature whatsoever between the parties in regard to any aspect, matter or thing relating to these trading terms and conditions and whether or not OCTO-LOGISTICS has executed its obligations in terms of any agreement it has with the Customer, then and in such event the Customer shall nevertheless be obliged to perform its obligations in terms of any such agreement as though OCTO-LOGISTICS had performed properly and to the Customer's satisfaction.

- 18.2 In the event that the Customer alleges that it has made any overpayment or will, if an invoice by OCTO-LOGISTICS is paid, make an overpayment, the Customer's remedy, having performed its obligations as provided in clause 18.1, shall be limited to an action against OCTO-LOGISTICS in terms of clause 20 for repayment of either the whole or portion of the amount which the Customer alleges constitutes an overpayment.

- 18.3 Without affecting the generality of clauses 18.1 and 18.2 the Customer shall not be entitled to withhold payment of any amounts by reason of any dispute with OCTO-LOGISTICS, whether in relation to OCTO-LOGISTICS's performance in terms of any agreement, or lack of performance or otherwise, after which payment the Customer's rights of action against the company in terms of this clause can be enforced. Until such payment is made, any rights that the Customer may have, shall be deemed not yet to have arisen and it is only the payment to the company which releases such rights and makes them available to the Customer in respect of any claim that he may have against OCTO-LOGISTICS.

- 18.4 In any dispute between the company and the Customer OCTO-LOGISTICS shall be deemed to have performed its obligations in a proper and workmanlike manner and strictly in accordance with any agreement between it and the Customer, until such time as the Customer proves the contrary.

19. **GOVERNING LAW**

These Conditions and all agreements entered into between OCTO-LOGISTICS and the Customer pursuant thereto and on the terms thereof shall be governed by and construed in accordance with the laws of the Republic of South Africa.

20. **SUBMISSION TO JURISDICTION AND ARBITRATION**

- 20.1 Any dispute between the parties shall be submitted to arbitration which shall be:
- 20.1.1 Before a single arbitrator sitting in Johannesburg Durban and agreed by the parties, failing which appointed by the Arbitration Foundation of South Africa ("AFSA");
- 20.1.2 Subject to the AFSA Rules then in force.
- 20.2 Notwithstanding the provisions of clause 20.1, any dispute between the parties, including but not limited to the non-payment of any invoice issued by OCTO-LOGISTICS, or sale or disposal of Goods by OCTO-LOGISTICS may in the discretion of OCTO-LOGISTICS be determined by the High Court.
- 20.3 The parties agree that any legal action or proceedings brought in terms of clause 20.2 and arising out of or in connection with these Conditions or any of the services of OCTO-LOGISTICS shall be brought in the North or South Gauteng High Court, and the Customer irrevocably submits to the non-exclusive jurisdiction of such court.

21. **ONE YEAR TIME BAR FOR CLAIMS**

- 21.1 **The Customer shall give OCTO-LOGISTICS written notice of all claims within 60 calendar days of the earliest of the date of delivery of the Goods, the date on which the Goods should have been delivered, or the date of the incident giving rise to the claim, failing which OCTO-LOGISTICS's liability in respect of such claims shall be extinguished;**
- 21.2 In any event, **OCTO-LOGISTICS shall be discharged of all liability** whatsoever and all right of action shall be extinguished, **unless summons or other proper process originating action is served on OCTO-LOGISTICS by no later than one year after the date on which the incident giving rise to such cause of action occurred.**

22. **COSTS**

In the event of the Customer breaching any of its obligations and/or failing to timeously make payment of any amount to OCTO-LOGISTICS, the Customer agrees to pay, and shall be liable to pay, all legal costs on the attorney/own client scale including collection charges and tracing agent's fee incurred by OCTO-LOGISTICS in recovering any such amount from the Customer.

23. **SEVERABILITY**

If any provision of this agreement is held to be unenforceable by any Court of Law, such provision shall be severable from this agreement and shall not affect the remaining provisions of this agreement which shall remain in full force and/or effect.

24. **NON WAIVER**

No extension of time or waiver or relaxation of any of these Conditions shall operate as an estoppel against any party in respect of its rights under these 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.

25. BENEFIT OF DISCOUNTS

OCTO-LOGISTICS is entitled to the benefits 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.

26. SPECIAL CONDITIONS RELATED TO ELECTRONIC DATA

26.1 Notwithstanding the provisions of the Electronic Communications and Transactions Act 25 of 2002, as amended from time to time ("the ECT Act"), OCTO-LOGISTICS 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;

26.2 **Under no circumstances howsoever arising (including negligence and gross negligence) on the part of OCTO-LOGISTICS or its employees) shall OCTO-LOGISTICS be liable for any loss or damage arising from or consequent upon the provision by OCTO-LOGISTICS to the Customer in whatever manner and/or form, of incorrect information, including data as defined in the ECT Act, where such incorrect information has been generated by and provided to OCTO-LOGISTICS by any third party;**

26.3 OCTO-LOGISTICS 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 reasons, and regardless of negligence in whatever degree on the part of OCTO-LOGISTICS, of OCTO-LOGISTICS's computer systems and/or software programs, including those "Information System Services" as defined in the ECT Act, provided and/or operated by OCTO-LOGISTICS and/or by any third party, and which systems shall include OCTO-LOGISTICS's electronic automated information service provided to its Customers.

27. NATIONAL CREDIT ACT AND CONSUMER PROTECTION ACT

The parties agree that this agreement falls outside the ambit of the National Credit Act 35 of 2005 and Consumer Protection Act 68 of 2008.

SIGNED at on this day of 20.....

Witnesses :

1. _____

2. _____

_____ for and on behalf of
OCTO-LOGISTICS (PTY) LTD
Full names:
Capacity:
(being duly authorised hereto)

SIGNED at on this day of 20.....

Witnesses :

1. _____

2. _____

for and on behalf of

THE CUSTOMER

Full names:

Capacity:

(being duly authorised hereto and warranting that I have received, understand and agree to OCTO-LOGISTICS's General Conditions of Credit and General Trading Terms and Conditions)