



**DURBAN CONTAINER PARK (PTY) LTD**

**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 The following words and terms shall have the meanings assigned to them hereunder:
- 1.3.1 "Conditions" shall mean these general trading terms and conditions as amended from time to time;
- 1.3.2 "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;
- 1.3.3 "Container operator" shall mean a Container operator as defined in the Customs and Excise Act No. 91 of 1964 or any person who carries on the business of transporting Containerised Goods or any ship owner, charter, ship operator, carrier, ships agents, ship broker, freight forwarder, non-vessel owning common carrier, clearing and forwarding agent, international transport operator and combined transport operator from, on whose behalf at whose instruction DURBAN CONTAINER PARK receives Goods and Containers for storage;
- 1.3.4 "Container trailer" shall mean a trailer constructed for the purpose of carrying Containers;
- 1.3.5 "Customer" shall mean any person at whose request or on whose behalf DURBAN CONTAINER PARK undertakes any business or provides any advice, information or service and shall be deemed to include the owner, consignee or consignor of the Goods as hereinafter defined and any person claiming any right to or in respect of any such Goods;
- 1.3.6 "Day" shall mean the twenty-four hour period from midnight to midnight;
- 1.3.7 "dangerous goods" shall mean Goods which by reason of their nature, quantity or mode of stowage either singularly or collectively are liable in DURBAN CONTAINER PARK's 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 equipment, as well as all Goods defined as Dangerous in the IMCO Regulations 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;

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- 1.3.8 "Depot" shall mean the Container depot operated by DURBAN CONTAINER PARK as a depot operator;
- 1.3.9 "Goods" shall mean any Goods handled, stored, transported or dealt with by or on behalf of DURBAN CONTAINER PARK and which come under the control of DURBAN CONTAINER PARK 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;
- 1.3.10 "instruction" shall mean a statement of the Customer's specific requirements;
- 1.3.11 "DCP" shall mean DURBAN CONTAINER PARK (PTY) LTD
- 1.3.12 "owner" shall mean the owner, shipper, consignor and consignee of the Goods to which any business concluded under these trading terms and conditions relates and any other person who is or may have or acquire any interest, financial or otherwise, therein and anyone acting on their behalf;
- 1.3.13 "person" shall mean natural persons, statutory body, DCP incorporated in terms of the law enforced at the place at which the DCP is incorporated, a firm, partnership, close corporation, trust or association;
- 1.3.14 "services" shall mean all activities of the DCP in the course of business, whether gratuitous or not;
- 1.3.15 "the tariff" shall mean the tariff published by DCP, as amended from time to time, which is available from DCP on written request.
- 1.3.16 "vehicle" shall mean any motor vehicle (including but not limited to any forklift, lorry, stacker, van, truck, trailer, or car) in respect of which DCP performs or is requested to perform any service or which enters DCP'S depot in connection with such service.

## 2. **APPLICATION OF TRADING TERMS AND CONDITIONS**

- 2.1 These conditions apply to service rendered by DCP, whether gratuitous or for reward, and to every Customer, Owner or other person for or on whose behalf DCP receives and stores Goods, or to whom DCP delivers or is obliged to deliver Goods, or for or on whose behalf DCP performs or renders any service in respect of Goods, and to any further or additional work carried out for the Customer, Owner 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 DCP's notices, correspondences, faxes, telexes, invoices, email, receipts and other documents;
- 2.4 Unless the parties agree to the contrary in writing, these standard terms and conditions shall prevail in the event of the Customer and / or Owner itself having standard terms and conditions, even if the latter conditions are apparently incorporated after these standard trading terms and conditions.

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### 3. **AMENDMENTS TO THESE CONDITIONS**

- 3.1 DCP shall be entitled to amend or supplement its Standard Terms and Conditions and whilst DCP 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 Standard Terms and Conditions shall be binding on DCP unless embodied in a written document signed by a duly authorised director of DCP. Any purported variation or alteration of these trading 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 Standard Terms and Conditions by the Customer.

