

**ANOREL (PTY) LTD**

**CREDIT APPLICATION – CUSTOMER PACK AND COVERING LETTER**

Dear Customer,

Thank you for your interest in our product range and doing business with Anorel.

We have attached a list of documents for your consideration hereunder, and we also request you to kindly take note of the important information and instructions below:

**1. For the Credit Application:**

- a. Complete all required information, sign and return it to the sender of the email.
- b. The completed application will be sent to our Belgium team who will then send same to our credit provider. The response from our credit provider may take 5 working days for a limit below R 500 000 and up to 14 working days for a limit above R 500 000.
- c. Once the credit limit has been approved and the process completed, the purchase and supply business will commence immediately.

**2. For the Standard Trading Terms and Conditions:**

- a. Initial each and every page.
- b. Sign in full on the last page and return it to the sender of the email.

**3. Section 18 POPI Act Informed Consent Form:**

Anorel (Pty) Ltd is compliant with the **Protection of Personal Information Act 4 of 2013 (POPIA)**. Please take cognizance of the [Section 18 Consent Form](#) and sign and return it to the sender of the email.

***For any POPI related queries, please contact the Information officer using the following contact information: [oscar@anorel.net](mailto:oscar@anorel.net)***

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**CREDIT APPLICATION FORM AND STANDARD TRADING TERMS AND CONDITIONS**

<b>APPLICANT'S DETAILS</b>			
Company	<input type="checkbox"/>	CC	<input type="checkbox"/>
Partnership	<input type="checkbox"/>	Trust	<input type="checkbox"/>
Individual	<input type="checkbox"/>		
Registered name			
Trading name/s		Registration no.	
Type of business		VAT no.	
Physical address		Date business established	
Postal address		Office tel.	
Delivery Address(es)		Fax no.	
Contact person(s)		Cell no.	
		Email	
<b>BANKING DETAILS</b>			
Bank		Branch	
Account name		Account number	
<b>IF A COMPANY, CC, OR TRUST- DETAILS OF AUDITORS/ACCOUNTANTS</b>			
Name			
Contact details			
Date of last financial statements			
<b>3 TRADE REFERENCES (APPLICANT HAS CONSENT TO USE THE TRADE REFERENCE INFORMATION LISTED BELOW)</b>			
Company name	Contact person	Contact no.	Fax no./email address
<b>ARE THE APPLICANT'S PREMISES LEASED?</b>			
Landlord's name	Landlord's address		Landlord's contact no's
<b>NAMES, ADDRESSES AND ID NUMBERS OF DIRECTORS/MEMBERS/TRUSTEES/PARTNERS</b>			
Name	ID no.	Physical Address & Contact Number	
<b>DETAILS OF PERSON RESPONSIBLE FOR PROCESSING PAYMENT OF THE APPLICANT'S ACCOUNTS</b>			
Full names		Office tel.	
Position		Cell no.	
Fax no.		Email	
<b>ANOREL WILL SEND THE APPLICANT A STATEMENT OF ACCOUNT IN ONE OF THE FOLLOWING METHODS CHOSEN BY THE APPLICANT:</b>			
email			
<b>THE APPLICANT'S ANTICIPATED MONTHLY PURCHASES ON CREDIT WOULD RANGE IN VALUE BETWEEN R.....(LOWEST) AND R.....(HIGHEST)</b>			
If you are signing this agreement on behalf of a company, CC, trust, partnership or association of persons, on the date of signing this application form, does such entity have a <u>GROSS ASSET VALUE</u> OR <u>ANNUAL TURNOVER</u> of less than R2 million?			
<b>ACKNOWLEDGMENTS AND WARRANTIES</b>			
1. The decision whether or not to grant the credit to the Applicant is in the discretion of Anorel (Pty) Ltd ("Anorel").			
2. <b>BY SIGNING THIS CREDIT APPLICATION, I, THE UNDERSIGNED, ON BEHALF OF THE APPLICANT AND WHERE APPLICABLE, IN MY PERSONAL CAPACITY, WARRANT THAT:</b>			

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- 2.1 the information recorded in this credit application is true and correct in all respects;
- 2.2 the Applicant has never been, and is not now, insolvent or in liquidation, financially distressed or subject to business rescue proceedings;
- 2.3 the Applicant has not applied for a debt review and is not subject to a debt rearrangement order or agreement in terms of the National Credit Act, 34 of 2005, as amended or replaced from time to time.
3. **I/the Applicant agree(s) that**, within 7 days of any change of any of the information disclosed in this credit application, I/it will deliver to Anorel written notice of that change, by hand, email or fax.
4. Subject to the provisions of the Protection of Personal Information Act, 2013 ("the POPI Act"), I/the Applicant authorize(s) Anorel to at any time:
- 4.1 request and collect from any source, including any credit bureau, any personal information (as defined in the POPI Act) relating to me/the Applicant, to establish my/the Applicant's compliance, creditworthiness and/or state of indebtedness;
- 4.2 store my/the Applicant's personal information in any media, including an electronic database regardless of where in the world it is hosted, for as long as Anorel considers it necessary for the purposes of this credit application and for any other compatible purpose;
- 4.3 reproduce, modify, adapt, distribute, display and use in any way and in any media, my/the Applicant's personal information for the purposes of this credit application and for any other compatible purpose, provided that Anorel preserves the integrity of my/the Applicant's personal information; and
- 4.4 verify any of my/the Applicant's personal information by any means, including by carrying out credit bureau and third-party checks.
5. **I/the Applicant acknowledge(s) and agree(s) that:**
- 5.1 Anorel may transmit to its credit bureau information about this credit application, including the Applicant's personal information and information about its non-compliance;
- 5.2 Anorel's credit bureau may provide a credit profile and possibly a credit score on the Applicant's creditworthiness;
- 5.3 Anorel may disclose any information relating to me/the Applicant, including my/the Applicant's personal information, to its holding company or any subsidiary of its holding company and any third party with whom the Applicant has, or intends to have, credit relations, on request by that third party.
6. **I/THE APPLICANT INDEMNIFY(IES) ANOREL AGAINST ANY LOSS OR DAMAGES WHICH IT MAY SUFFER BECAUSE OF ANY BREACH OF THESE WARRANTIES.**
7. **I/the Applicant agree(s) that all credit transactions concluded with Anorel will be subject to Anorel's Standard Trading terms and Conditions.**

**PLEASE ATTACH COPIES OF THE FOLLOWING DOCUMENTS TO THIS APPLICATION**

<b>ALL APPLICANTS</b>	VAT registration certificate
	Identity document of person signing as/for the Applicant and all members/directors/partners
	Certificate of confirmation of the company's registration issued by CIPC and reflecting the details of the current directors/ members of the company(Not less than 3 months old)
	Tax compliance Pin /letter of good standing
	Trust deed and any amendments thereof
<b>PARTNERSHIPS &amp; INDIVIDUALS</b>	Copy of identity document of each partner/individual

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SIGNED at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 20...

.....  
**THE APPLICANT/For THE APPLICANT**

who hereby warrants that (s)he is duly authorized to sign this agreement on its behalf

Full names .....

Designation .....

.....  
**THE COMPANY/For THE COMPANY**

who hereby warrants that (s)he is duly authorized to sign this agreement on its behalf

Full names .....

Designation .....

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## ANOREL (PTY) LTD

### STANDARD TRADING TERMS AND CONDITIONS

These Anorel (Pty) Ltd standard trading terms and conditions set out the general standard terms on which the Company supply the goods and/or performs any services.

