



**STANDARD TRADING  
TERMS & CONDITIONS**

# Standard Trading Terms & Conditions for Concargo

Concarga (Pty) Ltd hereinafter known as the Company shall not be a public or common carrier in relation to the carriage forming the subject of these conditions and any goods to be carried are accepted subject to the conditions contained herein. All and any business undertaken, including any advice, information or service provided whether graciously or not by the Company is and shall be subject to the conditions hereunder set out and each condition shall be deemed to be incorporated in and to be a condition of this agreement between the Company and its consignor. No agent or employee of the Company has the Company's authority to alter or vary these conditions either by an oral or written undertaking or promise given before or after receipt of these conditions, nor shall any act or omission of the Company be construed as a variation or waiver of any of these conditions. If any legislation is compulsorily applicable to any business undertaken, these conditions shall as regards such business be read as subject to such legislation and nothing in these conditions shall be construed as a surrender by the Company of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation and if any part of these conditions be repugnant to such legislation to any extent such part shall as regards such business be void to that but no further. Goods are accepted subject to the conditions stipulated by all carriers and parties into whose possession or custody they may pass for the due fulfilment of the obligations of the Company.

## ROUTES AND PROCEDURES

Subject to express instructions given by the consignor and accepted by the Company in writing, the Company reserves to itself complete freedom in respect of means, route and procedure to be followed in the handling and transport of the goods. Pending forwarding and delivery, goods may be warehoused or otherwise held at any place at the sole discretion of the Company at the consignor's risk and expense. The Company shall be entitled, in the absence of express instructions to the contrary, to employ independent third parties to perform all or any of the functions required by the Company. The Company is expressly authorised to arrange for the consignor's goods, in its discretion, to be transhipped from any vehicle upon which such goods may have been loaded to any other vehicle or vehicles. The Company shall have no responsibility or liability to the consignor 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, but the Company shall, if suitably indemnified against all costs, take such action against the third party on the consignor's behalf as its consignor may reasonably direct.

## QUOTATIONS

Quotations where given shall be subject to immediate acceptance and shall be subject to withdrawal or revision by the Company. The Company shall notwithstanding acceptance be at liberty to revise quotations or charges with or without notice in the event of: charges occurring in currency exchange, rates, rates of freight, surcharges, equipment rental rates, labour rates or any other charges applicable to the handling of the goods, and/or the volumetric charge calculated in accordance with the Company's volumetric tariff from time to time exceeding any quotation based on weight in which event the volumetric may, at the instance of the Company be substituted for the charge based on weight. The Company is entitled to the benefits of any discounts obtained and to retain and be paid all brokerages, commissions, allowances and any other remunerations of whatsoever nature and kind and shall not be obliged to disclose or account to the consignor for any such remuneration received by it.

## PAYMENT OF COMPANY'S REMUNERATION

Unless otherwise agreed between the parties in writing, the Company's remuneration shall be payable by the consignor in cash or cheque acceptable to the Company without deduction or set-off within thirty (30) days from date of statement. The Company shall be entitled to charge the consignor storage charges in respect of any period during which the goods are stored after tender of delivery up to and including the time of payment of all monies owing to the Company by the consignor. The amount of such charges shall be presumed to be reasonable unless the contrary is provided by the consignor. If any amounts owing by the consignor is unpaid on due date, then all other amounts owing by the consignor to the Company whether due and payable or not, shall become due and payable forthwith and the Company shall be entitled but not obliged (and without prejudice to any of its other rights against the consignor) by notice in writing to the consignor to rescind or suspend performance of any of its obligations under this agreement; and discounts granted by the Company shall be forfeited. Interest on overdue amounts shall be charged to the consignor at 3% above the prime bank overdraft rate charged from time to time by Nedbank Limited, and such interest shall be payable by the consignor on demand. A certificate of any member of the Company, whose appointment or authority need not be proved, shall be due and sufficient proof of the amount of the consignor's indebtedness to the Company for the purpose of obtaining summary judgment or provisional sentence.

## COMPANY LIEN OVER GOODS

The Company shall have a lien over all goods for monies due to the Company in respect of services rendered by the Company whether or not payment in respect of such goods is then due. Without prejudice to any of the Company's rights against the consignor, in the event of the consignor failing to pay to the Company any monies due by it, the Company shall have the right without notice to the consignor :- To open and examine any part of such goods; and as its option, to sell, either by public auction or private treaty, and at its entire discretion, the whole or any part of the goods; and to apply the proceeds of any such sale, after deducting all expenses attendant thereupon, in payment of/or towards any sum due by the consignor to the Company and to pay the consignor any surplus without interest, within 60 days after such sale whereupon the Company shall be released from all liability whatsoever in respect of the goods carried. The consignor hereby expressly appoints the Company as its agent and hereby grants it full authority to act as aforesaid in regard to the sale of its goods and the appropriation of the proceeds thereof. The exercise by the Company of any of the rights accorded to it by this clause shall be without prejudice to any other rights it may have under this agreement or at common law in respect of the non payment by the consignor of the Company's remuneration.



