



Synergy at your service[®]



STANDARD TERMS AND CONDITIONS

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1. DEFINITIONS

For the purpose of the terms and conditions of this agreement, unless inconsistent with the context, the following words shall carry the following meaning:

Abnormal loads means an indivisible (for practical purposes) object that, due to its dimensions and/or mass, cannot be transported on a vehicle or vehicles without exceeding the limitations or mass as described in the National Road Traffic Regulations, 2000;

Concarga - means **Concarga (Pty) Ltd** (Registration No. 2001/023614/07);

The Client means any person who addressed a Request for Services to **Concarga**, accepted **Concarga's** Written Quotation and in doing so became a party to a Contract of Service;

Contract of Service means **Concarga's** Written Quotation, incorporating the Standard Terms and Conditions and accepted in writing by the Client;

Dangerous Goods means Hazardous Goods as defined in the Regulations to the Hazardous Substance Act 15 of 1973, the National Road Traffic Act 93 of 1996 as well as any other goods which **Concarga** in its sole discretion and on reasonable grounds may deem hazardous or dangerous;

Domicilium citandi et executandi – Concarga (Pty) Ltd, Montreal Drive Ext, Airport City, Cape Town, Western Cape, Republic of South Africa;

E&OE means errors and omissions excepted;

Effective date means the date of acceptance of **Concarga's** Written Quotation by the Client;

Goods means any Goods which are transported in terms hereof;

Law includes the Common Law, relevant Statutes, Ordinances, By-Laws or Regulations;

Person shall have its ordinary meaning and includes a "body corporate";

Request for Services means a written request for services addressed to **Concarga** by any person;

Sub-Contractor means any Person with whom **Concarga** sub-contracts to carry out Transportation or to render any other services in terms of a Contract of Service;

Services means any services rendered by **Concarga** in terms of a Contract of Service;

Transportation means, without restricting the generality of this term, conveyance, packing (where specifically contracted for), storing and/or safe keeping of any Goods and the acquiring of permits, authority/ies and the like.

Written Quotation means the quotation furnished by **Concarga** upon receiving a Request for Services.

2. INTRODUCTION

Any goods to be carried are accepted and any services rendered subject to the conditions contained herein. All and any business undertaken, including any advice, information or service provided whether gratuitously or not by **Concarga** 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 the agreement between **Concarga** and the Client. No agent or employee of **Concarga** has **Concarga'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 by **Concarga** be construed as a variation or waiver of any of these conditions. If any legislation is applicable to any business undertaken in terms hereof, 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 **Concarga** of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation. To the extent that any part of these conditions are in conflict with such legislation it shall be regarded as pro non scripto without effecting the rest of these terms and conditions.

3. APPLICABILITY OF THESE CONDITIONS

The terms and conditions as set out herein, shall govern the relationship between **Concarga** and the Client in each and every Contract of Service between them, including Contracts of Service entered into subsequently to the contract formed by the Client's initial acceptance of **Concarga's** Written Quotation. For the avoidance of any uncertainty, all prior communication between the parties are excluded, save insofar as it has been expressly included in these terms and conditions (read with **Concarga's** Written Quotation and its acceptance by the Client).

The Contract of Service may be carried out by **Concarga** itself or on its behalf by any Sub-Contractor appointed by it.

4. CONDITIONS

Concarga shall only be obliged to perform in terms of the Contract of Service provided that:

Concarga has received sufficient notice and information of the Client's requirements to enable it to properly carry out the Contract of Service and ensure that a suitable and appropriate vehicle and/or the necessary plant and equipment is/are available.

The necessary consents and statutory permits have been granted and remain in force. (In the event of such consents or permits being refused or withdrawn for any reason whatsoever with the effect that the Contract of Service cannot be implemented, the said Contract shall terminate automatically and no liability for damages or otherwise shall attach to **Concarga**).

The Client is not in breach of any terms or conditions of the Contract of Service or any other Contract concluded with **Concarga**.

It is not impossible, impractical or dangerous for **Concarga** to comply with its obligations as a result of riots, strikes, lockouts, labour disturbances or disputes, boycotts, economic sanctions, acts of State, industrial legislation, war, terrorism, civil commotion or disturbances, attacks upon its employees or vehicles, floods, rationing or non-availability of fuel, vehicle accident, break-down in vehicle or equipment, commercial exigencies, any other cause whatsoever beyond its reasonable control or as a result of the occurrence of any event which is unforeseen, unexpected and irresistible and which human foresight cannot guard against.

