



**TRANSPORT AGREEMENT**

between

\_\_\_\_\_ )  
(Registration number: \_\_\_\_\_)

(Hereafter referred to as "**the Client**")

and

**FROST LOGISTICS (PTY) LTD**

(Registration number: **2024/238415/07**)

(Hereafter referred to as "**the Carrier**")

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## 1. DEFINITIONS

1.1. In this Agreement, unless inconsistent with or otherwise indicated by the context –

1.1.1. **"Agreement"** means this agreement entered into between the Carrier and the Client, including all annexures thereto;

1.1.2. **"the Carrier"** means **FROST LOGISTICS (PTY) LTD** (Registration Number: **2024/238415/07**) with physical address at **49 Range Road, Blackheath, Cape Town**, telefax: **021 905 8133** and email: [info@frostlogistics.co.za](mailto:info@frostlogistics.co.za) herein represented by either DJ van Rhyn or JW Lubbe, in their capacity as Directors, duly authorised thereto;

1.1.3. **"the Client"** means \_\_\_\_\_  
(Registration Number: \_\_\_\_\_)  
with physical address \_\_\_\_\_,  
telefax: \_\_\_\_\_ and email: \_\_\_\_\_,  
herein represented by \_\_\_\_\_ in his/her capacity  
as \_\_\_\_\_duly authorised thereto;

1.1.4. **"Commencement Date"** means the date of signature of this Agreement;

1.1.5. **"Companies Act"** means the Companies Act, 71 of 2008 (as amended from time to time);

1.1.6. **"Consumer Protection Act"** means the Consumer Protection Act, 68 of 2008 (as amended from time to time);

1.1.7. **"financial year"** means the Carrier's financial year, namely 1 March to 28/29 February;

1.1.8. **"Insolvency Act"** means the Insolvency Act, 42 of 1936 (as amended from time to time);

1.1.9. **"National Credit Act"** means the National Credit Act, 34 of 2005 (as amended from time to time);

1.1.10. **"Parties"** means the Carrier and the Client and **"Party"** means either one of them as the context may indicate; and

1.1.11. **"Road Traffic Act"** means the Road Traffic Act, 29 of 1989 (as amended from time to time).

- 1.2. In this Agreement, words importing the singular will include the plural and *vice versa*, words importing the masculine gender will include the feminine and neuter genders and *vice versa* and words importing persons will include partnerships, juristic persons, trusts and bodies corporate and *vice versa*.
- 1.3. The headings to the clauses to this Agreement are inserted for reference purposes only and will not affect the interpretation of any of the provisions to which they relate.
- 1.4. When any period is prescribed in this Agreement, that period will be reckoned exclusively of the first day and inclusively of the last day, unless the last day is not a business day (any day other than a Saturday, Sunday or public holiday in the Republic of South Africa), in which case the last day will be the next succeeding business day.

## **2. APPOINTMENT**

- 2.1. The Client hereby appoints the Carrier as refrigerated and general cargo long-haul transporter for the duration of this Agreement and the Carrier hereby accepts the appointment, subject to the terms stipulated herein. The Carrier accepts that the Client appoints multiple carriers and apportions loads strictly as it sees fit.
- 2.2. The provisions contained in this Agreement, including the annexures hereto, shall prevail over any standard trading conditions utilised by the Carrier in the conduct of its business and shall be in amplification or substitution (as the case may be) of any conditions printed on any waybill, invoice or other document generated by the Carrier. Where any terms of any waybill, invoice or other document conflict with the terms of this Agreement, the terms of this Agreement shall prevail.
- 2.3. All carriage undertaken by the Carrier for and on behalf of the Client shall only be undertaken in accordance with the provisions of this Agreement, unless the contrary is agreed to in writing and signed by the duly authorised representatives of the parties.

## **3. DURATION & TERMINATION**

- 3.1. This Agreement shall commence on the commencement date and shall remain binding between the parties for an indefinite period.
- 3.2. This Agreement may, subject to clause 19, be terminated by either Party on one month's written notice to the other.
- 3.3. In the event of any Party terminating this Agreement, the Client shall, in the absence of any other agreement between the parties, pay any balance outstanding under this

Agreement and all unpaid interest and other fees and charges due and payable by the Client in terms of this Agreement up to and including the date of termination.

#### **4. TARIFF, CHARGES & FLUCTUATIONS**

- 4.1. General tariff charges shall be negotiated annually. The negotiated tariff charges shall, save for clause 4.3 below, remain fixed for a financial year, unless both parties agree to other tariffs and rates during the course of a financial year.
- 4.2. If not indicated, all tariffs are/or charges are exclusive of VAT. The applicable VAT charges will be applied to all fees and charges.
- 4.3. Any statutory price fluctuations as regards fuel (diesel or petroleum) charges will be reviewed and be adjusted monthly (or as necessary).
- 4.4. The Client shall, in addition to the general tariff charges and rates, also be liable for the following:
  - 4.4.1. any additional pick-up and/or deliveries per destination or collection address, such additional pick-up and/or deliveries to be quoted on an *ad hoc* basis (unless included in the quotation and invoice);
  - 4.4.2. in the event of special permits and/or licences being required in terms of statute to convey any goods, the costs incurred by the Carrier to acquire such permits and/or licences;
  - 4.4.3. any changes in consignment; and
  - 4.4.4. a change in route as a result of incremental weather conditions or other dangers posed, including, *inter alia*, strike action.

