



FX International Trading cc
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FX INTERNATIONAL TRADING CC

STANDARD TRADING TERMS AND CONDITIONS

1. INTERPRETATION

In these trading terms and conditions:

- 1.1 the headings to the clauses are for reference purposes only and shall not aid in the interpretation of the clauses to which they relate;
- 1.2 unless the context clearly indicates a contrary intention, words importing any one gender include the other two genders, the singular includes the plural and vice versa, and natural persons include created entities (corporate or unincorporated) and vice versa;
- 1.3 the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning namely -
 - 1.3.1 "FX" means **FX International Trading CC**, registration number 2002/061358/23 and its members are A & FJ Nell;
 - 1.3.2 "Client" means the same as "Customer";
 - 1.3.3 "Customer" means any person at whose request or on whose behalf FX undertakes any business or provides any advice, information or service, which includes, but is not limited to the shipper, holder, consignee, receiver of the

Goods, any Person owing or entitled to the possession of the Goods and anyone acting on behalf of or as principal of such Person.

- 1.3.4 "Goods" means any goods handled, transported or dealt with by or on behalf of or at the instance of FX or which come under the control of FX or its agents, servants or nominees on the instructions of the Customer, and includes any container, transportable tank, flat pallet, package or any other form of covering, packaging, container or equipment used in connection with or in relation to such goods;
- 1.3.5 "Conditions" means these Standard Trading Terms and Conditions as may be amended from time to time in accordance with the terms hereof.
- 1.3.6 "Container" includes any container flat rack, platform, trailer, transportable tank, pallet, or other item used for the consolidation of Goods.
- 1.3.7 "INCOTERMS" means the latest official rules for the interpretation of trade terms published by the International Chamber of Commerce from time to time;
- 1.3.8 "the Owner" means the owner of the goods and any other person who may have or who acquires any interest, financial or otherwise, therein.
- 1.3.9 "Person" includes an individual, corporation or other legal entities.

2. **APPLICATION OF TRADING TERMS AND CONDITIONS**

All and any business undertaken or advice, information or services provided by FX, whether gratuitous or not, is undertaken or provided on these conditions.

3. **OWNER'S RISK**

All packing, unpacking, palletising or de-palletising, sorting, storing, (whether in the open or otherwise) loading, unloading, warehousing, transporting or other handling of goods by or on behalf of or at the request of the Customer, owner or the Company, is effected at the sole risk of the Customer and/or the owner, and the Customer indemnifies FX against any claim which might be brought against it, howsoever arising, from such packing, unpacking, palletising or de-palletising, sorting, storing,

(whether in the open or otherwise), loading, unloading, warehousing, transporting or other handling of goods.

4. APPLICABLE LEGISLATION

4.1 If FX is obliged, in the execution of any of its duties and/or responsibilities to comply with any common law or legislative enactment ("the law") of any nature whatsoever, then FX by complying therewith shall not be deemed to waive nor abandon any of its rights in terms of these trading terms and conditions.

4.2 In addition thereto, in complying with the law, FX shall not be deemed to have assumed any onus, obligation, responsibility or liability in favour of the Customer.

4.3 If any of the terms of these conditions is repugnant to or in conflict with the law, then and in such event the conflicting term embodied herein shall be deemed to be amended and/or altered to conform therewith, and such amendment and/or alteration shall not in any way affect the remaining provisions of these conditions.

5. EXCLUSION OF OBLIGATIONS OF COMMON OR PUBLIC CARRIER

FX deals with goods only on the basis that it is neither a common carrier nor a public carrier. The transportation of all goods is undertaken at the sole risk and expense of the Customer and subject to these conditions.

6. FX 'S DISCRETION IN THE ABSENCE OF INSTRUCTIONS

In the absence of specific instructions given timeously in writing by the Customer to FX -

6.1 it shall be in the reasonable discretion of FX to decide at what time to perform or to procure the performance of any or all of the acts which may be necessary or requisite for the discharge of its obligations to the Customer;

6.2 FX shall have an absolute discretion to determine the means, route and procedure to be followed by it in performing all or any of the acts or services it has agreed to perform; and

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- 6.3 in all cases where there is a choice of tariff rates or premiums offered by any carrier, warehouseman, underwriter, or other person depending upon the declared value of the relevant goods or the extent of the liability assumed by the carrier, warehouseman, underwriter or other person, it shall be in the discretion of FX as to what declaration, if any, shall be made, and what liability, if any, shall be imposed on the carrier, warehouseman, underwriter or other person.