### 4. **SERVICES**

- 4.1 Subject to these Conditions, DCP provides the services which appear in the Tariff;
- 4.2 DCP shall be entitled to a reasonable remuneration at the comparable market rate where a service is provided which does not appear in the Tariff, unless this rate has been specifically negotiated and agreed between the parties, in which event such negotiated and agreed rate shall apply.

### 5. **QUOTATIONS, RATES AND PAYMENT**

- 5.1 Any quotation given by DCP is valid for a period of 7 days only;
- 5.2 In the event of the cost to DCP or performing any service increasing for any reason whatsoever subsequent to DCP quoting for it, the change agreed with the Customer for such service shall automatically increase accordingly;
- 5.3 Any additional service that DCP is obliged or entitled to provide that has not been quoted for, shall be charged at it's usual charge or, if it has no usual charge, at a reasonable charge;
- 5.4 In the absence of any written agreement to the contrary, the remuneration payable to DCP by the Customer will be in accordance with the Tariff, which Tariff will be subject to variation by DCP from time to time and without any prior notification to the Customer;
- 5.5 The Customer and/or owner, as the case may be, to whom DCP delivers services is liable to DCP for payment of all amounts due to DCP for services rendered in respect thereof;
- 5.6 The Customer and/or owner shall pay to DCP all sums immediately when due without deduction or deferment on account of any claim, counter-claim or set off and all payments received by DCP may be appropriated by DCP 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;
- 5.7 In the event of the Customer failing to pay any amount to DCP on due date, then and in such an event the whole amount owing by the Customer to DCP (whether at that stage

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payable or not) shall immediately become due, owing and payable by the Customer to DCP and DCP shall be entitled to institute whichever legal proceedings it may wish to in order to recover such amount;

- 5.8 On all amounts overdue to DCP, DCP shall be entitled to charge interest at the maximum rate permissible in law of from the date on which payment was due and payable until the full amount outstanding is paid;
- 5.9 The Customer and/or owner, as the case may be, to whom DCP delivers services is obliged to pay all and any costs incurred by DCP in complying with all or any statutory requirements and regulations, notices and any requirements of a competent authority including movement, permanent removal or destruction of invested or contaminated Containers, Goods or vehicles or the treatment of DCP staff or premises or any other persons or premises as a result of any infestation or contamination arising from such Containers, Goods or vehicles;
- 5.10 When DCP is instructed to collect Freight charges, duties, charges 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 DCP'S SERVICES**

- 6.1 All Containers in respect of which DCP provides Container storage services shall only be regarded as being in actual custody of DCP and under its actual control from the time the Goods are received by DCP at a depot to the time that they are delivered;
  - 6.1.1 Goods shall be deemed to have been received by DCP at the later of the time when:
    - 6.1.1.1 The Goods enter through the depot gates; or
    - 6.1.1.2 The process of off-loading the Goods from the vehicle at the depot, has commenced;
  - 6.1.2 Goods shall be deemed to have been delivered by DCP at the earlier time of when:
    - 6.1.2.1 They are delivered to the person in possession of a delivery release order by placing the Goods at the disposal of such person, at a depot; or
    - 6.1.2.2 the Customer, owner or their servant and agent assume control of the Container trailer on which DCP has placed a Container, by connecting a prime mover to such Container trailer, provided always that DCP 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 and owner;
- 6.2 An acknowledgment of receipt of any Goods by DCP shall not constitute an acknowledgement or admission in regard to the state or condition or quantity of such Goods nor as to the correctness of any statement made by DCP on any documentation;

