



15 TROTTER ROAD  
ASHLEY  
3610

TEL: 031 710 0720  
FAX: 031 710 0725  
EMAIL: [accounts@rbsonkzn.co.za](mailto:accounts@rbsonkzn.co.za)

## STANDARD TRADING TERMS AND CONDITIONS OF RB & SON TRANSPORT KZN (PTY) LTD

### Interpretation

#### 1 Definitions and Interpretation

1.1 In these Conditions the words set out in the Schedule or hereunder shall have the meanings assigned to them in the Schedule or hereunder, unless the context clearly indicates the contrary:

- 1.1.1 "Authorities" shall mean any duly constituted legal or administrative person charged with the administration of any law;
- 1.1.2 "Business" shall mean all and any business undertaken, including any advice, information or Service provided, whether gratuitously or not, by RBS;
- 1.1.3 "COIDA" shall mean the Compensation for Occupational Injuries and Diseases Act, 130 of 1993;
- 1.1.4 "Conditions" shall mean these standard trading terms and conditions;
- 1.1.5 "CUSTOMER" shall mean any person, whether an agent or a principal, at whose request or on whose behalf RBS undertakes or renders any Business;
- 1.1.6 "Dangerous Goods" shall mean goods, including 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 harbour or 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 NRTA and/or SANS 10228, or classified as such in the IMDG Code or any other code or regulations of, or published by, any international organisation;
- 1.1.7 "Goods" shall mean any goods handled, transported or dealt with by or on behalf of or at the instance of RBS or which come under the control of RBS or its agents, servants or subcontractors on the instructions of the CUSTOMER, and includes any container, transportable tank, flat pallet, package or any other form of covering, packaging, container or equipment used in connection with or in relation to such goods;
- 1.1.8 "NRTA" shall mean the National Road Traffic Act, 93 of 1996;
- 1.1.9 "OHS Act" shall mean the Occupational Health and Safety Act, 85 of 1993;
- 1.1.10 "Owner" shall mean the owner of the goods and any other person who may have or who acquires any interest, financial or otherwise, therein;
- 1.1.11 "Parties" shall mean RBS and the CUSTOMER collectively, and "Party" shall mean either one of them;
- 1.1.12 "RBS" shall mean RB & Son Transport KZN (Pty) Limited, registration number 2011/004110/07 and shall also include its cessionaries, assigns and/or successors in title;
- 1.1.13 "Services" shall mean the services provided or to be provided by RBS to the CUSTOMER, which services may include, but not be limited to, warehousing and the distribution of Goods and any services allied thereto;
- 1.1.14 "Waste" shall mean waste as defined in the National Environmental Management: Waste Act, 59 of 2008.

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 Conditions.

1.3 Unless inconsistent with the context, words relating to any gender shall include the other genders, words relating to the singular shall include the plural and vice versa and words relating to natural persons shall include associations of persons having corporate status by statute or common law.

1.4 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of these Conditions.

1.5 In so far as the provisions of any written agreement between the Parties are inconsistent with these Conditions, the provisions of the written agreement shall prevail.

1.6 The rule of construction that the contract shall be interpreted against the Party responsible for the drafting or preparation of these Conditions shall not apply.

1.7 The eiusdem generis rule 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.

1.8 These Conditions shall be interpreted and applied in accordance with South African law.

## **Application and Legal Standing**

### **2 Application of Standard Trading Terms and Conditions**

2.1 All and any Business undertaken or provided by RBS is subject to these Conditions.

2.2 RBS may at its election perform all or any Business undertaken either itself or it may procure that any member of the Compass Group undertakes such Business as principal, in which event these Conditions shall apply mutatis mutandis to the relationship between the CUSTOMER and any such member of the Compass Group. RBS stipulates in favour of each member of the Compass Group that it shall have the benefit of these Conditions, which stipulation shall be deemed to be accepted by the relevant member at the time of accepting any instruction to perform any such Business.

### **3 Contracting**

3.1 Unless otherwise agreed in writing, RBS in procuring the carriage, storage, packing or handling of Goods shall be entitled to act either as an agent for and on behalf of the CUSTOMER or as a principal.

3.2 The offer and acceptance of a fixed price for the accomplishment of any task shall not itself determine whether such task is to be arranged by RBS acting as agent for and on behalf of the CUSTOMER or as a principal.

3.3 The CUSTOMER acknowledges that when RBS, as agent for and on behalf of the CUSTOMER, concludes any contract with a third party, such agreement is concluded between the CUSTOMER and the third party.

3.4 Unless otherwise agreed in writing, RBS, when acting as agent for and on behalf of the CUSTOMER, shall be entitled to enter into any contract it reasonably deems necessary or requisite for the fulfilment of the CUSTOMER's instructions.

