



STANDARD TRADING CONDITIONS ACT LOGISTICS (PTY) LTD

1. INTERPRETATION

- 1.1 Clause headings in the Agreement are inserted for convenience only and shall not be used in its interpretation.
- 1.2 ACT Logistics Pty Ltd is abbreviated as ACT for the purposes of this agreement.
- 1.3 Sub-Contractors are abbreviated as SC for the purposes of this agreement.

2. INTRODUCTION

- 2.1 These terms and conditions –
 - 2.1.1 are an integral part of the Service to be provided by ACT and/or any SC;
 - 2.1.2 Together with the **Standard Trading conditions**, the conditions attached to the application for **30 day Facilities**, the **Service Rate Schedule** (where applicable) shall collectively hereinafter be referred to as the **“Agreement”**.
- 2.2 The services are transacted and provided subject to the terms of the Agreement.

3. SERVICE

- 3.1 ACT and/or each SC (as the case may be) –
 - 3.1.1 shall provide the Services in accordance with the Agreement;
 - 3.1.2 shall select the method of transport, carriage and handling to be used for the provision of the Service or any aspect thereof;
 - 3.1.3 do not guarantee that the Customer’s request for special conditions or special delivery instructions will result in any specific method being employed;
 - 3.1.4 **ACT and the SC are independent corporate, juristic or other business entities and are not liable for the debts or obligation of each other.** No SC is authorized to accept service of legal process for or on behalf of ACT or any other SC.
- 3.2 The Service may be executed by ACT itself, or ACT may, in its sole and absolute discretion employ, instruct or entrust the shipment to any SC on such conditions as may be stipulated by or negotiated by ACT with such SC for the purpose of such Service, or such part thereof as the SC may be employed to carry out.
- 3.3 The Customer acknowledges and agrees that –
 - 3.3.1 **the Shipment may be carried by a SC;**
 - 3.3.2 the Service or part thereof performed by a SC will be subject to the same terms and conditions as set out in this Agreement;
 - 3.3.3 **persons or juristic entities and the Personnel hire by ACT to fulfil its obligations under this Agreement including, but not limited to any SC, shall have the benefit of every exemption from and limitation of liability and defence to which ACT is entitled;**
 - 3.3.4 ACT and/or any SC may engage road hauliers and/or commercial airlines/carriers, to perform all or part of the Services pursuant to the Agreement.
- 3.4 **ACT and/or any SC (as the case may be) –**
 - 3.4.1 **will do all that it reasonably can to meet the stipulated dates and time for the Service;**
 - 3.4.2 **cannot be responsible for failure to perform or delays in performance of the Service due to force majeure events;**
 - 3.4.3 **will not be liable to the Customer for any loss arising from any failure or delay in performance of the Service resulting from force majeure events;**

- 3.4.4 will use reasonable endeavours to continue to perform in terms of this Agreement as soon as performance becomes possible;
- 3.4.5 **Undertake to give the Customer timely notice of any unavoidable delays.**

4. DELIVERY

- 4.1 Subject to this Agreement, ACT agrees to receive and arrange for the provision of the Service to the Consignee in accordance with the information on ACT’s Waybill or return of the Shipment to the Customer (or its nominee) when the Shipment was not delivered to the Consignee.
- 4.2 Any **instruction** from the customer to ACT and/or a SC to provide the Service shall be on a Waybill, duly completed and tendered with the Shipment.
- 4.3 **Unless otherwise agreed in writing and signed by ACT, no other instructions, whether verbal or written shall be binding on ACT or any SC.**
- 4.4 A Shipment under this Agreement shall be deemed to have been received into ACT or any SC’s possession only upon –
 - 4.4.1 the Shipment being received into ACT or the SC’s physical possession;
 - 4.4.2 a signed copy of the waybill acknowledging acceptance by ACT or the SC and furnished to the Customer by expressly authorized ACT and/or SC personnel.
- 4.5 The Customer is responsible for ensuring that the person signing the waybill for such receipt is expressly authorized to do so by ACT/ SC
- 4.6 A signed waybill being given by the Consignee or the Customer shall be sufficient evidence of delivery to the Consignee, or of a Shipment returned to the Customer (or its nominee).
- 4.7 **In the absence of gross negligence or other breach of duty by ACT or any SC, a POD shall be sufficient evidence that the Shipment was delivered in accordance with the Agreement, in good order and condition, in an intact form, without any Loss and shall further constitute final and absolute release of all undertakings and obligations of ACT and/or any SC.**