7. **FX 'S GENERAL DISCRETION**

- 7.1 Notwithstanding anything to the contrary herein contained, if at any time FX should consider it to be in the Customer's interests or for the public good to depart from any of the Customer's instructions, FX shall be entitled to do so and shall not incur any liability in consequence of doing so.
- 7.2 If events or circumstances come to the attention of FX, its agents, servants, or nominees which, in the opinion of FX, make it in whole or in part, impossible or impracticable for FX to comply with a Customer's instructions, FX shall take reasonable steps to inform such Customer of such events or circumstances and to seek further instructions. If such further instructions are not timeously received by FX in writing, it shall, at its sole discretion, be entitled to detain, return, store, sell, abandon, or destroy all or part of the goods concerned at the risk and expense of the Customer.
- 7.3 In any event, it shall always be within FX's sole discretion as to whether any instruction or request to it, that services be provided, be accepted or performed by it, notwithstanding any previous agreement to undertake or provide services to the Customer and notwithstanding that FX may have granted any credit terms or facilities to the Customer, expressly or by implication.

8. **INSURANCE**

- 8.1 FX shall have no obligation whatsoever to obtain any form of insurance cover on behalf of the Customer in respect of the goods and will only endeavour to do so if expressly requested by the Customer to do so. Such insurance will be subject to such exceptions and conditions as may be imposed by the insurance company or underwriter taking the risk and FX shall not be obliged to obtain separate cover for

any risks so excluded. Unless otherwise agreed in writing FX shall not be under any obligation to obtain separate insurance in respect of separate consignments but may insure all or any of such consignments under any open or general policy held by FX from time to time.

- 8.2 Should any insurer dispute its liability in terms of any insurance policy in respect of any goods, the Customer concerned shall have recourse against such insurer only and FX shall not have any responsibility or liability whatsoever in relation thereto notwithstanding that the premium paid on such policy may differ from the amount paid by the Customer to FX in respect thereof. Insofar as FX agrees to arrange insurance, it acts solely as agent for and on behalf of the Customer.
- 8.3 Subject to 8.1, if the goods are transported, or are to be transported, by rail, it shall be the obligation of the Customer to instruct FX prior to receipt of the goods into its or the rail carrier's custody or control, as to whether FX is to accept the rail carrier's standard or any offer of insurance of the goods, on behalf of the Customer, or to request FX to endeavour to place such insurance cover with such other underwriter as directed by the Customer. In any event the Customer acknowledges that it is aware of the terms and conditions under which the rail carrier undertakes the rail carriage of containerised goods, the terms and conditions of the insurance cover offered by the rail carrier and their limitations of liability in the event of such insurance cover not being accepted and under no circumstances whatsoever shall FX be liable for any loss suffered by the Customer and howsoever caused, while the goods are in the custody of the rail carrier.
- 8.4 Notwithstanding anything to the contrary herein contained FX shall in no circumstances be liable for any consequences of any failure to obtain any insurance cover, whether requested to do so by the Customer, or otherwise.
- 8.5 All services and goods handled by FX are done at the customer's risk. FX does not accept liability for the insurance for such goods or services. All goods which are transported, handled, or stored on behalf of FX's customers, should have adequate insurance cover on a "door to door at destination" basis and should include all freight and customs costs. Such cover will be provided by the

customer. Insurance facilities between yourself and the insurance companies can be arranged on your behalf on request and this should be agreed to in writing at prior to loading. All excess and premiums are for the customer's account and no liability whatsoever in respect of claims being rejected for whatever reason shall be passed onto FX or any of its subcontractors.

9. **FX 'S OBLIGATIONS IN THE ABSENCE OF INSTRUCTIONS**

Unless specific written instructions are timeously given to and accepted by FX, it shall not be obliged to -

- 9.1 make any declaration for the purpose of any statute, convention, or contract, as to the nature or value of any goods or as to any special interest in delivery. In particular, FX shall be under no obligation to make any declaration or to seek any special protection or cover from any carrier in respect of any goods which are, or fall within the definition ascribed thereto by that body of dangerous goods or other goods which require special conditions of handling or storage; and
- 9.2 arrange for any particular goods to be carried, stored or handled separately from other goods.

