

STANDARD TERMS AND CONDITIONS OF CARRIAGE

ENTERED INTO & AGREED BETWEEN TRANSCOM SHARAF GROUP COMPANIES INCLUDING ITS SUBSIDIARIES AND ASSOCIATES HEREIN AFTER REFERRED TO AS “THE CARRIER”

AND

IT’S CUSTOMERS (“CUSTOMER”)

Unless otherwise agreed to in writing, all contracts between the carrier and its customers shall be subject to the terms and conditions referenced on the individual Company’s Account Application form, set out below :-

1. Where appropriate, words importing any gender shall include any other gender as well as bodies of persons whether corporate or incorporate and words importing the singular shall include the plural and vice versa.
2. The terms “carrier” includes each of its servants, agents and sub-contractors who shall enjoy the same protection as the carrier.
3. The carrier shall be entitled to employ sub-contractors on such terms and conditions as it deems fit for the purpose of fulfilling a contract, or any part thereof.
4. Goods/cargo means anything to be handled, conveyed or stored by the carrier.
5. Customer means those that contract with the carrier for any service, jointly and severally and includes everyone they represent.
6. To enable the carrier, where necessary, to quote, arrange for suitable vehicles, obtain permits, traffic escorts and to plan generally, the customer shall provide the carrier with :-
Adequate addresses for collection and delivery and details of loading and off loading facilities, times and matters which could affect access;
Exact quantities, weights and dimensions of all goods and adequate further information and notice to enable the carrier to apply for statutory clearances required.
All relevant particulars of loading and off-loading point and road dimensions, load-bearing capacities and possible obstructions to enable proper route planning.
7. Dangerous, hazardous, or noxious goods mean anything so classified by the South African railways, or harbours administration or so regarded by the carrier.
8. Should it require dangerous, hazardous or noxious goods to be handled, the customer shall, beforehand, specifically inform the carrier and give it detailed instructions, in writing, as to the properties and handling thereof to ensure and compliance with any relevant laws.
9. The carrier shall not be obliged to handle dangerous, hazardous or noxious goods.
10. Should the carrier agree to handle dangerous, hazardous or noxious goods the customer shall pack them properly according to any regulations in force.
11. The customer will furnish the carrier with all necessary documents that it may need with every consignment.
12. Whilst it will endeavor to deliver all goods on time, the carrier cannot contract on the basis that time is of the essence, or accept liability for any losses due to delay and the customer shall not be entitled to cancel, repudiate, or claim damages due to late delivery.
13. The customer warrants that :-
If it is not the absolute owner of any goods in a consignment, it is in so far as necessary entitled and authorized to enter into this contract on behalf of all relevant parties;-
It has disclosed all relevant required details relating to the goods to enable the carrier to price and execute the contract safely and lawfully;
The required handling will not be dangerous, hazardous, or noxious, or unlawful unless disclosed in writing by the customer beforehand;
All information given by, or on its behalf is correct.
14. Quotations may be amended or withdrawn prior to acceptance and shall lapse after the period indicated on the quote.
15. The contract price shall inter alias be:-