5. CUSTOMER’S WARRANTIES AND OBLIGATIONS

- 5.1 The Customer expressly warrants that –
 - 5.1.1 **the Customer is duly authorized to enter into this Agreement;**
 - 5.1.2 **the Customer is either the owner, or the authorized representative of the owner of the goods;**
 - 5.1.3 the Customer or the Consignee; at their own expense, have secured the necessary permits or licenses required to lawfully effect the export or import of the shipment between countries prior to ACT or any SC collecting the shipment.
 - 5.1.4 None of the activities or operations requested by the Customer in terms of this agreement is in any way linked to criminal, money laundering or terrorist activities.
- 5.2 The Customer –
 - 5.2.1 authorises ACT and/or any SC to complete any document/s required to comply with the relevant laws when clearing a shipment through customs;
 - 5.2.2 shall provide ACT and/or SC with all accurate and complete documents, payments and information necessary for customs clearance;
 - 5.2.3 shall be bound by and warrants the accuracy of all documents and information furnished to ACT and/or any SC for customs purposes or for any other purposes in terms of this agreement;

- 5.2.4 shall never conceal or misrepresent any fact, matter or circumstance concerning the goods or any Shipment to be received by ACT and/or any SC;
- 5.2.5 shall not submit or request ACT or any SC to perform the service in respect of an Goods, if the provision of such service is or would be, or may be in violation of, or prohibited by any laws;
- 5.2.6 shall provide whatever further information may reasonably be required by ACT or any governmental organisation with respect to the shipment or any party interested in the Goods. Shipments may be subject to security controls by air carriers and government entities and ACT will submit to all required security controls. On behalf of the customer and or the consignee and all others with an interest in the shipment, the Customer consents to a search of any shipment if an as required by any air carrier or government entity. The Customer understands and agrees that ACT may be required to maintain copies of shipping documents in accordance with applicable laws;
- 5.2.7 Quotations where given shall be on the basis of immediate acceptance and shall be subject to withdrawal or revision by ACT. ACT shall not withstanding acceptance be at liberty to revise quotations or charges with or without notice in the event of;
- 5.2.8 Changes occurring in currency, exchange rates, rates of freight charges, equipment rental rates, labour rates. Or any other charges applicable to the handling of the goods, and/or,
- 5.2.9 The volumetric charge calculated in accordance with ACT's volumetric tariff from time to time exceeding any quotation based on weight in which event the volumetric charge may, at the instance of ACT be substituted for the recharge based on weight.
- 6. PACKAGING AND CONTENTS OF THE SHIPMENT**
- 6.1 The Customer is solely responsible for and undertakes to ensure that –
- 6.1.1 prior to ACT and/or any SC taking delivery thereof, each parcel shall be properly and securely –
- 6.1.1.1 packaged, sealed, addressed and labelled in accordance with the custom and practice of the trade and in accordance with the applicable laws;
- 6.1.1.2 packed so that the Goods enclosed therein will not be susceptible to damage during the transport thereof by land, sea or air;
- 6.1.2 the Goods are properly placed and packed in each Parcel;
- 6.1.3 prior to ACT or any SC taking delivery thereof, the outside of each Parcel is clearly labelled, (including such warning labels as may be applicable to a specific consignment) with the name and address of the designated Consignee;
- 6.1.4 the waybill will contain the correct description of the Goods contained in the shipment which has been tendered for the Service.
- 6.2 The Customer acknowledges and agrees that neither ACT nor any SC, shall be under any obligation to check the contents, packaging, sealing, addressing or labelling of the shipment or the Waybill.**
- 6.3 Should any Shipment be received by ACT or any SC other than in accordance with clause 6 here listed, then, except to the extent that ACT the SC and/or the personnel, acted with gross negligence or fraudulent intent, neither ACT nor any SC nor any of their personnel, shall be liable for any loss sustained to any such parcel or its contents.