#### **5. PAYMENT & INTEREST**

- 5.1. Unless otherwise agreed, the Client shall pay the Carrier for any goods transported pursuant to this Agreement in accordance with the payment terms as contemplated herein.
- 5.2. Unless the Client has an approved deferred payment facility with the Carrier, the Client shall make payment of the invoice rendered to it by the Carrier for the conveyance of goods before the Carrier loads the goods, alternatively, and in the sole discretion of the Carrier, before the goods are delivered to the predetermined delivery address.

- 5.3. Payment shall be made by the Client to the Carrier by way of electronic funds transfer into such bank account as the Carrier may from time to time nominate in writing, unless the Carrier has, in writing, identified another means by which the Client is to effect payment to the Carrier.
- 5.4. In the event of the Client failing to make payment to the Carrier on the date that it is due, the Carrier shall be entitled to levy interest on all overdue amounts at the maximum permissible rate of interest allowed under the National Credit Act which interest will be calculated and levied monthly in advance from the due date to date of final payment, and shall be calculated on a compounded basis on the amount owing at the end of each month.
- 5.5. In addition to clause 5.4, the Carrier shall have the right, and is hereby irrevocably authorised to:
  - 5.5.1. take a lien over the conveyed goods and documentation; and
  - 5.5.2. sell any part of or all the conveyed goods to satisfy the Client's debt owed to the Carrier in terms of the invoice.
- 5.6. Any payment made under this Agreement shall be credited to the Client on the date of receipt of the payment as follows:
  - 5.6.1. first, to satisfy any due or unpaid interest levied (if any);
  - 5.6.2. secondly, to satisfy any due or unpaid fees or charges (if any); and
  - 5.6.3. thirdly, to reduce the amount of the principal debt owed under this Agreement.
- 5.7. Only in the event of a Client having been preapproved for a deferred payment facility will the payment terms of the attached "Annexure A" be applicable to this agreement.

## **6. MARKING OF GOODS**

- 6.1. The Client shall clearly mark the receiver's name on all goods. The Carrier accepts no responsibility where goods are not marked clearly/legibly and may refuse to convey such goods.
- 6.2. Any alterations, additions, or erasure on a bill of lading shall be signed or initialled by the Client and the Carrier's driver.

- 6.3. The Client shall be responsible to supply accurate names and addresses where the goods are to be conveyed and shall provide all documentation required by law to ensure legal conveyance of such goods.
- 6.4. Where goods in a single load are to be delivered to 2 or more predetermined delivery addresses, the Client shall supply to the Carrier sufficient seals to re-seal the load after each delivery. In such event, all seal numbers shall be included on the waybill and invoice. The Carrier shall verify separation of loads at the predetermined collection and delivery addresses.
- 6.5. Where any addressee refuses to accept delivery due to incorrect goods, information and/or documentation being provided by the Client, and the Carrier being compelled to return the goods to the Client or the predetermined collection address as the case may be, the Client shall be liable for all costs incurred as a result. In such event, the Carrier shall not be responsible for any loss or damages to goods, perishable or otherwise.

## **7. COLLECTION / LOADING**

- 7.1. The Carrier will ensure that its vehicles are made available at the predetermined collection address to load goods at the predetermined collection times. The Carrier will advise the Client in the event of any vehicle delay in arrival and shall indicate to the Client the revised time of arrival.
- 7.2. The Client shall be responsible to arrange the loading of the goods into the Carrier's vehicle. The Client shall be responsible to arrange for loading facilities suitable for the Carrier's vehicles and shall ensure that the goods are ready for loading.
- 7.3. Any damage caused to the Carrier's vehicle and/or personnel as a result of inadequate and/or negligent loading shall be for the Client's account. Any damage caused to the Carrier's vehicles as a result of inadequate loading facilities shall be for the Client's account.
- 7.4. The Carrier shall not be held liable for any loss, damage or additional costs as a result of inadequate loading facilities.
- 7.5. The Carrier shall provide:
  - 7.5.1. load lock bars; and/or
  - 7.5.2. restraining nets

where necessary to stabilise loads. The Client shall advise the Carrier sufficiently in advance whether it will be required to stabilise the load.

- 7.6. In the event of damages occurring to the packaging or products resulting from:
  - 7.6.1. the Carrier failing to provide restraining equipment (after it having been advised by the Client of its necessity), the Client shall be entitled to claim from the Carrier the replacement value of goods. The Carrier shall not be liable for any indirect or consequential loss or damages, including, *inter alia*, loss of business or profit; or
  - 7.6.2. the Client failing to advise the Carrier to provide restraining equipment, no claim shall lie against the Carrier.
- 7.7. Upon completion of the loading process, the dispatching Party (i.e. the Party responsible for loading the goods) shall seal the load with a numbered seal, upon which the Carrier's driver will acknowledge receipt of the load. The seal number shall be recorded on the waybill, prepared by the Client, or the dispatching Party (as the case may be) which shall be countersigned by the Carrier, and shall also be recorded on the invoice.
- 7.8. Overloading is a criminal offence. The Client shall be obliged to ensure that the parties tasked with loading the vehicle are *au fait* with the applicable loading methods and laws. This notwithstanding, in the event of any load exceeding any legal limitation, including incorrect weight distribution, all fines relating to overloading or incorrect weight distribution incurred by the Carrier, as well as handling, storage, transport, standing time, losses and/or delays resulting therefrom will be for the Client's account, subject thereto that the Carrier provided the correct gross vehicle mass of each vehicle to the Client.
- 7.9. The Client shall be obliged to disclose to the Carrier if any abnormal loads or loads exceeding the regular loading capacity is to be conveyed. In such instances, abnormal load permits and specially equipped vehicles will be required, the costs of which will be for the Client's account.