3.5 The relationship between the Parties is a contract of service and does not constitute a contract of employment or partnership.

3.6 Neither Party shall incur any liability whatsoever for or on behalf of the other Party, other than where RBS is acting as an agent as set out in these Conditions.

### **4 Subcontracting**

4.1 Any Business entrusted by the CUSTOMER to RBS may, in the absolute discretion of RBS, be fulfilled by RBS itself, by its own servants performing part or all of the relevant Business, or by RBS employing, or entrusting such Business to third parties on such conditions as may be stipulated by, or negotiated with, such third parties for the purposes of such Business, or such part thereof as they may be employed to carry out.

4.2 Where RBS contracts with third parties to perform all or any of the functions which it has agreed to perform, RBS shall remain liable to the CUSTOMER for the performance of its obligations hereunder.

## **Remuneration and Payment**

### **5 Quotations, estimates and rates**

5.1 Any quotations given by RBS shall be valid for a period of 30 days only.

5.2 RBS shall be entitled at any time by notice to the CUSTOMER to cancel, amend or resile from any quotation or estimate in circumstances where it becomes impracticable or uneconomical for RBS to carry out the contract at the quoted or estimated rate and the CUSTOMER shall have no claim whatsoever against RBS for any loss that the CUSTOMER might incur as a result of RBS cancelling, amending or resiling from the quotation or estimate.

5.3 Without in any way limiting the provisions of this clause, all quotations, estimates and agreements as to rates are subject to amendment without notice, having regard to, inter alia, change in the cost to RBS of performing any Service that occurs after quotation, estimate or agreement, as the case may be. Any amendment as aforesaid will be commensurate with the increase in the cost of performing that Service, and, in the event of a dispute between the Parties, shall be determined by the then auditors of RBS or any other auditors nominated by RBS, who in such determination shall act as experts and not as arbitrators and whose decision shall be final and binding on the Parties.

## **6 Payment**

6.1 In the absence of any written agreement to the contrary, RBS shall invoice the CUSTOMER monthly in respect of the Services and the CUSTOMER shall pay all amounts due within 30 days of the date of invoice without deduction, set-off, withholding or deferment on account of any claim or counterclaim which the CUSTOMER may allege.

6.2 Payment of all amounts due to RBS shall be made in South African Rand's at the address or into the bank account nominated by RBS.

6.3 The CUSTOMER shall pay RBS Value Added Tax at the then prescribed rate in respect of the exclusive amount reflected in any invoice.

6.4 All and any moneys received by RBS from the CUSTOMER shall be appropriated by RBS in its sole and absolute discretion to any indebtedness owing by the CUSTOMER to RBS, notwithstanding that the CUSTOMER might, when making payment, seek to appropriate the payment so made to any particular debt or portion of a debt.

6.5 All documents, cash, cheques, bank drafts or other remittances, sent to RBS through the post or electronically transmitted shall be deemed not to have been received by RBS unless and until they are actually received by RBS. In the event that any payment to RBS is effected electronically, then the CUSTOMER bears the risk in respect of such payment until such time as the payment is received and cleared into RBS' bank account.

6.6 Notwithstanding that RBS may seek recovery of any amount due to it, from any person other than the CUSTOMER; the CUSTOMER shall remain liable to make payment of the said amount to RBS upon demand, at any stage.

6.7 RBS shall be entitled to set off any refunds, repayments, claims and other recoveries received by it on behalf of the CUSTOMER against any amounts due by the CUSTOMER to RBS.

## **7 Default and Debt Collection**

7.1 Any amount not paid to RBS by the CUSTOMER on due date shall bear interest at the maximum rate allowed by law, calculated on daily balance and compounded monthly in arrears.

7.2 In the event of the CUSTOMER being in default of payment of any one or more amount, or being in breach of any other term or condition to which a credit facility is subject, or if the CUSTOMER's creditworthiness has, in RBS' reasonable opinion, deteriorated, then RBS shall be entitled forthwith to revoke such credit facility and declare all amounts immediately due and payable.

7.3 If RBS institutes legal proceedings against the CUSTOMER to recover amounts due to RBS, the CUSTOMER shall be liable for all legal costs incurred by RBS on the scale as between attorney and own client, as well as collection commission and tracing agent's fees, if any.

## **8 Duties, Taxes, Imposts, Levies, Deposits and Discounts**

8.1 The CUSTOMER shall be liable for outlays 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 Goods and for any payments, fines, penalties, expenses, loss or damage or whatsoever incurred or sustained by RBS in connection therewith or arising therefrom.