- 6.4 Any flyers, document protectors, waybills, packaging material and labels which are necessary for the purposes of protecting, securing, labelling or tracking any shipment shall be for the account of the customer.
- 6.5 The Customer undertakes and agrees that it shall not, without ACT's prior written consent, tender any shipment –
- 6.5.1 likely to cause damage, including any dangerous, noxious, corrosive, flammable or explosive article, or any article or substance likely to cause injury, damage or infection to other goods, life or health or is likely to encourage vermin;
- 6.5.2 **containing fragile items including glass, glassware, mirrors, pottery, crockery, china, cast cement, plaster or asbestos, finished or partially finished products or other goods containing property of a fragile nature.**
- 6.6 Should the Customer, with ACT's prior written consent and under special arrangements, tender shipments containing goods of the nature referred to in 6.5, then the Customer warrants that such –
- 6.6.1 Parcel shall be packed –**
- 6.6.1.1 under and shall bear such warning labels as are required by all applicable laws;
- 6.6.1.2 in a manner so as to minimise additional risks to which such Parcel may be exposed;
- 6.6.2 Parcel shall be accompanied by the necessary declarations, if so required;
- 6.6.3 Packaging, warning labels and declarations shall neither exempt the Customer from the requirements of the relevant laws, nor from any liability owing to damages caused to any person or property during the handling and transport of such shipment.
- 6.7 Should the Customer, for any reason whatsoever, fail, neglect or refuse to reveal that the contents of any shipment containing goods of the nature referred to in 6.5.1, then ACT or the SC may, after giving the customer 3 (three) days' notice, destroy or otherwise deal with such shipment as circumstances may demand. Neither ACT nor any SC shall be liable to the Customer for the value or loss of such shipment and shall be entitled to claim from the Customer the reasonable costs of dealing with such shipment.
- 6.8 The Customer undertakes and agrees that it shall not tender any Shipment for the service containing goods not lawfully under its control or goods that are illegal or prohibited by law.
- 6.8.1 from any criminal/civil or other proceedings that may ensue as a result of ACT and/or SC having any illegal shipments and/or unlawfully held shipments under its control, including all legal costs incurred by ACT and/or SC.
- 6.9 Except to the extent that ACT, the SC and or their personnel acted with gross negligence or fraudulent intent, the customer indemnifies and holds ACT and/or its personnel harmless –
- 6.9.1 from any Loss arising from the Customers failure to observe the terms as detailed in clause 6;
- 6.9.2 from any criminal/civil or other proceedings that may ensue as a result of ACT and/or SC having any illegal shipments and/or unlawfully held shipments under its control, including all legal costs incurred by ACT and/or SC.
- 7. SERVICE COSTS AND PAYMENT**
- 7.1 Service Costs**
- 7.1.1 The Customer retains ultimate responsibility and liability for all Service Costs, notwithstanding that any or all such Service costs might be payable by the consignee.**
- 7.1.2 ACT shall be entitled to amend its Service costs from time to time by giving reasonable prior notice to the customer.
- 7.1.3 ACT and/or any SC may, in their sole and absolute discretion, pay any service costs relating to the shipment and the Customer shall, on demand, reimburse ACT and/or the SC the amount of any such Service Costs that have been paid. This service costs would/could include costs paid to toll roads.
- 7.2 Payment**
- 7.2.1 The full outstanding service costs shall be paid strictly 30days from date of statement as per the Application for facility, and shall be paid by means of electronic transfer without any deduction or set-off directly into the ACT bank account which details appear on the statement and the invoice.
- 7.2.2 Any disputes that arise cannot be off-set against service costs due on the 30 day facility. The Customer specifically acknowledge that it shall not be entitled at any stage to withhold any payment or to deny any obligation or responsibility in terms of this agreement as a result of any claim, complaint or investigation or any claim or complaint or the processing of any claim or complaint which may have resulted from the use of the Company's products and or services.
- 7.2.3 The customer has to refer any dispute to ACT in writing within 5 business days of date of statement