5. SUSPENSION OF PERFORMANCE

While any of the conditions referred to in clause 4 remain unfulfilled (or operative as the case may be) **Concarga** shall be entitled to refuse or suspend performance without being liable in any manner whatsoever therefore to the Client or any other Person whatsoever, and without prejudice to **Concarga's** rights to recover monies then due to it in respect of services already performed by it.



6. LIMITATION OF EXTENT OF CONCARGO'S LIABILITY

Notwithstanding anything to the contrary or implied in these conditions:

- The goods are at all times transported and carried and all services rendered at the sole risk of the Client.
- **Concargio** shall not under any circumstances be liable for any loss or damage howsoever arising and/or caused by any negligence of its directors, employees or Sub-Contractors used by it to give effect to the Contract of Services or by any breach of contract or by any other cause.
- **Concargio** 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 **Concargio** shall not at any stage be liable for 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 the Client requires insurance cover in respect of any Contract of Service, written notice thereof must be given (by the Client) to **Concargio** before any goods or documents are entrusted to or Services rendered by **Concargio**, together with a statement as to the value of the goods or other insurable interest. Upon receipt of such notice **Concargio** may agree to arrange the required cover, in which case it shall be entitled to effect special insurance to cover the value of the goods or other insurable interest. By giving such notice the Client shall be deemed to have agreed and undertaken to pay **Concargio** the amount of the premium payable by **Concargio** for such insurance.

In the event of the Client expressly requesting insurance cover as set out above, then the following additional conditions shall apply:

PRO RATING

In cases of the partial loss of a consignment the cover referred to 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 above shall be reduced to one third (1/3) of the applicable cover in respect of the full pallet.

CROSS BORDER INSURANCE

All goods are at all times carried at the Client's risk also for all cross border consignments. **Concargio** may, however, arrange insurance cover in terms of prior a written request to it wherein the total value of the goods is expressly declared by the Client, which cover will be for the account of the Client.

EXCLUSION OF LIABILITY

As stated above, **Concargio** accepts no responsibility whatsoever for any loss or damage in transit or in the rendering of any other services, howsoever occurring. The parties agree that, in addition to the limitation of liability referred to above in respect of **Concargio**, the Client shall have no claim of whatsoever nature against **Concargio's** members, employees or agents (including its Sub-Contractors) howsoever arising.

7. CLIENT'S WARRANTIES AND INDEMNITIES

The Client warrants and represents that:

- The Goods are the Client's sole and exclusive property and/or that the Client has the full and absolute authority of the persons owning or having an interest in the Goods to enter into the Contract of Service.
- The carriage of the Goods or the rendering of any other Services as contracted for with **Concargio** does not contravene any Law.
- No Dangerous Goods shall be tendered to **Concargio** for placing with it and/or any Sub-Contractor without **Concargio's** express consent in writing and written acknowledgement that the Client has disclosed to **Concargio** all material information pertaining to the Transportation (or any other service to be rendered) which may affect **Concargio's** risk and decision in agreeing to transport the Goods or to render the Services for and on behalf of the Client.

The Client hereby indemnifies **Concargio** against all liability and any claims of whatsoever nature by any Person in respect of:

- Any loss or damage to Goods or injury to persons or loss of life from whatsoever cause.
- Any loss or damage resulting from non-delivery or incorrect delivery.
- Any loss or damage on grounds of breach of contract or negligence, howsoever arising.
- Any loss or damage arising from loss of market or attributable to delay in forwarding or in transit or failure to carry out fully or in part any instructions given to it or for any other consequential loss howsoever arising.
- All legal costs incurred by **Concargio** in resisting any such claims, such costs to be determined on the scale as between attorney and one's own client.
- Any loss or damage arising from the rendering of services in respect of abnormal and/or dangerous loads.

The Client warrants the accuracy, without exception, of all information and specifications given by or on its behalf to **Concargio**.

Except where **Concargio** is instructed in writing to pack the Goods, the Client warrants that all Goods have been properly and sufficiently packed and/or prepared.

8. PRESCRIPTION OF CLAIMS

Without limiting and without prejudicing the provisions of these conditions (and in particular those relating to the limitation of liability), the Client shall notify **Concargio** of any loss, damage, complaint or claim within 24 (twenty four) hours from the time of off-loading, or in the case of late delivery or non-delivery of the Goods, within 24 (twenty four) hours from the scheduled time of off-loading and shall confirm such notification in writing to be received by **Concargio** within 72 (seventy two) hours of such off-loading or scheduled time of off-loading, as the case may be, failing which, any claim arising therefrom shall ipso facto lapse and be unenforceable.