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- 6.3 The immunities, indemnities, rights and limitations of liability enjoyed by DCP in terms of these conditions, shall extend and apply to DCP's servants, agents and subcontractors acting within the course and scope of their employment as such and in this regard these conditions will operate as of contract for their benefit and shall be capable of acceptance by them at any time and whether before or after any cause of action may have arisen;
- 6.4 The Customer shall be entitled to appoint a surveyor to monitor the loading and off-loading of Goods at DCP;
- 6.5 DCP shall in no circumstances be responsible for and accepts no liability for the handling, loading, unloading, securing and/or lashing of Goods and/or Containers and/or other vehicles;
- 6.6 If delivery of the Goods, Container or vehicle is not accepted by the Customer and/or owner at the appropriate time and place, then, DCP shall be entitled to store the Goods, Container or vehicle or any part thereof at no risk to DCP and at the expense of the Customer and/or owner. Should the Goods, Container or vehicle have not been collected or accepted by the Customer and/or owner or any other person after the expiration of 21 (twenty-one) days from DCP notifying the Customer and/or owner in writing to collect or accept such Goods, Container or vehicle, such Goods may be sold pursuant to the provisions of this agreement insofar as it relates to such sale in the event of a lien and as provided for herein, provided that if DCP has no address for the Customer and/or owner such notice period shall not be necessary and payment or tender of the nett proceeds, if any, of the sale thereof after deduction of those charges and expenses incurred by DCP in respect thereof, shall be equivalent to delivery of such Goods, Container or vehicle;
- 6.7 Carriers of Goods to the point of receipt by DCP or from the point of delivery by DCP, are in all instances and notwithstanding that DCP might have requested such carrier to carry Goods, the agent of the Customer or owner;
- 6.8 Every agent who deals with DCP warrants that it has the authority to bind its principal to these conditions and to the extent necessary binds itself to these conditions;
- 6.9 The Customer or owner, shall jointly and severally be liable to DCP for all costs, charges, expenses and damages how so ever incurred or suffered by DCP arising out of or incidental to the failure of particular Goods, Containers or vehicles to comply with these terms and conditions;
- 6.10.1 Every Customer and/or owner shall furnish DCP with such particulars of the Goods, Containers or vehicles, including weights, measurements, characteristics and description as DCP may in its sole discretion reasonably require for the purpose of handing such Goods, Containers or vehicles. DCP shall at all times be entitled to rely for purposes whatsoever upon all particulars and information as are furnished in terms of this clause;
- 6.10.2 Without prejudice to the foregoing, the Customer and/or owner warrant and guarantee to DCP the accuracy of the following:
- 6.10.2.1 The marks, numbers and weights and any other information shown on a Container and any documentation pertaining to such Container; and

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- 6.10.2.2 the marks, numbers, weights, description of Goods and packing, shown on all shipping and other documents in respect of Goods;
- 6.11 Goods must:
- 6.11.1 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;
  - 6.11.2 be securely packaged and sufficiently protected to withstand handling, both human and mechanical, containerisation, transport and delivery; and
  - 6.11.3 Be marked in compliance with the relevant IMCO regulations;
  - 6.11.4 DCP 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;
  - 6.12.1 Every Container must be clearly marked so as to be readily identifiable with the Customers Container manifest, or any other document by which such Container is intended to be identified;
  - 6.12.2 DCP shall at all times be entitled but not obliged to inspect any Goods and any Container, and shall be entitled to refuse to accept any Goods and/or any Container, whether packed or not which in its sole discretion appears in any way to be damaged or unsafe for handling, storage or carriage;
  - 6.13.1 Every Customer and/or owner warrants to and in favour of DCP the suitability and safety of every Container and vehicle delivered to DCP by or on behalf of such Customer and/or owner;
  - 6.13.2 Every Customer and/or owner warrants to, and in favour of, DCP, that every Container whether containing Goods or not, shall 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 DCP 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 Container in breach of such warranty;
  - 6.14.1 When Goods in Containers are delivered to DCP, DCP 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 Containers. The cost of repacking the Goods and/or Containers shall be borne by the Customer on whose behalf DCP received such Goods and/or Container;
  - 6.14.2 Notwithstanding the foregoing and whenever DCP conducts an external visual inspection of the Container or Goods, DCP shall not be under any liability in respect of loss or damage resulting from any fact or state of affairs not ascertainable as a result of such external visual inspection;
  - 6.15 Except under special arrangements previously made in writing, DCP shall not accept or deal with Bullion, Coins, Precious Stones, Jewellery, Valuables, Antiques, Pictures, Human

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Remains, Live Stock, Post, Parcels or other mail and plants. Should the Customer nevertheless deliver such Goods to DCP or cause DCP to handle or deal with any such Goods otherwise than under special arrangement previously made in writing, DCP 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;

6.16.1 Unless otherwise previously agreed in writing, the Customer undertakes that no Goods or Containers requiring temperature control will be delivered to DCP and that DCP shall not be caused to deal with or handle such Goods and no liability shall attach to DCP in respect of such Goods or Containers;

6.16.2 If DCP 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 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 complied with, DCP shall not be liable for any loss or damage to the Goods;

6.16.3 If the Customer is in breach of 6.16.1 and/or 6.16.2 above, DCP 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, DCP shall be entitled to destroy the Goods or deal with same at its sole discretions and at the risk and expense of the Customer;.