- 7.2.4 Should the disputed statement, as presented for payment, not be address with ACT i.r.o. 7.2.3 it is accepted by ACT and the Customer to be correct.
- 7.2.5 ACT will credit each payment made under this agreement to the Customer on the date of receipt of the payment as follows –
- 7.2.5.1 firstly, to satisfy any due or unpaid interest (if any); and
- 7.2.5.2 Secondly, to satisfy any due or unpaid Service Costs.

7.3 Interest

- 7.3.1 Should the Customer fail to pay any amount payable to ACT in terms of this Agreement, then, in addition to any rights ACT may have in terms of this Agreement or at Law, the provisions of this 7.3 shall apply.
- 7.3.2 Without prejudice to any ACT rights, the Customer shall pay to ACT interest on all overdue payments calculated at the maximum rate of interest permitted by the NCA from time to time.
- 7.3.3 The interest shall be reckoned from the day after the due date of the amount concerned until the date of payment, both days inclusive, and shall be –
- 7.3.3.1 calculated on a compounded basis on the amount owing at the end of each month; and
- 7.3.3.2 payable on demand
- 7.3.4 It is specifically acknowledged and agreed that this clause 7.3 shall survive termination of this Agreement for any reason whatsoever:

7.4 Attempted Deliveries

- 7.4.1 Notwithstanding anything to the contrary herein contained, should ACT fail to effect delivery of any shipment, ACT shall nevertheless be entitled to payment in respect thereof, provided that such failure arose –
- 7.4.1.1 as a result of ACT and/or any SC being specifically prevented by the intended Consignee; or
- 7.4.1.2 pursuant to a specific instruction from the Customer or intended Consignee; or
- 7.4.1.3 as a result of the Customer furnishing ACT the incorrect delivery instruction/address; or
- 7.4.1.4 as a result of the specified Consignee not being available at the time of delivery; or
- 7.4.1.5 as a result of the Consignee refusing to accept the shipment despite such shipment being delivered in accordance with the instructions on the Waybill.
- 7.4.1.6 In the event that ACT is compelled to return the goods to the consignor then the consignor shall be liable for all costs incurred in the return of such goods whether on the same basis as originally agreed upon or any other basis whatsoever.
- 7.4.1.7 If ACT is compelled to dispose of such goods by reason of their perishable nature or for whatever other reason, ACT shall not be liable for any damage to, or losses of such goods or any loss or damage arising out of the disposal thereof and the consignor shall be liable to ACT for all costs incurred in connection with the disposal of such goods.
- 7.4.1.8 Should Customer instruct ACT to re-attempt delivery, the Customer will be liable for all additional costs and charges.**
- 7.4.1.9 If the Customer fails to accept delivery of a shipment thus returned ACT may upon 30 days written notice to the Customer dispose of its shipment at public or private sale and pay itself of the proceeds to satisfy all outstanding charges owing on the shipment and any other outstanding charges due by the Customer. Any sums collected by ACT in excess of such charges will be paid to the customer. The Customer and consignee shall remain liable, jointly and severely for any deficiency.

8. ADDITIONAL INFORMATION

- 8.1 The Customer –
- 8.1.1 agrees to hold harmless and indemnify ACT and/or and SC from any loss arising from the Customer's failure to comply with or provide information as required in this agreement, except to the extent that ACT and/or SC acted with gross negligence or fraudulent intent.

- 8.2 ACT reserves the right to charge a reasonable fee for any additional work necessitated by any inaccurate, incomplete Waybills supplied by or on behalf of the Customer where such work is necessary to enable ACT to render the Services in accordance with this Agreement.
- 8.3 Pending completion of the work contemplated in 8.2, neither ACT nor any SC shall be liable for any consequential delay, failure or damages resulting from any inaccurate, incomplete or out of date data or erroneous or incomplete instructions supplied by or on behalf of the Customer.
- 8.4 ACT and/or any SC shall carry out any such additional work as expeditiously as possible in order to enable it to render the Services in accordance with this Agreement.
- 8.5 Should the Customer fail to specify the required service on the Waybill, then ACT shall be entitled to assume and the requested service shall be deemed to be the Domestic Airfreight(17:00) Service, and ACT shall be entitled to charge the Customer for said Service.**

9. RIGHT TO HOLD AND SUSPEND SHIPMENTS

- 9.1 The Customer hereby grants to ACT the right to –
- 9.1.1 hold any of the Customer's Shipments which may be in ACT's possession from time to time, for all sums due at any time by the Customer to ACT;**
- 9.1.2 Sell such shipments and use the proceeds to make good the debt due to ACT in accordance with applicable Laws.
- 9.2 ACT shall, without incurring any liability toward the Customer, and until such time as all amounts owing to ACT have paid together with interest accruing during the period payment of such sums was overdue, be entitled to retain possession of any Shipment/s and document/s and suspend the shipping thereof.
- 9.3 The exercise by ACT of any of its rights accorded by this clause shall be without prejudice to any other rights it may have under this agreement or at Common Law in respect of the non –payment by the consignor of ACT.

10. CHANGE IN LAW AND MARKET CONSIDERATIONS

- 10.1 If at any time during ACT's relationship with the Customer –
- 10.1.1 any new Law, ruling or regulation is promulgated, given or adopted; or
- 10.1.2 there are any changes to any present or future Law ruling or regulation; or
- 10.1.3 there are any changes in the interpretation or administration of any Law, ruling or regulations by any relevant authority or comparable agency charged with interpretation or administration thereof; or
- 10.1.4 there is any change in the market considerations which are relevant to ACT relating to the supply of Services, including –
- 10.1.4.1 the increase by any relevant governmental or regulatory authority (including the National Bargaining Council for the Road Transport Industry or its successors-in-title) of statutory wages and/or other amounts payable to ACT's Personnel; and/or
- 10.1.4.2 the increase by the relevant governmental or regulatory authority (including Central Energy Fund or its successors-in-title) of the price of oil, fuel and petrol; and/or
- 10.1.4.3 airline rates increases or decreases; and/or
- 10.1.4.4 subject ACT to any taxes, duties or other charges in respect of this Agreement or change the basis of taxation of ACT (except for changes in the rate of normal taxation on the overall net income of ACT);
- 10.1.4.5 impose on ACT any other obligation or condition which requires ACT to incur a cost in respect of the Services supplied;
- 10.1.4.6 otherwise increase the cost to ACT of supplying the Service in terms of this Agreement or reduce the amount/s received or receivable by ACT hereunder by a sum which ACT, in its discretion, deems material, then the Customer shall, in addition to the Service Costs, pay to ACT, forthwith on demand while such circumstances continue, such additional amount or consideration which will fully compensate ACT for such additional cost or reduced receipts.