8.2 RBS shall bear no liability in consequence of the fact that there may be a change in the rate of duty, wharfage, cargo dues, freight, railage or cartage or any other tariff, before or after the performance by RBS 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.

8.3 Where as a result of any act or omission by or on behalf or at the instance of RBS and whether or not such act or omission was negligent, any duty, tax, levy, railage, wharfage, cargo dues, 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 RBS may otherwise have will cease and fall away if the CUSTOMER does not within a reasonable time having regard to all the circumstances, and in particular to the time allowed for the recovery from the payee of any amount overpaid, advise RBS that an incorrect amount has been paid or levied and do all such acts as are necessary to enable RBS to effect recovery, where applicable, of the amount incorrectly paid or levied.

8.4 RBS is entitled to the benefits of any discounts obtained and to retain and be paid all brokerages, commissions, allowances and other remunerations of whatsoever nature in relation to the Goods or Services, and shall not be obliged to disclose or account to the CUSTOMER, or principal for any such amounts received or receivable by it.

## **Legal and Insurance Issues**

### **9 Limitation of Liability**

9.1 Risk in and to the Goods shall remain at all times with the CUSTOMER.

9.2 Subject to the provisions of these Conditions, RBS shall not be liable for any claim of whatsoever nature (whether in contract or in delict) and whether for damages or otherwise, howsoever arising unless: 9.2.1 such claim arises from a grossly negligent act or omission on the part of RBS, its servants, agents or subcontractors; and 9.2.2 in respect of a claim relating to Goods, such claim arises at a time when the Goods in question are in the actual custody of RBS, its servants, agents or subcontractors and under their actual control; and 9.2.3 the claim is not time barred by virtue of the provisions of these Conditions or otherwise.

9.3 Notwithstanding anything to the contrary contained in these Conditions or elsewhere, RBS shall not be liable for any loss of profit, consequential loss, indirect or special damages whatsoever and howsoever arising.

9.4 In the event that RBS is liable to the CUSTOMER in terms of these Conditions or otherwise, in no case whatsoever shall any liability of RBS, howsoever arising, exceed the following:

9.4.1. for the loss or damage to Goods, the least of:

9.4.1.1 R20 per kg or R900,000 per conveyance;

9.4.1.2 the value of the Goods evidenced by the relevant documentation or declared by the CUSTOMER for customs purposes or for any purpose connected with their transportation;

9.4.1.3 the value of the Goods declared for insurance purposes;

9.4.2 in respect of any other claim, double the amount of the fees raised by RBS for its Services in connection with the Goods.

## **10. Claims**

10.1 No claim of any nature whatsoever and howsoever arising may be brought against RBS unless RBS has received written notice of the claim on the prescribed form from the CUSTOMER specifying full details thereof, within:

10.1.1 in the case of loss of or damage to Goods, howsoever caused, 14 days of the date of delivery of the Goods or the date the Goods should have been delivered, as the case may be; and 10.1.2 in any other case, 14 days of the date of the event giving rise to the claim.

10.2 RBS shall in any event be discharged from all liability whatsoever and howsoever arising in respect of any Service provided to the CUSTOMER or which RBS has undertaken to provide, unless summons or other process initiating legal proceedings is issued and served on RBS within 12 months after the cause of action in respect of any such alleged liability arose.

## **11 Insurance**

11.1 RBS shall have no obligation to effect any insurance on the Goods except upon express written instructions given by the CUSTOMER and accepted in writing by RBS.

11.2 Such insurance will be on the terms specified by RBS, failing which, on the terms referred to by the insurance company or underwriter taking the risk as "Goods in Transit" insurance, and will be subject to such exceptions and conditions as may be imposed by the insurer, RBS having no obligation whatsoever to obtain separate cover for any risks so excluded. 11.3 Unless otherwise agreed in writing RBS shall not be under any obligation to obtain separate insurance in respect of separate consignments of Goods but may insure all or any of such consignments under any open or general policy.

11.4 Should any insurer dispute its liability in terms of any insurance policy in respect of any Goods, the CUSTOMER shall have recourse against such insurer only and RBS shall not have any responsibility or liability whatsoever in relation thereto notwithstanding that the premium paid on such policy may differ from the amount paid by the CUSTOMER to RBS in respect thereof.

