

ASPEN LOGISTIC SERVICES PROPRIETARY LIMITED

TERMS AND CONDITIONS OF TRANSPORT

A. All Transport Services rendered to the Customer by Aspen Logistic Services shall be rendered subject to these Terms and Conditions of Transport read with the Transport Order.

B. Nothing in these Terms and Conditions of Transport are intended to, or must be understood to unlawfully restrict, limit or avoid any rights or obligations, as the case may be, created for either the Customer and/or Aspen Logistic Services in terms of the CPA, but only to the extent that the CPA is applicable.

1. DEFINITIONS

In these Terms and Conditions of Transport, unless the context clearly indicates a contrary intention, the following expressions shall bear the following meanings:

1.1 **“Aspen Logistic Services”** shall mean Aspen Logistic Services Proprietary Limited, registration number: 2019/124078/07 and includes any Sub-Contractor;

1.2 **“Acceptance Note”** shall mean a written notification including an e-mail, letter or fax which Aspen Logistic Services sends to the Customer agreeing to render the Transport Services detailed in a particular Transport Order;

1.3 **“Consignment”** shall mean a load of Goods, which are transported by Aspen Logistic Services in accordance with a Transport Order read with these Terms and Conditions of Transport;

1.4 **“Consignee”** shall mean the natural or juristic person identified in the applicable Transport Order to whom delivery of the Consignment must be made;

1.5 **“Container”** shall mean any transportable tank, pallet, package or other covering not supplied by or on behalf of Aspen Logistic Services;

1.6 **“Credit Facilities Agreement”** shall mean the written Credit Facilities Agreement entered into between Aspen Logistic Services and the Customer in terms of which Aspen Logistic Services has granted to the Customer a credit facility in respect of the payment of the Rates;

1.7 **“Customer”** shall mean the Customer whose details are set out in the Quotation, to which these Terms and Conditions of Transport are attached;

1.8 **“Dangerous Goods”** shall mean hazardous Goods and Goods which, in the opinion of Aspen Logistic Services, are dangerous and includes anything likely to cause any damage whatsoever to persons or property (including the vehicle of Aspen Logistic Services or its Sub-Contractors)

1.9 **“Driver”** shall mean the driver of the Vehicle rendering Transport Services in terms of a Transport Order;

1.10 **“Enquiry Notice”** shall mean an enquiry sent via e-mail by the Customer to Aspen Logistic Services in regard to rendering specific transport services;

1.11 **“Goods”** shall mean the Goods which are transported in terms of the Transport Order;

1.12 **“Gross Combination Mass”** shall mean the Vehicle mass as defined in the regulation promulgated in accordance with the National Traffic Act, which is applicable to each Vehicle carrying out the Transport Services;

- 1.13 **“High Risk Goods”** shall mean any Goods deemed to be prone to hijacking and/or theft, which include but are not limited to precious metals, precious stones, antiques, bank notes, securities, white goods, electrical goods, bullion, groceries, tea, sugar and cigarettes;
- 1.14 **“Legal Axle Mass”** shall mean the permissible axle weight limit of a Vehicle as per the Regulations of the National Road Traffic Act, which are applicable to each Vehicle carrying out the Transport Services;
- 1.15 **“Loading Point”** shall mean the place where the Consignment is loaded onto the Vehicle, as detailed in the Transport Order;
- 1.16 **“National Road Traffic Act”** shall mean the **National Road Traffic Act, No. 93 of 1996** (as amended from time to time);
- 1.17 **“Off-Loading Point”** shall mean the place where the Consignment is to be off-loaded from the Vehicle as stipulated in the Transport Order;
- 1.18 **“POD”** shall mean Aspen Logistic Services’ receipt, which the Consignee is obliged to sign on delivery of the Consignment, evidencing proof that the Consignment has been delivered, or which receipt is endorsed by the Driver in circumstances where the Consignee refuses or neglects to sign on delivery of the Consignment;
- 1.19 **“Quotation”** means the quotation prepared by Aspen Logistic Services in response to an Enquiry Notice which shall be e-mailed to the Customer should Aspen Logistic Services elect to do so;
- 1.20 **“Rates”** shall mean the monies which the Customer has agreed to pay Aspen Logistic Services as detailed in the Quotation to render the Transport Services;
- 1.21 **“Sub-Contractor”** shall mean any person whom Aspen Logistic Services utilizes from time to time to render the Transport Services, for and on behalf of the Customer;
- 1.22 **“Terms and Conditions of Transport”** shall mean these standard terms and conditions of Transport;
- 1.23 **“Transport Services”** shall mean the service of transporting the Consignments by road from the Loading Point to the Off-Loading Point, which service Aspen Logistic Services shall render to the Customer in accordance with the provisions of these Terms and Conditions of Transport, read with the applicable Transport Order;
- 1.24 **“Transit”** shall mean the point from when the Customer completes loading the Goods onto the Vehicle at the Loading Point until the point when the Consignee or the Customer (as the case may be) commences with off-loading the Goods from the Vehicle at the Off-Loading Point. In the event that Aspen Logistic Services agrees to load the Goods onto the Vehicle as detailed in a particular Transport Order and agrees to off-load the Goods from the Vehicle at the Off-Loading Point, then in those circumstances **“Transit”** shall mean the point from when Aspen Logistic Services commences with loading the Goods onto the Vehicle at the Loading Point until the point when Aspen Logistic Services completes off-loading the Goods from the Vehicle at the Off-Loading Point;
- 1.25 **“Transport Order”** shall mean a written order issued by the Customer to Aspen Logistic Services in regard to a particular Consignment for which Aspen Logistic Services has issued a Quotation. The Transport Order shall be deemed to incorporate the applicable Enquiry Notice and the corresponding Quotation;
- 1.26 **“VAT”** shall mean the value-added tax levied in accordance with the **Value-Added Tax Act, No. 89 of 1991** (as amended);
- 1.27 **“VAT invoice”** shall mean an invoice issued in accordance with the **Value-Added Tax Act, No. 89 of 1991** (as amended); and