- Fixed in the discretion of the carrier with due regard to its ruling rates, or in the absence of such rates at market related rates.
- Calculated on the information furnished and warranted to be correct and complete by the customer and accepted in good faith by the carrier.
16. Charges will be appropriately increased and any damages suffered claimed if :-
 The information furnished is incorrect in which event the carrier may even cancel any further performance under a contract, retain monies already paid and claim damages.
 The cost of capital equipment to be specifically acquired for a contract, or fuel, tyres, spares, insurance, salaries, wages, sub-contractors, rail age, airfreight, shipping, taxes, exchange rate fluctuations or any other costs beyond the carrier's control is increased during a contract;
 Longer routes than planned, when quoting, or contracting have to be used, or loading, or off-loading is complicated due to circumstances beyond the carriers control;
 Obtaining permits, providing escorts, removing or reinstating obstructions involves expenses and effort not provided for by the carrier;
 Extra costs are incurred to meet taxes, levies and authoritarian requirements;
 In the event of any vehicle being seized as a consequence of any breach on the part of the customer;
 The customer, or the consignee fails to load, off-load, or take delivery of any goods, in which event the Carrier shall in its discretion be entitled to abandon the goods on site, or store them. The customer shall be liable for all expenses and charges and shall have no claim whatsoever against the carrier; Any area, or mass set aside for storage, or conveyance of goods is not used, or the carrier's equipment is damaged, or delayed due to the customer's fault;
 If the carrier has to pay any demurrage, or storage charges.
- 17 The customer irrevocably appoints the carrier to enter into any contract at the sole cost and expense of the customer, upon such terms and conditions as it deems fit should it, in the carrier's opinion at any time, become necessary to store any of the goods.
- 18 Notwithstanding any prior debts, the carrier shall not be precluded from raising further debits for amounts legitimately due.
- 19 Because all contracted services will be rendered at the sole risk of the customer, notwithstanding anything to the contrary contained herein, or in any law, the customer shall appropriately insure, against all risks and have, the carriers interests noted in such policies and indemnities and holds the carrier, which contracts out of all liability, harmless, against any direct, indirect, consequential, or other loss, damage, or expense suffered by anyone, including the carrier arising from, or in connection with each contract entered into, including but not limited to, claims flowing from :-
 Contamination, damage, destruction, late or non-delivery of any goods;
 Indemnities that the carrier must give for removal and re-instatement of obstructions;
 Civil or criminal liability and expenses incurred arising from the customer's omission to inform and instruct the carrier fully regarding any goods in terms of a contract.
 The carrier shall not be responsible for any loss, or incorrect delivery of the consignment due to the name and address of the consignee being improperly stated;
 In the absence of any willful act, or omission, the carrier shall not be liable for any loss in the event of the delivery being affected to any person to receive same.
- 20 Goods in transit insurance
 If so required, the carrier can, at the customer's cost, endeavor to arrange goods in transit and any other insurance they request prior to transportation.
 If any such request cannot be met at all the carrier or its insurers, the customer shall be advised prior to transportation;
 Whilst the carrier will endeavor to arrange cover as required, it does not warrant anything in that regard and failure to arrange the whole or portion of any required insurance shall not entitle the customer to damages from the carrier. It shall be the customer's obligation to determine and satisfy itself with the conditions and suitability of any insurance arranged.
 The carrier will reasonably assist the customer in pursuing any insurance claim
- 21 The contract shall be carried out in a manner to be decided upon the carrier.
- 22 Transit shall commence: -
 When the consignment has been delivered, unloaded and accepted for carriage at the carrier's premises; or
 When the consignment has been loaded and finally secured on the carrier's vehicle at any other point.
23. Unless otherwise terminated, transit shall terminate
- 23.1 On the arrival at place of delivery (without the load being unfastened, or unloaded);
 If a consignment is to be held by the carrier pending instructions, or collection and the instructions, or
- 23.2 Collection does not materialize within a reasonable time.

24. The customer shall be solely responsible for delivery, loading and off-loading of any goods to be conveyed, Or stored on the carrier's vehicles or premises and for the acceptance of completion of the contract;
To the extent that the carrier's agents may assist therein, they shall do so on instruction, supervision and at sole risk of the customer, or consignee.
25. The carrier shall not be obliged to perform under a contract unless:-
 - 25.1 It has received sufficient notice of the customer's requirements to enable it to perform;
 - 25.2 It has suitable vehicles available;
 - 25.3 Every authority and permit required to enable lawful performance has been obtained and remain in force the carrier shall not be responsible for any delays caused by obtaining consents, or approval and shall be entitled to charge extra to cover the costs incurred by and delay;
- 25.4 All roads, loading, off-loading equipment, facilities and accesses are in the carrier's opinion, passable, operable, safe and adequate;
- 25.5 The carrier is satisfied of the customer's solvency and ability and willingness to pay for the services in terms of a contract;
- 25.6 It is, in the carriers opinion, safe to comply with its obligations and is not prevented from doing so by force majeure which shall inter alias include, but not be limited to, attacks upon its employees, vehicles, or equipment, accidents, breakdowns, non-availability of fuel, or any other cause whatsoever beyond its reasonable control;
- 25.7 The competent authorities approve of the passage of the loaded vehicle and the route on which the carrier's charges have been based.
26. Should goods, whether they are dangerous, hazardous, or noxious in terms hereof and so disclosed, nor not, become so dangerous, hazardous, or noxious to persons, or property, in the carrier's opinion, it shall forthwith, without any notice, be entitled to take steps it deems prudent, including the disposal of the goods, to overt the problem.
 - 26.1 Notwithstanding damage to, or disposal of any goods, the carrier shall be entitled to payment as if the goods were duly delivered as well as any expenses and extra charges incurred trying to overt the problem and any damage suffered by the carrier;
 - 26.2 The carrier shall under no circumstances be liable to the customer, consignee, or anyone else for any loss, or damage sustained as a result of any such steps.
27. The carrier shall be entitled to sell any goods in a consignment by public auction, or privately in any manner it deems fit and to apply the proceeds of any such sale, alter all expenses, towards payment of any amount due to it by the customer :-
 - 27.1 It the carrier is unable to deliver that consignment to the consignee's order, or
 - 27.2 If transit is deemed to have ended.
28. The carrier's right of sale shall be subject to the following provisions:-
 - 28.1 Where the address of the customer, or the consignee is known, the carrier shall give them notice that the goods will be sold unless paid for and removed within a stipulated time;
 - 28.2 The carrier shall make reasonable efforts to sell the goods at a fair price for the consignment,
 - 28.3 If the carrier sells it shall be discharged from further liability to the customer anyone claiming through it once it pays, or tenders the balance of the price realized less all expenses incurred in connection with the sale and all outstanding carriage and storage to the customer.
29. All payments to the carrier shall be without deduction, or set-off and no amount may be deferred, or withheld by reason of any claim or counter claim.
30. A certificate stating the amount owing by the customer, signed by the carrier, or its representative, whose appointment need not be proved by the carrier, shall be adequate proof of balance and binding unless the customer proves that such amount is not owing.
31. Overdue interest calculated from the time, shall be charged and capitalized on a monthly basis at the maximum legal rate.
32. The customer agrees to pay all expenses of whatsoever nature, incurred by the carrier in successfully enforcing, or defending any provisions of this agreement, or any claim hereunder, including but not limited to costs of tracing the customer, or any sureties, transport and all legal fees, including collection commission, as between attorney and own client, irrespective of whether court action has been instituted or not, on demand.,
33. Any agent acting for a disclosed or undisclosed principal accepts liability for all amounts due to the carrier under the contract;
 - 33.2 The consignee shall be liable for the carrier's charges and shall pay same, even if the goods are consigned, "carriage forward", or the carrier has to collect payment from another if the consignee, or such other fails to pay them within three (3) days after being called upon to do so by the carrier.