10. **CUSTOMER'S UNDERTAKINGS**

- 10.1 The Customer undertakes to supply all pertinent information required by FX on time.
- 10.2 The Customer **warrants** that -
 - 10.2.1 it is either the owner or the authorised agent of the owner of any goods in respect of which the Customer instructs FX and that each such person is bound by these trading terms and conditions;
 - 10.2.2 in authorising the Customer to enter into any contract with FX and/or in accepting any document issued by FX in connection with such contract, the owner, sender or consignee is bound by these trading terms and conditions for itself and its agents and for any parties on whose behalf it or its agents may act, and in particular, but without prejudice to the generality of the

abovegoing, it accepts that FX shall have the right to enforce against them jointly and severally any liability of the Customer under these trading terms and conditions or to recover from them any sums to be paid by the Customer which upon proper demand have not been paid;

10.2.3 all information and instructions supplied or to be supplied by it to FX is and shall be accurate, true and comprehensive, and in particular, without derogating from the generality of the abovegoing, the Customer shall be deemed to be bound by and warrants the accuracy of all descriptions, declarations, invoices, packing lists, values and other particulars furnished to FX for Customs, consular and other purposes, and the Customer warrants that it will not withhold any necessary or pertinent information, and indemnifies FX against all claims, losses penalties, forfeiture, fines, damages and expenses whatsoever, including any legal costs (on the scale as between attorney and own client on a full indemnity basis without taxation or deduction) incurred by FX as a result, howsoever arising as a result of a breach of these obligations including, any assessment or reassessment;

10.2.4 the goods will be properly, adequately and appropriately prepared and packed, stowed, labelled and marked, having regard *inter alia* to the implementation by or on behalf of FX or at its instance of the contract involved, and the characteristics of the goods involved and are capable of withstanding the normal hazards inherent in the implementation of such contract;

10.2.5 where goods are carried in or on containers, trailers, flats, tilts, railway wagons, tanks, igloos or any other unit load devices specifically constructed for the carriage of goods by land, sea or air, (each such device hereinafter individually referred to as "the transport unit") then save where FX has been given and has accepted specific written instructions to load the transport unit -

10.2.5.1 that the transport unit has been properly and competently loaded;

10.2.5.2 that the goods involved are suitable for carriage in or on the transport unit;
and

10.2.5.3 that the transport unit is itself in a suitable condition to carry the goods loaded therein and complies with the requirements of all relevant transport authorities and carriers.

11. RECOVERY OF DEBTS DUE TO FX

11.1 FX shall be entitled to recover any amounts due to it by the Customer in respect of instructions relating to or in terms of any contract in respect of particular goods from the Customer, or if the Customer acts as agent for a disclosed or undisclosed principal from the Customer or the principal, as FX in its absolute discretion deems fit.

11.2 The Customer agrees that in the event of FX instituting legal proceedings against the Customer to recover amounts due in terms of any agreement or for breach of these conditions or for enforcement of any other obligations or for the recovery of damages owed by the Customer to FX in terms of such agreement, the Customer shall be liable for all legal costs incurred by FX, on the scale as between attorney and own client, as well as collection commission and tracing agent's fees.

12. FX ENTITLED TO ACT AS AGENT OR PRINCIPAL IN CONTRACTING

12.1 Unless otherwise agreed in writing, FX in procuring the carriage, storage, packing or handling of goods shall be entitled to act either as an agent for and on behalf of the Customer or as a principal, as it in its absolute discretion deems fit.

12.2 The offer and acceptance of a fixed price for the accomplishment of any task shall not itself determine whether such task is to be arranged by FX acting as agent for and on behalf of the Customer or as a principal.

12.3 The Customer acknowledges that when FX, as agent for and on behalf of the Customer, concludes any contract with a third party, such agreement is concluded between the Customer and the third party.

12.4 Unless otherwise agreed in writing, FX, when acting as agent for and on behalf of the Customer, shall be entitled to enter into any contract it reasonably deems necessary or requisite for the fulfilment of the Customer's instructions, including, without limitation, contracts for the -

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- 12.4.1 carriage of goods by any route or means or person;
 - 12.4.2 storage, packing, transport, shipping, loading, unloading and/or handling of goods by any person at any place whether on shore or afloat and for any length of time; and
 - 12.4.3 carriage or storage of goods in break-bulk form or in or on any transport units or with or without other goods of whatsoever nature.

13. **SUBCONTRACTING**

- 13.1 Any business entrusted by the Customer to FX may, in the absolute discretion of FX, be fulfilled by FX itself, by its own servants performing part or all of the relevant services, or by FX employing, or entrusting the goods or services to third parties on such conditions as may be stipulated by, or negotiated with, such third parties for the purposes of such services, or such part thereof as they may be employed to carry out.
- 13.2 Where FX contracts with third parties to perform all or any of the functions which it has agreed to perform, the Customer agrees that FX shall have no responsibility or liability to the Customer for any act or omission of such third party, even though FX may be responsible for the payment of such third party's charges. Notwithstanding the foregoing, FX undertakes to cede any right of action which it may have against such third parties to the Customer upon demand, the Customer hereby indemnifying FX against any loss, damage or expense which might arise from the Customer prosecuting such claims or right of action.

