

HETTIES TRANSPORT cc

CK 1994/007314/23

Terms and Conditions

INDEX

- 1. Definitions**
- 2. No variation of conditions**
- 3. Remuneration**
- 4. Payment of remuneration**
- 5. Carrier's lien**
- 6. Customer's warranties**
- 7. Condition of goods**
- 8. Dangerous goods**
- 9. Environmental liability indemnity**
- 10. Perishable goods**
- 11. Loading and off-loading**
- 12. Route**
- 13. Carrier's liability for damage or loss**

14. **Demurrage**
15. **Subcontracting**
16. **Insurance**
17. **Permits and consents**
18. **Delay- Police instruction**
19. **Sole agreement**
20. **Non-variation**
21. **Indulgence and waiver**
22. **Applicable law**
23. **Abnormal Load**
24. **Failure by Customer to Take Delivery**
25. **Hetties Transports Breach**
26. **Consent to the Jurisdiction of the Magistrates court**
27. **Cession, Delegation and Assignment**
28. **Legal Costs**
29. **Domicilium and notices**
30. **Presumptions as to notices**

1 Definitions

In these conditions the following words shall bear the meanings assigned to them below.

1.1 “ the carrier” means Hetties Transport cc CK 1994/007314/23 and includes the carrier’s servants and agents and any person or persons carrying any goods forming the subject matter of this contract under and in terms of a subcontract with the carrier;

1.2 “ the customer” means the party reflected on the despatch document as the sender of the goods whether acting on his own behalf or in his capacity as agent or in any other capacity for a third party or whom accepts the carriers quotation to perform a contract for the Transportation of goods.

1.3 “the goods” means the goods forming the subject matter of this agreement, whether contained in one or more parcels, container, pallet, or packages and whether consigned singly or in parcels or in bulk, supplied in bulk by the customer and which is accepted by the carrier to Transport.

1.4 “Dangerous goods” includes those classified as such by the Marie Division of the Department of Transport or which are to be considered Hazardous and or noxious substances in terms of the hazardous and Noxious Substances Act;

- 1.5** “**the handling of the goods**” includes the goods being handled, warehoused, held, controlled, loaded or unloaded, carried or otherwise possessed by the carrier for any purpose whatsoever;
- 1.6** **Vehicle**” means any vehicle or trailer used by the carrier in connection with the Transportation of the Goods.
- 1.7** “**the contract**” means the current agreement between the customer and the carrier, whether orally, in writing or by accepting the carriers quote, for the Transportation of the goods.

2 No variation of conditions

The handling of the goods shall be subject to the conditions stated herein unless specifically varied by the carrier in writing, and these conditions shall at all times take precedence over any terms, conditions or stipulations contained in any of the customer’s documentation.

Should the customer in any way purport to attach any conditions which vary, amend or are in conflict with the conditions set forth herein, then notwithstanding anything to the contrary stipulated by the customer, the conditions set forth herein shall prevail and be of full force and effect, unless specifically varied in writing with specific reference to the customer’s contrary documentation.

3. Remuneration

- 3.1** In the absence of any written agreement to the contrary, the remuneration payable to the carrier by the customer will be in accordance with the standard tariffs of the carrier.
- 3.2** The carrier’s standard tariffs are subject to review by the carrier without prior notice to the customer.

- 3.3** The customer shall be liable for any duty, tax, impost, fine or outlay of whatsoever nature levied by the authorities at any port or place in connection with the goods and shall reimburse the carrier for any such amount disbursed or losses sustained by the carrier in connection therewith.
- 3.4** In the event of the carrier being obliged to take out or obtain any licences or permits, or to comply with the requirements of any lawful authority, the carrier shall be entitled to make an additional charge to cover any expenses resulting there from not already included in the carrier's standard tariffs.
- 3.5** In the event of the carrier being obliged to deviate from the route selected by it or to carry the goods over another route, for any reason whatsoever, including but not limited to adverse weather conditions, impassable or dangerous roads, bridges, pontoons and ferries, or the instructions of any competent authority the carrier shall be entitled to charge an additional remuneration in proportion to the resulting extra distance travelled.
- 3.6** The customer shall pay additional charges calculated at the carriers usual rates if loading and off-loading of the goods takes place at more than one place on route which is not provided for in the carriers quotation.
- 3.7** Quotations are given having regard to factors stipulated in 5 above. Quotations further;
- 3.7.1** exclude any duties , taxes, imposts, fines or outlays of whatsoever nature levied by authorities;
- 3.7.2** shall not bind the carrier if not accepted by the customer within 30 days of the carrier giving the quote to the customer;