6.17 Without limiting or affecting any other terms of these standard terms and conditions, Goods (whether perishable or otherwise) in the care, custody or control of DCP may at the Customers and/or owners expense to sold or disposed of by DCP without notice to the Customer and/or owner if such Goods have begun to deteriorate or are likely to deteriorate;

6.18 Force Majeure

DCP will not be hold responsible for, any cessation, interruption or delay in the performance of its obligations due to earthquake, flood, storm, natural disaster, act of God, war, terrorism, armed conflict, labour strike, lockout, boycott or other similar events beyond the reasonable control , provided that the company relying upon this provision: Gives prompt written notice thereof, and takes all steps reasonably necessary to mitigate the effects of the force majeure event.

6.18. RAIL AND CERTAIN DOCUMENTARY SERVICES ARRANGED BY DCP

6.18.1 If DCP arranges the carriage of Goods and Containers by rail and any handling or storage connected therewith, it does so solely as an agent for the Customers and shall not be liable for the acts or omissions of DCP;

6.18.2 All such transport shall be contracted in accordance with DCP's standard conditions and tariff applicable at the time of performing the transport, whether or not less favourable than the terms of these conditions;

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- 6.18.3 In addition, DCP acts as an agent when providing services in respect of or relating to customs requirements, taxes, licenses, consular documents, certificates of origin, inspection certificates and other similar services;
- 6.18.4 Nonetheless, the remuneration for such service shall be payable by the Customer to DCP;
- 6.18.5 With regard to any such service procured by DCP on behalf of the Customer, except to the extent caused by DCP's negligence, the Customer shall defend, indemnify and hold harmless DCP in respect of all liability, loss, damage, costs or expenses arising out of any contracts made;
- 6.18.6 In the event of a claim in respect of such service, DCP shall provide the Customer with particulars of the identity, services and charges of Persons instructed to perform them to the extent that such particulars are relevant to the Customer's claim.

#### 6.19 INSURANCE

- 6.19.1 No insurance will be affected except upon express instruction given in writing by the Customer. All insurance affected by DCP is subject to the usual exceptions and conditions of the policies of the insurance DCP or underwriters taking the risk;
- 6.19.2 Unless otherwise agreed in writing, DCP shall not be under any obligation to effect separate insurance on each consignment but may declare it on any open or general policy;
- 6.19.3 Should the insurers dispute their liability for any reason, the insured shall have recourse against the insurer only. DCP shall not have any responsibility or liability in relation to the insurance.

#### 7. **DCP'S RIGHTS**

- 7.1 DCP shall be entitled to, but be under no obligation, to depart from the Customer's instructions in any respect if, in the opinion of DCP there is good reason to do so in the Customer's interest and it shall not incur any additional liability thereby;
- 7.2 DCP may at any time comply with the orders or recommendations given by any authority. The responsibility of DCP 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;
- 7.3 If at any time the performance of DCP's obligations, in the opinion of DCP or its agent, is or is likely to be effected by any circumstance unavoidable by DCP's reasonable endeavours, DCP 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 terminated and place the Goods or any part thereof at the disposal of the Customer at any place which DCP may deem safe and convenient, whereupon the responsibility of DCP in respect of the Goods shall cease. The Customer shall be responsible for any additional costs of carriage to and delivery and storage at such place and all other expenses incurred by DCP;

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- 7.4 If delivery of the Containers is not taken by the Customer at the time and place when and where DCP is entitled to call upon the Customer to take delivery thereof, DCP shall be entitled to store the Goods in the open or under cover at the sole risk and expense of the Customer;
- 7.5 Notwithstanding clauses 7.3 and 7.4 above, DCP shall be entitled but under no obligation at the expense of the Customer and without liability to the Customer to sell or dispose of any Container or other Goods which in DCP'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;
- 7.6 Notwithstanding anything contained herein and without in any way limiting its rights in terms hereof, DCP shall be entitled to open and inspect any Container(s) at any time and without notice in the event of DCP, through any one of its managers or directors, being of the reasonable suspicious that the contents of such Container(s) is illegal or the proceeds of and/or used in and/or evidence in respect of any criminal activity and all indemnities herein shall be applicable in favour of DCP, in such an event.