14. **TERMS AND CONDITIONS OF AGENTS AND SUBCONTRACTORS**

- 14.1 Notwithstanding anything to the contrary contained herein the Customer agrees that all goods shall be dealt with by any third party appointed to perform any function on such terms and conditions the third party may stipulate, whether or not inconsistent with these trading terms and conditions, including the carriers, warehousemen, government departments, and all other parties (whether acting as agents or subcontractors to FX or otherwise) into whose possession or custody the goods may pass, or subject to whose authority they may at any time be.

14.2 If, notwithstanding the provisions of 14.1, if it should be held that FX in any way retains any obligations or responsibilities with regard to the performance of the obligations by a third party, then to the extent that the terms and conditions stipulated by the third party carrier, warehouseman, government department and any other such party, impose a liability, obligation or responsibility on FX, more onerous than those imposed by these terms and conditions, then such provision shall not apply as between FX and the Customer or owner and the provisions of these terms and conditions shall have precedence. In all other instances the third party's terms and conditions shall apply.

15. **GOODS REQUIRING SPECIAL ARRANGEMENTS**

The Customer must advise FX in writing should any goods require any special arrangements, failing which FX shall incur no liability whatsoever in respect of such goods, and in particular, shall incur no liability in respect of its negligent acts or omissions in respect of such goods. A claim, if any, against FX in respect of the goods referred to in this clause shall be governed by the limitations of these STC's.

16. **GOODS REQUIRING PRIOR CONSENT OF FX**

16.1 The Customer shall obtain in advance FX 's specific written consent to accept into its possession or control or into the possession or control of any of its servants, sub-contractors, agents or employees any goods, including radio-active materials, which are or may become perishable, dangerous, inflammable or noxious, or which by their nature may injure, damage, taint or contaminate, or in any way whatsoever adversely affect any person, goods or property, including goods likely to harbour or attract vermin or other pests, or any goods defined as hazardous and/or dangerous in the Tariff or rules for carriage of Transnet Limited, or so classified in the IMDG Code or any other code or regulations of, or published by, any other International Organisation. The Customer warrants that such goods, or the case, crate, box, drum canister, tank, flat, pallet, package or other holder or covering of such goods will comply with any applicable laws, regulations or requirement of any authority or carrier and that the nature and characteristics of such goods and all other data required by such laws, regulations or requirements will be prominently and clearly marked on the outside cover of such goods.

16.2 If any such goods are delivered to FX, whether or not in breach of the provisions of clause 16.1, such goods may for good reason as FX in its discretion deems fit including, without limitation, the risk to other goods, property, life or health be destroyed, disposed of abandoned or rendered harmless or otherwise dealt with at the risk and expense of the Customer and without FX being liable for any compensation to the Customer or any other party, and without prejudice to its rights to recover its charges and/or fees including the costs of such destruction, disposal, abandonment or rendering harmless or other dealing with the goods. The Customer indemnifies FX against all loss, liability or damage caused to it as a result of the tender of goods to FX.

17. **PERISHABLE GOODS**

17.1 Without limiting or affecting any other terms of these STC's, goods (whether perishable or otherwise) in the care, custody or control of FX may at the Customer's expense be sold by private treaty or public auction or otherwise disposed of by FX in its sole discretion, without notice to the Customer, sender, owner or consignee, if -

17.1.1 such goods have begun to deteriorate or are likely to deteriorate;

17.1.2 such goods are insufficiently addressed or marked;

17.1.3 the Customer cannot be identified; or

17.1.4 the goods have not been collected or accepted by the Customer or any other person after the expiration of 21 days from FX notifying the Customer in writing to collect or accept such goods, provided that if FX has no address for the Customer such notice period shall not be necessary, and payment or tender of the net proceeds, if any, of the sale thereof after deduction of those charges and expenses incurred by FX in respect thereof shall be equivalent to delivery of such goods.

17.2 Should any amount owing by the Customer to FX in respect of any matters referred to in clause 17.1 become due and payable and remain unpaid, or in the event that any goods are not accepted for delivery as provided for in 18 below, FX

shall be entitled and the Customer hereby authorises FX and without first obtaining an order of court, to sell all or any of the goods by public auction or on reasonable notice not exceeding 14 days by private treaty. The net proceeds of any such sale, after deducting therefrom all costs, charges and expenses incurred by FX, shall be applied in reduction or discharge as the case may be, of the Customer's obligations to FX in respect of such goods without prejudice to the its rights to recover from the Customer any balance which may remain owing to FX after the exercise of such rights. Should the total amount collected by FX, after deducting therefrom all costs, charges and expenses incurred by FX in respect thereof, exceed the full amount of the Customer's obligations to FX in respect of such goods, FX shall be obliged to refund such excess to the Customer.