11. DOMICILE ADDRESS

- 11.1 The parties hereto choose the following addresses as the address for serving of legal notices for all purposes of and in connection with this Agreement –
- 11.1.1 ACT LOGISTICS PTY LTD 50A Junction Rd, Parow Industria, 7493, RSA
- 11.1.2 Customer at the Customer's address stated on the Application/Waybill
- 11.2 Any notice given or payment made by either party to the other ("addressee") which is delivered by hand between the hours of 09:00 and 17:00 on any Business Day to the addressee's physical address for the time being shall be deemed to have been received by the addressee at the time of delivery.
- 12. INDEPENDANT CONTRACTOR**
- 12.1 ACT is an independent contractor and, as such, the Customer shall not have any authority to bind or commit ACT.
- 12.2 Nothing in this Agreement shall be deemed or construed to create a joint venture, partnership or agency relationship between ACT and the Customer for any purpose.
- 13. CESSION OF RIGHTS**
- ACT shall be entitled to cede its rights under the Agreement to any third party by giving the Customer 30 (thirty) days' written notice of such intention and without the written approval or consent of the Customer.
- 14. TERMINATION OF THE AGREEMENT**
- 14.1 The Customer may cancel or terminate this Agreement at any time by paying an amount ("settlement amount" equal to the aggregate of –
- 14.1.1 the unpaid balance of the outstanding amount on the Customer's account(s) with ACT as at that date ("settlement date"); and
- 14.1.2 all unpaid interest and all other Service Costs due or payable by the Customer in terms of this Agreement up to and including the settlement date.
- 14.2 The Customer may demand to be furnished with a statement specifying the settlement amount, in which event ACT will be obliged to provide such statement, in writing, within 5 (five) business days of the Customer's request.
- 14.3 The statement reflected in clause 14.2 above will only be binding for the date stated and will not include any transaction effected or process on or after this date and for which the Customer will also be liable.
- 14.4 ACT may cancel or terminate this Agreement at any time by giving the Customer 30 (thirty) days' prior written notice. Upon termination of the Agreement by ACT the Customer must pay ACT upon demand –
- 14.4.1 the unpaid balance of the outstanding amount on the Customer's account(s) with ACT as at the date of termination; and
- 14.4.2 unpaid interest and all other Service Costs due or payable by the Customer in terms of this Agreement up to and including the date of termination.
- 15. DEFAULT, IMPLICATIONS OF DEFAULT AND PROCESS TO BE FOLLOWED**
- 15.1 The Customer will be in default of this Agreement if –
- 15.1.1 the Customer does not pay any amount payable to ACT under this Agreement on the due date as contemplated in 7.2.1 above; or
- 15.1.2 the Customer breaches any of the terms and conditions of this Agreement or any agreement in terms of which the Customer provided security to ACT, and the Customer fails to remedy the breach within (7) seven days of receiving written notice to do so;
- 15.1.3 any representation or warranty made in connection with this Agreement or any other documents supplied by the Customer is materially incorrect or false;
- 15.1.4 any person who furnished security to ACT in respect of this Agreement (e.g. as surety, guarantor or pledger), commits any breach of its obligations to ACT in terms of that agreement;
- 15.1.5 the Customer or any person who furnished security in respect of this Agreement –
- 15.1.5.1 being an individual –
- 15.1.5.1.1 publishes notice of the voluntary surrender of his estate or dies;
- 15.1.5.1.2 is placed under administration or commits an act of insolvency as defined in the Insolvency ACT 24 of 1936;
- 15.1.5.1.3 has any application or other proceedings brought against or in respect of him in terms of which he is sought to be sequestered or placed under curatorship, in any event whether provisionally or finally and whether voluntarily or compulsory;
- 15.1.5.2 not being an individual –
- 15.1.5.2.1 is wound up, liquidated, dissolved, deregistered or placed under judicial management, in any event whether provisionally or finally and whether voluntarily or compulsory, or passes a resolution providing for any such event;
- 15.1.5.2.2 is deemed to be unable to pay its debts;
- 15.1.5.2.3 resolves that it voluntarily begin business rescue proceedings or has any business rescue proceedings commenced against it, as contemplated in section 132(1) the Companies Act 71 of 2008;
- 15.1.5.2.4 has a judgement of a competent court against the Customer or any person who has furnished security for the Customer for the attachment of assets or for payment of any amount is not satisfied for more than seven (7) days after the date on which it is issued; or
- 15.1.5.2.5 compromises or attempts to compromise with the Customer's creditors generally or defer payment of debts owing by the Customer to the Customer's creditors.
- 15.2 If the Customer is in default and this Agreement is subject to the NCA, ACT may –
- 15.2.1 give the Customer written notice of such default and may propose that the Customer refer this Agreement to a debt counsellor, alternative dispute resolution agent, consumer court or ombud with jurisdiction, with the intent that the parties resolve any dispute under this Agreement of develop and agree on a plan to bring repayments up to date;
- 15.2.2 commence legal proceedings to enforce this Agreement including exercising its rights in terms of any of the securities and recover collection costs and default administration charges as defined in the NCA if –
- 15.2.2.1 it has been given the Customer notice as referred to in clause 15.2.1 above or it has given notice to terminate any debt review process under section 86 of NCA which may then be underway in respect of this Agreement;
- 15.2.2.2 the Customer is and has been in default under this Agreement for at least 20 (twenty) business days; and
- 15.2.2.3 at least 10(ten) business days have elapsed since ACT delivered the notice contemplated in clause 15.2.2.1; and
- 15.2.2.4 in the case of a notice in terms of clause 15.2.1, the Customer –
- 15.2.2.4.1 has not responded to that notice; or
- 15.2.2.4.2 responded to the notice by rejecting ACT's proposal.
- 15.3 If the Customer is in default of this Agreement and this Agreement is not subject to the NCA, RAM may exercise its rights, as may be permissible in law and without prejudice to any of ACT's other rights, which include any one or more of the following-
- 15.3.1 suspending the delivery and provision of the Service;
- 15.3.2 demanding immediate payment of overdue amounts;
- 15.3.3 terminating of this Agreement; and
- 15.3.4 enforcing any security furnished in respect of the Agreement.
- 16. GENERAL**
- 16.1 Sole Agreement**
- No Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein. This Agreement supersedes and replaces all prior agreements, commitments, undertakings or representations, whether oral or written, between the parties in respect of the subject matter hereof.
- 16.2 Amendment**
- No addition to, variation, or consensual cancellation of this Agreement shall be of any force or effect unless in writing and signed by or on behalf of the Parties.
- 16.3 Severability**