## **8. EXPLOSIVE OR DANGEROUS CARGO**

- 8.1. The carrier shall not be obliged to convey explosive or dangerous goods.
- 8.2. Every person, whether as the Client or agent, shipping explosive or dangerous goods/cargo without prior full written disclosure to the Carrier of its nature, hereby indemnifies the Carrier against all loss, damage or injury caused thereby. All such goods/cargo are warehoused at the risk and expense of the Client.



- 8.3. Should goods, whether explosive or dangerous or not, in the opinion of the Carrier become dangerous or hazardous to persons or property, it shall forthwith, without prior notice to the Client, be entitled to take such steps as it deems prudent, including the disposal of the goods, to avert any danger and/or hazard whereafter it will promptly advise the Client of any such action taken.

## **9. TRANSPORT**

- 9.1. The Carrier undertakes to convey the goods from the predetermined collection address to the predetermined delivery addresses as and when instructed by the Client. Conveyance of the goods shall be effected in a prompt and efficient manner using such reasonable skill, care and diligence expected of a carrier of goods of similar status to that of the Carrier.
- 9.2. The Carrier shall use such methods of conveyance and such routes as it may in its discretion deem to be most suitable for the goods it is required to convey.

## **10. DELIVERY / OFF-LOADING**

- 10.1. The Carrier will adhere to predetermined off-loading times provided to it by the Client. In the event of any incident preventing the Carrier from adhering to the pre-determined off-loading times, the Carrier shall immediately advise the Client of the delay.
- 10.2. The provisions of clauses 7.2 & 7.2 above shall apply *mutatis mutandis*.
- 10.3. The Client shall be responsible to arrange the off-loading of the goods from the Carrier's vehicle. Any damage caused to the Carrier's as a result of inadequate and/or negligent off-loading shall be for the Client's account.
- 10.4. The Carrier will provide such reasonable assistance as may be expected of a goods conveyancer to expedite the off-loading of goods at the predetermined delivery addresses. The Carrier will ensure that its drivers assist the receiving Party as and when so requested, including verification of the load.
- 10.5. The Carrier will return to the Client copies of all waybills, proof of deliveries and invoices (and such other documentation as may be applicable) duly signed on a monthly basis [alternatively every 15/20 days from the first delivery].

## **11. SHORTAGES OF GOODS**

- 11.1. In the event that there is a shortage of goods at the predetermined delivery address:

- 11.1.1. where the seal has not been tampered with and the seal number matches the seal number recorded on the waybill and the invoice; the Carrier shall not be held liable for any shortages of goods which may be identified during the off-loading process;
- 11.1.2. where the seal has been tampered with and/or the seal number does not match the seal number recorded on the waybill and invoice, or in the event that any change has been made to the seal number recorded on the waybill and invoice, which change has not been signed by representatives of both the Client and the Carrier; the Client shall be entitled to claim from the Carrier the direct and actual damages suffered as a result subject thereto that the Carrier is proven to be directly responsible for the loss as a result of its negligence. The Carrier shall not be liable for any indirect or consequential loss or damages, including, *inter alia*, loss of business or profit; and
- 11.2. the Client shall notify the Carrier, in writing, of such shortages (and associated claims) within 48 hours after off-loading. In the absence of timeous notification to the Carrier, the Client and/or the addressee shall be deemed to have received all the goods the Carrier was contracted to convey.
- 11.3. Irrespective of the state of the seal, the Carrier shall not be held liable for:
  - 11.3.1. shortages of inner contents of unopened packaged or bundled goods; or
  - 11.3.2. shortages of or damages to goods where the way-bill/loading statement has been signed by the Carrier's driver and the Party responsible for loading as "quantity not checked".

## **12. BREAKDOWN / ACCIDENTS & SALVAGING**

- 12.1. Where the Carrier's vehicle(s) breaks down, the Carrier shall take all reasonable steps to ensure that the goods arrive at predetermined delivery addresses and shall notify the Client immediately of the delay in delivery time.
- 12.2. Where the Carrier's vehicle is involved in an accident or should it for any other reason become necessary for the goods transported by the Carrier to be salvaged, the Carrier shall immediately and without delay notify the Client. The Client (and/or its insurers, as the case may be) shall advise the Carrier as to the manner in which it requires the goods to be salvaged.

12.3. In the event that any of the salvaged goods are to be disposed of, the Client shall be obliged to afford the Carrier and its insurer the opportunity to inspect the salvaged goods before such goods are disposed of.