9. PAYMENT WITHOUT DEDUCTION

Notwithstanding any claim, the Client shall pay to **Concargio** the full amount stated on **Concargio's** invoice on due date without any deduction or set-off and without prejudice to the Client's rights contended for against **Concargio**. In respect of any such claim the Client shall not be entitled to deduct or set-off any monies which it owes to **Concargio** against any monies which it contends are due to it by either **Concargio** and/or any Sub-Contractor.

10. ABNORMAL LOADS

Any carriage of Goods on behalf of the Client constituting abnormal loads shall be subject to the following special terms and conditions:

- Adequate notice shall be given to **Concargio** to enable it to prepare drawings of such loads, route surveys and local authority clearances and to submit these items to the Provincial and/or local authorities (and where applicable to Eskom and the Post Office Authorities) for their respective consents.
- The Client shall bear the costs of obtaining the consents from the above authorities, removing and replacing any obstacles during loading, off-loading or on route, raising and reinstating overhead wires, switching the electric power off and on, traffic escorts required and pavement and obstruction fees levied by the authorities concerned, and any other additional services incidental to and necessary for the carriage of such loads where such costs have not been included in the Freight quoted by **Concargio**.
- The hours and speed of such Transportation are subject to regulation by the authorities concerned.



- **Concargio** shall not (without limiting the generality of the abovestated) be liable for any damages to any property whatsoever caused by the passage of such loads over or through such property and the Client hereby indemnifies **Concargio** against all liability and claims whatsoever by any Person for:
 - Any such damages to such property and for any consequential loss or damage arising therefrom.
 - All legal costs incurred by **Concargio** in resisting any such claims as calculated on the scale as between attorney and one's own client.

11. STIPULATION FOR THE BENEFIT OF CONCARGIO

The stipulations contained in clauses 6, 7 and 10 are for the benefit of **Concargio** and of any person for whose acts and/or omissions **Concargio** is or may be in Law liable and of any person who may perform any of **Concargio's** obligations hereunder.

12. VALIDITY OF QUOTATIONS

Quotations shall remain open for acceptance by the Client for a period of 30 (thirty) days from the date thereof, (which acceptance shall be communicated in writing to **Concargio**), and if not accepted during such period, shall automatically lapse.

13. QUOTATION DATA

All Quotations are subject to the conditions contained herein and to E&OE. Quotations are based, inter alia, on quantities, densities, dimensions, mass, properties, other technical data, available loading and off-loading hours and other information supplied by the Client and are accepted by **Concargio** in good faith under representation by the Client. Any variance therefrom shall entitle **Concargio** to require the freight quoted to be adjusted to take into account such variance, or to suspend performance, or cancel the Contract without thereby incurring any liability whatsoever and in the event of any such cancellation reserving to itself the right to claim from the Client such damages as **Concargio** may have suffered. Quotations are subject to:

- Work being carried out by the methods and the route to be decided upon by **Concargio** without interruption, hindrance or postponement.
- The availability of **Concargio's** vehicles, plant, equipment and/or staff on the dates required.
- All part loads being conveyed and delivered at **Concargio's** convenience.
- Any increase in **Concargio's** costs coming into force and effect after the date of the quotation over which **Concargio** has no control will be for the Client's account.
- Any delay due to interruption, hindrance, local traffic, municipal regulation or non-production of necessary licences, permits or customer forms which will be charged to the Client.
- Where the volumes, quantities or scopes of work have increased over what have been quoted for, the Client will be charged for any additions on a pro rata basis.
- A charge increase should there be a change of route due to reasons beyond **Concargio's** control.
- Any postponement or cancellation by the Client entitles **Concargio** to make a change to cover the expenses incurred and/or losses to **Concargio** arising therefrom.
- **Concargio** shall have the right to increase the charge specified in the event of stoppages or delays in the carrying out of the work to which the Contract of Service relates provided that such stoppages or delays are caused by circumstances beyond the control of **Concargio** or are such that **Concargio** could not reasonably have foreseen or prevented the cause of such stoppages or delays arising.

14. FREIGHT AND CHARGES

The Freight or other agreed charges payable to **Concargio** by the Client for the Transportation of Goods or the rendering of any other Services shall be the Freight or charges agreed between **Concargio** and the Client or shall be calculated at the rate agreed between them, as the case may be. The Freight or charges shall be subject to variation as provided for in clauses 10, 13, 15 and 16.