11.5 Insofar as RBS agrees to arrange insurance RBS acts solely as agent for and on behalf of the CUSTOMER.

## **12 Indemnity**

12.1 Without prejudice to RBS' rights under these Conditions, any agreement between the Parties and/or at law, the CUSTOMER indemnifies and holds RBS harmless against all liabilities, damages, costs and expenses whatsoever incurred or suffered by RBS arising directly or indirectly from or in connection with:

12.1.1 the CUSTOMER's express or implied instructions or their implementation by or on behalf of or at the instance of RBS in relation to any Goods or Services;

12.1.2 any liability whatsoever that may be incurred arising from any warranty given to RBS being untrue or incorrect;

12.1.3 defective packaging of the Goods (unless supplied by RBS);

12.1.4 the defective condition of, or overweight, containers or vehicles (unless provided by RBS);

12.1.5 the loading or offloading of the Goods by any person other than RBS, its servants, agents or subcontractors;

12.1.6 RBS complying with the requirements of any Authority with regard to the Goods;

12.1.7 any act or omission of the CUSTOMER or any person acting on its behalf, whether negligent or not;

12.1.8 the nature of the Goods;

12.1.9 any claim made by any third party in connection with the Services or the Goods;

12.1.10 the breach by the CUSTOMER of these Conditions or any agreement between the Parties.

12.2 The CUSTOMER also indemnifies and holds harmless each servant, agent and subcontractor of RBS against any claim made by any third party in connection with the Services or the Goods. RBS stipulates in favour of each of its servants, agents and subcontractors, existing and future, that the CUSTOMER gives such indemnity to them, which stipulation is open for acceptance by the said servants, agents and subcontractors for an indefinite period of time.

### **13 Lien**

13.1 RBS shall have a special and general lien over all Goods and any documents relating thereto in its possession and such Goods and documents shall be deemed to be pledged to RBS as security for all moneys whatsoever due to RBS by the CUSTOMER, sender, Owner, consignee, or their agents, if any, whether relating to the Goods or not.

13.2 In the event of RBS utilising 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 RBS for purposes of exercising RBS' right of retention under the said lien and/or pledge.

13.3 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 RBS. The lien and pledge in favour of RBS 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 RBS' lien or pledge.

### **Customer**

#### **14 Instructions**

14.1 The CUSTOMER's instructions to RBS shall be precise, clear, comprehensive and in writing. Oral instructions, standing or general instructions or instructions given late, even if received by RBS without comment, shall not in any way be binding upon RBS, but RBS may act thereupon in the exercise of its absolute discretion.

14.2 Unless specific written instructions are timeously given to and accepted by RBS, RBS shall not be obliged to 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, RBS 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, or to arrange for any particular Goods to be carried, stored or handled separately from other Goods.

14.3 In the absence of specific instructions given timeously in writing by the CUSTOMER to RBS, the latter shall, in its reasonable discretion, decide at the means, route, procedure and time to perform or to procure the performance of any or all of the acts which may be necessary or requisite for the discharge of its obligations to the CUSTOMER.

14.4 Notwithstanding anything to the contrary herein contained, if at any time RBS should reasonably consider it to be in the CUSTOMER's interests or for the public good to depart from any of the CUSTOMER's instructions, RBS shall be entitled to do so and shall not incur any liability in consequence of doing so.

14.5 If events or circumstances come to the attention of RBS, its agents, servants, or subcontractors which, in the opinion of RBS, make it in whole or in part, impossible or impracticable for RBS to comply with a CUSTOMER's instructions RBS 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 RBS in writing, RBS shall, in its sole discretion, be entitled to detain, return, store, sell, abandon, or destroy all or part of the Goods concerned at the risk and expense of the CUSTOMER.

#### **15 CUSTOMER's Undertakings**

15.1 The CUSTOMER undertakes to supply to RBS all information relating to its business and/or the Goods that is relevant to the provision by RBS of the Services.

15.2 The CUSTOMER warrants that:

15.2.1 it is either the Owner or the authorised agent of the Owner of any Goods in respect of which the CUSTOMER instructs RBS and that each such person is bound by these Conditions;

15.2.2 in authorising the CUSTOMER to enter into any contract with RBS, the Owner, sender or consignee is bound by these Conditions 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 RBS shall have the right to enforce against them jointly and severally any liability of the CUSTOMER under these Conditions and/or to recover from them any sums to be paid by the CUSTOMER which upon proper demand have not been paid;

15.2.3 all information and instructions supplied or to be supplied by it to RBS is and shall be accurate, true and comprehensive, and in particular, without derogating from the generality of the foregoing, the CUSTOMER shall be deemed to be bound by and warrants the accuracy of all descriptions, values and other particulars furnished to RBS for customs, consular and other purposes, and the CUSTOMER warrants that it will not withhold any necessary or pertinent information;

15.2.4 the Goods will be properly, adequately and appropriately prepared and packed, stowed, labelled and marked, having regard inter alia to the Services to be provided by or on behalf of RBS and the characteristics of the Goods involved, and are capable of withstanding the normal hazards inherent in the provision of such Services;

15.2.5 if any Goods require special storage, packaging or labelling by reason of their nature or properties or in accordance with any regulation, convention or statute, that all such requirements shall be complied with.