- 1.28 **“Vehicle”** shall mean the vehicle which Aspen Logistic Services uses to render the Transport Services.

2. ENQUIRY NOTICES, QUOTATIONS AND TRANSPORT ORDERS

- 2.1 When the Customer requires Transport Services to be rendered, it will send an Enquiry Notice to Aspen Logistic Services via e-mail. The Enquiry Notice shall contain the following information:

- 2.1.1 The Loading Point;
- 2.1.2 Time required for loading the Consignment;
- 2.1.3 The loading date;
- 2.1.4 Full details of the Consignee;
- 2.1.5 The Off-Loading Point;
- 2.1.6 Time required for off-loading the Consignment;
- 2.1.7 The nature of the Goods;
- 2.1.8 The relevant weight and dimensions of the Consignment; and
- 2.1.9 Any other information which is material to transporting the Consignment.

- 2.2 The Customer shall ensure that the information detailed in the Enquiry Notice is accurate. The Customer shall be responsible for all additional costs resulting from any incorrect information provided in the Enquiry Notice.

- 2.3 On receipt of the Enquiry Notice, Aspen Logistic Services may issue a Quotation based on the information provided in the Enquiry Notice, however it is not obliged to do so. The Quotation shall detail the Rates for rendering the Transport Services detailed in the Enquiry Notice.

- 2.4 On receipt of the Quotation, the Customer may elect whether or not to issue a Transport Order. In the event that Aspen Logistic Services elects to issue a Quotation and if the Customer is satisfied with the contents of the Quotation, it may elect to issue a Transport Order.

- 2.5 On receipt of the Transport Order, Aspen Logistic Services may elect whether or not to accept the Transport Order. Aspen Logistic Services is not obliged to accept the Transport Order. Should Aspen Logistic Services elect to accept the Transport Order, it shall do so within 48 (forty-eight) hours of receiving such Transport order, by issuing an Acceptance Notice to the Customer.

- 2.6 On issuing the Acceptance Notice, Aspen Logistic Services is deemed to have accepted the Transport Order and Aspen Logistic Services is thereafter obliged to render the Transport Services in accordance with the Transport Order read with these Terms and Conditions of Transport.