#### 1. Definitions and Interpretation

- 1.1. In these STCs, the words set out hereunder shall have the meanings assigned to them, and cognate expressions shall have a corresponding meaning, unless the context clearly indicates the contrary:
- 1.1.1. **"Abnormal Goods"** shall include goods which by reason of their nature, weight (mass), dimensions or otherwise require special preparations to be made or unusual or special care, treatment or precautions to be taken for the storage, transport or movement of same, which the Company in its sole discretion regards as abnormal or is otherwise described as such;
- 1.1.2. **"Business"** shall mean all and any business undertaken, including any sale of goods and/or service provided by the Company;
- 1.1.3. **"Carrier"** shall mean any carrier of goods or any person/entity with whom the Company contracts to provide any of the services for and on behalf of the Customer;
- 1.1.4. **"Clearing and Forwarding"** means freight forwarding (by ocean, road or rail) or customs clearing and related functions;
- 1.1.5. **"Company"** shall mean Anorel (Pty) Ltd; and unless the context indicates the contrary, the Company's shareholders, members, directors, employees, officers, subcontractors, representatives and agents;
- 1.1.6. **"Contractor"** shall mean any third-party appointed by the Company to perform any services for or on behalf of the Company or Customer but excludes Customers contracting with the Company to render defined services, supply goods and the like to or for the Company. Contractor includes a Carrier and the Contractor's shareholders, members, directors, employees, officers, subcontractors, agents and representatives;
- 1.1.7. **"Customer"** shall include any person who accepts the Company's sales order for the sale of goods, any person who instructs the Company to perform any of the services, any person who accepts the Company's STCs, any person who contracts with the Company either directly or through the services of an employee or an agent, any person at whose request or on whose behalf the Company undertakes any business or provides any advice, information or services, the owner of the goods and any person who has a risk in and to the goods;
- 1.1.8. **"Dangerous Goods"** shall mean goods, including without limitation radio-active materials, which are or may become dangerous, inflammable or noxious, or which by their nature may injure, damage, taint or contaminate, or in any way whatsoever adversely affect any person, goods or property, including goods likely to attract vermin or other pests, or any goods defined as hazardous and/or dangerous in the Tariff or rules for carriage of Transnet Limited, the National Road Traffic Act, 93 of 1996 and/or SANS 10228, or classified as such in the International Maritime Dangerous Goods Code or any other code or regulations of, or published by, any government authorities;
- 1.1.9. **"Day"** shall mean a calendar day;
- 1.1.10. **"Goods"** shall mean any goods, items, commodities, material or cargo that are, or are intended to be, the subject of sale and/or the services rendered by the Company or are otherwise handled or dealt with by or on behalf of or at the instance of the Company, or which come under the control of the Company or its agents or nominees on the instructions of the Customer;
- 1.1.11. **"the Group"** shall mean Anorel (Pty) Ltd and any company which is a holding company or subsidiary of Anorel (Pty) Ltd from time to time which may render services to the Customer;
- 1.1.12. **"Law"** shall mean any law including common law, statute, constitution, decree, judgment, treaty, regulation, directive, standard, instrument, by-law, order or any other measure of any government, local government, statutory or regulatory body or court having the force of law;
- 1.1.13. **"Notice"** shall mean notice in writing;
- 1.1.14. **"Owner"** shall mean the owner of the goods and any other person who may have or who acquires any interest, financial or otherwise, therein;
- 1.1.15. **"Parties"** shall mean the Company and the Customer collectively, and "Party" shall mean either one of them;
- 1.1.16. **"Possession"** shall mean possession, care, custody and control;
- 1.1.17. **"Quotation/Sales order"** shall mean a quotation or sales order issued by the Company containing the details of the goods and services ordered by the Customer and associated costs of supplying them;
- 1.1.18. **"Rates"** shall mean the rates as agreed between the Parties in writing;
- 1.1.19. **"Said to Contain"** means that the Company accepts the goods on the basis of the information provided by the Customer regarding the goods, including but not limited to their nature, quantity, condition and/or value, which information the Company is entitled to rely upon, without verification;
- 1.1.20. **"Services"** shall mean the services provided or arranged by the Company including the clearing and forwarding, warehousing and transportation, location and delivery of goods within the borders of the Republic of South Africa and elsewhere;
- 1.1.21. **"STCs"** shall mean these standard trading terms and conditions as updated from time to time;
- 1.1.22. **"Transport Unit"** shall mean containers, trailers, flats, tilts, railway wagons, tanks, igloos or any other unit load devices specifically constructed for the carriage of goods by land, sea or air;
- 1.1.23. **"Warehousing Services"** shall include, but are not limited to, the transport, distribution, warehousing, stacking, storage, vaning, receipt or dispatch of goods via rail or road.
- 1.2. Headings of clauses shall be deemed to have been included for purposes of convenience only and shall not modify or affect the interpretation of these STCs.
- 1.3. Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or

expression have a corresponding meaning.

- 1.4. The rule which serves to restrict the meaning of general words to things or matters of the same kind as the preceding particular words (*eiusdem generis*) shall not apply, and whenever a term is followed by the word "including" which is then followed by specific examples, such examples shall not be construed as to limit the meaning of that term.
- 1.5. Any number of days prescribed in these STCs excludes the first day and includes the last day; and any relevant action or notice may be validly done or given on the last day.
- 1.6. The rule of construction that these STCs shall be interpreted against the Party responsible for the drafting or preparation of these STCs shall not apply.
- 1.7. These STCs and all agreements entered into between the Company and the Customer pursuant thereto and on the terms thereof shall be governed by and construed in accordance with the laws of the Republic of South Africa.

## 2. Scope of Application

- 2.1. The sale of goods and/or services undertaken or provided by the Company, or any liability which may apply to the Company, whether or not arising from the sale of goods or performance of services, shall be undertaken or provided subject to these STCs and they shall form part of, and be incorporated into any agreement or contract concluded by and between the Parties.
- 2.2. In case of a regular business relationship with the Company, these STCs shall also apply to future transactions in which they might not explicitly be referred to. By placing an order or entering into a contract with the Company for supply of goods and/or the provision of services, the Customer confirms and is deemed to have read and accepted these STCs.
- 2.3. These STCs shall apply to the exclusion of the Customer's or any other parties' trading terms and conditions unless specifically agreed in writing and signed by a director of the Company. The STCs shall at all times take precedence over any terms, conditions or stipulations contained or reflected in any of the Customer's documentation.
- 2.4. Any employee, agent or representative of the Customer appointing or instructing the Company, warrants that he/she has the authority to bind the Customer to these STCs.
- 2.5. If, where applicable, a Customer sells its business or the whole or a greater part of its undertaking or assets (the Business) or undergoes any restructure of any nature whatsoever (including an establishment of a New Entity), the Customer undertakes to notify the Company of these changes, and the Customer must procure that the New Entity is aware of these STCs and agrees that these terms and conditions apply to it, *mutatis mutandis*. In so far as any business is or has been carried out between the Company and the New Entity, the New Entity must be deemed bound by these STCs.
- 2.6. If any provision in these STCs shall be inapplicable, invalid, illegal or unenforceable, the applicability, validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

## 3. Appointment of Third Parties

- 3.1. Unless otherwise agreed in writing, the Company shall carry out the sale of goods and/or the supply of Services as a principal or may in its discretion and at any time unilaterally appoint any Contractor to fulfil all or any of the Company's obligations arising in terms of these STCs.
- 3.2. In appointing such Contractors, the Company shall be construed as being the agent of the Customer and shall under no circumstances have any responsibility to or become liable to the Customer regarding any act or omission by such Contractor in the performance of its obligations pursuant to such appointment, or for any loss or damage caused to the Customer or any third party as a result thereof.
- 3.3. Unless otherwise agreed in writing, the Company when

acting as agent for and on behalf of the Customer shall be entitled to enter into any agreement or contract it reasonably deems necessary for the fulfilment of the services or any of the Customer's instructions.

- 3.4. The Customer acknowledges that when the Company, as agent for and on behalf of the Customer, concludes any agreement or contract with a Contractor, such agreement is concluded between the Customer and the Contractor on such terms as the Contractor may stipulate.
- 3.5. The relationship between the Parties is a contract of sale of goods and/or supply of service and does not constitute a contract of employment or partnership.

## 4. Offers and Orders

- 4.1. Any order of the Customer, placed in writing, shall be considered an offer to us to enter into a contract on the terms and conditions stipulated therein.
  - 4.2. Contracts, as well as supplements, modifications, or ancillary agreements, shall be deemed entered into only upon (i) our written confirmation of acceptance of the order through a sales order confirmation (without prejudice to any reservations to which the sales order is made subject) and (ii) initiation of fulfilment of the order after acceptance of the sales order confirmation by the Customer.
  - 4.3. Should the Customer wish to vary or cancel any order, it shall address the request for such variation or cancellation in writing to the company timeously. If we have not already processed the relevant order, we shall vary or cancel that order, as the case may be, according to the Customer's instruction. If we have already processed the relevant order, then it shall co-operate with the Customer to the maximum extent possible in the circumstances to accommodate the Customer's requirements, provided that costs reasonably incurred by the Company in altering or cancelling such an order, as the case may be, shall be for the Customer's account.
  - 4.4. The Company has a discretion at all times to whether accept an order from the Customer willing to purchase goods or procure services, and may consider, amongst other things, the availability of stock, storage space, transport, and the timeous receipt by us of information relating to the goods and services which the Customer requires and the Customer's available credit.
  - 4.5. The Company is entitled at any time by written notice to the Customer to cancel, amend or resile from any quotation, order, estimate or executory agreement in circumstances where it becomes impracticable or uneconomical for the Company to carry out the contract at the quoted or estimated rate, and the Customer shall have no claim whatsoever against the Company for any loss or additional expense that the Customer might incur as a result of such cancelling, amending or resiling from the quotation, estimate or executory agreement.
  - 4.6. Without in any way limiting the provisions of Clause 4.1, all quotations, estimates and agreements are subject to revision by the Company without notice to the Customer, having regard to changes in currency exchange rates and upward movements in amounts payable by or on behalf of or at the instance of the Company to third parties including, without limitation, freight, surcharges, duties, insurance premiums, equipment rental and Labour, which charges and upward movements take place after the provision of the quotation or estimate. Any revision of rates as aforesaid will be commensurate with the change in the currency exchange rate or the increase in such amounts payable.
  - 4.7. If the Customer disputes the Company's revised Quotation, such dispute shall be determined by the then auditors of the Company or any other auditors nominated by the Company, who in such determination shall act as experts and not as arbitrators and whose decision shall be final and binding on the parties.
- ## 5. Payment
- 5.1. The Company will send the Customer an invoice and statement for the amount which the Customer owes the Company for the good sold and/or services rendered.
  - 5.2. Except where the Company has granted credit facilities to