12.4. The Client shall be entitled to claim from the Carrier only the direct and actual damages suffered as a result of having to salvage and destroy the goods as aforesaid. The Carrier shall not be liable for any indirect or consequential loss or damages, including, *inter alia*, loss of business or profit.

### **13. RISK & LIABILITY**

13.1. Risk in and to the goods shall pass to the Carrier on the sealing of the load at the predetermined collection address and shall remain with the Carrier until such seal is broken.

13.2. The Carrier shall have the right to refuse acceptance for the purposes of conveyance of any goods in the event of such goods not being properly packaged and/or sealed and/or overloaded.

13.3. Should goods become damaged in any way, either by means of defrosting or physical damage due to an accident or vehicle fire, the following steps must be taken:

13.3.1. the goods are to be inspected by an appointed assessor from *Regent Insurance Company*;

13.3.2. the goods are to be reconciled to ensure that all goods loaded is accounted for;

13.3.3. the goods shall be destroyed by an acceptable means and a certificate of safe destruction shall be obtained and maintained on file;

13.3.4. records shall be updated to account for every batch that was damaged on the load; and

13.3.5. the Client shall be informed of any short delivery.

13.4. The carrier shall not be liable for loss, damage, injury or delay to any goods described under the bill of lading caused by:

13.4.1. an act, omission, or order of the Client;

- 13.4.2. a defect or inherent vice of the goods, including structural integrity and susceptibility to damage because of atmospheric conditions such as temperature and humidity or changes therein;
- 13.4.3. *force majeure*, including, but not limited to rain, wind, flood, hail and/or sun damage;
- 13.4.4. except in cases of negligence of the Carrier, it shall not be liable for damage to or loss of contents of pieces of furniture, crates, bundles, cartons, boxes, barrels or other containers unless such contents are open for the Carrier's inspection and then only for such articles as are specifically listed by the Client and receipted for by the Carrier or its agent;
- 13.4.5. spoilage, deterioration, contamination, freezing, rusting, extremes of temperature, shrinkage, evaporation, loss of weight, difference of grain, seed and livestock or other commodities caused by natural shrinkage, changes in colour, flavour, finish or texture unless any of them shall be caused by fire or accident of the vehicle;
- 13.4.6. mechanical or electrical derangement of pianos, radios, phonographs, clocks, refrigerators, television or video equipment, computers and their peripheral devices, automatic washers or other instruments or appliances, unless evidenced by external damage to such equipment and unless caused by perils not otherwise excluded;
- 13.4.7. public enemies, riots, strikes, hijacking, the authority of law or quarantine.
- 13.5. The carrier is not liable for loss, damage, injury or delay to any goods carried under bill of lading unless notice thereof setting out the particulars of origin, destination and the date of shipment of the goods and the estimated amount claimed in respect of such loss, damage, injury or delay is given to the carrier in writing within 48 hours after delivery of the goods.
- 13.6. Where, through no fault of the Carrier, the Carrier is not able to effect delivery of the goods to the addressee entitled to receive it:
- 13.6.1. the Carrier shall forthwith notify the Client; and
- 13.6.2. the goods may, at the sole discretion of the Carrier, be:
- 13.6.2.1. stored in the Carrier's warehouse subject to a reasonable storage fee; or

13.6.2.2. removed to and stored in a public or licensed warehouse at the expense of the Client, without liability on the part of the Carrier, and subject to lien of all freight and other lawful charges including reasonable storage fees.

13.7. Where the addressee and the Client refuses to accept or does not claim the goods within 14 days of the written notice of storage, the Carrier may begin the process of selling the goods. The Carrier shall, in such instance, give written notice of the sale to the Client.

13.8. Any allegations of damage or a claim must be endorsement immediately on the waybill/delivery note at the time of delivery and must be signed and counter signed by the recipient and the Carrier's driver. In the absence of said endorsement, the Carrier and/or the Client and/or the addressee shall be deemed to have received all the goods in good order and repair.

#### **14. INSURANCE TRANSIT RISK**

14.1. The Carrier shall:

14.1.1. insure the goods for a maximum amount of R 2,072,000.00 (inclusive of VAT) per load (which amount may be reviewed from time to time) against all risks to which it may be exposed during transit and shall furnish proof of such insurance as and when requested by the Client;

14.1.2. take all reasonable steps to ensure that the goods are not exposed to any additional risk which may have the effect of obviating any policy of insurance obtained in respect thereof;

14.2. Should the value of the goods exceed the maximum insurance coverage referred to in 14.1.1 above, the Client shall notify the Carrier, in writing by telefax and email, prior to loading the goods. Reasonable notice must be provided to the Carrier during business hours.

14.3. Any additional insurance arranged shall be for the Client's account.

14.4. Where the Client has its own insurance, the Client shall be under no obligation to claim from its insurers.

#### **15. VEHICLES**

15.1. The Carrier shall -

- 15.1.1. ensure that all its vehicles are equipped with communication, satellite tracking and temperature monitoring equipment;
- 15.1.2. maintain its vehicles in a clean and neat condition and appearance;
- 15.1.3. ensure that all vehicle compartments shall be sanitised regularly with a bacterial growth inhibitor to prevent contamination of product and shall furnish the Client with the relevant MSDS sheets of the chemical used for such purpose; and
- 15.1.4. conform to the requirements of any legislation governing the use of vehicles on public roads, road traffic operations, mechanical condition, and general roadworthiness, and shall fully comply with all provisions of the Road Traffic Act, or any other act, regulation or legislation promulgated by any provincial, regional, or national authority.