3. LOADING AND OFF-LOADING THE CONSIGNMENT

- 3.1 The Customer undertakes to ensure that:

- 3.1.1 the Consignment is ready for loading on the loading date as detailed in the Transport Order;
- 3.1.2 the Customer’s delivery note, if any, is handed to the Driver at the Loading Point;
- 3.1.3 the Loading and Off-Loading Points are safe and that it is reasonably possible to load and off-load the Vehicle;
- 3.1.4 the Consignment will be properly prepared for transportation;
- 3.1.5 all documents which Aspen Logistic Services requires to be signed on loading and off-loading the Consignment are so signed including but not limited to the POD; and

- 3.1.6 the Consignee is available and adequately prepared to receive each Consignment when the Consignment is delivered on the Off-Loading Date.
- 3.2 Unless otherwise agreed in a Transport Order, the Customer shall be responsible for the loading the Vehicle at the Loading Point and the Customer shall be responsible for ensuring that the Consignee off-loads the Vehicle at the Off-Loading Point. The maximum amount of time allowed for loading and off-loading a Consignment shall be detailed in Transport Order, calculated from when the Vehicle arrives at the security check point at the Loading Point or the Off-Loading Point, as the case may be.
- 3.3 Any assistance given by Aspen Logistic Services at the request of Customer or the Consignee in respect of loading or off-loading a Vehicle shall be at the Customer's sole risk and shall not in any way affect the Customer's liability for the loading and off-loading of the Vehicle. The Customer hereby indemnifies Aspen Logistic Services against any claim whatsoever arising from any assistance given by Aspen Logistic Services in terms of this clause 3.3.
- 3.4 The onus of proving the quantity, type, physical properties, composition and the condition of the Consignment or any part thereof at the time of receipt thereof by Aspen Logistic Services shall at all times remain with the Customer. No delivery note, transport order, consignment note, voucher, receipt or other document furnished to or signed by Aspen Logistic Services or any of its employees shall shift the onus in clause 3.4 onto Aspen Logistic Services or constitute conclusive proof thereof.
- 3.5 The Customer is responsible for ensuring that the Vehicle's Gross Combination Mass and its Legal Axle Mass do not exceed the statutory limits. The Customer shall reimburse Aspen Logistic Services on demand for any fines, which it receives as a result of the Vehicle being overloaded and/or as a result of the incorrect axel mass distribution. In the event of Aspen Logistic Services' Vehicle being overloaded, the Customer agrees that it shall be responsible for off-loading the excess goods and for all the associated costs, including but not limited to forklift and/or crane hiring charges, storage costs and the costs of transporting the excess goods. Aspen Logistic Services may in its sole and absolute discretion elect to attend to off-loading the excess goods in which case the Customer shall reimburse Aspen Logistic Services for all the costs it incurs on demand for such payment. Aspen Logistic Services shall also be entitled to charge the Customer its usual rate for standing time (demurrage), which amounts shall also be payable on demand.
- 3.6 Neither the Customer nor the Consignee may instruct the Driver to uplift any Goods at the Off-Loading Point without Aspen Logistic Services' prior written consent except where such upliftment is recorded in the Transport Order.
- 3.7 The Customer shall be liable for any damage to the Vehicle caused by the Customer, the Consignee, their employees and/or agents as a result of loading and/or off-loading the Consignment.
- 3.8 The Customer shall ensure that the Consignee signs the POD on delivery of the Consignment. The POD once signed, is proof that the Consignment has been delivered. Where the Consignee or Customer, as the case may be, refuses or neglects to sign the POD after delivery of the Consignment, the Driver will endorse the POD, evidencing that the Consignment has been delivered to the Off-Loading Point.

4 RATES

In consideration for rendering the Transport Services detailed in the Transport Order, the Customer shall pay Aspen Logistic Services the Rates. The Rates are stated exclusive of VAT. The Rates shall be paid to Aspen Logistic Services by the Customer, strictly in accordance with the provisions of the Credit facilities Agreement, where the Customer has a credit facility with Aspen Logistic Services or where the Customer does not have a credit facility with Aspen Logistic Services, payment shall be made as detailed in the particular Quotation.

5 LIABILITY

5.1 Goods in Transit Insurance:

Aspen Logistic Services shall keep in place Goods in Transit insurance for an amount of not less than **R1,500,000.00** (one million five hundred thousand Rand) per claim inclusive of VAT. Notwithstanding anything to the contrary contained in these Terms and Conditions of Transport, Aspen Logistic Services shall be responsible for the loss of and/or damage to the Goods during Transit, up to a maximum amount of **R1,500,000.00** (one million five hundred thousand Rand) per Transport Order, inclusive of VAT. The Customer hereby waives any claim that it may have against Aspen Logistic Services, which is in excess of the abovementioned amount of **R1,500,000.00** (one million five hundred thousand Rand) per Transport Order, inclusive of VAT.