18. **THE ACCEPTANCE OF DELIVERY**

If delivery of any goods is not accepted by the Customer, consignee or party nominated by the Customer at the appropriate time and place then: -

18.1 FX shall be entitled to store the goods or any part thereof at no risk to itself and at the expense of the Customer; and

18.2 the provisions of clause 17.2 shall apply mutatis mutandis.

19. **WAREHOUSING**

19.1 In providing the services, the goods may be warehoused or otherwise held at any place as determined by FX in its absolute discretion, at the Customer's risk and expense.

19.2 Where FX acts as in the capacity as warehouseman, as a principal, whether in premises owned, leased or operated by it, or in premises operated by a third party, all goods are received, stacked, stored, moved, despatched and otherwise handled, at the risk of the Customer and the owner thereof. All such activities shall be undertaken by FX in terms of and subject to these conditions and FX shall not be liable at common law or otherwise, as a bailee or deposittee.

19.3 The Customer and the owner **warrant** that:

19.3.1 all goods delivered to FX for warehousing shall be properly packed and labelled and in the event of any such goods requiring special storage, packaging or labelling by reason of its nature or properties or in accordance with any regulation, convention or statute, that all such requirements shall be complied with; and

19.3.2 notice of any special storage requirements of any such goods shall be given to FX in writing prior to the delivery of the goods into the custody of FX or its agents, provided that FX shall not be obliged to take delivery of any such goods in the event of it being of the view that such goods or the handling and storage thereof are for any reason whatsoever undesirable.

20. **COLLECTION OF EXPENSES AND C O D**

20.1 When goods are accepted or dealt with by FX upon instructions to collect freight, duties, charges or other expenses from the consignee or any other person, the Customer shall remain responsible therefore if they are not paid by such consignee or any other person immediately when due.

20.2 If accepted by FX, instructions to collect payment on delivery shall be subject to the condition that FX will be entitled to assume that the recipient will effect payment and in regard to the collection will not be liable for any negotiable instrument which is not met on due date for payment. Such payment is collected by FX at the Customer's risk.

21. **SUNDRY GOODS RECOGNISABLE AS THE CUSTOMER'S**

FX shall have no obligation to take any action in respect of any goods which may be recognisable as belonging to the Customer unless and until it receives suitable instructions relating to those goods together with all necessary documents.

22. **EXAMINATION OF LANDED GOODS**

22.1 Where it is necessary for an examination to be held or other action to be taken by FX in respect of any discrepancy in the goods which are landed or discharged from any vessel, aircraft, vehicle, or transport unit, no responsibility or liability

shall attach to FX for any failure to hold such examination or to take any other action unless FX has been timeously advised by the landing or discharge agent that such goods have been landed and that such a discrepancy exists.

- 22.2 FX will not be responsible for examining or counting any goods received by it where such goods are bundled, palletised or packed in any manner such that their number cannot be quickly and easily counted. Should FX undertake to examine or count goods so received, it shall incur no liability in respect of any error or inaccuracy in such counting, whether such error or inaccuracy is the result of negligence on the part of FX or otherwise. FX shall be entitled to levy a charge on the Customer for the counting of goods in such circumstances.

23. DUTIES, TAXES, IMPOSTS, LEVIES AND DEPOSITS

- 23.1 The Customer, whether or not the cause of payment was due to an act, instruction or omission of the seller, shipper, owner and/or consignee and their agents, if any, shall be liable for any duties, taxes, VAT, imposts, levies, deposits or out-lays of whatsoever nature (including fines, penalties and forfeiture) levied by or payable to the authorities, intermediaries or other parties at any port or place for or in connection with the goods and whether at the time of entry and/or at any subsequent time and for any payments, fines, penalties, expenses, loss or damage or whatsoever incurred or sustained by FX howsoever arising and whether or not the Customer is at fault.

- 23.2 FX shall bear no liability in consequence of the fact that there may be a change in the rate of duty, wharfage, cargo dues, freight, railage or cartage or any other tariff, before or after the performance by FX of any act involving a less favourable rate or tariff or by virtue of the fact that a saving might have been effected in some other way had any act been performed at a different time.