15. ESCALATION

Subject to clause 13, and provided **Concargio** performs within 30 (thirty) days of date of quotation, the Freight or charges quoted in such quotation shall remain fixed. If however **Concargio** performs after such 30 (thirty) day period the Freight or charges quoted shall be subject to escalation in accordance with the SEIFSA Index of Road Freight Costs as at the date of performance by **Concargio**, the base index being that prevailing at date of quotation.

16. ADDITIONAL CHARGES

Subject to the above, and in addition to the Freight or charges, **Concargio** shall be entitled to levy an additional charge at its usual rate, alternatively reasonable rate, in the event of:

- The circumstances envisaged in clauses 26, 31, 32, 33, 34, and 35 occurring; or
- The time taken to load or off-load a vehicle exceeding the maximum time allowed in terms of clauses 27 and 28; or
- Loading and off-loading taking place at more than one point; or
- **Concargio** being obliged, due to circumstances beyond its control, to utilise routes different from those intended by it at the time of entering into the Contract of Service.

17. PAYMENT

Subject to clause 9 above, payment shall be received in full, free of any commission, exchange, brokerage, deduction or set-off, within 30 (thirty) days of date of statement by **Concargio** which may appropriate all monies paid entirely within its sole and unfettered discretion. The Client shall not be entitled to deduct from or set-off against such payments any claims which the Customer may contend it has against **Concargio** arising from any cause whatsoever. Notwithstanding that **Concargio** may agree to collect and/or receive payment from a third party, the Client hereby acknowledges that the Client is personally bound by the provisions of the Contract of Service, and the Client hereby guarantees payment of the Freight and other charges by such third party to **Concargio**. There will be no valid discharge of the obligation to pay **Concargio** by the Client unless payment has been made to **Concargio** and to no other Person. **Concargio** is entitled to levy an interest charge against the Client at the rate of 2% (two per cent) per month on all amounts which are outstanding and are unpaid by the Client.

18. RATE OF EXCHANGE

All duties, surcharges and quoted rates and charges are based on the prevailing Rand to Dollar or Sterling or Euro (whichever may be applicable) rate of exchange ("ROE") on the day quoted. Consequently all **Concargio's** charges may be subject to change without prior warning or notice in the event of any fluctuations of more than 2% of the ROE in 24 hour periods from the effective date. In the event of such change, **Concargio** reserves the right to issue a further invoice claiming any increases that may be due by reason thereof which will also take into account any variations in final shipped volume, mass and quantity of the cargo applicable. For the avoidance of doubt, the ROE for Airfreight is determined by the monthly IATA US dollar exchange rate.

19. LOADING AND OFF-LOADING

Where the Client is not the consignor and/or consignee, the consignor and/or consignee and their servants and agents shall be deemed to be agents of the Client and to be authorised to act on the Client's behalf in the situations contemplated in clauses 25 to 33 inclusive.

20. CONCARGIO'S DISCRETION IN THE ABSENCE OF INSTRUCTIONS

In the absence specific instructions given timeously in writing by the Client to **Concargio**-

- It shall be in the reasonable discretion of **Concargio** to decide at what time to perform or to produce the performance of any or all of the acts which may be necessary or required for the discharge of its obligations to the Client:
- **Concargio** shall have an absolute discretion, to be exercised on reasonable grounds, 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;
- 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 **Concargio** 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.



21. CONCARGO'S GENERAL DISCRETION

Notwithstanding anything to the contrary herein contained, if at any time **Concargoo** should on reasonable grounds consider it to be in the Client's interest or for the public good to depart from any of the Client's instructions, **Concargoo** shall be entitled to do so and shall not incur any liability in consequence of doing so.

If events or circumstances come to the attention of **Concargoo**, its agents, servants or nominees which, in the opinion of **Concargoo** and on reasonable grounds, make it in whole or in part, impossible or impracticable for **Concargoo** to comply with the Client's instructions **Concargoo** shall take reasonable steps to inform the Client of such events or circumstances and to seek further instructions. If such further instructions are not timeously received by **Concargoo** in writing **Concargoo** shall, at its sole discretion, and depending on the prevailing circumstances, be entitled to detain, return, store, sell, abandon, or destroy all or part of the goods concerned at the risk and expense of the Client.