5.2 Limitation on Claims against Aspen Logistic Services:

Besides a claim contemplated in clause 5.1 above, the Customer hereby agrees that it shall not have any other claim against Aspen Logistic Services arising out of the rendering of the Transport Services, notwithstanding anything to the contrary contained in these Terms and Conditions of Transport.

5.3 Consequential Losses and Damages:

Subject to the provisions of clause 9.2, but notwithstanding anything else to the contrary contained in these Terms and Conditions of Transport, neither Party shall be liable to the other Party for any indirect and/or consequential loss or damage (including but not limited to loss of profit, loss of sales or lost opportunity costs), whether accrued or which may arise in the future, arising from any claim of any nature whatsoever, or in any way connected with the Transport Services, regardless of whether such claim is founded in contract, delict, statute or otherwise.

6 CUSTOMER'S WARRANTIES

The Customer warrants and represents to Aspen Logistic Services that:

- 6.1 the Goods are either the Customer's sole and exclusive property or that the Customer has the full and absolute authority of the persons owning or interested in the Goods to engage Aspen Logistic Services to render the Transport Services in terms of these Terms and Conditions of Transport;
- 6.2 the transportation of the Goods in terms of the Transport Order does not contravene any law in the Republic of South Africa or any other country which the Vehicle will traverse in order to reach the Off-Loading Point;
- 6.3 the information provided to Aspen Logistic Services in the Enquiry Notice is accurate;
- 6.4 the Goods shall not contain radioactive materials, dangerous, flammable or noxious material which by their nature are or may become liable to cause injury or damage to any person or property unless disclosed in the Enquiry Notice.
- 6.5 it has disclosed to Aspen Logistic Services all material information pertaining to transportation of the Goods, which may affect Aspen Logistic Services' decision to agree to transport the Goods for and on behalf of the Customer;
- 6.6 it has all the necessary permits, consents and licenses necessary to transport the Goods from the Loading Point to the Off-Loading Point;
- 6.7 all Goods have been properly and sufficiently packed and/or prepared for the purposes of transportation from the Loading Point to the Off-Loading Point;
- 6.8 any Container provided by the Customer for the transportation of a Consignment, is suitable for such transportation; and
- 6.9 all Goods are properly and sufficiently marked for the purpose of being clearly and easily identifiable during loading, transportation and unloading of the Goods.

7 PRESCRIPTION OF CLAIMS

Without limiting and without prejudicing the provisions of The Terms and Conditions of Transport (and in particular Clause 5) the Customer shall notify Aspen Logistic Services of any loss, damage, complaint or claim within 24 (twenty-four) hours from the time of off-loading, or in the case of late delivery or non-delivery of the Goods within 24 (twenty-four) hours from the scheduled time of off-loading and shall confirm such notification in writing to be received by Aspen Logistic Services within 72 (seventy-two) hours of such off-loading or scheduled time of off-loading, as the case may be, failing which, any claim arising therefrom shall *ipso facto* lapse and be unenforceable.

8 TRANSPORT SERVICES

- 8.1 Aspen Logistic Services is responsible for rendering the Transport Services, as detailed below:
- 8.1.1 supplying the Customer with the Vehicles, Drivers and fuel necessary to render the Transport Services detailed in the applicable Transport Order;
 - 8.1.2 transporting the Consignment from the Loading Point to the Off-Loading Point in accordance with the applicable Transport Order;
 - 8.1.3 maintaining and/or renewing, as and when needed, certificates of roadworthiness, certificates of fitness, operators' permits, professional driver's permits and any other licence required in respect of each Vehicle and Driver used to render the Transport Services;
 - 8.1.4 ensuring that at all times, it performs its obligations with due regard to the safety of the Customer's personnel and all other persons present at a Loading Point or Off-Loading Point;
 - 8.1.5 performing its obligations in terms of these Terms and Conditions of Transport and the applicable Transport Order in a way which does not unreasonably interrupt, or causes the least possible interruption to Customer's business;
 - 8.1.6 ensuring insofar as it may be necessary, to allow, and ensure that its Drivers and its Sub-Contractors and their employees allow, the Customer or its duly authorised representatives to lawfully search any Vehicle, parcel, bag or other container or object of any nature whatsoever, and/or any Driver or its Sub-Contractor's driver entering or leaving any Loading Point or Off-Loading Point;
 - 8.1.7 ensuring that at all times during which Aspen Logistic Services is performing the Transport Services, that it is responsible for and supervises the performance of the Transport Services and the Drivers;
 - 8.1.8 obtaining at its cost any new licenses, permits and the like and renew all existing licenses, permits and the like that may be required in order for it to lawfully render the Transport Services; and
 - 8.1.9 ensuring that its Sub-Contractors and the employees of such Sub-Contractors at all times abide by the Terms and Conditions of Transport and the applicable Transport Order.
- 8.2 Aspen Logistic Services shall be entitled, but not obliged to, unpack the Goods at any time to inspect the Goods and establish the nature and packaging of the Goods. The cost of repacking the Goods shall be for the Customer's account.
- 8.3 Aspen Logistic Services shall be entitled to engage Sub-Contractors in order to render the Transport Services, subject to the following provisions:
- 8.3.1 notwithstanding such sub-contracting of its obligations, Aspen Logistic Services shall remain responsible for the loss and/or damage to the Consignment during Transit to the extent detailed