# LIMITATION OF EXTENT OF COMPANY LIABILITY

Notwithstanding anything to the contrary or implied in these conditions:

- The Company shall not under any circumstances be liable for any loss or damage howsoever arising unless a claim is made in writing to the Company within seven (7) days after delivery of the goods by the Company to the consignee.
- The Company's liability shall in all cases be limited to R50.00 per consignment.
- The Company shall not be liable for any indirect or consequential loss or damages howsoever arising.
- Without derogating from the generality of the aforesaid limitations of liability, the parties expressly agree that the Company shall not at any stage be liable for any damage resulting from or caused by or in connection with fire, flood, railway or road accidents, moth vermin, insects, damp, rust, burglary or housebreaking, act of God, riot, civil commotion, invasion, war, sabotage, malicious intent, explosion, marine risks, labour unrest, strikes, lockouts, chemical damage, leakage or any other causes whatsoever.

If it is desired that the liability of the Company should not be governed by these limits, written notice thereof must be given to the Company before any goods or documents are entrusted to the Company, together with a statement to the value of the goods. Upon receipt of such notice the Company may agree to its liability being increased to a maximum amount equivalent to the amount stated in the notice, in which case it shall 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 the Company the amount of the premium payable by the Company for such insurance. The Company's liability in this case shall at no stage exceed the amount in respect of which the goods have been so insured and shall only become due and payable to the consignor upon receipt of the proceeds of insurance claimed from the insurance company concerned. Notwithstanding anything to the contrary herein contained, the Company shall under no circumstance become liable to the consignor unless and until the consignor has paid in full all freight charges due by it to the Company. In the event of the consignor expressly requesting insurance cover as hereinabove set out, then the following conditions in regard to any claim shall apply:

## 1. COVER AND ALL RISKS COVER

In the event of the aforesaid cover being inadequate, the Company will arrange such additional insurance and/or All Risks cover in terms of a prior written request to the Company by the consignor.

## 2. PRO RATING

In cases of the partial loss of a consignment the cover referred to in 1 above will be pro-rated. For the avoidance of doubt and by way of example, should only ten (10) boxes be damaged out of a total of thirty (30) transported on one pallet, the applicable cover referred to in the table set out in 1 above shall be reduced to one third (1/3) of the applicable cover in respect of the full pallet.

## 3. CROSS BORDER INSURANCE

All goods are carried at owner's and/or consignor's risk for all cross border consignments. The Company may, however, request or arrange insurance cover in terms of prior written request to it which the total value of the goods is expressly declared by the consignor of which will be for the account of the consignors for the property.

## 4. EXCLUSION OF LIABILITY

Save for the insurance provisions stated above, the Company accepts no responsibility whatsoever for any loss or damage in transit, howsoever occurring. The parties agree that, in addition to the limitation to liability referred to above in respect of the Company, the consignor shall have no claim of whatsoever nature against the Company's members, employees or agents howsoever arising.

# TIME OF DELIVERY

The Company shall not be liable for any delay or detention of the goods for any loss, damage or deterioration therein, unless the date and time for delivery of the goods is expressly stipulated as being of the essence of the contract. In any event, the Company shall not be liable for any such loss, damage or deterioration unless such delay or deterioration is attributable to willful default or gross negligence on the part of the Company.

# LIMITATION OF LIABILITY RESULTING FROM INCORRECT ADDRESS OF CONSIGNEE OR FAILURE OF CONSIGNEE TO TAKE DELIVERY AND HANDLING OF GOODS

The consignor shall properly and accurately furnish to the Company the name and address of the consignee as also all documents as must of necessity accompany the goods or such documents as the Company may require, and the Company shall not be responsible nor incur any liability for any loss or incorrect delivery of goods due to the name and address of the consignee being improperly stated and in the absence of gross negligence, the Company shall not be liable for any loss in the event of delivery being effected to some person other than the consignee, in the event of the consignee, or his agent, not being present to receive and accept delivery of same. In the event of the consignee refusing to accept delivery of the goods in whole or in part, or in the event of the Company being unable to effect delivery by reason of the address of the consignee being improperly or inaccurately stated, and being compelled to return the goods to the consignor, then the consignor shall be liable for all costs incurred in the return of such goods whether on the same basis as originally agreed upon or any other basis whatsoever, or being compelled to dispose of such goods by reason of their perishable nature or for whatsoever other reason, the Company shall not be liable for any damage to or loss of such goods or any loss or damage arising out of the disposal thereof and the consignor shall be liable to the Company for all costs incurred in connection with the disposal of such goods. The consignor shall be deemed to be bound by and to warrant the accuracy of all descriptions, values and other particulars furnished to the Company for customs, consular and other purposes, and shall be deemed to have indemnified the Company against all claims, losses, penalties, damages, expenses and fines whatsoever arising from any inaccuracy or omission, even if such inaccuracy or omission is not due to any negligence.