If any provision hereof is held to be unenforceable by any court of Law, such provision shall be severable from this Agreement and shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.

16.4 Governing Law

These Terms shall in all respects (including its existence, validity, interpretation, implementation, termination and enforcement) be governed by the Laws of the RSA which is applicable to agreements executed and wholly performed within the RSA.

16.5 Costs

In the event that ACT secures the services of an attorney or a debt collecting agency or tracing agent or electing to institute legal proceedings against the customer for the recovery of any amounts due and payable in terms of this agreement, ACT shall be entitled to recover from the customer all such costs in securing such services and taking any such action inclusive of collection commission and costs on an attorney and own client scale.

16.6 Waiver

No indulgence which any Party may grant to another shall constitute a waiver of any of the rights of the grantor, who shall not thereby be precluded from exercising any rights against the grantee which may have arisen in the past or which might arise in the future.

16.7 Writing

All notices, consents, advice or other communication by any Party to the other of them, shall be in writing and signed by the relevant party, and unless in writing and signed, shall be deemed not to have been given or made. For such purpose "writing" shall be deemed to include telefacsimile and email communications.

16.8 Consents

Wherever any provision in this Agreement requires any Party's consent, such consent shall only be valid and binding on the parties if it is obtained beforehand and is in writing.

16.9 Accountants verification

16.9.1 A certificate signed by ACT's accountants or any director of ACT as to the existence of any amount of indebtedness of the Customer to ACT at any time, as to the fact that such amount is due and payable, the amount of interest accrued thereon and as to any other fact, matter or thing relating to the indebtedness of the Customer to ACT, shall be sufficient proof of the contents and correctness thereof and of the Customer's indebtedness for the purposes of provisional sentence or summary judgement or any other proceeding against the Customer in any competent court and shall be valid as a liquid document for such purposes.

16.9.2 It shall not be necessary to prove the appointment of the person signing such verification letter and such verification letter shall be binding on the Customer and shall be deemed to be sufficient particularly for the purpose of any pleading or trial in any action or other proceeding instituted by ACT against the customer.

16.10 Successors-in-title

Without prejudice to any other provision of this Agreement, any successor-in-title, including any executor, heir, liquidator, judicial manager, curator, trustee or business rescue practitioner, of either party shall, to the extent permissible in Law, be bound by this Agreement.

17. CONFIDENTIALITY

Notwithstanding the cancellation or termination of the Services, the Customer shall not disclose to any person or use in any manner whatever ACT's confidential information or Service Costs; provided that the Customer may disclose ACT's confidential information and the existence and contents of this Agreement –

17.1 to the extent required by Law (other than in terms of a contractual obligation of the Customer);

17.2 to, and permit the use thereof by, its employees, representatives and professional advisers to the extent strictly necessary for the purpose

of implementing or enforcing this Agreement or obtaining professional advice or conducting its business. It is specifically agreed that any disclosure or use by any such employee, representative or adviser of such confidential or other information for any other purpose shall constitute a breach of this 19 by the Customer.