## **16. COOLING OF VEHICLES**

- 16.1. The Carrier shall ensure that its vehicles are pre-cooled prior to arriving at any predetermined collection address for purposes of loading chilled goods until the vehicle docks at the predetermined loading bay according to the following requirements:
  - 16.1.1. frozen goods: at least minus 20 degree Celsius; and
  - 16.1.2. chilled goods: between 0 (zero) degrees Celsius and +5 degrees Celsius.
- 16.2. On dispatch, the Client will certify on a temperature log sheet the required temperature setting which temperature log sheet shall contain the vehicle registration number, waybill number and invoice number. A copy of the log sheet will be provided to the driver. The Carrier shall thereafter ensure that the required in-transit temperatures are maintained throughout the transport period and shall keep a temperature log sheet in respect of the entire transport period.
- 16.3. In the event that the in-transit temperatures not being in accordance with the Client's instructions upon arrival at the predetermined delivery address and the addressee reject the goods as a result thereof, the provisions of clause 12.4 will apply, *mutatis mutandis*.
  - 16.3.1. In such an event, all goods will be returned to the predetermined collection address and no transportation costs will be levied.

## **17. CARRIER'S EMPLOYEES**

- 17.1. The Carrier:

- 17.1.1. shall take all reasonable steps to ensure that its employees adhere to the rules governing their movements at the Client's predetermined collection and delivery address, including all provisions relating to safety; and
- 17.1.2. acknowledges that it is the "employer" of its employees, as defined by and for the purposes of all relevant legislation.

## **18. SUB-CONTRACTORS**

- 18.1. It is recorded that the Carrier may, at its sole discretion, sub-contract a particular job to another carrier service. Notwithstanding this, the Carrier shall at all times remain liable to the Client for its obligations in terms of this agreement and any breach of any of the terms and conditions of this agreement by any sub-contractor shall be deemed to be a breach of this agreement by the Carrier.
- 18.2. The Client shall not be liable for any damages whatsoever arising out of injury to the Carrier or any of its agents or employees suffered whilst such person is on any premises owned or operated by the Client or any of its subsidiaries and or clients, or arising out of damage to or loss of any property belonging to such person unless such injury or damage or loss is caused by the negligence of The Client or any of its servants or agents.

## **19. WARRANTY BY THE CLIENT**

- 19.1. Where the Client is a juristic person, the Client warrants:
  - 19.1.1. for purposes of the Consumer Protection Act, that its annual turnover is more than the threshold amount contemplated in section 5(2) of the Act (as published from time to time); and
  - 19.1.2. for purposes of the National Credit Act, that its annual turnover is more than the threshold amount contemplated in section 4(1)(a)(i) of the Act (as published from time to time).

## **20. SURETY**

Where the Client is a juristic person, the Carrier may, at its sole discretion, require a surety to sign security for the Client's obligations under this Agreement.

## **21. DEFAULT & BREACH**

- 21.1. The Client will be in default of this Agreement if:

- 21.1.1. the Client does not pay any amount payable to the Carrier under this Agreement on the due date as contemplated in clause 5 above;
- 21.1.2. the Client breaches any of the terms and conditions of this Agreement or any agreement in terms of which the Customer provided security to the Carrier, and the Client fails to remedy the breach within 7 days of receiving written notice to do so;
- 21.1.3. any representation or warranty made in connection with this Agreement or any other documents supplied by the Client is materially incorrect or false;
- 21.1.4. any person who furnished security to the Carrier in respect of this Agreement (as surety) commits any breach of its obligations to the Carrier in terms of this Agreement;
- 21.1.5. the Client or any person who furnished security in respect of this Agreement:
  - 21.1.5.1. being an individual:
    - 21.1.5.1.1. publishes notice of the voluntary surrender of his estate or passes away;
    - 21.1.5.1.2. is placed under administration or commits an act of insolvency as defined in the Insolvency Act; or
    - 21.1.5.1.3. 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,
  - 21.1.5.2. being a juristic person:
    - 21.1.5.2.1. is wound up, liquidated, dissolved, deregistered or placed under judicial administration, in any event whether provisionally or finally and whether voluntarily (including any resolution so passed) or compulsory;
    - 21.1.5.2.2. is deemed unable to pay its debts;
    - 21.1.5.2.3. resolves that it voluntarily begins business rescue proceedings or has any business rescue proceedings commenced against it, as contemplated un section 132(1) of the Companies Act;



21.1.5.2.4. has a judgment of a competent court against the Client, or any person who has furnished security for the Client, for the attachment of assets or for payment of any amount is not satisfied for more than 7 days after the date on which the judgment is issued; or

21.1.5.2.5. compromises or attempts to compromise with the Client's creditors generally or defers payment of debts owing by the Client to the Client's creditors.