## 8. **SUBCONTRACTING**

- 8.1 Any business entrusted by the Customer to DCP may, in the absolute discretion of the DCP, be fulfilled by DCP itself by its own servants performing part of all of the relevant services, or by DCP employing, or entrusting the Goods, Containers or Vehicles 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 DCP employs third parties to perform all or any of the functions which it has agreed to perform, the Customer agrees that DCP shall have no responsibility or liability to its Customer for any act or omission of such third party, even though may be responsible for the payment of such third party's charges;
- 8.3 Any third party which DCP utilises in any way for the performance of all or any of the functions which it has agreed to perform shall be deemed to be the Agent of the Customer and/or Owner.

## 9. **DCP PROVIDING SERVICES FOR CLEANING AND REPAIR OF CONTAINERS AND ANY SERVICES CONNECTED THEREWITH**

- 9.1 If DCP provides services for cleaning or repair of Containers and any services connected therewith, DCP shall not be liable for any improper performance or non-performance of such services, or any consequences whatsoever arising there from, except to the extent provided in paragraph 9;
- 9.2 DCP's liability shall not exceed the reasonable costs of rectifying the services improperly or not performed by the DCP, subject to a limit per Container of that Container's market value;
- 9.3 At DCP'S sole discretion, DCP may rectify at its own expense the services improperly or not performed. If DCP exercises this option, or is not given an opportunity by the

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Customer to exercise this option, DCP shall not be liable for any costs incurred by the Customer or any other person in rectifying such services;

- 9.4 The Customer undertakes to inspect the Container on redelivery to the Customer or such other person as is required. DCP shall not be liable and the Customer shall defend, indemnify and hold harmless DCP against any loss, damage, liability, cost and expense in respect of or arising from improper or non performance of DCP'S services which would have been apparent upon reasonable inspection of the Container at the time of redelivery and was not brought to DCP'S attention in writing at the time of redelivery;
- 9.5 DCP shall be discharged of all liability unless:
- 9.5.1 notice of any claim is received in writing by DCP or its agent within 14 days after the date specified in 9.5.2.1 to 9.5.2.3 below, except where the Customer can show that it was impossible to comply with this time limit and that the claim has been made as soon as it was reasonably possible so to do; and
- 9.5.2 Suit is brought in the proper forum and written notice thereof received by DCP within 9 months after the date specified in clause 14 below :
- 9.5.2.1 In the case of loss or damage to Containers the date of delivery of the Containers;
- 9.5.2.2 in the case of delay or non-delivery of Containers the date that the Containers should have been delivered;
- 9.5.2.3 in any other case, the event giving rise to the claim,

Otherwise any claim shall be deemed to be waived and absolutely barred.

## 10. **DCP'S LIEN**

- 10.1 DCP will have a specific and general lien in respect of all Containers, Goods in storage and documents relating thereto, for any sum due by the Customer to him and which remains unpaid. DCP will give to the Customer fourteen days notice to pay any such sum and if payment is not made accordingly the contractor will, without further notice, have the right to open and examine the whole or any part of the Goods, if any, and at it's option to sell the whole or part of the Goods and/or the Container either by public auction or by private treaty and to apply the proceeds of such sale, after deducting all expenses thereof, in payment towards any sum due to DCP by the Customer. Any surplus will be paid over to the Customer by DCP, without interest, within thirty days after such sale or, in the event of DCP being unaware of the address of the Customer, on application of the Customer, but save therefore, DCP will be released from all liability whatsoever in respect of the Goods stored;
- 10.2 Where DCP has, in accordance with the provisions of clause 1 above, sold part only of the Goods/Containers stored by the Customer, and the proceeds of such sale are sufficient to pay to DCP all monies due to it by the Customer up to the date thereof, the Customer will be entitled to take delivery of the remainder of the Containers/Goods. DCP will have the right to charge for the storage of any Goods/Containers forming part of such remainder for which delivery is not taken by the Customer, remuneration in