15.2.6 where Goods are carried in or on 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, that:

15.2.6.1 save where RBS has been given and has accepted specific written instructions to load the transport unit, the transport unit has been properly and competently loaded;

15.2.6.2 the Goods involved are suitable for carriage in or on the transport unit; and

15.2.6.3 the transport unit is itself in a suitable condition to carry the Goods loaded therein and complies with the requirements of all relevant transport Authorities and carriers;

15.2.7 no claim shall be made by any third party in connection with the Services or the Goods against RBS or any servant, agent or subcontractor or RBS and any contracts relating to the Goods concluded by the Customer with third parties shall include a provision that RBS, its servants, agent and subcontractors shall have the benefit of any rights, defences or liberties in such contracts excluding or limiting the liability of the Customer in respect of the Goods as if such provisions were expressly for their benefit.

15.3 Without prejudice to RBS' rights to claim damages from the CUSTOMER arising out of a breach by the CUSTOMER of any of the warranties in clauses 15.2.1 to 15.2.7 above, such breach shall result in the Goods being handled by RBS at the sole risk of the CUSTOMER.

15.4 The CUSTOMER undertakes that no claim shall be made by it against any servant, agent or subcontractor of RBS 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. RBS stipulates in favour of each of its servants, agents and subcontractors, existing and future, that the CUSTOMER gives such undertaking and waiver to them and shall have no right of action whatsoever against any of them in connection with the Services or the Goods, which stipulation is open for acceptance by the said servants, agents and subcontractors for an indefinite period of time.

## **Services**

### **16 Transport**

16.1 RBS deals with Goods only on the basis that it is neither a common carrier nor a public carrier.

16.2 Every undertaking to convey Goods is subject to the condition that RBS has available a suitable vehicle or vehicles at the appropriate time.

16.3 RBS shall be entitled to issue in respect of the whole or part of any contract for the movement of Goods, a warehouse and/or forwarding receipt, a consignment or delivery note, or a container terminal or transport order, (any of which may reflect RBS or another as the carrier in terms thereof).

16.4 The CUSTOMER shall be liable for all costs, fines and/or penalties arising from the overloading of any vehicle or incorrect weight distribution of Goods on a vehicle.

### **17 Collection and Delivery**

17.1 Unless the Parties have agreed to the contrary in writing, RBS shall not be responsible for the loading or offloading of vehicles, save at its own premises; provided that RBS may give assistance in that regard where such assistance is customary and practicable, but any assistance so given shall be without liability on the part of RBS.

17.2 RBS may refuse to receive any Goods if it has reasonable cause to do so, including, but not limited to circumstances where RBS is not satisfied that arrangements have or will be made for the removal of such Goods from its premises.

17.3 The CUSTOMER shall accept all responsibility for damage or loss of whatsoever nature within its or any consignee's premises to:

17.3.1 vehicles or Goods, due to unsuitability of means of access to the loading or offloading points;

17.3.2 roads, manholes, covers, kerbs, mains, pipes, bridges, weighbridges or approaches, and anything of a like nature, en route to the loading or offloading point, due to the weight or nature of the vehicle or its load.

17.4 RBS shall be entitled to deliver Goods to the bearer of any delivery order or other document relating to such Goods, notwithstanding that such delivery order or other document provides for delivery to a named party or to his order. RBS shall be entitled to assume that the person presenting such delivery order or other document is the person lawfully entitled to take delivery and is not required to verify signatures appearing on such delivery order or other document.

17.5 If the CUSTOMER, consignee or party nominated by the CUSTOMER fails to uplift or take delivery of any Goods at the appropriate time and place then RBS' liability in respect of such Goods shall cease forthwith and RBS shall be entitled to store the Goods or any part thereof at the sole risk and expense of the CUSTOMER.

## **18. Warehousing**

18.1 All goods delivered to RBS for warehousing shall be properly packed and labelled and in the event of any such Goods requiring special storage, packaging or labelling by reason of its nature or properties or in accordance with any regulation, convention or statute:

18.1.1 all such requirements shall be complied with; and

18.1.2 notice of any special storage requirements of any such Goods shall be given to RBS in writing prior to the delivery of the Goods into the custody of RBS or its agents, failing which such Goods shall be handled and stored by RBS at the sole risk of the CUSTOMER.

18.2 RBS shall not be obliged to take delivery of any Goods in the event of it reasonably being of the view that such Goods or the handling and storage thereof are for any reason whatsoever undesirable.