21.2. If the Client is in default of this Agreement and the Agreement is subject to the National Credit Act, the Carrier may:

21.2.1. give the Client written notice of such default and may, in its sole discretion, insist that the Client refer this Agreement to alternative dispute resolution, including mediation, conciliation or arbitration, with the intent that the parties resolve any dispute under this Agreement;

21.2.2. commence legal proceedings to enforce this Agreement including exercising its rights in terms of any of the securities once:

21.2.2.1. the Carrier has given notice to the Client as contemplated in clause 21.2.1 above; and

21.2.2.2. the Client is and has been in default under this Agreement for 20 business days.

21.3. If the Client is in default of this Agreement and the Agreement is not subject to the National Credit Act, the Carrier may exercise its rights as may be permissible in law and without prejudice to the Carrier's other rights, which include any one or more of the following:

21.3.1. suspending the deliver and provisions of services under this Agreement;

21.3.2. demanding immediate payment of overdue amounts;

21.3.3. terminating this Agreement with immediate effect; and

21.3.4. enforcing any security furnished in respect of this Agreement.

21.4. All cost incurred in any action against the Client in any competent Court in connection with this Agreement shall be for the Client's account, such costs to include attorney and

own client legal costs, costs of tracing agents, collection commission and any other similar costs incurred by the Carrier to give effect to the terms of this Agreement.

- 21.5. A certificate signed by the Carrier's directors specifying the amount owing by the Client and further stating that such amount is due, owing and payable by the Client shall be *prima facie* proof of the amount thereof and of the fact that such amount is due, owing and payable for the purpose of obtaining provisional sentence or any other judgment against the Client in any competent Court. It shall not be necessary to prove the appointment of the person signing such certificate.

## **22. CONSENT TO MAGISTRATES' COURT JURISDICTION & COSTS**

- 22.1. Notwithstanding the amount which may at any time be owing to the Carrier, the Client hereby irrevocably consents, in terms of section 45 of the Magistrates' Court Act, 32 of 1944 (as amended from time to time) to the non-exclusive jurisdiction of the Magistrates' Court having jurisdiction for the determination of any action or proceeding otherwise beyond its jurisdiction which may be brought by the Carrier against the client arising out of this Agreement.

## **23. DOMICILIA AND NOTICES**

- 23.1. The Parties choose as their *domicilia citandi et executandi* their respective addresses set out in clause 1.1.3 of this Agreement for all purposes arising out of or in connection with this Agreement.
- 23.2. Each of the Parties shall be entitled from time to time, by written notice to the other to vary its *domicilium* to any other address which is not a post office box or *poste restante*.
- 23.3. Any change in the client's *domicilium* address shall be communicated to the carrier Party, in writing within 48 hours of such change.
- 23.4. Any notice given by a Party to the other Party ("the addressee") which:
- 23.4.1. is delivered by hand during the normal business hours of the addressee at the addressee's *domicilium* for the time being shall be presumed, unless the contrary is proved by the addressee, to have been received by the addressee at the time of delivery;
- 23.4.2. is posted by prepaid registered post (or its equivalent) to the addressee at the addressee's *domicilium* for the time being shall be presumed, unless the contrary

is proved by the addressee, to have been received by the addressee on the 5<sup>th</sup> (fifth) day after the date of posting; or

23.4.3. is transmitted by telefax or e-mail to the addressee shall be presumed, unless the contrary is proved by the addressee, to have been received by the addressee within 48 (forty-eight) hours of transmission.

23.5. Where, in terms of this Agreement any communication is required to be in writing, the term "writing" shall include communications by e-mail or telefax.

23.6. Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication actually received by one of the Parties from another including by way of facsimile transmission or electronic mail shall be adequate written notice or communication to such Party.

## **24. ASSIGNMENT**

Neither Party shall cede, assign, make over, alienate, mortgage, charge or encumber its rights in terms of this Agreement, nor shall any part thereof, to any third party without the prior written consent of the parties entering this Agreement hereto.

## **25. GENERAL**

25.1. This is the entire agreement between the Parties. Neither Party relies in entering into this agreement upon any warranties, representations, disclosures, or expressions of opinion which have not been incorporated into this Agreement as warranties or undertakings. No variation or consensual cancellation of this Agreement will be of any force or effect unless reduced to writing and signed by both Parties.

25.2. No addition to or variation, consensual cancellation or novation of this Agreement and no waiver of any right arising from this Agreement or its breach or termination will be of any force or effect unless reduced to writing and signed by all the parties or their duly authorised representatives.

25.3. Neither Party will be regarded as having waived, or be precluded in any way from exercising, any right under or arising from this Agreement by reason of such Party having at any time granted any extension of time for, or having shown any indulgence to the other Party with reference to, any payment or performance hereunder, or having failed to enforce, or delayed in the enforcement of, any right of action against the other Party.

25.4. Nothing in this Agreement constitutes either Party as the agent, principal, representative or partner of the other, and no Party will be entitled to hold out to any third party that the relationship between the Parties is that of a partnership, joint venture or the like.

25.5. All provisions and the various clauses of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. The parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.