- 34 All consignors, customers, consignees, owners of goods, agents and others who are parties to this contract, individually and independently, cede all their rights against each other and any benefits they may have under any insurances related to this, or any other contracts, with the carrier, to it, as security for payment of anything they may owe to it and each of them appoints the carrier exclusively and irrevocably to do everything necessary to collect any payment due to them and to appropriate it to any debt they may owe to it.
- 35 Apart from any lien it may have, the parties hereto also agree, that all documents relating thereto, which come into possession, or under control of the carrier on their behalf, is pledged to it as security for all monies any of them may owe to it.
- 35.2 If any monies are not paid when due, the carrier shall without notice be entitled to open and examine any goods remaining subject to its lien, or pledge to it.
36. The carrier shall in its absolute discretion be entitled to appropriate payment received from, or on behalf of the customer to any debt the customer may owe it.
37. Should the customer breach any contract with the carrier, or default in its own obligations, the carrier shall, without prejudice to any other rights it may have, in its absolute discretion be entitled to :-
Suspend any further performance, until the default is cured;
Sell any goods it holds under lien, or pledge, by public auction, or private treaty and to apply the proceeds towards any debt owing to it by the customer, after 7 days notification of its intention to the customer at its last known address
Upon payment, or tender of any balance of the proceeds of any such sale, the carrier shall be released from any liability to the customer in respect of the goods.
The carrier's rights in terms of this clause are in addition to any other common law rights, which it has against the customer.
38. In order to enable the carrier to carry out immediate investigations, the customer shall notify it of any complaints, within 7 days of delivery; failing which, any claim arising shall lapse.
39. Should the carrier notwithstanding the foregoing be held liable for any loss, or damage arising from or in connection with a contract, its liability shall be limited to R100.00 (South African Rand)
40. The carrier shall be entitled to cede, or assign any of its rights, or obligations under any contract to anyone;
The customer shall have no right to cede, or assign any of its rights, or obligations under any contract.
41. The customer chooses the addresses set out in any documentation with the carrier for purposes of delivery of all notices, mail and as Dom cilium citandi et executandi for service of legal process, but shall be entitled to change such addresses from time to time provided that the new addresses shall always include a physical address and that any such change shall only be effective upon receipt of written notice by the carrier. All notices forwarded by prepaid registered post, shall be deemed given and received 3 (three) days after the date of processing.
42. The parties consent to the jurisdiction of a Magistrates Court in whichever legal jurisdiction decided by the carrier in connection with any action that might be instituted arising from, or relating to these standard terms & conditions
43. The exercise by the carriers of any right in terms of this agreement shall be without prejudice to any other rights it may have in terms hereof, or in law.
44. No agreement at variance with the terms and conditions of this agreement and no waiver by the carrier of any of its rights shall be of any force or effect unless reduced to writing.
45. These conditions shall replace all prior conditions and govern this and future contracts between the carrier and the customer.
46. The carrier shall be entitled from time to time to amend these standard terms and conditions and that the amendments shall be contained in that listed on the Companies web site at www.transcomsa.co.za or whichever site as changed from time to time.