## **19 Packing**

In the event that RBS agrees to undertake the packing of the Goods into any container or the packaging or unitisation of the Goods for any purpose, it shall be the obligation of the CUSTOMER to provide RBS with full packing and labelling instructions in writing, including but not limited to any requirements as to internal or other securing, mass distribution, maximum aggregate mass restrictions, labelling, temperature control or other restrictions, information as to the properties of the Goods and any noxious or other possible hazardous or dangerous properties they might possess, failing which such packing shall be effected by RBS at the sole risk of the CUSTOMER.

## **Goods**

### **20 Landed Goods**

20.1 Where it is necessary for an examination to be held or other action to be taken by RBS in respect of any discrepancy in the Goods which are landed or discharged from any vehicle or other transport unit, no responsibility or liability shall attach to RBS for any failure to hold such examination or to take any other action unless RBS has been timeously advised by the landing or discharge agent that such Goods have been landed and that such a discrepancy exists.

20.2 Should RBS undertake to examine or count Goods received by it that are bundled, palletised or packed in any manner such that their number cannot be quickly and easily counted, RBS shall incur no liability in respect of any error or inaccuracy in such counting, whether as a result of negligence on the part of RBS or otherwise. RBS shall be entitled to levy a charge on the CUSTOMER for the counting of Goods in such circumstances.

### **21 Special Goods**

Except under special arrangements previously made in writing RBS will not accept or deal with bullion, coins, banknotes, stamps, deeds, cheques, securities or other currency, precious stones, jewellery, valuables, personal effects, household goods, antiques, pictures, livestock, plants, tobacco products, spirits, wine, mobile telephones and their components, or computers and their components or parts. Should the CUSTOMER nevertheless deliver such Goods to RBS or cause RBS to handle or deal with any such Goods otherwise than under special arrangements previously made in writing RBS 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.

### **22 Dangerous Goods**

22.1 The CUSTOMER shall obtain in advance RBS' specific written consent to accept any Dangerous Goods into its possession or control or into the possession or control of any of its servants, sub- contractors, agents or employees.

22.2 The Customer shall, at all material times, provide RBS with current Material Safety Data Sheets in respect of Dangerous Goods as required by law.

22.3 The CUSTOMER warrants that any Dangerous Goods, and the case, crate, box, drum canister, tank, flat, pallet, package or other holder or covering of such Goods will comply with any applicable laws, regulations or requirement of any Authority or carrier and that the nature and

characteristics of such Goods and all other data required by such laws, regulations or requirements will be prominently and clearly marked on the outside cover of such Goods.

22.4 The CUSTOMER furthermore warrants that any consignee in respect of Dangerous Goods will be authorised and/or qualified to uplift, receive and/or handle such Goods.

22.5 If any Dangerous Goods are delivered to RBS, such Goods may for any good reason as RBS in its discretion deems fit including, without limitation, the risk to other Goods, property, life or health, be destroyed, disposed of abandoned or rendered harmless or otherwise dealt with at the risk and expense of the CUSTOMER and without RBS being liable for any compensation to the CUSTOMER or any other party, and without prejudice to RBS' rights to recover its charges and/or fees including the costs of such destruction, disposal, abandonment or rendering harmless or other dealing with the Goods.

22.6 The CUSTOMER indemnifies RBS against all loss, liability or damage caused to RBS arising out of or relating to Dangerous Goods. .

### **23 Abnormal loads**

23.1 RBS shall not transport abnormal loads unless an agreement to that effect is concluded in writing between the Parties relating to, inter alia:

23.1.1 the cost of any traffic escorts required by the Authorities and any charges for raising overhead wires, switching off power, removing obstacles along the route, and/or any other work that might be necessary for the passage of such loads;

23.1.2 access to loading and off-loading sites;

23.1.3 an indemnity from the Customer with regard to the costs of repairing any damage caused by the passage of the load over private property (unless caused by the negligence of RBS, its servants, agents or subcontractors).

23.2 Any agreement to transport abnormal loads shall be subject to the condition that:

23.2.1 the relevant permits are timeously obtained from the Authorities; and

23.2.2 the Authorities approve a suitable and direct route and do not subsequently vary such route.