25.6. The construction and interpretation of this Agreement shall be governed by and regulated in accordance with the laws of the Republic of South Africa

**SIGNED AT** \_\_\_\_\_ **ON** \_\_\_\_\_ **20** \_\_\_\_\_

**WITNESSES:**

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
**FOR AND ON BEHALF OF FROST  
LOGISTICS (PTY) LTD, WHO  
WARRANTS TO BE DULY AUTHORISED  
THERE TO**

**SIGNED AT** \_\_\_\_\_ **ON** \_\_\_\_\_ **20** \_\_\_\_\_

**WITNESSES:**

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
**FOR AND ON BEHALF OF** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**WHO WARRANTS TO BE DULY  
AUTHORISED THERE TO**

## ANNEXURE A

### TERMS OF DEFERRED PAYMENT FACILITY

These terms and conditions shall only be applicable and binding between the parties to this agreement if the Client has been approved and issued a deferred payment facility.

The Client understands that the terms contained in this Annexure A is in addition to the terms of the main transport agreement.

1. The Carrier shall make out an invoice to the Client for the amount due.
2. All amounts appearing on such invoice shall be due and payable 30 days after the date on which the invoice is delivered to the Client. The invoice shall be delivered to the Client in terms of the provisions of clause 23 of this Agreement.
3. In the event of the Client failing to make payment to the Carrier on the date that it is due, the Carrier shall be entitled to levy interest on all overdue amounts at the maximum permissible rate of interest allowed under the National Credit Act which interest will be calculated and levied monthly in advance from the due date to date of final payment, and shall be calculated on a compounded basis on the amount owing at the end of each month.
4. In the event of the Client failing to make payment, the Carrier has the right, in addition to its rights contained in clauses 5.5 and 21.3 above, to report the Client's default to a credit bureau.
5. Should the Client fail to object any amount appearing on such invoice within 7 days after date thereof, the invoice shall be prima facie proof of the Client's indebtedness to the Carrier for purposes of summary judgement or provisional sentence and the Client shall be deemed to have accepted the correctness of the invoice and to have received delivery of each and every item or service appearing thereon and will be estopped from contesting the accuracy thereof for any reason whatsoever.
6. A certificate signed by the Carrier's directors specifying the amount owing by the Client and further stating that such amount is due, owing and payable by the Client shall be prima facie proof of the amount thereof and of the fact that such amount is due, owing and payable for the purpose of obtaining provisional sentence or any other judgment against the Client in any competent Court. It shall not be necessary to prove the appointment of the person signing such certificate.

7. In the event of the Client defaulting in making payment of any amount that has become due and owing or in the event of any of the provisions contained in clause 21.1 of this Agreement being triggered, the full amount owing to the Carrier will become due and owing without notice to the Client.
  
8. The Client acknowledges that the Carrier is entitled to make whatever inquiries it considers necessary in assessing the Client's application for credit. If the credit is approved, the Carrier is entitled to register details about the conduct of the Client's account with the credit bureau.
  
9. The Client shall forthwith inform the Carrier of death, insolvency or legal disability of any surety, in which event all amounts due to the Carrier will become owing and immediately payable. The further operation of this Agreement shall, in such event, be suspended or terminated, without derogating or influencing any right which may have accrued to the Carrier prior to such suspension or termination.
  
10. This agreement will become of full force and effect upon acceptance by the Carrier and corresponding its acceptance to the Client. For purpose of proof of the agreement between the Parties, a facsimile and/or email copy bearing the signature of the Client and the surety/sureties shall be deemed to constitute an original copy once endorsed by the Carrier. Notwithstanding the aforementioned, the Carrier may insist on a copy bearing the original signatures of the Parties.

**SIGNED ON BEHALF OF THE CLIENT OR ITS DULY AUTHORIZED REPRESENTATIVE WHO GUARANTEES HIS AUTHORITY TO DO SO:**

**SIGNED AT** \_\_\_\_\_ **ON** \_\_\_\_\_ **20** \_\_\_\_\_

**WITNESSES:**

\_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
**FOR AND ON BEHALF OF** \_\_\_\_\_

\_\_\_\_\_

**WHO WARRANTS TO BE DULY AUTHORIZED THERETO**

SIGNED AT \_\_\_\_\_ ON \_\_\_\_\_ 20\_\_\_\_

WITNESSES:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

FOR AND ON BEHALF OF FROST  
LOGISTICS (PTY) LTD, WHO  
WARRANTS TO BE DULY AUTHORISED  
THERE TO

**ANNEXURE B**

**SURETY AGREEMENT**

I/we

**FULL NAME(S):** \_\_\_\_\_

**IDENTITY NUMBER(S):** \_\_\_\_\_

("the Surety")

do hereby bind ourselves as surety and co-principle debtors to and in favour of

**FROST LOGISTICS (PTY) LTD**

**REGISTRATION NUMBER: 2024/238415/07**

("the Creditor")

for the due and proper fulfilment of all the obligations of, and for the payment on demand of any amounts which are or may become due by

**COMPANY / CC NAME:** \_\_\_\_\_

**REGISTRATION NUMBER:** \_\_\_\_\_

("the Debtor")