- the Customer, the Customer must pay to the Company the full amount due in respect of the good sold and/or services on presentation of the Company's invoice. If the Company has granted credit facilities to the Customer, full payment of the Company's invoice must be made within 30 days after the date of the Company's statement, unless the parties agree otherwise in writing.
- 5.3. Payments are to be performed on the terms otherwise agreed between the parties in writing and in the currency as mentioned in the invoice. The Company expressly excludes cash payments, unless the Customer agrees to be liable for the bank charges associated with the said payment.
  - 5.4. Any claim relating to the invoice must be presented to the Company not more than 5(five) business days after receipt of the invoice by the Customer, failing which the invoice is final and binding on the parties.
  - 5.5. If any payment to the Company is effected electronically, then the Customer bears the risk in respect of such payment until the payment is received and cleared into the Company's bank account.
  - 5.6. If accepted by the Company, instructions to collect payment on delivery shall be subject to the condition that the Company will be entitled to assume that the recipient will effect payment and in the matter of such collection will not be liable for any negotiable instrument which is not met on due date for payment.
  - 5.7. All payments received by the Company from the Customer shall be appropriated by the Company in its sole and absolute discretion in respect of any undisputed indebtedness owing by the Customer to the Company, notwithstanding that the Company might, when making payment, seek to appropriate the payment so made to any particular debt or portion of a debt.
  - 5.8. The company shall under no circumstances be precluded from raising a debit and obtaining payment in respect of any fee or disbursements due to it notwithstanding the fact that a previous debit or debits, whether excluding or partly excluding the items subsequently requiring to be charged or recovered, had been raised and whether or not any notice had been given that further debits were to follow.
  - 5.9. In the event of the Customer being in default of payment of any one or more amounts due and payable, or being in default of any other term or condition on which a credit facility was granted, and notwithstanding any other terms to the contrary whatsoever contained, the Company shall be entitled to immediately revoke such credit facilities and declare all amounts immediately due and payable and proceed for recovery of all amounts which would be due and payable to the Company, were it not for the credit terms or facilities granted to the Customer.
  - 5.10. Notwithstanding the account limit requested or required by a Customer (if any), all accounts and credit limits will be determined at Company's discretion and the Company is entitled to cancel or amend any account or credit limit at any time, on notice to the Customer.
  - 5.11. The Company shall not be obliged to disburse any monies on behalf of the Customer in relation to any services until it is in receipt of funds adequate to cover same and the Company shall not be liable for any loss or damages suffered by the Customer or any third party as a result of any failure to disburse such monies.
  - 5.12. The Company shall be entitled to keep for its own benefit and shall not be obliged to make known to the Customer, any discount, allowances, commission or brokerage obtained in the course of executing the Customer's instructions.
  - 5.13. All charges due by the Customer to the Company shall be paid free of deduction, set-off or demand and may not be withheld or deferred on account of any claim or counterclaim which the customer may allege.
  - 5.14. The Company's obligation to supply the good and/or services shall be suspended as long as the Customer is in arrears with any payment owing to the Company, without notice and without prejudice to the Company's right to claim compensation. If any doubt exists as to the Customer's ability to fulfil its payment obligations towards the Company, the Company reserves the right to suspend transport or deliveries until satisfactory securities have been provided or advance payment has been made, as requested by the Company in its sole discretion.
6. **All in Rate**  
If the Company, in its dealings with Customers or Contractors, quotes or is quoted a charge or rate which is described as being "all in", that charge or rate shall be deemed to cover all charges and disbursements from the commencement to the final completion of the services.
  7. **Carriage**  
The Company does not constitute a public or common carrier, it transports goods be they containerized or otherwise subject to these STCs only.
  8. **Duties, Taxes, Imposts, Levies, Deposits and Deposits**
    - 8.1. Except as otherwise provided in these STCs, the Customer, whether or not the cause of payment was due to an act, instruction or omission of the sender, Owner and/or consignee and their agents, if any, shall be liable for any duties, taxes, imposts, levies, deposits or out-lays of whatsoever nature levied by or payable to the authorities, intermediaries or other parties at any port or place for or in connection with the services and whether at the time of entry and/or at any subsequent time and for any payments, fines, penalties, expenses, loss or damage or whatsoever incurred or sustained by the Company in connection therewith or arising thereout;
    - 8.2. The Company shall bear no liability in consequence of the fact that there may be a change in the rate of duty, wharfage, freight, railage or cartage or any other tariff, before or after the performance by the Company of any act involving a less favourable rate or tariff or by virtue of the fact that a saving might have been effected in some other way had any act been performed at a different time.
  9. **Recovery of Duties Incorrectly Paid**
    - 9.1. Whereas a result of any act or omission by or on behalf or at the instance of the Company, and whether or not such act or omission was negligent, any duty, tax, levy, railage, wharfage, freight, cartage or any other impost or charge has been paid or levied in an incorrect amount, then any responsibility or liability to the Customer which the Company may otherwise have will cease and fall away if the Customer does not:
      - 9.1.1. within a reasonable time having regard to all the circumstances, and in particular to the time allowed for the recovery from the payee of the amount overpaid, advise the Company that an incorrect amount has been paid or levied, and
      - 9.1.2. do all such acts as are necessary to enable the Company to effect recovery of the amount incorrectly paid.
    - 9.2. The fact that the Customer may not be aware that any such incorrect payment has been made shall not constitute a circumstance to be considered in calculating what is a reasonable time for the purpose of clause 9.1.1. Should any act or omission by the Customer, whether or not such act or omission was due to ignorance on the part of the Customer, and whether or not such ignorance was reasonable or justified in the circumstances, prejudice the Company's right of recovery, the Customer shall be deemed not to have complied with the provisions of clauses 9.1.1 and 9.1.2.
  10. **Default and Debt Collection**
    - 10.1. The Company reserves the right to discontinue any account and summarily to cancel any agreement in respect of which any payments have fallen in arrears. In the event of these rights being exercised by the Company, all amounts owing by the Customer shall immediately become due and payable to the Company on demand;
    - 10.2. The Company may charge interest at a rate of 2.5% on any amount unpaid, due and outstanding, plus a further R1200.00 for administration fees, every month the account falls on overdue.

- 10.3. In addition to the aforesaid interest, the Company shall be entitled to recover any amounts due to it by the Customer or if the Customer acts as agent for a disclosed or undisclosed principal, from the Customer or the principal, as the Company in its absolute discretion deems fit.
- 10.4. The Customer agrees that it will pay all costs of whatsoever nature incurred by the Company in recovering any amounts or incurred by the Company in the enforcement of any other obligations or for the recovery of damages owed by the Customer to the Company on the scale as between attorney and own client, as well as any interest, collection commission and tracing agent's fees.

#### 11. Limitation of Liability

- 11.1. Unless explicitly stated otherwise in these STCs, the Company shall not be liable for any claim of whatsoever nature and howsoever arising (whether in contract or in delict or arising out of the provision of the services or not or for damages or otherwise) unless such claim arises from a gross negligent act or omission on the part of the Company, its employees or subcontractors.
- 11.2. Without limiting the generality of the limitations or exclusions of the Customer's liability, the Company is specifically not liable for:
- 11.2.1. any shortage, loss of or damage to goods, unless it occurs at a time when the goods in question are in the actual care, custody and control of the Company, its employees or subcontractors;
- 11.2.2. any shortage, loss of or defect in goods in the Company's warehouse which does not exceed 0.5% of the quantity of the goods as evidenced by the warehouse receipts; or
- 11.2.3. any shortage, loss of or damage to goods dispatched directly from a vessel to the Customer's nominated transporter.
- 11.3. Notwithstanding anything to the contrary contained in these STCs or elsewhere, the Company shall not be liable to the Customer for any indirect loss, including but not limited to consequential, incidental or remote loss; special or speculative damages; or loss of profit, business or production.
- 11.4. Our liability for any type of loss, including but not limited to gross negligence if permitted by law, shall not exceed the price of the goods sold or services provided.
- 11.5. The Customer agrees that no claim shall be made against any director, employee or employee of the Company in his personal capacity which imposes or attempts to impose any liability upon him in connection with the sale of goods and/or provision of the services, and the Customer waives all and any such claims.