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accordance with the provisions hereof and, without notice to the Customer to recover any such remuneration in accordance with the provisions of clause 10.1 above, which will mutatis mutandis apply;

10.3 The exercise by DCP of any of the rights accorded to him by this clause will be without prejudice to any other rights which he may have under this agreement or at common law in respect of the non-payment by the Customer of DCP'S remuneration and it shall remain entitled to recover any difference and/or shortfall from any of the parties included in the terms Customer and/or Owner;

10.4 In any event, any lien shall:

10.4.1 Survive the delivery of the Goods; and

10.4.2 Extend to cover the costs of recovery of any sums due;

and DCP's rights in terms hereof shall apply in all such events.

## 11. **DANGEROUS GOODS**

The Customer will not deliver for storage any Goods which are dangerous or likely to encourage vermin or other pests or to cause infection. In the event of any such Goods being delivered for storage, without the knowledge or express consent of DCP, the Customer will indemnify DCP against all loss or damage suffered by DCP or any third party as a result of the presence of such Goods. DCP may at it's discretion remove, sell, destroy or otherwise dispose of any such Goods received into storage without their knowledge or express consent and will not be liable in any way to the Customer for the value thereof.

## 12. **INDEMNITY BY THE CUSTOMER AND OWNER**

12.1 Without prejudice to any of DCP rights under these Conditions, the Customer and/or the owner indemnifies and holds harmless DCP against all liabilities, claims, damages, costs (including legal costs) and/or expenses, howsoever arising and whether or not attributable to the negligence of DCP, in whatever degree, incurred or suffered by the Customer arising directly or indirectly from, or in connection with, the Customer's express, tacit or implied instructions in relation to any Goods or Container;

12.2 Without limiting the generality of sub-clause 12.1:

12.2.1 the Customer and owner indemnify DCP, in respect of any claim which may be made against DCP by any person for mis-delivery of Goods, Containers or vehicles expect where such mis-delivery is due to gross negligence on the part of DCP;

12.2.2 the Customer and owner shall be liable for and shall indemnify and hold DCP harmless in respect of all claims, loss or damages and/or costs relating to the Goods, howsoever arising, and whether or not attributable to the negligence of DCP in whatever degree for duties, fines, penalties, taxes (including customs duty and VAT), imposts, detention charges, levies by or paid to any authority including the South African Port Operations and National Ports Authority and the

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South African Revenue Services, and for all claims, costs, expenses, loss and damage whatsoever incurred or sustaining by DCP in connection therewith;

- 12.2.3 without limiting the generality of sub-clause 11.1 the Customer and owner shall be liable for and shall indemnify and hold DCP harmless in respect of all loss, damages, claims, costs (including but not limited to legal costs on the attorney and own client scale) and/or any other liability, howsoever arising, and whether or not attributable to the negligence of DCP in whatever degree, which DCP may incur or suffer in terms of the National Road Traffic Act, 93 of 1996, and any regulations promulgated pursuant thereto, as may be in force from time to time and, in particular but without limiting the general meaning of this clause, liability which DCP may incur as a consignee as defined in the National Road Traffic Act 93 of 1996 or the regulations of that Act;
- 12.2.4 Any breach of warranty or obligation by the Customer or arising from the negligence of the Customer or owner;
- 12.2.5 Any act or omission by the Customer or Owner or any person acting on their behalf;
- 12.2.6 DCP complying with instructions given by or on behalf of the Customer or Owner;
- 12.2.7 DCP complying with the instruction of an authority in respect of the Goods;
- 12.2.8 The defective conditions of or overweight Containers or vehicles;
- 12.2.9 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 the DCP'S Customs bonded warehouse or Customs licensed depots, unless solely arising from a negligent act or omission on the part of the DCP;
- 12.2.10 the Customer and/or owner indemnifies and holds DCP harmless against all and any claims against it for loss of or damage to property or injury to persons arising directly from infestation or contaminations as referred to in 5.5 hereof;
- 12.2.11 the Customer warrants all or any and indemnifies DCP against all claims which may arise against DCP owing out of 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 DCP;
- 12.5 The Customer undertakes that no claim shall be made against any servant or agent of DCP which imposes or attempts to impose upon any of them any liability whatsoever in connection with the Goods, Containers or Vehicles and if any such claim should nevertheless be made, to indemnify DCP against all consequences thereof;
- 12.6 Without prejudice to the foregoing, every such servant agent of DCP shall have the benefit of all provisions herein, as if such provisions were expressly for their benefit. In entering into this contract DCP, to the extent of those provisions, does so not only on its behalf but as agent and trustee for such servants and agents;