3.7.3 are subject to amendment until such time as loading shall actually have commenced;

3.7.4 are subject to change in the event that the customer increase the quantity of the goods to be carried;

3.8 The customer acknowledges –

3.8.1 that the carrier shall have the sole discretion in determining the route to be adopted in the Transporting of the goods;

3.8.2 that the Transportation of the goods is subject to the suitability of the vehicle and operator resources on the dates required;

3.8.3 that any delays in the Transportation of the goods due to or occasioned by interruption, hindrance, local traffic, municipal regulation or non-production of necessary licenses, permits or custom forms and clearances will give rise to additional charges for the customers account;

3.8.4 that the carrier shall be entitled to increase the charge to the customer should the cause of the delay fall beyond the control of the carrier.

4 Payment Of Remuneration

4.1 In the absence of any special provisions to the contrary, payment shall be effected by the customer in cash and not by cheque, in advance (or against tender of delivery of the goods or within 30 days after the date of the carrier's invoice).

4.2 The carrier shall in its absolute discretion be entitled to appropriate all payments made by the customer towards the payment of any debt or

obligation of whatsoever nature owing by the customer to the carrier, irrespective of when such debt or obligation arose.

4.3 Interest will accrue on all payments not made on due date at the maximum rate allowed by law from the due date for payment to the date on which payment is effected.

4.4 The customer may not raise any claim, dispute or counter-claim as a reason for deferring payment and the customer may not withhold any payment or set off any claim or counter-claim which it may wish to raise against the amount invoiced by the carrier.

5 Carrier's Lien

5.1 As security for all moneys (whether past or present) owing for the handling of goods, whether forming the subject matter of this agreement or otherwise, the carrier shall have a lien over all goods, documents, bills of lading, import permits as well as all repayments, refunds, claims or recoveries in its possession or under its control.

5.2 In addition, the carrier shall be entitled to hold all goods as security for any other moneys which may be owing to it by the customer from any cause whatsoever.

5.3 Notwithstanding that credit may have originally been granted by the carrier to the customer, the carrier may at any time in its sole discretion retain possession of any goods pending the discharge of all customer's indebtedness to the carrier, whether or not such indebtedness is related to the handling of the goods in question.

5.4 In the event of the carrier retaining possession of the goods in terms of clause 5.1 and/or 5.2 and/or 5.3, the carrier shall be entitled to store or

warehouse the goods at such place as it deems fit, at the customer's expense.

5.5 If any moneys owing to the carrier are not paid by the customer within 30 days after they have become due, the carrier shall be entitled without further notice:

5.5.1 to open and examine the goods;

5.5.2 to sell the whole or any part of the goods in such a manner and on such terms and conditions as it deems fit;

5.5.3 to apply the proceeds of any sale after deducting all expenses thereof in payment or reduction of any amount due by the customer to the carrier (including storage charges envisaged in clause 5.4) provided that any surplus shall be paid over to the customer without interest immediately after the sale, if the customer's address is known, and if not, upon demand made by the customer within 90 days of the sale.

5.6 The carrier shall not be liable for any loss, damage or deterioration of such goods attributable to the implementation of this clause.

5.7 The carrier's rights under this clause are not exhaustive and are in addition to any other rights which it may have against the customer.

6. Customer's warranties

The customer is bound by and warrants in favour of the carrier:

6.1 the accuracy of all descriptions, values and other particulars furnished to the carrier for customs, railage and other purposes. The customer indemnifies the carrier against all expenses, claims or fines arising from any inaccuracy or omission of descriptions, values or other particulars

(even if the inaccuracy or omission of descriptions, values or other particulars occurs without negligence);

6.2 that the carriage of the goods will not violate or infringe any Act, regulation or law and the customer hereby indemnifies and holds the carrier harmless against any claims and/or damages which the carrier may suffer by virtue of the customer's breach of this warranty;

6.3 that the goods are the customer's sole property, alternatively, the customer is authorised by the person owning the goods to enter into this contract subject to these terms and conditions, and the customer hereby indemnifies the carrier against any claim of any nature made by the owner.