#### 12. Claims

- 12.1. Without prejudice to any other provisions in these STCs, no claim may be brought against the Company or any of its Directors or Employees, unless the Customer:
- 12.1.1. has given Notice of the Claim to the Company either at the time of the removal of the goods from the custody of the Company, or within 7 (seven) days of the date when the loss or damage occurred, or of the Customer reasonably becoming aware thereof, whichever is the later; and
- 12.1.2. has provided the Company with a fully documented claim setting out the precise nature and quantum of the claim within 3 (three) months of the date of the Notice of the Claim required in clause 12.1.1.
- 12.2. In addition to clause 12.1 it is agreed that the Company shall in any event be discharged from all liability whatsoever and howsoever arising unless summons or other process initiating legal proceedings is issued and served on the Company within 6 (six) months after the cause of action in respect of any such alleged liability arose and immediate Notice is given to the Company of such legal proceedings having been brought.

#### 13. Lien

- 13.1. The Company shall have a special and general lien or pledge over all corporeal and incorporeal property in its possession, including but not limited to goods and any documents including bills of lading and import permits relating thereto in its possession, as well as all refunds, repayments, claims and other recoveries and such goods and documents shall be deemed to be pledged to the Company as security for all moneys or indebtedness whatsoever due to the Company by the Customer, sender, Owner, consignee, or their agents, if any, whether relating to the goods or not;
- 13.2. In delivering or having the goods stored into the custody of the Company or its agents and subcontractors for any purpose whatsoever, such delivery shall for the purpose hereof be deemed to be delivery of the same in pledge and as security for all amounts owed to the Company at that time or which become payable in the future.
- 13.3. In the event of the Company using the services or premises of any third party for any purposes including the transportation or storage of any goods, such third party shall be the agent of the Company for purposes of exercising the Company's right of retention under the said lien and/or pledge;
- 13.4. The Customer shall not be entitled to effect or allow to be effected any security in respect of the goods or the documents relating to the goods, including without limitation, any general or special notarial bond, pledge, hypothec, right of retention, or lien and pledge, without the prior written consent of the Company. The lien and pledge in favour of the Company referred to in this clause, shall operate as a first and prior charge against the goods and the documents relating to the goods and no other security shall rank prior to the Company's lien or pledge;
- 13.5. The Company reserves the right to enforce the above lien until all monies due to it by the Customer are paid up together with interest accumulating thereon;
- 13.6. If property in question is not owned by the Customer, the Customer hereby confirms being empowered on behalf of the Owner, to deal with same and authorizes the Company to exercise its rights in terms hereof.
- 13.7. Should any amount due to the Company remain unpaid after the lapse of 30 (thirty) days, the Company shall be entitled to immediately exercise its lien and shall advise the Customer in writing that it has done so. After such period, the company may sell/dispose of the property forming the subject matter of the lien on any basis that it deems fit, and without in such circumstances, becoming liable for any loss consequent upon or incidental to the exercise of such right of sale;
- 13.8. The Customer hereby authorises the Company to effect such a sale by either public auction or private treaty, on reasonable notice not exceeding 30 (thirty) days. The net proceeds of any such sale, after deducting therefrom all costs, charges and expenses incurred by the Company, shall be applied in reduction or discharge as the case may be, of the Customer's obligations to the Company in respect of such goods without prejudice to the Company's rights to recover from the Customer any balance which may remain owing to the Company after the exercise of such rights;
- 13.9. Any expenses and charges incurred or levied by the Company in enforcing the lien, including; storing, handling and selling the said property shall be borne by the Customer. The proceeds of the sale shall be applied towards offsetting the entire indebtedness of the Customer to the Company and any surplus accumulating hereafter will be refunded to the Customer;

#### 14. Insurance

- 14.1. The price charged by the Company for its services, including warehousing, does not factor into account the Company assuming any risks in and to the goods of the Customer. Consequently, the Customer acknowledges that the risk in



and to the goods shall always vest with it and it must take all necessary and appropriate steps to hold fully comprehensive insurance cover over such goods. Therefore, under no circumstances, will the Company be liable to the Customer for any loss and/or damage caused to its goods whilst under the control and/or in the possession of the Company.

- 14.2. Should any claim be made on the Company by the Customer or its insurer under the laws of subrogation in respect of damage or loss caused to goods then the Customer hereby indemnifies the Company and its agents and holds them harmless from all and any such claims.

**15. Indemnity**

- 15.1. Without prejudice to the Company's rights and securities under these STCs, any agreement between the Parties and/or at law, the Customer indemnifies and holds the Company harmless against all liabilities, damages, costs and expenses whatsoever incurred or suffered by the Company arising directly or indirectly from or in connection with:

- 15.1.1. the Company complying with the express or implied requirements or instructions of the Customer or any Authority regarding the goods or services;
- 15.1.2. any act or omission or breach of these STCs by the Customer or any person, subcontractor, Carrier or other third party acting on its behalf or under its instruction;
- 15.1.3. the late or non-provision by the Customer of any documentation required by any government authorities;
- 15.1.4. any claim made by the owner, consignor, consignee, carrier, the Customer's clients or suppliers or any third party in connection with the goods and/or services;
- 15.1.5. any warranty given to the Company by the Customer being untrue or incorrect;
- 15.1.6. the consequences resulting from the transport, storage, or handling of the goods;
- 15.1.7. the loading, offloading, marking, labelling, numbering, weight, measurements, non-delivery, mis-delivery or defective packaging of the goods;
- 15.1.8. the contents, quality, nature, legality, inherent vice, counterfeit nature, defect in or description of the goods;
- 15.1.9. death, bodily injury or damage to persons or personal property as a result of the willful or negligent act or omission of the Customer or any person acting on its behalf;
- 15.1.10. any claims of a general average or salvage nature which may be made against the Company, and the Customer shall provide such security as may be required by the Company in this regard.

**16. Instructions and Information**

- 16.1. For all purposes hereunder the Customer shall be deemed to have in relation to the Customer's business, the Services to be rendered by the Company in regard thereto, reasonable knowledge of all matters directly or indirectly relating thereto or arising therefrom including, without limitation, terms of supply and all matter relating thereto, and the Customer undertakes to supply all pertinent information to the Company;
- 16.2. In supplying the good and/or services to the Customer, the Company shall be entitled to rely upon the accuracy and completeness of any instruction and other information given to it by the Customer and recorded in writing;
- 16.3. The Company shall not be obliged to accept any oral instructions, standing or general instructions or instructions given late, even if received by the Company without comment, but the Company may act thereupon in the exercise of its absolute discretion;

- 16.4. The Company shall be entitled at any time to require the Customer to furnish further information relating to the goods and/or services requested by the Customer and shall be entitled to postpone performance of any Services or obligation in terms hereof until such information is received;

- 16.5. In the absence of specific instructions given timeously in writing by the Customer to the Company:

- 16.5.1. it shall be in the reasonable discretion of the Company to decide at what time to perform or to procure the performance of any services or actions which may be necessary or requisite for the discharge of its obligations to the Customer;

- 16.5.2. the Company shall have an absolute discretion to determine the means, route, packaging and procedure to be followed by it in performing all or any of the Services it has agreed to perform;

- 16.5.3. in all cases where there is a choice of tariff rates or premiums offered by any Carrier, warehouseman, underwriter, or other person depending upon the declared value of the relevant goods or the extent of the liability assumed by the Carrier, warehouseman, underwriter or other person, it shall be in the discretion of the Company 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.

- 16.6. Notwithstanding anything to the contrary contained in these STCs, if at any time the Company should consider it to be in the Customer's interests or for the public good to depart from any of the Customer's instructions, the Company shall be entitled to do so and shall not incur any liability in consequence of doing so.