24. RECOVERY OF MONIES INCORRECTLY PAID

Where any duty, tax, levy, railage, wharfage, cargo dues, freight, cartage or any other impost or charge has been levied in an incorrect amount:

- 24.1 the Customer indemnifies and agrees to hold harmless FX, and to reimburse FX in full for any such disbursement

24.2 FX will endeavour to recover the amount incorrectly paid or levied.

25. PAYMENT BY THE CUSTOMER

25.1 Unless otherwise specifically agreed by FX in writing the Customer shall pay to FX in cash immediately upon presentation of account all sums due to it without deduction or set-off and payments shall not be withheld or deferred on account of any claim or counterclaim which the Customer may allege.

25.2 Where payment terms have been agreed in writing, payment of all amounts due to FX must be made :

25.2.1 free of exchange and any other charges at such address as FX may require.

25.2.2 in such currency as FX may direct.

25.2.3 without demand and free of any deduction or set off on the due date of payment.

25.3 Any amount not paid on due date for payment shall bear interest at the maximum permissible rate allowed by law on accounts not settled within the agreed terms of credit and calculated on daily balance and compounded monthly in arrears.

25.4 All and any moneys received by FX from the Customer shall be appropriated by FX in its sole and absolute discretion in respect of any undisputed indebtedness owing by the Customer to it, notwithstanding that the Customer might, when making payment, seek to appropriate the payment so made to any particular debt or portion of a debt.

25.5 In the event that the Customer fails to make any payment timeously FX shall be entitled to forthwith revoke any credit facilities and declare all amounts immediately due and payable and proceed for recovery of all amounts which would be due and payable to it, were it not for the credit terms or facilities granted to the Customer.

26. DEBITING FEES AND DISBURSEMENTS

FX shall under no circumstances be precluded from raising a debit and obtaining payment in respect of any fee or disbursements due to it notwithstanding the fact that a previous debit or debits, whether excluding or partly excluding the items subsequently requiring to be charged or recovered, had been raised and whether or not any notice had been given that further debits were to follow.

27. RISK OF ITEMS POSTED OR ELECTRONICALLY TRANSMITTED

27.1 Notwithstanding any prior dealings between FX and the Customer all documents, cash, cheques, bank drafts or other remittances, sent to FX through the post or electronically transmitted shall be deemed not to have been received by FX unless and until they are actually received by it.

27.2 In the event that any payment to FX is effected electronically, then the Customer bears the risk in respect of such payment until such time as the payment is received and cleared into the FX's bank account.

28. QUOTATIONS & ESTIMATES

28.1 FX shall be entitled at any time by notice to the Customer to cancel, amend or resile from any quotation or estimate in circumstances where it becomes impracticable or uneconomical for it to carry out the contract at the quoted or estimated rate and the Customer shall have no claim whatsoever against FX for any loss that the Customer might incur as a result of FX cancelling, amending or resiling from the quotation or estimate.

28.2 Without in any way limiting the provisions of clause 28.1 all quotations, estimates and agreements are subject to revision without notice, having regard to changes in currency exchange rates and upward movements in amounts payable by or on behalf of, or at the instance of FX to third parties, including, without limitation, freight, surcharges, insurance premiums, equipment rental and labour which charges and upward movements take place after quotation. Any revision of rates as aforesaid will be commensurate with the change in the currency exchange rate or the increase in such amounts payable. Any such increase shall, failing agreement between the parties, be determined by the then auditors of FX or any

other auditors nominated by FX, who in such determination shall act as experts and not as arbitrators and whose decision shall be final and binding on the parties.

29. NO CLAIMS AGAINST FX 'S MEMBERS AND EMPLOYEES

The Customer undertakes that no claim shall be made against any director, servant or employee of FX which imposes or attempts to impose upon him any liability in connection with the rendering of any services which are the subject of these trading terms and conditions and the Customer hereby waives all and any such claims.

30. CUSTOMER'S ORAL INSTRUCTIONS

The Customer's instructions to FX shall be precise, clear and comprehensive and in particular, but without limitation, shall cover any valuation or determination issued by Customs in respect of any goods to be dealt with by or on behalf of or at the request of FX. Instructions given by the Customer shall be recognised by FX as valid only if timeously given specifically in relation to a particular matter in question. Oral instructions, standing or general instructions or instructions given late, even if received by FX without comment, shall not in any way be binding upon it, but FX may act thereupon in the exercise of its absolute discretion.

31. VARIATION OF THESE TRADING TERMS AND CONDITIONS

No variation of these trading terms and conditions shall be binding on FX unless embodied in a written document signed by an authorised representative of FX. Any purported variation or alteration of these trading terms and conditions otherwise than as set out above shall be of no force and effect, whether such purported variation or alteration is written or oral, or takes place before or after receipt of these standard trading terms and conditions by the Customer.