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- 12.7 The Customer shall defend, indemnify and hold harmless DCP from and against all claims, costs and demands whatsoever and by whomsoever made or preferred in excess of the liability of DCP under the terms of these Conditions and without prejudice to the generality of this clause this indemnity shall cover all claims, costs and demands arising from or in connection with the negligence of DCP, its servants and agents;
- 12.8 In this clause, "agent" includes direct and indirect sub-contractors and their respective servants and agents;
- 12.9 Advice and information in whatever form it may be given is provided by DCP for the Customer and/or Owner only and the Customer and/or Owner shall defend, indemnify and hold harmless DCP 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 DCP'S written agreement and the Customer and/or Owner shall indemnify DCP against any loss suffered because of a breach of this condition;
- 12.10 Should any claim be made by any person against DCP, arising out of the performance of its obligations, as contained in these conditions, the Customer shall indemnify DCP for all and any claims and/or amounts for which DCP may be held liable for in excess of the liability provided for in these conditions. The Customer shall also reimburse DCP for its reasonable legal costs incurred in defending such a claim;
- 12.11 The Customer's bill of lading, waybill or other contracts of carriage, handling and storage shall include a provision prohibiting the making of a claim against DCP, its servants or agents and a provision that DCP, its servants and agents shall have the benefit of any provision in such contract of carriage, handling or storage excluding the liability or the Customer in respect of the Goods, Containers or vehicles.

### 13. **LIMITATION OF DCP'S LIABILITY**

- 13.1 Subject to the provisions of clause 13, DCP shall not be liable for any claims (whether in contract or in delict), damages, loss and/or expenses, of whatsoever nature and howsoever arising, which shall, without limiting the generality of the aforesaid, include:
- 13.1.1 Any negligent act or omission or statement by DCP or its employees, servants, agents, nominees, contractors or sub-contractors; and/or
- 13.1.2 Any act or omission of the Customer and/or owner or agent of the Customer and/or owner with whom DCP deals; and/or
- 13.1.3 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, Container or vehicle, including any mis-delivery brought about pursuant to the submission of fraudulent documentation; and/or
- 13.1.4 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, Container or vehicle; and/or
- 13.1.5 any loss, damage or expense arising from or in any way connected with any circumstance, cause or event beyond the reasonable control for DCP, including

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but without limiting the generality of the aforesaid, strike, lock-out, stoppage or restraint of labour; and/or

- 13.1.6 Any loss, damage or expense arising from theft, vehicle hijacking, accident, storm, tempest flood, lightning or other Act of God; fire, explosion, or any act done with malicious intent; and/or
- 13.1.7 Any loss, damage or expense attributable to failure to carry out any instructions given to DCP; and/or
- 13.1.8 Any loss or damage arising out of repairs undertaken by DCP to a Container, more particularly, DCP shall not be responsible for any consequential and/or indirect loss or damage arising out of any malfunction of the Container(s) due to the inadequate repair thereof. Of the purposes of this sub-clause, consequential/indirect loss includes, but is not limited to loss of profits, delay and damage to Goods carried in a Container; and/or
- 13.1.9 damage or injury suffered by the Customer or any person whatsoever arising out of any cause whatsoever as a result of DCP'S execution of attempted execution of its obligations to the Customer and/or the Customer's requirements or mandate; unless-
- 13.1.10 such claim arises from a grossly negligent act or omission on the part of DCP and its servants, employees or agents where such persons are acting within the scope of their employment or mandate; and
- 13.1.11 such claim arises at a time the Goods, Container or vehicle in question are in the actual custody of DCP and under its actual control.
- 13.2 Notwithstanding the provisions of clause 12.1 DCP shall never be liable for any claims (whether in contract or in delict), damages, loss and/or expenses, howsoever arising and regardless of the negligence of DCP, 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.