7. Condition Of Goods

The onus of proving the quantity, type, physical properties and composition and the condition of the goods and/or the condition of any container at the time of receipt thereof by the carrier shall at all times remain with the customer, and no delivery note, receipt or other document furnished or signed at such time by or on behalf of the carrier shall constitute conclusive proof thereof.

8. Dangerous Goods

8.1 Unless otherwise agreed in writing, the customer warrants that all goods handled are fit to be handled in the ordinary way and are not dangerous.

8.2 Unless otherwise agreed in writing, the carrier will not handle any dangerous, corrosive, noxious, hazardous, inflammable or explosive goods or any goods which in its opinion are likely to cause damage.

8.3 The customer shall be liable for all losses or damage caused to the carrier and/or third parties by all goods handled and hereby indemnifies the carrier against any claims arising in connection therewith.

8.4 Should the carrier agree to handle any dangerous goods for any purpose:

8.4.1 the customer shall furnish with the goods a written declaration detailing the trade name, chemical composition and characteristics of the goods; and

8.4.2 such declaration shall define the precise respects or circumstances in which the goods are dangerous; and

8.4.3 the customer shall ensure that the goods bear the warning labels and declarations required in terms of the laws and regulations applicable to the Transportation of dangerous goods.

8.5 If in the opinion of the carrier any goods (whether they have been declared as dangerous or not) become a danger to any person or property the carrier shall be entitled immediately and without notice to the customer to dispose of the goods in question or take such other steps as it in its sole discretion deems prudent to avert danger. In such event the carrier shall:

8.5.1 not be liable under any circumstances for the value of the goods or for any other loss or damage whether direct or consequential sustained by the customer or owner as a result of such disposal or other steps; and

8.5.2 still be entitled to recover from the customer its remuneration for the handling of the goods together with any costs incurred by it in disposing of them or taking other steps.

8.6 Unless written instructions are given to the carrier, it shall be under no obligation to make any declaration or to seek any special protection or cover from Spoornet in respect of any goods falling within the definition by that body:

8.6.1 dangerous or hazardous goods; or

8.6.2 of goods liable to be stored in the open.

9. Environmental Liability Indemnity

9.1 The Customer warrants that it/he/she foresees no existing facts or circumstances that are likely to result in the carrier being required by law at any time in the future to clean up at its/his/her cost, any hazardous substance causing pollution or environmental degradation resulting from the Transportation of the goods for the customer by the carrier.

9.2 For the purpose of this clause,

“pollution” means any discharge, Transport, emission, release, leakage, spillage, escape or disposal of a hazardous substance; and

“hazardous substance” means any substance which, either alone or in combination with any other substance may cause injury or ill health to or death of human beings, or cause degradation to the environment, and includes any hazardous, poisonous, dangerous, noxious or toxic substances, pollutants or wastes which have an adverse effect on the composition, resilience or productivity of natural or managed eco-systems or materials useful to people, or will have such an effect in the future.

9.3 The customer indemnifies the carrier and holds the carrier harmless against all loss or damage which the carrier may sustain from any breach of the warranty in clause 9.1 above, and undertakes to pay on demand to the carrier whatever sums shall have been incurred or have to be incurred by the carrier as a consequence thereof, including any and all claims, costs, damages, expenses (together with reasonable professional fees incurred), losses, liabilities, including without limitation liability to third parties, fines or penalties suffered or incurred by the carrier as a direct consequence of or in connection with any civil or criminal proceedings relating thereto.

10. Perishable goods

Perishable goods which are not taken up immediately upon arrival at their destination or which are insufficiently marked or otherwise not identifiable may be disposed of without notice to the customer, and the payment or tender to the customer of the net proceeds of any disposition (after deduction of all charges incurred by the carrier) shall be equivalent to delivery.

11. Loading and off-loading

11.1 The customer shall ensure that:

11.1.1 the goods shall be ready for loading on the date specified;

11.1.2 all documentation necessary in connection with the goods and the Transportation thereof shall be fully and correctly prepared;

11.1.3 at all places where the carrier is to collect and off-load the goods there will be safe, suitable and adequate access and loading and off-loading

facilities, and that it is possible for the carrier to do so by means of ordinary staircases and/or doorways, without need for any special or

additional tackle, plant, power, labour or equipment;

11.1.4 the goods will be sufficiently packed and prepared for carriage;

11.1.5 the customer shall sign such certificates and receipts on loading and off-loading as the carrier may require.