in clause 5.1; and

- 8.3.2 the Sub-Contractor to whom Aspen Logistic Services has sub-contracted the transportation of the Consignment furthermore shall not be entitled to further sub-contract the Transport Services to any third party.
- 8.4 Aspen Logistic Services will be paid the Rates for any Transport Services which are sub-contracted. Aspen Logistic Services shall thereafter be responsible for paying the Sub-Contractor. Any increase in cost arising out of the utilization of a Sub-Contractor will be for Aspen Logistic Services' account.
- 8.5 Aspen Logistic Services is not a Container owner, lessor or operator and is consequently, not under any obligation to provide Containers for the transportation of the Goods.
- 8.6 Instructions to collect payment on delivery in cash or otherwise on behalf of the Customer shall be accepted by Aspen Logistic Services upon the condition that Aspen Logistic Services will only be liable for the exercise of reasonable diligence and care in respect of such collection.

9. **ABNORMAL LOADS**

- 9.1 The carriage of Goods on behalf of the Customer at the instance of Aspen Logistic Services constituting abnormal loads shall be subject to the following terms and conditions:
- 9.1.1 adequate notice shall be given to Aspen Logistic Services to enable it to prepare drawings of such loads, route surveys and obtain local authority clearances and to submit these items to the Provincial and /or local authorities (and where applicable to electricity and the Post Office authorities) for their respective consents;
- 9.1.2 the Customer shall bear the cost of obtaining the consents from the above authorities, removing and replacing any obstacles during loading, off-loading or in route, raising and reinstating overhead wires, switching the electric power off and on, traffic escorts required, and pavement and obstruction fees levied by the authorities concerned, and any other additional services incidental to and necessary for the carriage of such Goods; and
- 9.1.3 the hours and speed of such transportation are subject to regulation by the authorities concerned.
- 9.2 Aspen Logistic Services shall not (without limiting the generality of the provisions of clause 5) be liable for any damage to any property and paved areas caused as a result of transporting such Goods over or through such property and the Customer hereby indemnifies Aspen Logistic Services against all liability and claims whatsoever by any Person whatsoever for:
- 9.2.1 any such damages to such property and for any consequential loss or damage arising therefrom; and
- 9.2.2 all legal costs incurred by Aspen Logistic Services in resisting any such claims.

10 **DANGEROUS GOODS**

- 10.1 Aspen Logistic Services is not obliged to contract for the carrying of Dangerous Goods on behalf of its Customer.
- 10.2 In the event of Aspen Logistic Services agreeing in writing to the transportation of Dangerous Goods, The Customer shall:
- 10.2.1 disclose fully the nature and properties of such Dangerous Goods to Aspen Logistic Services.

- 10.2.2 prior to loading give Aspen Logistic Services special detailed instructions to enable Aspen Logistic Services to place such Dangerous Goods for the proper safety and handling; and
 - 10.2.3 comply with all regulations governing the loading, off-loading, storing and carriage of such Dangerous Goods.
- 10.3 In the event of the Customer or consignor failing to disclose the dangerous nature of any Goods, or in the event of any Goods becoming a danger to persons or property, whether the dangerous nature thereof has been disclosed or not, Aspen Logistic Services shall be entitled immediately, and without prior notice to the Customer, to discharge, or dispose of any such Goods, in any manner and Aspen Logistic Services shall not be liable for any loss or damage arising from such discharge or disposal whatsoever. Aspen Logistic Services shall furthermore be entitled to recover from the Customer the Rates in respect of any such carriage, notwithstanding the non-delivery of such Goods together with any expenses incurred in discharging or disposing thereof.
- 10.4 The Customer:
- 10.4.1 shall be liable for all loss and/or damages suffered by Aspen Logistic Services or any other Person/s whatsoever caused by Dangerous Goods whether the dangerous nature thereof has been disclosed or not; and
 - 10.4.2 hereby indemnifies Aspen Logistic Services against all liability and all claims by any Person/s whatsoever arising from such loss and/or damage.