- 16.7. If events or circumstances come to the attention of the Company, its agents, employees, or sub-contractors which, in the opinion of the Company, make it in whole or in part, impossible or impracticable for the Company to comply with a Customer's instructions, the Company shall take reasonable steps to inform such Customer of such events or circumstances and to seek further instructions. If such further instructions are not timeously received by the Company in writing, the Company shall, at its sole discretion, be entitled to detain, return, store, sell, abandon or destroy all or part of the goods concerned at the entire risk and expense of the Customer.

- 16.8. Unless specific written instructions are timeously given to and accepted by the Company, the Company shall not be obliged to:

- 16.8.1. make any declaration for the purpose of any statute, convention, or contract, as to the nature or value of any goods or as to any special interest in delivery. In particular, the Company shall be under no obligation to make any declaration or to seek any special protection or cover from any Carrier in respect of any Dangerous Goods or other Goods which require special conditions of handling or storage;

- 16.8.2. arrange for any particular goods to be carried, stored or handled separately from other goods, unless those goods are the subject of a collateral management or similar agreement.

**17. Customer Warranties and Undertakings**

- 17.1. The Customer warrants that:

- 17.1.1. it is either the owner, or the authorised agent of the owner, of any goods in respect of which the Customer instructs the Company or of any person on whose behalf the Company undertakes the services, and that each such person is bound by these STCs;

- 17.1.2. it has knowledge of all matters directly or indirectly relating to the goods and/or services to be rendered by the Company including, without limitation, terms of sale and purchase and all matters relating thereto, and the Customer undertakes to supply all

pertinent information to the Company;

- 17.1.3. in authorising the Customer to enter into any contract with the Company and/or in accepting any document issued by the Company in connection with such contract, the Owner is bound by these STCs for itself and its agents and for any parties on whose behalf it or its agents may act, and in particular, but without prejudice to the generality of the foregoing, it accepts that the Company shall have the right to enforce against them jointly and severally any liability of the Customer under these STCs or to recover from them any sums to be paid by the Customer which upon proper demand have not been paid;
- 17.1.4. all information and instructions supplied or to be supplied by it to the Company is and shall be accurate, true and comprehensive, and in particular, the Customer is deemed to be bound by and warrants the accuracy of all descriptions, values and other particulars furnished to the Company for customs, consular and other purposes, and the Customer warrants that it will not withhold any necessary or pertinent information;
- 17.1.5. where goods are carried in or on any Transport Unit, the Transport Unit has been properly and competently vanned, the goods involved are suitable for carriage in or on the Transport Unit, and the Transport Unit is itself in a suitable condition to carry the goods vanned therein or thereon and complies with the requirements of all relevant transport authorities and Carriers;
- 17.1.6. where the Customer nominates a road freight transporter to load goods directly from a vessel, the transporter will comply with all legal requirements as well as the obligation to both weigh in on arrival and weigh out after loading at the Company's weighbridge.
- 17.2. The Customer indemnifies the Company against all claims, losses, penalties, damages, expenses and fines whatsoever, whensoever and howsoever arising as a result of a breach of any warranties, whether negligently or otherwise, including any assessment or reassessment;
- 17.3. The Customer undertakes:
- 17.3.1. that no claim shall be made by it against any employee, agent or subcontractor of the Company which imposes or attempts to impose upon him or her any liability in connection with the goods or the rendering of any services, and the Customer hereby waives all and any such claims, which claims should be made directly against the Company in terms of these STCs; and
- 17.4. Time is of the essence for the performance by the Customer of all obligations owed to the Company in terms of any agreement which is governed by these STCs.

## 18. Company Warranties and Representations

- 18.1. The Company makes no warranties and representations to the Customer save as may be specifically provided herein or as notified in writing by the Company to the Customer from time to time.
- 18.2. The Customer acknowledges that the Company is not in any way bound by any oral statement, representation, guarantee, promise, undertaking, inducement or otherwise which may have been made at any time by any salesman, employee, representative or any person acting or purporting to act for or on behalf of the Company, whether negligently or otherwise unless such statements, representations, guarantees, promises, undertakings, warranties or inducements are supplied or made in writing by an employee duly authorised by written resolution of the board of directors of the Company in response to a written enquiry specifying accurately and in complete detail what information is required.

## 19. Inspection and Acceptance of the Goods

- 19.1. The Company will not be responsible for conducting any examination or counting of any landed or delivered goods.

Should the Company undertake to count any goods so received, the Company shall be entitled to levy a charge on the Customer for the counting of the goods in such circumstances;

- 19.2. Without prejudice to its right to inspect the goods, the Customer must accept/take delivery of the goods immediately upon presentation. All costs incurred by the Company relating to the Customer's unreasonable refusal to take delivery of the goods are for the Customer's account, including costs of transportation and storage. If the risk for loss or damage to the goods has not yet been transferred to the Customer as provided in these STCs, such risk shall be deemed to have reasonably transferred to the Customer at the time of refusal to take delivery and the Customer shall be deemed to have taken delivery of the goods at such time;
- 19.3. The Customer must inspect the goods without unreasonable delay and upon the Company providing the Certificate of Analysis (CoA). The Company shall be notified within 10(ten) business days from date of delivery of any claims or returns based on quality or quantity, failing which, the goods will be deemed to have been delivered in good order and condition;
- 19.4. The Company must be notified of defects that could not have been reasonably discovered even through diligent inspection within 3(three) months from the date of delivery thereof or from when the Customer is deemed to have taken delivery. All claims filed after the relevant period set forth in this clause are deemed to have prescribed for the purposes of this agreement;
- 19.5. No claims or returns will be accepted once the goods are changed in any way, processed or resold. Further, the Customer shall lose all rights to claim for defects in case the goods were improperly handled or stored by or for the account of the Customer;
- 19.6. No express or implied warranties are made by the Company regarding the suitability of the goods for the purpose intended by the Customer as such no consequential damage claims will be entertained;
- 19.7. For justified or accepted claims, we shall, in our sole discretion, as the case may be (i) supply additional or replacing goods at our expense; or (ii) partly or in full refund the invoice amount or issue a credit note. Any and all further claims or demands of the Customer on whatever legal basis are hereby rejected;

## 20. Goods Requiring Special Arrangement

The Customer undertakes not to tender for storage, handling or transportation any goods which require temperature control without previously giving at least two days' Notice to the Company of their nature and particular temperature range to be maintained and in the case of a temperature controlled container stuffed by or on behalf of the Customer, the Customer further undertakes 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 by the Customer. If the above requirements are not complied with the Company shall not be liable for any loss of or damage to the goods caused by such non-compliance.

## 21. Abnormal Goods

Where the Company is required to provide the services in respect on Abnormal Goods, it shall have the right to vary these STCs or add such further terms thereto as in its sole discretion may deem fit.

## 22. Dangerous Goods

- 22.1. The Customer must obtain in advance the Company's specific written consent to accept into its possession/custody, or into the possession/custody of any of its employees, agents or employees, any Dangerous Goods. The Company is not obliged to provide any services in respect of Dangerous Goods.
- 22.2. Should the Company agree to provide such services, the Customer must:

- 22.2.1. provide the Company with current Safety Data

- Sheets (SDS) in respect of Dangerous Goods as required by law;
- 22.2.2. provide a full written disclosure of the nature and properties of the Dangerous Goods to the Company;
- 22.2.3. comply with all Laws governing the loading, off-loading, storage and carriage of Dangerous Goods;
- 22.2.4. provide proof to the satisfaction of the Company, that the Customer has obtained suitable insurance in respect of any liabilities that might arise following the loss, damage, spillage of the Dangerous Goods, including any environmental damage or clean-up costs; and
- 22.2.5. ensure that such Dangerous Goods, or any Transport Unit or other case, crate, box, drum, canister, tank, flat pallet, package or other holder or covering of such Dangerous Goods, will bear the warning labels and declarations required in terms of any Law or other requirements of any authority or Carrier and that the nature and characteristics of such Dangerous Goods and all other data required by such Law, or other requirements will be prominently and clearly marked on the outside cover of such Dangerous Goods.
- 22.3. The Company will only render services with regard to Dangerous Goods at the Customer's risk and shall not be liable to the Customer for any loss or damage to the Dangerous Goods, howsoever arising. The Customer shall Indemnify the Company against all losses or damages, howsoever caused, arising out of the rendering of any services in respect of the Dangerous Goods, including third party claims.
- 22.4. Notwithstanding that the Company agrees to provide the services in respect of Dangerous Goods, the Company may nevertheless for good reason, alternatively where compelled, destroy or otherwise deal with such goods. Under such circumstances, the goods will be dealt with at the entire risk of the Customer, without compensation being due to same or any other party and without prejudice to the Company's right to inter alia debit charges and fees including that relating to the cost of destruction or disposal.
- 23. Harmful Goods**
- 23.1. If the Company in its sole discretion considers that the goods in respect of which it provides the services may cause harm of any nature, including but not limited to the risk to other goods, property, life or health or the proliferation of vermin, the Company shall be entitled to deal with both the Transport Unit and the goods in such a manner as it deems fit (which shall, inter alia include destruction or abandonment) without notice and compensation being given to any person, and further in circumstances where the Company will be entitled to charge its full fee including any costs incurred in dealing with the Transport Unit and the goods as above.
- 23.2. The Customer shall be liable for the Company's costs and shall indemnify the Company against any claim by any person arising out of or in connection with the exercise by the Company of its right in terms of this clause.
- 23.3. The Customer indemnifies the Company against any harm and any related damage claims arising regarding containers containing potentially harmful/dangerous contents and further regardless of whether the Company had knowledge of such contents or not.
- 24. Perishable Goods**
- Where a Transport Unit contains perishable goods and same have begun or are likely to perish, the Company may deal with those contents in such manner as it deems fit and without notice to any person. In these circumstances, the Customer shall be liable for the Company's costs of and shall indemnify the Company against any claim by any person arising out of the Company's handling of the goods.
- 25. Packaging and Delivery**
- 25.1. Unless agreed otherwise in writing and/or except to the extent that the Company agrees to clear, forward, warehouse and/or transport the goods in terms of these terms, if the Customer requests the Company to deliver the goods to it, the route and means of transportation shall be determined by the Company, as well as packaging of the goods;
- 25.2. Unless agreed otherwise in writing, if the Company (or our agent) deliver the goods to the Customer, delivery takes place when the Customer (or its agent) begins unloading the goods at the delivery address set out in the Customer's order;
- 25.3. Unless we have agreed to provide the Customer with a credit facility, goods will not be delivered to the Customer unless and until we receive suitable proof of payment from the Customer and the full amount due in respect of the goods as freely available funds in our bank account;
- 25.4. The delivery dates are not binding but are merely given as an indication, unless expressly agreed upon otherwise in writing. Although we will try to deliver the goods to the Customer by the delivery date requested in the Customer's order, we are not bound to do so. Should there be any foreseeable delay in delivery, the Company shall reasonably notify the Customer in writing. If the communicated delay is accepted by the Customer, the Company shall not be liable under any circumstances whatsoever, for any loss or damages of any nature (including consequential damages, loss of profit or special damages), whether within the contemplation of the parties or not, and which the Customer may suffer as a result of any delay in the delivery of the goods. The Customer may not cancel an order as a result of any delivery delay. We may deliver the goods to the Customer in more than one instalment;
- 25.5. Goods delivered by the Company to the Customer shall be accompanied by a Delivery Note. A delivery note signed by or on behalf of the Customer constitutes prima facie (on the face of it) proof that the goods have been delivered to and received by the Customer;
- 26. Retention of Title**
- 26.1. The goods remain the Company's property until full and final payment of the related invoice(s). In the event that the Customer buys from other suppliers or manufacturers of goods that are identical or similar to the goods bought from us, the Customer shall be obliged to, if not yet the case, affix to the goods a sign clearly indicating that the goods are the Company's property until such time as title passes to the Customer;
- 26.2. If this retention of title is not enforceable towards third parties under any relevant law or in any relevant jurisdiction, or as a result of any other reason, the Company shall be conferred with security and collateral rights permissible under such law or in such jurisdiction for due payment of the invoice. The Customer shall reasonably inform us of any threats to our title and shall reasonably co-operate in taking such measures.
- 27. Warehousing**
- 27.1. Pending forwarding and/or delivery of goods by the Company, the goods may be warehoused, stored, handled, stacked or otherwise held at any place and in any manner as determined by the Company in its absolute discretion, at the Customer's expense.
- 27.2. Where the Company provides warehousing services, whether in premises owned, leased or operated by it, or on premises operated by a third party, the warehousing services are provided subject to these STCs, and the Company shall not be liable at common law or otherwise as a bailee or deposittee.
- 27.3. The goods are received by the Company on a "Said to Contain" basis. The Company is entitled but not obliged to unpack any goods to inspect them. The Customer shall be responsible for the cost of repacking the goods.
- 27.4. The Customer acknowledges and agrees that the Company is required to comply with the terms of its Terminal Operating Licenses (TOL) and leases in respect of the Ports and any Road Hauler Licenses and any other licenses issued by SARS and as such its fulfilment of its obligations in terms of these STCs will be subject to such terms.

- 27.5. The Customer agrees that, notwithstanding anything in these STCs to the contrary, the Company will not be obliged to perform any warehousing services at a Port or elsewhere if the Company is no longer licensed to do so by SARS or the applicable Port authority, or the Company no longer has any lease suitable for the carrying out of the warehousing services.
- 27.6. The Customer agrees to a warehousing charge if collection exceeds 30 days storage after receiving Purchase Order, unless expressly agreed otherwise in writing.
- 27.7. The Customer warrants that:
- 27.7.1. all goods that are the subject of the warehousing services or are otherwise delivered to the Company shall be properly packed and labelled and in the event of any goods requiring special storage, packing or labelling, by reason of its nature or properties, or in accordance with any Law, that all such requirements shall be complied with;
- 27.7.2. it shall give Notice to the Company of any special storage requirements of any such goods prior to the delivery of the goods into the possession of the Company or its agents, provided that the Company shall not be obliged to take delivery of any goods or provide any other services in the event that the Company is of the view that taking delivery of such goods, or the provision of any services is for any reason whatsoever undesirable.
- 28. Transport and Risk**
- 28.1. The Company deals with goods only on the basis that it is neither a common carrier nor a public carrier;
- 28.2. Every undertaking to transport goods is subject to the condition that the Company has available a suitable vehicle(s) at the time of booking, and transport rates are subject to re-confirmation at time of booking;
- 28.3. Transport over weekends and overtime are by prior arrangement and acceptance from both parties at an agreed overtime charge;
- 28.4. All transport documentation must be completed immediately after completion of loading or unloading the goods, as the case may be;
- 28.5. Risk of damage to, and loss or destruction of the goods passes to the Customer once the goods are delivered, off-loaded, or discharged at the delivery address thereof in accordance with these STCs;
- 28.6. Unless we agree otherwise in writing, the Company shall not be obliged to procure any insurance or related cover of any nature for the goods on the Customer's behalf or otherwise.
- 28.7. In the absence of any Notice of damage or loss to the Company by the Customer at the time of delivery, the goods shall be deemed prima facie to have been delivered in good order and condition;
- 28.8. If the ownership or the right to take delivery of the goods, as the case may be, is in dispute, or if a third party claims to be entitled to the goods, or if goods have been attached by order of court, the Company shall have the right to retain the goods in question in its possession and charge storage therefore at rates that are in accordance with these STCs until the identity of the party who is entitled to take delivery of the goods has been determined by a final and enforceable order of court, alternatively, if the Company, in its sole discretion, is satisfied that the identity of the party who is in entitled to take delivery has been agreed to in writing by all the parties concerned;
- 28.9. The Company shall have the right to protect its interests in connection with the dispute or attachment, as referred to in this clause, by seeking legal assistance and/or by instituting or defending legal proceedings, in which case the reasonable costs thereof on an attorney and own client scale shall be for the account of the Customer; as per clause 10.4 shall apply.
- 28.10. The fact that the goods are subject to dispute shall not limit the Company's rights to dispose of the goods in accordance with these STCs.

**29. Compliance**

29.1. General Compliance:

- 29.1.1. If the Company is obliged, in the execution of any of its duties and/or responsibilities, to comply with any Law, then the Company by complying with the Law, shall not be deemed to have waived nor abandoned any of its rights in terms of these STCs. Furthermore, in complying with the Law, the Company shall not be deemed to have assumed any onus, obligation, responsibility or liability in favour of the Customer.
- 29.1.2. The Company shall perform the services in accordance with the relevant port, harbour master or shipping rules at the Port, local authority rules and directives and the provisions of the Company's lease and terminal operator or rail license conditions. The Company shall not be liable for any inability to provide services due to the amendment or termination of any license provisions or lease agreements in place.
- 29.1.3. The Company will retain all records in relation to the services for the period required by the applicable laws and regulations.
- 29.1.4. The Customer agrees to abide by the Company's Safety, Health and Environmental Rules when on any of the Company's sites.
- 29.1.5. Parties, as well as their agents, employees, subcontractors and intermediaries, will comply with any anti-corruption legislation applicable to either or both Party.