22. CONDITIONS OF GOODS

The onus of establishing the condition of the Goods at the time of delivery to **Concargoo** shall at all times remain on the Client, and no delivery note, receipt, or other document given at such time by **Concargoo** to the Client shall constitute proof of such condition, save to the extent that any specific record in relation thereto may have been made thereon by **Concargoo**.

23. PACKING

Concargoo shall not be responsible for the manner in which any goods are at any stage packed by or on behalf of the Client, whether such packing occurs originally or consequent upon a subsequent transhipment. Furthermore **Concargoo** reserves the right to decline the carriage of any goods, which in its opinion (based on reasonable grounds) have not been properly packed.

24. RESPONSIBILITY FOR LOADING AND OFF-LOADING

The Client shall deliver the Goods onto the vehicle nominated by **Concargoo** and/or the Sub-Contractor and shall take delivery therefrom, and shall be fully responsible for the loading and off-loading thereof.

Concargoo and/or the Sub-Contractor shall not be responsible for any loss or damage arising from the loading and off-loading of the vehicles and the Client indemnifies **Concargoo** and/or the Sub-Contractor against any claims which may be brought against **Concargoo** and/or the Sub-Contractor arising out of such loading, off-loading, overloading, unsafe loading or out of the nature of or any defect in the Goods concerned.

Concargoo's employees may assist with the loading and off-loading where such assistance is customary and practicable, and where contracted for, but such assistance shall be rendered at the sole risk of the Client without any liability for any loss or damage arising therefrom attaching to **Concargoo** and/or the Sub-Contractor.

25. LOADING AND OFF-LOADING FACILITIES

The Client undertakes:

- To provide or procure the provision of safe and adequate labour and equipment for loading and off-loading and safe, convenient and adequate loading and off-loading points and access to any such loading and off-loading points.
- To ensure that loading and off-loading will be possible at the agreed points during such hours and days as the parties have agreed.
- To ensure that **Concargoo's** or the Sub-Contractor's vehicle is suitably clean for the purpose of receiving and conveying the Goods before the loading of the Goods in the contracted vehicle/s is commenced with.
- To ensure that all Goods loaded shall be in such condition as to enable due and proper off-loading to be effected at the point of destination.
- To ensure that the Goods are off-loaded into the correct tank, vessel or container store or warehouse, as the case may be.

The Client warrants that if any Goods require special appliances for loading or off-loading of the vehicle, those appliances will be available at the point of collection or place of delivery of the consignment at the Client's expense.

26. DELAYS AND DAMAGES

In the event of a vehicle being delayed or damaged due to the Client's failure to comply with the provisions of clauses 24 and 25, the Client shall be liable for additional charges at **Concargoo's** usual rates, alternatively reasonable rates, and/or such damages as the case may be.

In the event of any damage whatsoever being caused to **Concargoo's** own/leased/hired/contracted vehicle/s and/or equipment whilst loading or off-loading Goods at the Client's premises (or any other designated premises), then and in such event, the Client shall be liable for the fair and reasonable costs of repairing the damage caused to **Concargoo's** own/leased/hired/contracted vehicle/s and/or equipment and restoring the vehicle/s and/or equipment to the condition it/they was/were in prior to the damage caused to it.

The Client shall be responsible for and shall compensate **Concargoo** in respect of all or any damage sustained by it, should any of its own/leased/hired/contracted vehicles or any part thereof, or any of **Concargoo's** equipment be damaged while such vehicles and/or equipment are on, or in the process of entering upon, or leaving any loading or off-loading sites, howsoever such damage is caused, whether as a result of loading, off-loading or whether as a result of the sites not being in a proper or good state of repair and/or whether such damage occurs because such sites are not level and clear. The Client shall be liable for such damage, whether same is direct, indirect or consequential. Similarly, should any of **Concargoo's** own/leased/hired/contracted vehicles and/or any part thereof and/or its equipment be damaged while such vehicles (and/or equipment) are in transit through any other fault of the Client and/or its servants or agents, whether as a result of loading or otherwise or whether as a result of the load itself, the Client shall be responsible and shall compensate **Concargoo** for any such damage, whether direct, indirect or consequential.

27. LOADING TIME

The maximum loading time allowed to the Client shall be 3 hours or as stipulated on the Written Quotation unless otherwise agreed to in writing by **Concargoo**. Loading time shall be deemed to commence at the time when the vehicle to be loaded arrives at the entrance to the property on which the loading point is situated.

28. OFF-LOADING TIME

The provision of clause 27 shall apply mutatis mutandis to off-loading time.