11. **HIGH RISK GOODS**

- 11.1 Notwithstanding anything to the contrary contained in these Terms and Conditions of Transport, Aspen Logistic Services shall under no circumstances be liable for the loss of or damage to any High-Risk Goods.
- 11.2 The Customer shall make a special declaration of the high-risk nature of such High Risk Goods in the Enquiry Notice and Transport Order and shall ensure that such High Risk Goods are specifically insured against all damage or loss prior to the loading of the High Risk Goods on the Vehicle, which insurance shall be for the Customer's account.

12. **FRAGILE GOODS**

- 12.1 Notwithstanding anything to the contrary contained in these Terms and Conditions of Transport, Aspen Logistic Services shall under no circumstances be liable for any damage or loss to any glass, glassware, mirrors, pottery, crockery, china, cast cement, plaster or asbestos finished or semi-finished products or Goods or any other similar or allied Goods of a fragile nature.
- 12.2 The Customer shall make a special declaration of the fragile nature of such Goods in the Enquiry Notice and Transport Order and shall ensure that such fragile Goods are specifically insured against all damage or loss prior to the loading of the fragile Goods in the Vehicle, which insurance shall be for the Customer's account.

13. **FORCE MAJEURE**

- 13.1 The term *force majeure* in these Terms and Conditions of Transport includes: fire, explosion, flood, riot, war, terrorist attack, accident, act of God, embargo, legislation, regulation or directive having the force of law, civil commotion, unrest or disturbance, non-availability of electricity, non-availability or shortages of fuel, labour strikes, lock-outs, labour disputes, the unforeseen mechanical breakdown of a Vehicle, lock-outs or any other cause resulting in the impossibility of performance in terms of a Transport Order and /or these Terms and Conditions of Transport which

is beyond the control of a Party whether similar or dissimilar to the causes described above (“**Force Majeure Event**”).

- 13.2 If either Party, despite its reasonable efforts, is prevented or hindered directly or indirectly by a *Force Majeure Event* from performing its obligations in terms of a Transport Order and /or these Terms and Conditions of Transport (other than the obligation to make monetary payments), the Party so affected (“**the affected party**”) shall be relieved of having to perform its obligations in terms of a Transport Order and /or these Terms and Conditions of Transport (other than the obligation to make monetary payments) as a direct result of the *Force Majeure Event* subject to the provisions of clause 13.4.
- 13.3 During the period that the *Force Majeure Event* exists and only to the extent that the affected party is prevented or hindered from performing its obligations in terms of a Transport Order and /or these Terms and Conditions of Transport, the affected party will not be liable for any loss or damage whether direct, general, special, or consequential which the other party (“**the unaffected party**”) may suffer as a direct result of the *Force Majeure Event* provided that reasonable written notice must be given by the affected party to the unaffected party. The written notice must provide the unaffected party with the details of circumstances giving rise to the non-performance as well as an estimate of the period of time for which the *Force Majeure Event* may endure.
- 13.4 If the *Force Majeure Event* is of such a nature that it will result in the affected party being unable to perform its obligations in terms of a Transport Order and /or these Terms and Conditions of Transport or should it exist for a period of 30 (thirty) calendar days or more, either Party shall be entitled, despite any provision to the contrary contained in these Terms and Conditions of Transport, to provide 7 (seven) calendar days written notice to the other Party of its intention to terminate a Transport Order and /or these Terms and Conditions of Transport. Neither Party will have any claim for damages arising out of the premature termination of a Transport Order and /or these Terms and Conditions of Transport in such circumstances.