29.2. Compliance with POPIA/GDPR and International Data Protection Law:

- 29.2.1. The Parties acknowledge their respective obligations to comply with the provisions of the Protection of Personal Information Act 4 of 2013 (hereinafter referred to as 'POPI')/GDPR and all International Data Protection Laws that may apply in their respective countries.
- 29.2.2. The Parties warrant that they are POPI/GDPR Compliant or have taken all reasonable steps to ensure that they are POPI /GDPR Compliant. Each party therefore understands and agrees, notwithstanding any contrary provision in this or any other agreement between the Parties, that each party retains its full rights to pursue legal or equitable remedies in the event of any breach or threatened breach dealing with POPI/GDPR, and may prevent the other party, any of its agents or subcontractors, or any third party who has received records from that party, from violating these STCs by any legal means available.
- 29.2.3. Each party further understands that violation of the provisions dealing with POPI/GDPR may subject that party to applicable legal penalties, including those provided under POPI/GDPR.
- 29.2.4. The Parties therefore undertake to maintain the integrity of all information received from each other, for the duration of this agreement in accordance with POPI/GDPR, and delete, return or destroy all information received from the other party after the termination of this Agreement, for whatever reason, subject to internal Data Retention Policies governed by Applicable South African Laws, and shall not retain copies, samples or excerpts thereof save for the purposes of litigation or pending litigation, audits, government investigations, forensic investigations, or any legitimate legal process, and all other reasons we may require this information for processing purposes in accordance with our privacy policy, which is available upon request.

**30. Sanctions, Import/Export Control and Anti-Boycott**

- 30.1. "Sanctions" mean any trade, economic and/or financial sanction or sanctions or export controls (including without

- limitation to any relevant law, regulation, order, ordinance, resolution, decree, restrictive measure or other requirement having the force of law, as well as import and export restrictions related to military and dual use products and technologies, chemical precursors (drugs and explosives), dangerous chemicals, pesticides and substances that deplete the ozone layer), adopted by the U.S., U.K., E.U. (or its respective Member States), U.N., or any other government authority.
- 30.2. The Customer represents and warrants that neither it nor any person or entity that directly or indirectly owns or controls it, that it directly or indirectly owns and controls, or for which it is acting on behalf of or at the direction of, is a designated target of any Sanctions, or an individual ordinary resident in or an entity incorporated under the laws of a country or territory subject to comprehensive sanctions administered by the U.S. Department of Treasury Office of Foreign Assets Control ("OFAC") ("Sanctioned Country") (collectively "Sanctioned Person"). The Buyer agrees and undertakes to the other that it and its agents, contractors and representatives will fully comply with the requirements of all applicable Sanctions in the performance of this contract.
- 30.3. The Customer agrees and undertakes that the goods being purchased in performance of this Agreement will not be directly or indirectly resold to a Sanctioned Person or a Sanctioned Country, transported on a vessel flying under the flag of a Sanctioned Country or that is a Sanctioned Person, or otherwise dealt with in any way which would cause a breach of Sanctions by us, our banks, insurers, agents, contractors, representatives or shareholders ("Anorel Related Parties") or otherwise expose us or Anorel Related Parties to the effects of any Sanctions.
- 30.4. The Customer further represents and warrants that it will not make payment for the goods through or via such country, bank, or other entity or body or facility, as would cause a breach of Sanctions by us or Anorel Related Parties, or which would expose us or Anorel Related Parties to the effects of any Sanctions, and that it will ensure that payment is made for the goods in full without violating Sanctions.
- 30.5. The Customer warrants that our goods will not be used by its customer or supplied by its customer in a way which would cause a breach of Sanctions by us or Anorel Related Parties or otherwise to the effects of any Sanctions.
- 30.6. The parties will not cooperate with, agree to, or comply with any terms or requests, including documentary requests, which violate or are otherwise prohibited or penalized under the Anti-Boycott laws or regulations of the US, UK, UN, the EU (or its respective member states) or any other government authority.
- 30.7. Without prejudice to the foregoing, the Customer agrees to cooperate with any reasonable requests for information and/or documentary evidence to support and/or verify compliance with this clause.
- 30.8. The Parties will not cooperate with, agree to, or comply with any terms or requests, including documentary requests, which violate or are otherwise prohibited or penalized under the Anti-Boycott laws or regulations of the U.S., U.K. and/or the EU.
- 30.9. Without prejudice to the foregoing, the Customer agrees to cooperate with the Company's reasonable requests for information and/or documentary evidence to support and/or verify compliance with this clause.
- 30.10. Each and every obligation, warranty and undertaking in this clause shall be deemed to be a condition of the contract and breach of any of these warranties or undertakings entitles the party not in breach to terminate the contract immediately and unilaterally without any further notice nor any further liability towards the other party.
- 31. Anti-Corruption and Anti-Money Laundering**
- 31.1. Each party respectively agrees and undertakes to the other that, in connection with this contract, it will fully comply with all applicable laws, regulations, orders, ordinances, resolutions, decrees, or restrictive measures and/or other requirements having the force of law, adopted by any state or government or international organization such as, but not limited to, the EU, the UN relating to anti-bribery and anti-money laundering, the US and the U.S. Foreign Corrupt Practices Act of 1977 and the UK and the UK Bribery Act of 2010 (hereinafter collectively the "Anti-Corruption and Anti-Money Laundering Laws"). In particular, each party respectively represents, warrants and undertakes to the other that it shall not, directly or indirectly, pay, offer, give or promise to pay or authorize the payment of, any monies or other things of value to, or confer a financial advantage on:
- 31.1.1. a government official or an officer or employee of a government or any department, agency or instrumentality of any government;
- 31.1.2. an officer or employee of a public international organization;
- 31.1.3. any person acting in an official capacity for or on behalf of any government or department, agency, or instrumentality of such government or of any public international organization;
- 31.1.4. any political party or official thereof, or any candidate for political office; or
- 31.1.5. any other private person, individual or entity. Each and every obligation, warranty and undertaking in this clause shall be deemed to be a condition of the contract.
- 31.2. The Customer agrees and undertakes that it and its agents, contractors and representatives will fully comply with the requirements of all applicable Anti-Corruption and Anti-Money Laundering Laws in the performance of this contract.
- 32. Licenses**
- 32.1. If any permit, license, consent or approval (Permits) to handle the goods or to provide the services is required under any Law, none of the Company's obligations or duties shall take effect unless and until the Company obtains or receives from the Customer the relevant Permits. Where the Company must obtain the relevant Permits, the Customer must provide all assistance and information as required.
- 32.2. The Company shall be excused from supplying good and/or performing services in terms of any agreement between it and the Customer if any license, permit or similar authorization lawfully required for it to do so is revoked, terminated, not issued or not renewed for any reason whatsoever.
- 33. Breach and Termination**
- 33.1. Without prejudice to its rights under these STCs, any agreement between the Parties and/or at law, either Party shall be entitled to cancel any agreement between it and the other party by written notice if:
- 33.1.1. the other Party commits any breach of its obligations under these STCs or the said agreement and fails to remedy that breach within 14(fourteen) days of its being given written notice to do so;
- 33.1.2. the other Party commits any act of insolvency in terms of any applicable insolvency legislation;
- 33.1.3. the other Party commences business rescue proceedings;
- 33.1.4. the other Party is deemed to be unable to pay its debts in terms of any deeming provision of any applicable legislation relating to companies or insolvency;
- 33.1.5. the other Party compromises or attempts to compromise with its creditors;
- 33.1.6. any provisional or final order is granted for the sequestration, winding up, bankruptcy or judicial management of the other Party, or any equivalent order is made in terms of any applicable law regarding the status of the other Party; or
- 33.1.7. the other Party fails to satisfy any default or other judgement granted against it, within 10(ten) days.
- 34. Performance**
- 34.1. Should there be any dispute of any nature whatsoever between the Parties in regard to any aspect, matter or thing relating to these STCs and whether or not the Company has

executed its obligations in terms of any agreement it has with the Customer, then and in such event the Customer must nevertheless be obliged to perform its obligations in terms of any such agreement as though the Company had performed properly and to the Customer's satisfaction;

- 34.2. The Customer's remedy, having performed its obligations as provided in clause 33.1, shall be limited to a claim against the Company for repayment of either the whole or a portion of the amount which the Customer alleges constitutes an overpayment;
- 34.3. Without affecting the generality of Clauses 33.1 and 33.2 the Customer shall not be entitled to withhold or set-off payment of any amounts, by reason of any dispute with the Company, whether in relation to the Company's performance in terms of any agreement, or lack of performance or otherwise, after which payment, the Customer's rights of action against the Company in terms of this Clause can be enforced. Until such payment is made, any rights that the Customer may have, shall be deemed not yet to have arisen and it is only the payment to the Company which releases such rights and makes them available to the Customer in respect of any claim that he may have against the Company.
- 34.4. In any dispute between the Company and the Customer, the Company shall be deemed to have performed its obligations in a proper and workmanlike manner and strictly in accordance with any agreement between it and the Customer, until such time as the Customer proves the contrary.