### **24 Sale of Goods**

24.1 Without limiting or affecting any of RBS' other rights under these Conditions, RBS may, in its sole discretion, dispose of or sell, by private treaty or public auction or otherwise, all or part of the Goods in the care, custody or control of RBS, if:

24.1.1 such Goods have begun to deteriorate or are likely to deteriorate;

24.1.2 such Goods are insufficiently addressed or marked;

24.1.3 the CUSTOMER cannot be identified;

24.1.4 the Goods have not been collected or accepted by the CUSTOMER or any other person; or

24.1.5 any amount owing by the CUSTOMER to RBS becomes due and payable and remain unpaid; provided that, if RBS has an address for the CUSTOMER, then, in the circumstances referred to in clauses 24.1.2, 24.1.3, 24.1.4 and 24.1.5 above, such sale or disposal shall be effected only after the expiration of 21 days from RBS posting a notice to the CUSTOMER at that address to collect or accept such Goods and/or pay all outstanding amounts.

24.2 The CUSTOMER hereby authorises RBS to effect such a sale by public auction or, on reasonable notice not exceeding 14 days, by private treaty. The net proceeds of any such sale, after deducting therefrom all costs, charges and expenses incurred by RBS, shall be applied in reduction or discharge as the case may be, of the CUSTOMER's obligations to RBS in respect of such Goods without prejudice to RBS' rights to recover from the CUSTOMER any balance which may remain owing to RBS after the exercise of such rights. Should the total amount collected by RBS, after deducting therefrom all costs, charges and expenses incurred by RBS in respect thereof, exceed the full amount of the CUSTOMER's obligations to RBS in respect of such Goods, RBS shall be obliged to refund such excess to the CUSTOMER.

### **25 Waste**

25.1 If Waste is generated at any premises controlled by RBS, whether as a result of the leakage of the Goods or otherwise:

25.1.1 RBS shall be responsible for the management, clean-up and/or disposal of such waste in an environmentally sound manner and with no harm to health, in accordance with the relevant legislation;

25.1.2 the CUSTOMER shall approve the manner of transport and place of disposal of such waste in writing within a reasonable time if required by RBS; and 25.1.3 the CUSTOMER shall be responsible for any costs incurred as a result of any actions taken by RBS in terms of this sub-clause, unless and to the extent that the Waste was caused by the gross negligence or wilful default of RBS.



25.2 If RBS stores Waste on behalf of a CUSTOMER and such Waste has not been uplifted within 90 days of RBS receiving same, despite a request therefore by RBS, RBS shall, without further notice, be entitled to dispose of such Waste forthwith in accordance with the relevant legislation at the CUSTOMER's cost.

## **General**

### **26 Compliance**

26.1 If RBS is obliged, in the execution of any of its duties and/or responsibilities to comply with any common law or legislative enactment of any nature whatsoever, then RBS by complying therewith, shall not be deemed to waive nor abandon any of its rights in terms of these Conditions; or to have assumed any onus, obligation, responsibility or liability in favour of the CUSTOMER.

26.2 The CUSTOMER agrees to abide by RBS' Safety, Health and Environmental Rules.

### **27 Confidentiality**

27.1 Each Party agrees to treat as strictly confidential the operations, business and affairs of the other Party and not to divulge any information relating thereto to any third party, agent or employee, save as required by law, in respect of the execution of these Conditions or agreement between them, whether prior to, during or after the currency of these Conditions or the said agreement.

27.2 All documentation furnished by one Party to the other Party pursuant to these Conditions or any agreement between them will remain the property of that Party and upon the request of that Party will be returned to it.

27.3 Each Party acknowledges that all right, title and interest in and to any information which the other Party has an interest in being kept confidential vests in that Party and that neither Party has any claim of any nature in and to the confidential information of the other Party.

### **28 Breach and Termination**

28.1 If RBS breaches any of these Conditions or any agreement between it and the CUSTOMER and fails to remedy such breach within 30 days of the date of receipt of written notice requiring it to do so then the CUSTOMER shall be entitled to compel performance by RBS of the obligations it has defaulted in, but shall not be entitled to cancel these Conditions or any agreement between the CUSTOMER and RBS.

28.2 Without prejudice to its rights under these Conditions, any agreement between the Parties and/or at law, RBS shall be entitled to cancel any agreement between it and the CUSTOMER by written notice if:

28.2.1 the CUSTOMER commits any breach of its obligations under these Conditions or the said agreement and fails to remedy that breach within 7 days of its being given written notice to do so;

28.2.2 the CUSTOMER commits any act of insolvency in terms of any applicable insolvency legislation;

28.2.3 the CUSTOMER is deemed to be unable to pay its debts in terms of any deeming provision of any applicable legislation relating to companies or insolvency;

28.2.4 the CUSTOMER compromises or attempts to compromise with its creditors;

28.2.5 any provisional or final order is granted for the sequestration, winding up, bankruptcy or judicial management of the CUSTOMER, or any equivalent order is made in terms of any applicable law with regard to the status of the CUSTOMER;

28.2.6 the CUSTOMER fails to satisfy any default or other judgement granted against it, within 10 days.