32. NON WAIVER

No waiver of any of these terms and conditions shall be binding or effectual for any purpose unless in writing and signed by or on behalf of the party giving the same. Any such waiver will be effective in a specific instance and for the purpose given. No failure or delay on the part of either party hereto in exercising any right, power or privilege hereunder will constitute or be deemed to be waiver thereof, nor will any

single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

33. **GOVERNING LAW**

These trading terms and conditions and all agreements entered into between FX and the Customer pursuant thereto and on the terms thereof shall be governed by and construed in accordance with the law of South Africa.

34. **SUBMISSION TO JURISDICTION**

The parties agree that any legal action or proceedings arising out of or in connection with these trading terms and conditions, or the granting of any credit, may at FX's sole discretion, be brought in the relevant court in the country having territorial and civil jurisdiction, where the company's registered office is situated at the commencement of the proceedings, and the Customer irrevocably submits to the non-exclusive jurisdiction of such court. FX shall have the option within that jurisdiction, or any other competent jurisdiction, of proceeding either in the superior court or in an inferior court, notwithstanding that the amount of the claim may exceed the jurisdiction of that inferior court, to which jurisdiction the Customer hereby consents.

35. **BENEFIT OF DISCOUNTS**

FX is entitled to the benefits of any discounts obtained and to retain and be paid all brokerages, commissions, allowances and other remuneration of whatsoever nature and kind whether or not they are customarily retained by or paid to freight forwarders, warehousemen or transporters and shall not be obliged to disclose or account to the Customer, or principal for any such amounts received or receivable by it.

36. **LIEN**

36.1 All goods and documents relating to goods including bills of lading and import permits, as well as all refunds, repayments, claims and other recoveries, shall be subject to a special and general lien or pledge either for moneys due in respect of such goods or for other moneys due to FX from the Customer, sender, owner, consignee, importer or the holder of the bill of lading or their agents, if any.

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- 36.2 In delivering the goods into the custody of FX or its agents for any purpose whatsoever, such delivery shall for the purposes hereof be deemed to be delivery of the same in pledge and as security for all amounts owed to FX at that time or which become payable in the future. In the event of FX utilising the services or premises of any third party for any purposes including the transportation or storage of any goods, such third party shall be the agent of FX for purposes of exercising FX 's right to retention under lien and/or pledge.
- 36.3 If any moneys due to FX are not paid within 14 days after notice has been given to the person from whom the moneys are due that such goods or documents are being detained, they may be sold by public auction or by private treaty or in some other way disposed of for value at the sole discretion of FX and at the expense of such person, and the net proceeds (if any) applied in or towards satisfaction of such indebtedness.
- 36.4 The Customer shall not be entitled to effect or allow to be effected any security in respect of the goods or the documents relating to the goods, including without limitation, any general or special notarial bond, pledge, hypothec, right of retention, or lien and pledge, without the prior written consent of FX . The lien and pledge and right of retention in favour of FX referred to above in 36.1 and 36.2, shall operate as a first and prior charge against the goods and the documents relating to the goods and no other security shall rank prior to FX's lien, pledge or right of retention.

37. INDEMNITY BY THE CUSTOMER

Without prejudice to any of FX 's rights and securities under these Conditions, the Customer indemnifies and holds harmless FX against all liabilities, damages, costs and expenses whatsoever incurred or suffered by FX arising directly or indirectly from or in connection with the Customer's express or implied instructions or their implementation by or on behalf of or at the instance of FX in relation to any goods and in particular, but without limitation of the foregoing, in respect of any liability whatsoever which may be incurred-

- 37.1 arising from the failure of any warranty given to FX in respect of the goods being true and correct; and/or

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- 37.2 to any haulier, carrier, warehouseman or other person whatsoever at any time involved with such goods arising out of any claim made directly or indirectly against any such person by the Customer or by any consignor, consignee or owner of such goods or by any person having an interest in such goods or by any other person whatsoever; and/or
- 37.3 to any owner or consignee of such goods who is not the Customer of FX where the Company performs the service of a de-consolidation agent, or any other service; and/or
- 37.4 to any carrier of the goods if the Company is the consignor or consignee of the goods; and/or
- 37.5 in respect of any goods referred to in clause 16.

Notwithstanding that FX may seek recovery of any amount due to it, from any person other than the Customer; the Customer shall remain liable to make payment of the said amount to FX upon demand, at any stage.