18. INSURANCE

In terms of the Financial Advisory and Intermediary Services act, ACT may not facilitate any insurance transaction at the instruction of any of its customers nor give insurance advice to its customers as it is not a licenced Financial Services Provider. There is a Mandate agreement in place between the Company and Eikos Risk Applications, a professional marine insurance broker ("the Broker") whereby the Broker has mandated ACT to operate as its Mandatary for the specific purposes of performing an insurance premium collection service on its behalf. This service will accompany certain other administrative or clerical services performed for and on behalf of the Broker relative to the short-term marine insurance policies that are managed by the Broker. Should any of the ACT customers require marine insurance, they will be directed to the Broker, the Broker being the correct party to provide marine insurance advice and intermediary services.

The Insurance Option form was completed as part of the Facility pack and the original of this signed document is kept on file at ACT.

Should the customer require the goods to be insured for loss or damage whilst in transit or being held in warehousing, bond or prior to transit please refer to the

CARGO INSURANCE CONDITIONS DOCUMENT which is available on ACT's website www.myact.co.za, a branch or from a representative.

18.1 The ACT waybill makes provision for the customer to indicate Yes or No to Insurance. Should such block be ticked YES and no value is indicated cover will be limited to R1000.00 per waybill.

19. EXCLUSIONS AND LIMITATIONS OF LIABILITY

19.1 ACT will be **liable** to the Client **for physical, direct losses and damages** in respect of the goods, if such physical direct losses or damages are caused directly by the **negligence or fault** based conduct or omissions of ACT, from the time that ACT its affiliates or SC takes possession of the goods until the time that ACT its affiliate or SC correctly delivers the goods to the designated consignee.

19.2 ACT will not be liable to the client if the goods are correctly delivered to the designated consignee where ACT, its affiliates or any SC receives a signed proof of delivery from the consignee confirming clean receipt of the goods without any discrepancy in respect of the goods being noted on the proof of delivery.

19.3 Notwithstanding anything to the contrary herein contained, and to the extent permitted by Law, **in no event shall ACT, its affiliates nor any SC be liable under any circumstances whatsoever in respect of the goods for;**

19.3.1 Incidental, indirect, exemplary, punitive and consequential damages, lost profits (fines(demurrage), penalties), business interruption, including non-performance, delays or Acts of God, earthquakes, abnormal weather, fires, floods, labour unrest, embargoes, strikes, civil upset, war, acts of terrorism, riots, hijackings and other acts out of the control of ACT, its affiliates or SC's.

19.4 **ACT, its affiliates or SC's do not know the nature and value of the goods it receives for carriage.** Accordingly ACT, its affiliates and SC's are entitled to **assume** that all goods handed to them for carriage are worth **R250.00** or less in value, and ACT bases its liability limitation on such assumed value.

19.5 The Client accordingly agrees that the **maximum liability** of ACT to the Client in respect of goods handed to ACT for carriage shall **not exceed R250 per shipment, unless** the Client has in advance of the carriage disclosed to ACT by writing a declared value on the face of the waybill, or by logging the value electronically on myact, that the goods are worth more than R250 and that the Client accordingly requires ACT to collect an Insurance premium either predetermined