### **29 Vis Major**

29.1 A Party shall not be liable for a failure to perform any of its obligations hereunder due to vis major (which includes but is not limited to war, civil war, civil violence, riots, revolutions, acts of piracy, acts of sabotage, terrorism, sabotage, natural disasters, destruction by lightning, explosions, fires, destruction of installations, industrial, changes of law, acts of Authority, whether lawful or unlawful) that it could not reasonably be expected to have taken into account at the time of the conclusion of these Conditions or any agreement between the Parties, provided that the Party subject to the vis major event shall give prompt notice to the other Party of its nature and estimated duration.

29.2 Relief from liability for non-performance by reason of the provisions of this clause shall commence on the date upon which the Party seeking relief gives notice of the vis major event relied upon and shall terminate upon the date which such event ceases to exist.

29.3 The Parties hereto shall co-operate and collaborate together and use all reasonable efforts to overcome the vis major event concerned and/or nullify its effect.

29.4 If the vis major event substantially or permanently prevents the continued performance by either Party of its obligations in terms of these Conditions or any agreement between them for a period exceeding 30 consecutive days, then either Party shall be entitled, by giving notice in writing, to terminate the said agreement with effect from 7 days after giving of such notice.

### **30 Notices and domicilia**

30.1 Each Party chooses as its domicilium citandi et executandi for all purposes under these Conditions and any agreement between them, the physical address most recently provided by it to the other in writing.

30.2 Either Party shall be entitled to change its domicilium by way of written notice to the other specifying its new domicilium provided that such new address shall be a street address within the Republic of South Africa.

30.3 All notices by one Party to the other shall be delivered, telefaxed or emailed to the chosen domicilium citandi et executandi of the addressee and shall be deemed to have been received on the date of delivery or dispatch unless the contrary is proved.

### **31 Electronic Data**

31.1 Notwithstanding the provisions of any legislation or other law regulating electronic communications and transactions, RBS shall only be deemed to have received electronic data and/or messages when such electronic data and/or messages have been retrieved, processed and read by the addressee.

31.2 Under no circumstances whatsoever and howsoever arising shall RBS be liable for any loss or damage arising from or consequent upon the provision by RBS to the CUSTOMER in whatever manner and/or form, of incorrect information, including electronically communicated information or data, where such incorrect information or data has been generated by and provided to RBS by any person with whom RBS conducts business, and/or any other third party.

31.3 RBS 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 reason, and regardless of negligence in whatever degree on the part of RBS, of RBS' computer systems and/or software programmes provided and/or operated by RBS and/or by any person with whom RBS conducts business and/or any third party, which systems shall include RBS' electronic automated information service provided to the CUSTOMER.

### **32 Licences**

RBS shall be excused from performing Services in terms of any agreement between it and the CUSTOMER if any licence, permit or similar authorisation lawfully required for it to do so is revoked, terminated, not issued or not renewed for any reason whatsoever.

### **33 General**

33.1 No amendment or variation of these Conditions or any agreement between the Parties shall be of any force or effect unless reduced to writing and signed by the managing director of RBS or two duly authorised directors of RBS

33.2 No failure, refusal or neglect by a Party to exercise any rights under these Conditions or any agreement between the Parties, or to insist upon strict compliance with or performance of another Party's obligations under these Conditions or such agreement, shall constitute a waiver of the provisions of these Conditions or such agreement or of any of that Party's rights. A Party may at any time require strict compliance with the provisions of these Conditions or any agreement between the Parties, and shall not be prejudiced or stopped from exercising any of its rights which may have arisen in the past or may arise in the future.

33.3 Each of the provisions of these Conditions and any agreement between the Parties shall be considered as separate terms and conditions. In the event that these Conditions or any such agreement are affected by any legislation or any amendment thereto, or if their provisions are by virtue of such legislation or otherwise held to be illegal, invalid, prohibited or unenforceable, then any such provisions shall be ineffective only to the extent of the illegality, invalidity, prohibition or unenforceability and each of the remaining provisions shall remain in full force and effect as if such illegal, invalid, prohibited or unenforceable provision was not a part of these Conditions or any agreement between the Parties.

### **34 Jurisdiction**

The Parties hereby submit to the jurisdiction of the Durban and Local Division of the High Court of South Africa in respect of any claim or dispute arising out of or in connection with these Conditions, any agreement concluded between them and/or the granting of any credit. Nothing in this clause shall prejudice RBS' rights to pursue any claim for amounts due to it by the CUSTOMER in any court of competent jurisdiction.