### 35. The Group

The Company may at its election perform all or any business undertaken or provide advice, information, supply goods and/or services either itself or it may procure that any member of the Group undertakes such business or provides such advice, information, supply of goods and/or services as principal upon and subject to these STCs which shall apply *mutatis mutandis* to the Customer and any such member of the Group.

### 36. Force Majeure

- 36.1. Neither party is liable for any failure to meet any of its obligations in terms of this Agreement, or any delay in meeting them, to the extent to which the failure or delay is caused by force majeure. For the purposes of this clause, force majeure means any event or circumstance which makes it permanently or temporarily impossible for a Party to perform all or some of its obligations and which:
- 36.1.1. is beyond a Party's reasonable control;
- 36.1.2. could not reasonably have been provided against before concluding this agreement;
- 36.1.3. cannot reasonably be avoided or overcome;
- 36.1.4. is not attributable to the other Party; and
- 36.1.5. may include war, invasion, hostilities, civil war, acts of terrorism, riot, civil commotion, disorder, labour dispute, strike, lock-out, go slow, accident, vehicle breakdown, load shedding, any government act or omission, roadblocks, searches, natural catastrophes such as earthquake, hurricane or cyclone; but
- 36.1.6. which does not include any inability to pay by any Party because of a lack of funds.
- 36.2. The affected Party must give notice to the other party immediately upon the occurrence of a force majeure or as soon as reasonably possible and subject to clause 35.3, must resume performance of its obligations as soon as the cause of the force majeure has ceased.
- 36.3. Each Party must take all reasonable and necessary steps at its own expense to mitigate the consequences of any force majeure which affects the performance of its own obligations. If the event of force majeure is of such a nature that it will not result in an impossibility of performance by the Company of the obligation in question, but will delay the performance thereof, the Company shall be entitled to such extensions of time in which to perform that obligation as may be reasonable in the circumstances, taking into account the interest of both parties: provided that if the force majeure situation persists for a period in excess of 7(seven) days the Customer shall be entitled upon written notice to the Company to terminate the affected order/services but shall

not be entitled to recover any damages which it may suffer as a result of such termination, any delays and/or the force majeure event.

### 37. Dispute Resolution

- 37.1. In any dispute between the Company and the Customer, the Company shall be deemed to have performed its obligations in a proper and workmanlike manner and strictly in accordance with any agreement between the Parties, until such time as the Customer proves the contrary.
- 37.2. Any dispute must in the first place be discussed by duly and properly mandated representatives from both Parties (who may not be legal representatives unless they are in the employ of either Party) at a meeting, with the object of arriving, if possible, at an amicable and negotiated solution to such dispute.
- 37.3. Such meeting must be held at a venue as agreed by the Parties within 5 (five) calendar days after either Party has called for such a meeting by Notice to the other Party. Such written notice must include details of the dispute and copies of all relevant correspondence and documentation.
- 37.4. In the event of the representatives being unable to negotiate and agree on an amicable settlement of such dispute within 7 (seven) calendar days after such meeting has been held, or such further period as agreed between the parties in writing, or if no meeting is held as requested then the Dispute must be referred to the High Court.
- 37.5. The Parties unconditionally consent and submit to the non-exclusive jurisdiction of the relevant High Court that has jurisdiction in regard to all matters arising from these STCs.

### 38. Notices and *domicilia*

- 38.1. All written notices given by one party to the other shall be deemed to have been validly served if delivered by hand or email to the address, as the case may be, reflected on then current official letterhead of each party. Such physical addresses will further constitute the parties' chosen *domicilium citandi et executandi* addresses at which same will accept service of all documentation and legal process.
- 38.2. Such notices shall, if delivered by hand, be deemed to have been received on the date of delivery, if sent by email be deemed to have been received on the business day (in the country to which the email was sent) following dispatch.

### 39. Cession of Claims

- 39.1. Cession by the Customer and/or Surety:
- 39.1.1. The Customer and Surety hereby jointly and severally, irrevocably and in *rem suam* (concerning(in) one's own affairs) cede and assign as a pledge unto and in favour of the Company, all the right, title, interest in and to all claims of whatsoever nature and description and howsoever arising which the Customer and/or Surety may now or at any time hereafter have against all and any persons, companies, corporations, firms, partnership, associations, syndicates and other legal personae whomsoever without exception as continuing covering security for the due payment of every sum of money which may now or at any time hereafter be or become owing by the Customer and/or Surety from whatsoever cause or causes arising, it being acknowledged that this cession is a cession in *securitatum debiti* (as security for the debt) and is not an out-and-out cession.
- 39.1.2. Should it transpire that the Customer and/or Surety entered into prior deeds of cession or otherwise disposed of any of the right, title and interest in and to any of the claims which will from time to time be subject to this cession, then this cession shall operate as a cession of all the Customers and/or Surety's reversionary rights.
- 39.1.3. This Cession shall be and remain in full force and effect as a continuing security notwithstanding any fluctuation, or temporary extinction of the Customer and/or Surety's indebtedness to the Company.
- 39.1.4. The Customer and/or Surety agree that, on request by the Company, they shall be obliged to hand over

to the Company all books of account, contracts, invoices, documents and the like which it may require for the purposes of ascertaining the amounts due to the Customer and/or Surety for the purpose of recovery of payment.

- 39.1.5. The Customer and/or Surety shall be obliged to furnish the Company with a schedule of all debts due to the Customer and/or Surety by its debtors monthly and upon demand. Notwithstanding the foregoing, the Company or its nominee shall at all times be entitled to inspect all or any of the Customer and Surety's records as the Company deems fit. Failure by either party to give effect to the foregoing shall not in any way prejudice the rights of the Company hereunder, and the Company shall at all times be deemed to have perfected its security in terms hereof.

39.2. Cession by the Company:

Should the Company cede its claim against the Customer and/or Surety to any third party ("the Cessionary"), then the above Cession of Claims and Deed of Suretyship shall be deemed to have been given by the Customer and/or Surety to such Cessionary as continuing covering security for the due payment of every sum of money which may at the time of such Cession or at any time thereafter be or become owing by the Company and Surety to the Cessionary (whether acquired the Cessionary by way of Cession or otherwise), and such Cessionary shall be entitled to exercise all rights in terms of the Cession of Claims and Deed of Suretyship as if such Cessionary were the Company hereunder.

**40. Relaxation**

- 40.1. No relaxation by a Party of any of its rights in terms of this agreement at any time shall prejudice or constitute a waiver of such rights, and same shall be entitled to exercise its rights thereafter as if the said relaxation had not taken place.
- 40.2. No act or omission by or on behalf of the Company shall be construed as an acceptance of liability or a waiver of rights or an acceptance of the correctness of an interpretation or viewpoint expressed by a Customer or Contractor unless it does so expressly.

**41. General**

Whilst correspondence for operational reasons may occur via email, no formal amendment or variation of these STCs may be concluded via email.

**SECTION 18: DECLARATION OF ACCURACY AND INFORMED CONSENT**

1. I/the data subject confirm that my/the data subject’s personal information, provided is accurate, up to date, not misleading and is complete in all respects, save where same may change and then in such an event, I/the data subject undertakes to advise Anorel (Pty) Ltd or its operator (s) of these changes.
  
2. I/the data subject, in providing the required personal information to Anorel (Pty) Ltd and / or to its operator, consent and give permission to process and further process my/the data subject’s personal information as and where required and acknowledge that I/the data subject understands the purposes for which the personal information is required and for which it will be used.
  
3. Furthermore, should any of the personal information which has been provided by myself concern or pertain to a legal entity whom I represent, I confirm that I have the necessary authority to act on behalf of such legal entity/data subject and that I have the right to provide the personal information and/or the required consent to use said personal information, on behalf of the aforementioned legal entity.
  
4. Furthermore, should any of the personal information belong to any of my dependents and/or beneficiaries who are under-age, I in my capacity as their legal guardian and competent person give Anorel the appropriate permission to process their personal information for the purposes for which these details were given.

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

\_\_\_\_\_  
**FOR THE APPLICANT**

Date	Version	Division	Author
July 2023	Version 1	Fertilizer	Legal, Risk & Compliance Manager

\_\_\_\_\_  
 Initial Here