11.2 The carrier shall not be under any obligation to provide any plant, power or labour which in addition to its vehicle's crew is required for the loading or unloading of any goods. Any assistance given by the carrier in such loading or unloading shall be at the sole risk of the customer.

11.3 Any customer (or owner) conducting any packing or other operation or activity in any area or premises provided by the carrier shall do so at its own risk, and the customer indemnifies the carrier against all claims or losses arising out of the presence of the customer in such area or premises.

12 Route

When carrying goods, the carrier shall in its sole discretion decide what route to follow.

13. Carrier's liability for damage or loss

The goods shall be carried at the sole risk of the customer (or owner). The customer hereby exempts the carrier from and indemnifies the carrier against all liability of whatsoever nature, arising directly or indirectly from the handling of the goods. This exemption and indemnity includes, but is not restricted to, any liability for direct and/or consequential loss or

damage arising from loss of the goods, damage to the goods, the failure to collect or deliver the goods timeously, adequately or at all or from or to the correct address, or from any other cause arising, whether any such liability, loss or damage is caused by or arises from breach of contract, negligence or gross negligence, on the part of the carrier, its servants, agents or employees or otherwise.

14. Demurrage

The carrier shall not be liable for demurrage or storage charges of any nature whatsoever and howsoever arising. Where any such demurrage and/or storage charges are paid by the carrier, such charges shall be refunded to the carrier by the customer on demand. The customer hereby appoints the carrier irrevocably and *in rem suam* as its agent and in its name, place and stead, to contract for the storage of the goods upon such terms and conditions as the carrier may, in its sole discretion elect, and without any liability whatsoever attaching to the carrier to attend to such storage.

15. Subcontracting

The carrier reserves the right to employ sub contractors or agents to act for it. Where the carrier employs independent third parties to perform all or any of the functions required of the carrier, the carrier shall have no responsibility or liability to the customers for any acts or omissions of such third parties, even although the carrier may be responsible for the payment of their charges. However if the carrier is suitably indemnified against all costs (including attorney and own client costs) the carrier shall take such action against the third party concerned on the customer's behalf as the customer may direct.

16. Insurance

- 16.1 The carrier shall, only if requested to do so in writing by the customer, effect insurance on any goods being handled by it. Any such insurance effected by the carrier shall be subject to the usual exceptions and conditions of the policies of the insurer or underwriter taking the risk. The carrier shall not be under any obligation to effect a separate insurance on each consignment but may declare it on any open or general policy. Should the insurer dispute liability for any reason, the insured shall have recourse against the insurer only and the carrier shall not be under any liability in relation thereto.
- 16.2 The customer agrees that he is hereby informed by the carriers insurance on normal loads and goods in transfer are limited to the amount of R500 000.00 (five hundred thousand rand) per load. Should the customer request the carrier to transport goods in the excess of the value of R500.000.00 the customer shall inform the carrier in writing in such a manner and fashion and timeously so as to enable the carrier to liaise with his insurer to effect such larger cover on insurance on goods to meet the requirements of the customer.
- 16.3 the customer understands and confirms that he is hereby given notice by the carrier that the carriers general insurance cover does not cover household goods and personal effects, alcoholic beverages, cigarettes, tyres, electronic goods and tin fish unless agreed by the underwriters of the carrier prior to transportation of the goods.

17. Permits and consents

If any permit, consent or approval to handle goods is required under any law, by-law or regulation, none of the carrier's obligations or duties shall take effect unless and until it obtains the relevant permit, consent or approval. The customer shall provide all assistance and information

required by the carrier for the purpose of applying for or obtaining any such permit, consent or approval.

18. Delay- Police instruction

The carrier shall not be liable for any delay occasioned by compliance with any instructions issued by the police or any other competent authority, but any extra costs incurred by the carrier as a result of compliance with any such instructions shall be added to its charges.

19. Sole agreement

This agreement constitutes the sole record of the agreement between the parties. The carrier shall not be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.

20. Non-variation

No addition to, variation of or agreed cancellation of this agreement shall be of any force or effect unless recorded in writing and accepted by the carrier in writing.

21. Indulgence and waiver

No relaxation or indulgence which the carrier may grant to the customer shall constitute a waiver of the rights of the carrier and shall not preclude the carrier from exercising any of its rights which may have arisen in the past or which might arise in the future.

22. Applicable law

The proper law of this agreement is the law of the Republic of South Africa.