#### 14. **PERIOD OF THE DCP'S LIABILITY**

- 14.1 The Goods shall be regarded as in the actual custody of DCP and under its actual control from time to time the Goods are received by DCP to the time that they are delivered the definitions of "received" and "delivered" and defined in clause 6 hereof, shall be equally applicable to this clause;
- 14.2 Any liability that DCP may for whichever reason incur, may only be incurred whilst the Goods are in the actual custody of DCP as aforesaid.

#### 15. **SPECIAL CONDITIONS RELATED TO ELECTRONIC DATA**

- 15.1 Notwithstanding the provisions of the Electronic Communications and Transportations Act 25 of 2002, as amended from time to time, DCP shall only be deemed to have received

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electronic data and/or messages when such electronic data and/or messages have been retrieved, processed, and read by the addressee.

- 15.2 Under no circumstances howsoever arising (including negligence on the part of DCP or its employees shall DCP be liable for any loss or damage arising from or consequent upon the provision by DCP to the Customer in whatever manner and/or form, of incorrect information, including data as defined in the Electronic Communications and Transactions (Act 25 of 2002), as amended from time to time, where such incorrect information has been generated by and provided by DCP by any person with whom DCP conducts business, and/or any other third party;
- 15.3 DCP 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 DCP, of DCP'S computer systems and/or software programs, including those "Information System Services" and defined in the Electronic Communications and Transportations (Act 25 of 2002), as amended from time to time, provided and/or operated by DCP and/or by any person with whom DCP conducts business, and/or a third party, and which systems shall include DCP' electronic automated information service provided to its Customers.

16. **MISCELLANEOUS**

- 16.1 This agreement constitutes the whole agreement between the parties and no representations or warranties have been made or given except as if specified herein;
- 16.2 No variations, additions, waivers, alterations, modifications or cancellation shall be binding upon the parties unless reduced to writing and signed by all parties;
- 16.3 No waive made by any party to the other party shall be valid unless in writing and any such waiver shall be construed strictly as relating to the matter in respect whereof it has been made;
- 16.4 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 effect the remaining provisions of this agreement which shall remain in full force and/or effect;
- 16.5 No indulgence by any party shall operate as an estoppel against it in respect of any of its rights in terms hereof, nor shall it operate so as to preclude any party thereafter from exercising its rights strictly in accordance with this agreement;
- 16.6 Each of the parties hereby undertakes to do all such things and sign by way of further assurance all such other documents as may be necessary to give effect to this agreement;
- 16.7 Each person who signs this agreement as representing any party, warrants that he has authority to sign this agreement;
- 16.8 The parties acknowledge that they have been free to secure independent legal advice as to the nature and effect of the provisions of this agreement and that they have either taken such independent legal advice or dispersed with a necessity of doing so;

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- 16.9 Should any one party take any legal action against the other in terms hereof, such party shall, in the event of being successful, be entitled to recover it's legal costs from the defaulting party on the scale as between attorney and own client;
- 16.10 The parties are in agreement that this agreement falls outside the ambit of the National Credit Act 35 of 2005 and, insofar as the Act may be applicable, all parties affixing their signature hereto waive any rights which they may have in terms of the Act, if applicable.
- 16.11 Customer will ensure that the surveyors / contractor/s and any other independent third party who are contracted by Customer, are compliant in terms of the Occupational Health & Safety Act 85 of 1993 and registered with Workman's Compensation in terms of the Compensation for Occupational Injuries & Diseases Act, 1993 (COIDA)

SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of 201\_\_\_\_ in the presence of the undersigned witnesses

Witnesses:

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_  
**DURBAN CONTAINER PARK (PTY) LTD**

SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of 201\_\_\_\_ in the presence of the undersigned witnesses

Witnesses:

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_  
**CUSTOMER SIGNATURE**

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