29. DELIVERY DETAILS

After completion of loading the Client shall verify the correctness of all the details contained in the Client's delivery documents.

30. DELIVERY AND OFF-LOADING INSTRUCTIONS

The Client shall ensure, prior to the Goods being off-loaded, that the Goods to be off-loaded are the precise Goods which are contracted to be off-loaded, that during off-loading clear and precise off-loading and delivery instructions are given, that the Goods are off-loaded at the correct place and/or off-loading point, and that immediately after off-loading the Goods comprise the correct quantity and are in good order and condition.



31. COMPLETION OF OFF-LOADING

When off-loading is completed the Client shall inspect the vehicle/s, as the case may be, to verify that the complete consignment has been off-loaded. Goods left on **Concargos** or the Sub-Contractor's vehicle/s for any reason to suit the convenience of the Client or the consignee, are held at the sole risk of the Client. Pending forwarding and delivery, Goods may be warehoused or otherwise held at any place/s at the sole discretion of **Concargos** or the Sub-Contractor, at the Client's risk and expense.

32. FAILURE BY THE CLIENT TO TAKE DELIVERY

Should the Client fail or neglect or be unable or refuse to take delivery of the whole or any part of the Goods at the agreed off-loading point or at the agreed off-loading time, or should (through no fault of **Concargos**) it not be possible or practicable to off-load the Goods within the prescribed time set out in 28 above and should no acceptable alternative written delivery instruction be received from the Client, **Concargos** shall be entitled to store or abandon the goods at its discretion based on reasonable grounds. In such event the Client shall be liable to pay any additional charges thereby incurred and shall have no claim whatsoever against **Concargos** for any act or omission arising therefrom.

33. DEMURRAGE

Concargos shall not be liable for demurrage or storage charges of any nature howsoever arising, levied by third parties, and where paid by **Concargos**, shall be refunded to **Concargos** by the Client on demand. The Client does hereby appoint **Concargos** irrevocably and in rem suam as its agent in its place and stead to contract for the storage of such Goods upon such terms and such conditions as **Concargos** may, in its discretion, (and based on reasonable grounds) elect and without any liability whatsoever attaching to **Concargos** to attend to such storage.

34. DANGEROUS GOODS

Concargos is not obliged to contract for the carrying of Dangerous Goods on behalf of its Client.

In the event of **Concargos** agreeing in writing to itself carry or to place with the Sub-Contractor the Client's Dangerous Goods, the Client shall:

- Disclose fully the nature and properties of such Goods to **Concargos**.
- Prior to loading, give **Concargos** special detailed instructions to enable **Concargos** to place such Goods for the proper safety and handling.
- Comply with all regulations governing the loading, off-loading, storage and carriage of such Goods.

In the event of the Client failing to disclose the dangerous nature of any Goods, or in the event of any Goods becoming a danger to persons or property, whether the dangerous nature thereof has been disclosed or not, **Concargos** shall be entitled immediately, and without prior notice to the Client, to discharge or dispose of any such Goods, in any manner and **Concargos** shall not be liable for any loss or damage arising from such discharge or disposal whatsoever. **Concargos** shall furthermore be entitled to recover from the Client the Freight or charges in respect of any such carriage, notwithstanding the non-delivery of such Goods, together with any expenses incurred in discharging or disposing thereof.

The Client:

- Shall be liable for all loss and/or damages suffered by **Concargos** or any other Person/s caused by Dangerous Goods whether the dangerous nature thereof has been disclosed or not.
- Hereby indemnifies **Concargos** against all liability and all claims by any Person/s arising from such loss and/or damage.

No goods, including radio-active materials, which are or may become dangerous, inflammable or noxious, or which by their nature may cause injury or damage to any person, goods or property whatsoever, shall be tendered to **Concargos** without its express consent in writing. The goods or the container package or other covering in which the goods are to be tendered to **Concargos** 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 **Concargos** 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 **Concargos** and at the entire risk and expense of the Client, without compensation to him or any other party and without prejudice to **Concargos**' right to its charges or fees including the cost of destruction or disposal. Notwithstanding the acceptance of the goods with its express consent, **Concargos** 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 Client, and without compensation to him or to any other party and without prejudice to **Concargos**' right to its charges or fees including the cost of destruction or disposal. Whether or not the Client was aware of the nature of the goods and whether or not **Concargos**' written consent thereof was obtained, the Client shall be deemed to have indemnified **Concargos** against all loss, damage or liability caused to **Concargos** as a result of the tender of the goods to **Concargos**.