# GENERAL INDEMNITY

The consignor shall be deemed to have indemnified the Company against all liabilities whatsoever suffered or incurred by the Company arising directly or indirectly from or in connection with the consignor's instruction or their implementation in relation to the goods.

# CONSIGNOR TO ESTABLISH CONDITION OF GOODS

The onus of establishing the condition of the goods at the time of acceptance and delivery thereof by the Company shall rest on the consignor.



## DANGEROUS GOODS

No goods, including radio-active materials, which are or may become dangerous, inflammable or noxious, or which by their nature are or may become liable to cause injury or damage to any person, goods or property whatsoever, shall be tendered to the Company without its express consent in writing. The goods or the container package or other covering in which the goods are to be tendered to the Company or its agents shall be prominently marked on the outside so as to indicate the nature and character of the goods, and so as to comply with any applicable laws, regulations or requirements of any authority or carrier. If any such goods are tendered to the Company without its written consent or without being marked as aforesaid, the same may at any time be destroyed, disposed of, abandoned or rendered harmless at the sole discretion of the Company and at the entire risk and expense of the consignor, without compensation to him or any other party and without prejudice to the Company's right to its charges or fees including the cost of destruction or disposal. Notwithstanding the acceptance of the goods with its express consent, the Company may nevertheless for good reason, such as the risk to other goods or property, life or health, destroy or otherwise deal with the goods at the entire risk and expense of the consignor, and without compensation to him or to any other party and without prejudice to the Company's right to its charges or fees including the cost of destruction or disposal. Whether or not the consignor was aware of the nature of the goods and whether or not the Company's written consent thereof was obtained, the consignor shall be deemed to have indemnified the Company against all loss, damage or liability caused to the Company as a result of the tender of the goods to the Company.

## WARSAW CONVENTION

If transportation of any consignment involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may apply and the convention governs and in most cases further limits the liability of the Company in respect of loss or damage to such consignment.

## DUPLICATE DOCUMENTS

The Company is under no obligation whatsoever to provide customers with duplicates of any documents issued by it. Nevertheless the Company without being legally obliged to do so will in its discretion endeavor wherever possible to provide customers with duplicate documents but reserves the right to charge for such copies.

## JURISDICTION OF THE MAGISTRATES COURT

The Company shall be entitled to institute any proceedings against the consignor in any Magistrates Court having jurisdiction over it, even though the cause of action or amount claimed is beyond that jurisdiction of the court.

## ATTORNEY & CLIENT COSTS & COLLECTION COMMISSION

In the event of the Company instructing its attorneys to recover monies from the consignor, the consignor shall be liable for and shall pay all legal costs incurred by the Company on an attorney client scale, inclusive of collection commission.

## GENERAL

No act, omission, course of dealing, forbearance, delay or indulgence by the Company in enforcing any of these conditions or any of its rights in terms thereof or any granting of time by the Company shall prejudice or affect the rights and remedies of the Company under these conditions and no such matter shall be treated as any evidence of waiver of the Company's rights thereunder nor shall any waiver of a breach by a consignor of any one or more of these conditions operate as a waiver of any subsequent breach thereof. The Company shall at all times and without notice be entitled to insist on strict application of these conditions and on their strict enforcement on its consignors. These conditions shall be governed and construed according to the laws of the Republic of South Africa and shall be subject to the exclusive jurisdiction of the courts of the Republic of South Africa.

## PACKING

The Company shall not be responsible for the manner in which any goods are packed by or on behalf of the consignor, whether such packing occurs originally or consequent upon a subsequent transshipment. Furthermore the Company reserves the right to decline the carriage of any goods, which in its opinion have not been properly packed.

## INDEMNITY AGAINST CLAIM BY OWNERS

The consignor hereby indemnifies the Company and holds it harmless against all and any claims which may be made against the Company by the owners of the goods or customers of the goods or any third party whatsoever in relation to the goods hereby carried.

## DOMICILIUM

The consignor appoints his physical address as his domicilium citandi et executandi for all purposes relating to this agreement.

## HEADINGS

The headings to the paragraphs are purely for guidance only, and are not to be used to construe the meaning of the text.