14. QUOTATIONS

- 14.1 Quotations are based, *inter alia*, on quantities, densities, dimensions, mass, properties, and other technical data, available loading and off-loading hours and other information supplied by the Customer and are accepted by Aspen Logistic Services in good faith under representation by the Customer. Any variance therefrom shall entitle Aspen Logistic Services to require that the Rates quoted be adjusted to take into account such variance, or to suspend performance, or cancel the Transport Order, without thereby incurring any liability whatsoever and in the event of any such cancellation reserving to itself the right to claim from the Customer such damages as Aspen Logistic Services may have suffered.
- 14.2 Unless otherwise agreed in a Quotation, reference to tonnage shall be deemed to refer to metric tons, being 1000 kilograms.
- 14.3 The Customer agrees that any increase in Aspen Logistic Services’ costs coming into force after the date of the Quotation over which Aspen Logistic Services has no control will be for the Customer’s account.
- 14.4 In the event that there are any delays in rendering the Transport Services due to the Customer failing to fulfill its obligations, the Customer shall be responsible for all the costs incurred by Aspen Logistic Services in regard to such delays, which shall be over and above the Rates in the Quotation.
- 14.5 Where the volumes, quantities or scopes of work have increased over what has been quoted for, the Customer will be charged for any additions on a *pro-rata* basis.
- 14.6 Where Aspen Logistic Services is no longer able to travel the route from the Loading Point to the Off-Loading Point, which was the basis of the Quotation for any reason beyond Aspen Logistic

Services' reasonable control, Aspen Logistic Services shall be entitled to charge the Customer for the additional charges actually incurred as a result of travelling on an alternative route.

- 14.7 Where the Customer requires a postponement or cancellation of the Transport Services, Aspen Logistic Services shall be entitled to charge the Customer for all costs and expenses it has incurred and for any losses it has sustained as a result of such postponement or cancellation as the case may be. Such losses shall not be deemed to be consequential losses for the purposes of these Terms and Conditions of Transport.

15. DEMURRAGE AND STORAGE CHARGES

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

16. TERMINATION

Aspen Logistic Services shall have the right, in addition to any other rights that it may have in law, to immediately terminate a Transport Order in writing, on written notice to the Customer, if any one of the following occurs:

- 16.1 if there is an application for the provisional or final liquidation of the Customer; or
- 16.2 if the Customer is ordered by a court of competent jurisdiction to be placed under business rescue in terms of the Companies Act No. 71 of 2008 (as amended) or if the Customer commences with business rescue proceedings.

17. DOMICILIUM AND NOTICES

- 17.1 The Customer chooses as its *domicilium citandi et executandi* ("**domicilium**") for all purposes arising from or pursuant to these Terms and Conditions of Transport, the physical address as detailed in the Quotation. Aspen Logistic Services chooses as its domicilium for all purposes arising from or pursuant to these Terms and Conditions of Transport, the physical address: Aspen Logistic Services Proprietary Limited, 1 Indianapolis Boulevard, Gosforth Park, Raceway Industrial Park, Germiston, marked for the attention of the Managing Director. Each Party shall be entitled from time to time, by written notice to the other Party, to vary its domicilium to any other address within the Republic of South Africa which is not a post office box or *poste restante*.
- 17.2 Any notice given by one Party ("**First Party**") to the other Party ("**Second Party**") which is delivered by hand during the normal business hours of the Second Party at the Second Party's domicilium for the time being shall be rebuttably presumed to have been received by the Second Party at the time of delivery.
- 17.3 Notwithstanding anything to the contrary in this clause 17, a written notice or other communication actually received by any Party is adequate written notice or communication to it, notwithstanding that the notice was not sent to or delivered at its domicilium.

18. BREACH

- 18.1 Should a Party ("**Defaulting Party**") be in breach of any of such Party's obligations in terms of these Terms and Conditions of Transport and have failed to remedy such breach at the end of a period of seven (7) days' after delivery by the other Party ("**Aggrieved Party**") to the Defaulting Party of a

notice in writing requiring the Defaulting Party to remedy such breach, then the Aggrieved Party shall be entitled, without further notice to the Defaulting Party and without prejudice to any other right or remedy which may be available to the Aggrieved Party in terms hereof or at law, subject to the limitations set out in clause 5 above:

- 18.1.1 to cancel these Terms and Conditions of Transport forthwith and to claim and recover from the Defaulting Party such damages as the Aggrieved Party shall have sustained in consequence of such default, breach and/or cancellation; or
- 18.1.2 to institute action for specific performance of the provisions of this Agreement and/or for damages.
- 18.2 Should either Party institute action against the other for payment in terms of these Terms and Conditions of Transport, it shall be entitled to claim legal costs on an 'attorney and client scale'.