35. CANCELLATION OF REQUEST FOR VEHICLE

The Client shall be entitled to cancel a request for a vehicle to carry out a particular service in terms of the Contract of Service, provided that the Client gives **Concargos** not less than 12 hours for a national domestic Contract of Service and 24 hours for an over border Contract of Service notice of cancellation (Saturdays, Sundays and Public Holidays excluded), prior to the time of despatch of the vehicle as scheduled by **Concargos**, failing which the Client shall be liable to pay **Concargos**' usual, alternatively reasonable additional charges.

36. BREACH OF CONTRACT BY CONCARGO

Should **Concargos** breach any material term or condition of a the Contract of Service, the Client shall give **Concargos** written notice to remedy such breach within 7 (seven) days of receipt thereof, and only in the event of **Concargos** failing to comply therewith, shall the Client be entitled to cancel the Contract on written notice to **Concargos**.

37. NO CLAIMS AGAINST COMPANY DIRECTORS AND EMPLOYEES

The Client undertakes that no claim shall be made against any director, servant or employee of **Concargos** in respect of anything whatsoever arising from the rendering of any Services which are the subject of these trading terms and conditions and hereby waives all and any such claims.

38. DUTIES AND TAXES

The Client shall be liable for any duty, tax, imports or outlays of whatsoever nature levied by the authorities at any post or place for or in connection with the Goods, and for any payments, fines, expenses, loss or damage incurred or sustained by **Concargos** or the Sub-Contractor in connection therewith.

39. FORCE MAJEURE

Without prejudice to any other rights to which it is entitled, **Concargos** shall be entitled in the event of force majeure, if it so decides, to suspend the performance of its obligations under the Contract of Service or to dissolve the Contract of Service without judicial intervention, by notifying the Client in writing and without **Concargos** being liable to pay any compensation.

Force majeure shall be taken to mean every failure that cannot be attributed to **Concargos** because the fault does not lie with it and it cannot be blamed either by virtue of the law, legal act or generally accepted practice.

40. LIEN

Concargos shall have a lien over all Goods for monies owing to **Concargos** by the Client in respect of services rendered by **Concargos** whether or not payment in respect of such Services is due.



In addition, **Concarg** shall be entitled to hold all Goods as security for any monies which are due and payable to it by the Client from any cause whatsoever. If any monies owing are not paid within 30 (thirty) days after they become due., **Concarg** shall be entitled without further notice to the Client:

- To open and examine any part of the consignment.
- To hold any part of the consignment in such manner and upon such terms and conditions as it deems fit in order to secure its lien and security.
- To sell the Goods over which **Concarg** has a lien, and to apply the proceeds of any such sale after deducting all expenses thereof in payment or deduction of any amount due by the Client to **Concarg** provided that any surplus is to be paid over to the Client, without interest, as soon as possible after the sale if the Client's address is known, or if not, upon demand by the Client.
- Upon payment or tender of the proceeds of any such sale, **Concarg** shall be released from all liability (if any) to the Client in respect of the Goods.

41. WARSAW CONVENTION

If transportation or carriage by air 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 **Concarg** in respect of loss or damage to such consignment.

42. DUPLICATE DOCUMENTS

Concarg is under no obligation whatsoever to provide Clients with duplicates of any documents issued by it. Nevertheless **Concarg** without being legally obligated to do so will in its discretion endeavour wherever possible to provide Clients with duplicate documents but reserves the right to charge for such copies.

43. JURISDICTION OF THE MAGISTRATES COURT

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

44. DISPUTE

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 including whether or not **Concarg** has executed its obligations in terms of any other agreement it has with the Client, then and in such event the Client shall nevertheless be obliged to perform all its obligations to **Concarg** in terms of any such agreement as though **Concarg** had performed properly and to the Client's satisfaction.

The Client shall not be entitled to withhold payments of any amounts, by reason of any disputes with **Concarg**, whether in relation to **Concarg's** performance in terms of any agreement, or lack of performance or otherwise.

In any dispute between **Concarg** and the Client **Concarg** 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 Client, until such time as the Client proves the contrary.

45. ARBITRATION

45.1 A dispute which arises in regard to –

- the interpretation of; or
- the carrying into effect of; or
- any of the parties' rights and obligations arising from; or
- the termination or purported termination of or arising from the termination of; or
- the rectification or proposed rectification of

The Contract of Service, or out of or pursuant to the said Contract, (other than where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction), shall be submitted to and decided by arbitration as set out below.