- as per the **CARGO INSURANCE OPTION** form or by completing a **Risk Analysis Questionnaire prior to the shipment been COLLECTED** and forwarding this by email/fax to the Customer Service agent arranging the collection (available from website, branch or representative).
- 19.6 If the Client fails to instruct ACT that Insurance is required, then the **maximum liability that ACT will be liable for will be R250.00**
- 19.7 If the Client's goods are lost or damaged whilst in the possession of ACT its affiliates or SC's, then ACT will be liable to pay the Client the proved cost of repair, or the purchase/replacement cost of the goods, whichever is the lesser amount, but if the Client did **not declare a Insured value** for the goods prior to carriage, then the **maximum liability** of ACT to the Client for loss or damage will be the assumed value of the goods, being **R250.00 per shipment**.
- 19.8 If ACT is liable to pay any amount to the client for loss or damage in terms of the preceding clauses, then ACT shall have the **right of salvage** in respect of those goods, and the client shall be obliged to reasonably assist ACT to exercise such salvage right.
- 19.9 Subject to Clause 19.1 **ACT's liability** to the Client for physical direct loss or damage to the goods is also subject to the **exclusions** set out in the "**Institute Cargo Clauses A and Strikes (Cargo) Clauses**" issued by the London Institute Underwriters as amended by them from time to time. As well as the exclusions listed in Eikos's **CARGO INSURANCE CONDITIONS** document issued by Marine Underwriting Managers (Pty) Limited which excludes amongst others jewellery, watches, precious stones, furs, bank and/or treasury notes, bullion, money, securities, stamps, patterns, manuscripts, plans, designs, explosives and all livestock. (available from website, branch or representative).
- 19.10 ACT's **maximum liability** to the Client for direct losses or damages in relation to the carriage or goods in ACT's its affiliates or SC's possession, custody or control shall **never exceed R50 000.00** per shipment, no matter what value is declared in respect of the goods as ACT's GIT insurance has a maximum claim of R50 000.00.
- 19.11 Any **claim** by the Client in respect of direct loss or damage to the goods where ACT is deemed liable by way of negligence, must be submitted within **7 running days of the date the courier collected the shipment**, failing which the claim will be deemed waived by the Client and **rejected by ACT who will bear no liability** to the Client whatsoever.
- 19.12 ACT does **not carry dangerous goods**. If the Client nevertheless hands over dangerous goods to the Courier for carriage (regardless of whether the Courier has been advised of the nature of the goods), the **Client** agrees that it is **fully responsible** for ensuring that all requirements in relation to their carriage are complied with and that all relevant information is conveyed to ACT its affiliates or SC's by written notice, including but not limited to classification of the goods, proper packaging and presentation of the goods, preparation of the legally required declarations and labels. The Client furthermore agrees that any liability of any nature caused by, or arising from the carriage of dangerous goods in any circumstances will be for the Client's account.
- 19.13 ACT its affiliates and SC's do not wish to carry **fragile or valuable goods**, but if the Client nevertheless chooses to hand over such goods to ACT its affiliates or SC's (regardless of whether ACT has been advised of the nature of the goods), then the Client shall pack and label such goods to minimise the additional risk associated with the carriage of such goods, and the Client agrees that the Courier will bear **no liability** whatsoever in regard to these goods howsoever caused.
- 19.14 It is agreed that ACT is **not liable** at all for any **consequential losses or damages** of any nature relating to the carriage or the goods, no matter how such consequential losses or damages were caused or arose, even if the Courier knew or should have known of the likelihood of such damages accruing and/or even if caused by the negligence of the Courier.
- 19.15 The **Client indemnifies ACT** against any claim of any nature whatsoever made against ACT by any person or entity as a result of the loss, damage or delay in respect of the goods, which exceeds the agreed exclusions and limits of liability set out above.

20. Value added tax

20.1 Value added tax

The Customer acknowledged and agrees that-

20.1.1 it shall be liable to pay VAT on the Service Costs and other amounts payable in terms of this Agreement together with payment of such amounts payable to ACT;

20.1.2 Should this Agreement be applicable prior to the imposition of any increase in the rate of VAT by the relevant authority, then all amounts payable shall be subject to variation in accordance with the provisions of Section 67 of the Value Added Tax Act, it being recorded and agreed that ACT shall receive the same Service Costs and any other amounts payable after payment of VAT, regardless of the rate at which VAT is payable.

21. Lien

21.1 ACT shall have a lien over all the goods, irrespective of whether the Customer is also the owner of the goods

21.2 In the event of non-payment of any monies due by the Customer to ACT, the ACT shall have the right, without any notice to the customer:

21.2.1 to open and examine any part of such goods;

21.2.2 at its option and subject to the necessary court order (with the required notice to the Customer), sell the goods by way of public auction and apply the proceeds to any such sale, after deducting all expenses thereof, in payment of or towards any amount due by the Customer to ACT.

21.3 Any surplus held by ACT after the sale of the goods as aforesaid shall be paid to the Customer without interest within a reasonable time after such sale, or in the event of ACT being unaware of the address of the Customer, on the application of the Customer within 3(three) months from date of the sale, but save therefore, ACT will be released from all liability in whatsoever respect of the goods or any surplus held by ACT as aforesaid.

21.4 Where ACT has, in accordance with the provision of clause 21.2, sold only part of the goods and the proceeds of such sales are sufficient to pay ACT all monies due to it by the Customer, the Customer shall be entitled to take delivery of the remainder of such goods. ACT shall have the right to charge a reasonable sum for the storage of any goods forming part of such remainder of which delivery is not taken by the Customer and, without notice to the Customer, to recover any sum in accordance with the provisions of clauses 21.2 and 21.3 which shall apply *mutatis mutandis*.

21.5 In the event of non-payment of any monies due by the Customer to ACT, ACT shall have the right, in addition to its right already specified in this clause, to:

21.5.1 suspend the carrying out of any of its then uncompleted obligations until full payment is made; and/or

21.5.2 refuse to provide any further services to the Customer; and/or

21.5.3 rescind the 30 day facilities granted to the Customer.

21.6 The exercise by ACT of any of the rights granted to it by this clause shall be without prejudice to any other rights it may have under this agreement or at common law.