19. **DISPUTE RESOLUTION: ARBITRATION**

- 19.1 Should any dispute arise between the Parties in connection with these Terms and Conditions of Transport, the Parties hereby consent to the arbitration being dealt with on an urgent basis in terms of the rules of the Association of Arbitrators (Southern Africa) ("AASA"). The arbitration will be held in Pietermaritzburg, KwaZulu-Natal, South Africa. The arbitrator shall be a practising senior advocate of at least 15 (Fifteen) years standing.
- 19.2 The decision of the arbitrator will be final and binding on the Parties and may be made an order of the High Court at the instance of a Party. The costs of such arbitration will be borne by the unsuccessful Party or by both the Parties in such proportions as determined by the arbitrator in his sole discretion.
- 19.3 The provisions of this clause 19 shall be severable from the rest of these Terms and Conditions and shall remain in effect despite the termination of or invalidity for any reason of these Terms and Conditions of Transport.
- 19.4 This clause 19 will, regardless of whether a Party to these Terms and Conditions of Transport has demanded that a dispute be determined in accordance with this clause 19, not preclude any Party from obtaining any relief on an urgent basis from a court of competent jurisdiction.
- 19.5 Despite the reference of a dispute to arbitration under this clause 19, the Parties shall continue to perform their obligations under these Terms and Conditions of Transport.

20. **GENERAL**

- 20.1 If any provisions of these Terms and Conditions of Transport are found to be unlawful, unenforceable or invalid, it shall be deemed to be separate and severable from the remaining provisions of these Terms and Conditions of Transport and to the extent that same is unlawful, unenforceable or invalid, be deemed to *pro non scripto*.
- 20.2 These Terms and Conditions of Transport (read with the Transport Order) constitutes the whole agreement between the Parties with regard to the Transport Services and no Party shall be bound by any undertakings, representations, warranties and promises or the like not recorded therein or otherwise agreed in writing and signed by the Parties.
- 20.3 No variation of, addition to or agreed cancellation of these Terms and Conditions of Transport (read with the Credit Facilities Agreement and Transport Order) shall be of any force or effect unless in writing and signed by both of the Parties.

- 20.4 No extension of time or other indulgences granted by one Party to the other Party in respect of its obligations will constitute a waiver or novation of or otherwise affect any of the first Party's rights to enforce strict compliance with these Terms and Conditions of Transport.
- 20.5 In these Terms and Conditions of Transport words referring to natural persons shall also refer to bodies corporate and other legal personae and vice versa; a reference to any one gender shall include a reference to the other two genders; and a reference to the singular shall include a reference to the plural and vice versa;
- 20.6 In these Terms and conditions of Transport a reference to a Party shall include a reference to that Party's successors, administrators, liquidators, trustees and assigns.
- 20.7 Any reference to any law or enactment is to that law or enactment as at the date on which the last Party signs Terms and Conditions of Transport and as may be amended or re-enacted from time to time.
- 20.8 When any number of days is referred to in these Terms and Conditions of Transport, the days shall be calculated by excluding the first day and including the last day.
- 20.9 The rule of interpretation that a contract will be interpreted against the Party responsible for the drafting of such contract shall not apply to these Terms and Conditions of Transport and the Parties waive any rights they have to rely on such rules.
- 20.10 The termination or expiry of these Terms and Conditions of Transport shall not affect those provisions of these Terms and Conditions of Transport which either stipulate that they will continue to operate after these Terms and Conditions of Transport expire or terminate, or which of necessity must continue to have effect after such expiry or termination, even if the clauses themselves do not expressly provide for this.
- 20.11 Where any number of days are prescribed in these Terms and Conditions of Transport, such days shall, save where the contrary is indicated, consist of all days (i.e. including Saturday, Sunday and public holidays in the Republic of South Africa).
- 20.12 The validity, interpretation and all other matters arising out of these Terms and Conditions of Transport shall be governed by the laws of the Republic of South Africa.
- 20.13 The Customer may not cede or assign any of its rights or delegate any of its obligations under these Terms and Conditions without the prior written consent of Aspen Logistic Services, which consent may be withheld.
- 20.14 The Customer acknowledges that it has not been induced to sign these Terms and Conditions of Transport by any representations by Aspen Logistic Services or by any third parties and confirms that it enters into these Terms and Conditions of Transport freely and voluntarily.
- 20.15 Each Party acknowledges that it has been free to secure independent legal and other advice as to the nature and effect of all of the provisions of these Terms and Conditions and that it has either taken such independent legal or other advice or dispensed with the necessity of doing so.

END OF THE TERMS AND CONDITIONS OF TRANSPORT