45.2 That arbitration shall be held –

- with only the parties and their representatives present thereat;
- at Cape Town.

45.3 It is the intention that the arbitration shall, where possible, be held and concluded in 21 (twenty one) Business Days after it has been demanded. The parties shall use their best endeavours to procure the expeditious completion of the arbitration.

45.4 Save as expressly provided in the Contract of Service to the contrary, the arbitration shall be subject to the arbitration legislation for the time being in force in the Republic of South Africa.

45.5 The arbitrator shall be, if the matter in dispute is principally –

- an accounting matter, independent auditors agreed between the parties in writing or, failing such agreement within 10 (ten) days after the arbitration has been demanded, at the request of either of the parties shall be nominated by the president for the time being of the South African Institute of Chartered Accountants (or its successor body), whereupon the parties shall forthwith appoint such person as the arbitrator. If that person fails or refuses to make the nomination, either party may approach any court having jurisdiction to make such appointment and, to the extent necessary, such court is expressly empowered to do so;
- any other matter, an impartial admitted senior counsel of not less than 10 (ten) years' standing or a retired judge agreed between the parties in writing or, failing such agreement within 10 (ten) days after the arbitration has been demanded, at the request of either of the parties shall be nominated by the president for the time being of the Law Society of the Western Cape (or its successor body in Cape Town), whereupon the parties shall forthwith appoint such person as the arbitrator. If that person fails or refuses to make the nomination, either party may approach any court having jurisdiction to make such appointment and, to the extent necessary, such court is expressly empowered to do so.

45.6 The parties shall keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential.

45.7 The arbitrator shall be obliged to give his award in writing fully supported by reasons.

45.8 The provisions of this clause are severable from the rest of this agreement and shall remain in effect if this agreement is terminated for any reason.

45.9 The arbitrator shall have the power to give default judgment if either party fails to make submissions on due date and/or fails to appear at the arbitration.

45.10 The parties agree that a written demand by either party to a dispute in terms of this clause 45 that the dispute be submitted to arbitration is to be deemed to be a legal process



for the purpose of interrupting extinctive prescription in terms of the Prescription Act, 1969.

46. GENERAL

- **Concargo** may cede all its rights under this Contract.
- **Concargo** may appoint a sub-contractor to perform on its behalf in terms of this contract.
- These conditions shall apply to any other additional work and/or transport carried out for and on behalf of the Client, whether or not the Client's attention has been specifically drawn to these terms and conditions as being applicable to the contract governing the relationship. It shall therefore be construed that the Client has agreed that all terms and conditions herein contained shall apply to all future and/or additional transport work carried out or services rendered for and on behalf of the Client by **Concargo** and/or the Sub-Contractor.
- All Contracts shall be interpreted and governed by the Laws of the Republic of South Africa in their entirety. This Contract shall be deemed to have been entered into in the Republic of South Africa.
- The head notes to the various clauses contained in these conditions are for reference purposes only and do not affect the interpretation of the individual clauses.
- The Client selects as its domicilium citandi et executandi for all purposes hereunder its place of business as reflected on its invoices, delivery notes and letterheads.
- **Concargo** selects as its domicilium citandi et executandi the address that appears on the face hereof.

47. SEVERABILITY

Each clause of the Contract of Service is severable, the one from the other. If any clause is found to be defective or unenforceable for any reason by any competent court, then the remaining clauses will be and continue to be of full force and effect.

48. NO WAIVER

No relaxation, indulgence or extension of time that **Concargo** grants the Client will be construed as a waiver of any of **Concargo's** rights in terms of the Contract of Service, or a novation of any of the terms of the said Contract, or estop **Concargo** from enforcing strict and punctual compliance with the terms of the said Contract.

49. NO VARIATION

No variation of, addition to, consensual cancellation of or waiver of any right arising in terms of the Contract of Service will be of any force or effect unless it is reduced to writing and signed by the parties or their duly authorised representatives.

50. WHOLE AGREEMENT

The Contract of Service constitutes the whole agreement between the parties in relation to the subject matter thereof and no party is bound by any undertaking, representation or warranty not recorded therein.

SIGNED BY **(THE CLIENT) AT**

ON THIS **DAY OF****2011.**

WITNESSES

1.
2.

For and on behalf of
..... (the Client)

he/she warranting that he/she is duly authorised thereto and expressly acknowledging that he/she has read, fully understands and assents to the terms and conditions as set out above