23. Abnormal Load

The carriage of Goods, constituting abnormal loads, by Hetties Transport on behalf of the Customer shall be subject to the following additional conditions –

23.1 Adequate advance notice shall be given to Hetties Transport to enable it to prepare drawings of such loads, route surveys and local authority clearances and to submit these to the Provincial and/or local authorities (and here applicable to Escom and the Post Office authorities) for their respective consents.

23.2 The Customer shall bear all costs of and associated with the Transportation of such abnormal load, including but not limited to, the costs of –

23.2.1 obtaining the consents from the relevant authorities;

23.2.2 removing and replacing any obstacles during loading, off-loading or en route;

23.2.3 raising and reinstating overhead wires;

23.2.4 the cost of switching electric power off and on;

23.2.5 traffic escorts required;

23.2.6 pavement and obstruction fees levied by the local authorities concerned ;

23.2.7 any other additional services or charges incidental to or necessary for the carriage of such abnormal load, where such costs and charges have not been included in Hetties Transport 's quote.

23.3 The hours and speed of such Transportation are subject to regulation by the authorities concerned.

23.4 Hetties Transport shall (without limiting the generality of the provisions of condition 20) not be liable for any damage to any property whatsoever and howsoever caused by the passage of such abnormal load and/or vehicles over or through such property and the Customer hereby indemnifies HETTIES TRANSPORT against all liability and claims whatsoever, howsoever arising and by whomsoever made for any such damages to such property and for any consequential loss or damage arising therefore and further indemnifies Hetties Transport for all and any legal costs that Hetties Transport may incur in resisting any such claims;

24. Failure by Customer to Take Delivery

The general practice for loading is 4 (four) hours and off-loading is 4(four) hours. Unless arranged before the time for loading/ offloading.

Should the Customer fail for whatever reason, refuse or neglect to take delivery of the whole or any part of the Goods at the agreed off-loading point and/or at the agreed off-loading time, or should it not be possible (though no fault of Hetties Transport) or be practical to off-load the goods within 6 (Six) hours after arrival of the vehicle at such off-loading point and should no acceptable alternative delivery instructions be received from the Customer, Hetties Transport without notice to the Customer and at Hetties Transport's sole discretion be entitled to store or abandon the Goods. In such event the Customer shall be liable for and shall pay any additional charges thereby incurred and, without limiting the provisions of condition 20, shall have no claim whatsoever and howsoever arising against Hetties Transport for any of its acts or omissions associated therewith.

25. Hetties Transport 's Breach

Should Hetties Transport breach any of the terms and conditions of the contract, the Customer shall give written notice to Hetties Transport calling upon it to remedy any such breach complained of within 7 (SEVEN) days of receipt of such notice and, failing compliance, may thereafter cancel the agreement on further written notice to Hetties Transport .

26. Consent to the Jurisdiction of the Magistrates' Court

The customer consents in terms of Section 45 of the Magistrates court Act No. 32 (as amended), to the jurisdiction of the Magistrates Court, having jurisdiction under Section 28 of the said Act, notwithstanding that the claim by Hetties Transport exceeds the normal jurisdiction of the Magistrates Court as to amount. Hetties Transport shall, in its sole discretion, be entitled to proceed against the Customer in any other court of competent jurisdiction, notwithstanding the foregoing.

27. Cession, Delegation and Assignment

Hetties Transport may, without the consent of the Customer, cede, delegate or assign all or any of its rights and/or obligations arising from a contract with the Customer for the Transportation of Goods.

28. Legal Costs

Should Hetties Transport instruct an attorney to enforce any of its rights against the Customer arising from a contract, regardless of whether legal action is instituted or not, the Customer shall be liable for and shall pay Hetties Transport 'S legal costs on the scale as between attorney and client, such costs to include the costs of tracing agents and collection commissions.

29. Domicilium And Notices

The customer chooses its address set out in this agreement as its *domicilium citandi et executandi* (“*domicilium*”) for all purposes under this agreement, whether for serving any court process or documents, giving any notices, or making any other communications of whatsoever nature and for any other purpose arising from this agreement.

30. Presumptions as to notices

Any notice required to be given by the carrier to the customer will be deemed to have been validly given if posted by registered post to the *domicilium* of the customer and will be deemed to have been received by the customer within 7 days of the date of posting.

31. Damaged Goods / Shortages

Any goods damaged or found short , the customer must report it to Hetties Transport within 48 Hours to avoid a claim not being honoured.