I/we agree that: -

1. the Surety absolutely, irrevocably and unconditionally guarantees and hereby jointly and severally binds himself/herself/itself as surety for and co-principle debtor with the Debtor to the Creditor for all the obligations of the Debtor including the prompt payment when due of all the amounts owed by the Debtor to the Creditor.
2. this suretyship shall apply to, cover and secure the Creditor and its respective successors in title, orders or assigns;
3. the Creditor shall be at liberty to release securities, or other sureties for the Debtor, or to extend any leniency or extension of time to, or compound or make other arrangements with the Debtor or the Surety, and no such action on the part of Creditor shall affect, or



in any way be construed or operate as a waiver or abandonment of any of Creditor's rights or claims against the Surety hereunder;

4. all acknowledgements of indebtedness and admissions by the Debtor in regard to the obligations of the Debtor to Creditor in respect of which the Surety enters into this suretyship shall be binding on him/her;
5. in the event of the liquidation, sequestration, assignment or placing under judicial management of the estate of the Debtor, or in the event of a compromise between the Debtor and any creditor of the Debtor –
  - 5.1. the Surety undertakes not to prove a claim against the Debtor's estate for any amount the Surety may be called upon to pay under this suretyship, until all amounts (including interests and costs) due by the Debtor to Creditor have been paid in full;
6. the Surety hereby agrees that, notwithstanding any part payment by him/her or on his/her behalf, to Creditor, the Surety shall have no right to any cession of action in respect of such part payment, and shall not be entitled to take any action against the Debtor or against any other surety for the Debtor in respect thereof, unless and until the indebtedness of the Debtor to Creditor shall have been discharged in full;
7. the Surety agrees that any dividend received by Creditor from the Debtor's estate in respect of Creditor's claims against the Debtor shall be appropriated in the first instance to the payment of that part (if any) of the Debtor's indebtedness to Creditor which is not covered by this suretyship;
8. no dividends or payments which Creditor will receive from the Debtor or the Surety shall prejudice Creditor's right to recover from the Surety, to the full extent of this suretyship, any sum which, after the receipt of such dividends or payments, will remain owing to Creditor by the Debtor, but nothing herein contained will be deemed to limit the provisions below relating to the renunciation by the Surety of benefits;

9. Should Creditor cede its claim against the Debtor to any third party/ies, then this suretyship shall be deemed to have been given by the surety to such cessionary/ies, who shall be entitled to exercise all rights in terms of this deed of suretyship as if such cessionary/ies were Creditor;
  
10. the amount of the indebtedness of the Debtor and of the Surety hereunder to Creditor at any time, and the fact that the due date of payment of the whole, or as the case may be, portion of such amount has arrived, shall be:
  - 10.1. determined and proved by a certificate signed by an attorney for Creditor (whose appointment, qualification or authority need not be proved);
  
  - 10.2. a certificate in terms of 10.1 shall be
    - 10.2.1. binding on the Surety;
  
    - 10.2.2. prima facie proof of the amount of the indebtedness of the Surety hereunder; and
  
    - 10.2.3. valid as a liquid document against the Surety in any competent court for the purpose of obtaining provisional sentence or judgment against the Surety thereon;
  
11. at the option of Creditor any claim against the Surety, arising hereunder, may be brought in any Magistrate's Court having jurisdiction, notwithstanding that the amount of the claim may exceed the jurisdiction of the said Magistrate's Court;
  
12. should the Surety at any time in defending any action based on this suretyship, allege that:
  - 12.1. there is no reason for the Debtor's obligations to Creditor, and/or
  
  - 12.2. errors have been made in calculation of the amount claimed then the onus of proving such a defence will rest on the Surety;

13. the Surety renounces the benefits of:
  - 13.1. Excussion – by renouncing this benefit, the Surety understands that Creditor becomes entitled to sue the surety for the full amount for which the surety is liable in terms of this suretyship without first proceeding against the Debtor;
  - 13.2. Division – by renouncing this benefit, the Surety understands that where there is more than one surety for the Debtor's obligations, Creditor will be entitled to sue each such surety for the full amount owing under this suretyship and not only for a pro rata share;
  - 13.3. Cession of action – by renouncing this benefit, the Surety understands that Creditor becomes entitled to sue the surety without first ceding Creditor's right of action against the Debtor to the Surety;
14. in the event of Creditor ever having to instruct its attorney in order to enforce any of Creditor's rights against the Surety in terms of this suretyship, then the Surety agrees to pay all costs so incurred, including legal fees on an attorney and own client basis, tracing fees and collection commission;
15. in the event that any provision/s of this suretyship is/are found by a competent Court to be invalid or unenforceable for any reason, such provision/s shall be considered severable from the remainder of this suretyship and shall not render this document as a whole invalid or unenforceable, but Creditor shall remain entitled to the maximum security capable of being afforded to Creditor by the remainder of the suretyship;
16. the Surety chooses as his/her *domicilium citandi et executandi* the address and email address set out in this clause for all purposes arising out of or in connection with this suretyship at which addresses all processes and notices arising out of or in connection with this suretyship, its breach or termination may validly be served upon or delivered to the Surety.

16.1. Physical Address: \_\_\_\_\_

16.2. Postal Address: \_\_\_\_\_

16.3. Email Address: \_\_\_\_\_

SIGNED at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_.

WITNESSES: \_\_\_\_\_

WITNESSES: \_\_\_\_\_

**SURETY**