38. **LIMITATION OF FX 'S LIABILITY**

- 38.1 Subject to the provisions of clause 38.2 and clause 39, FX shall not be liable for any claim of whatsoever nature (whether in contract or in delict) and whether for damages or otherwise, howsoever arising including but without limiting the generality of the aforesaid claims arising from -
- 38.1.1 any negligent act or omission or statement by FX or its servants, agents, sub-contractors or nominees; and/or
- 38.1.2 any act or omission of the Customer or agent of the Customer with whom FX deals; and/or
- 38.1.3 any loss, damage or expense arising from or in any way connected with the marking, labelling, numbering, non-delivery or mis-delivery of any goods; and/or

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- 38.1.4 any loss, damage or expense arising from or in any way connected with the weight, measurements, contents, quality, inherent vice, defect or description of any goods; and/or
- 38.1.5 any loss, damage or expense arising from or in any way connected with any circumstance, cause or event beyond the reasonable control of FX, including but without limiting the generality of the aforesaid, any act of God, any act of Government or other authority, strike, lock-out, stoppage or restraint of labour; and/or
- 38.1.6 damages arising from loss of market or attributable to delay in forwarding or in transit or failure to carry out any instructions given to the Company; and/or
- 38.1.7 loss or non-delivery of any separate package forming part of a consignment or for loss from a package or an unpacked consignment or for damage or mis-delivery; and/or
- 38.1.8 damage or injury suffered by the Customer or any person whatsoever arising out of any cause whatsoever as a result of FX's execution or attempted execution of its obligations to the Customer and/or the Customer's requirements or mandate;
- unless -
- (a) such claim arises from a grossly negligent act or omission on the part of the FX or its servants; and
 - (b) such claim arises at a time when the goods in question are in the actual custody of FX and under its actual control; and
 - (c) the claim is not time barred by virtue of the provisions of clause 46 hereof or otherwise.
- 38.2 Notwithstanding anything to the contrary contained in these trading terms and conditions, FX shall not be liable for any indirect and consequential loss arising from any act or omission or statement by it, its agents, servants or nominees, whether negligent or otherwise.

39. MONETARY LIMITATION OF LIABILITY OF FX

39.1 In the event that FX is liable to the Customer in terms of clause 38, or otherwise, in no such case whatsoever shall any liability of FX, howsoever arising, exceed whichever is the least of the following respective amounts -

39.1.1 the value of the goods evidenced by the relevant documentation or declared by the Customer for customs purposes or for any purpose connected with their transportation;

39.1.2 the value of the goods declared for insurance purposes;

39.1.3 double the amount of the fees raised by FX for its services in connection with the goods, but excluding any amount payable to sub-contractors, agents and third parties.

39.2 If it is desired that the liability of FX in those cases where it is liable to the Customer should not be governed by the limits referred to in clause 39.1, written notice thereof must be received by FX before any goods or documents are entrusted to or delivered to or into the control of FX (or its agents or sub-contractors), together with a statement of the value of the goods. Upon receipt of such notice FX may in the exercise of its absolute discretion agree in writing to its liability being increased to a maximum amount equivalent to the amount stated in the notice, in which case it will be entitled to effect special insurance to cover its maximum liability and the party giving the notice shall be deemed, by so doing, to have agreed and undertaken to pay FX the amount of the premium payable by FX for such insurance. If FX does not so agree the limits referred to in clause 39.1 shall apply.

40. GENERAL AVERAGE

The Customer indemnifies and holds harmless FX in respect of any claims of a General Average nature which may be made against FX and the Customer shall provide such security as may be required by FX in this connection and in a form acceptable to FX.

41. BREACH

- 41.1 If FX breaches any of these trading terms and conditions or any agreement between it and the Customer and fails to remedy such breach within 30 days of the date of receipt of written notice requiring it to do so then the Customer shall be entitled to compel performance by FX of the obligations it has defaulted on, but shall not be entitled to cancel these trading terms and conditions or any agreement between the Customer and FX.
- 41.2 No provision in these trading terms and conditions shall derogate from FX's common law rights in the event that the Customer breaches any term or condition of the agreement.
- 41.3 FX shall be entitled to cancel any agreement between it and the Customer by written notice if –
- 41.3.1 The Customer commits any breach of its obligations under the agreement and fails to remedy that breach within 7 (seven) days of its being given written notice to do so;
- 41.3.2 The Customer commits any act of insolvency in terms of any applicable Insolvency Legislation;
- 41.3.3 The Customer is deemed to be unable to pay its debts in terms of any deeming provision of any applicable legislation relating to Companies or Insolvency;
- 41.3.4 The Customer compromises or attempts to compromise with its creditors ;
- 41.3.5 Any provisional or final order is granted for the sequestration, winding up, bankruptcy or judicial management, of the customer, or any equivalent order is made in terms of any applicable law with regard to the status of the Customer;
- 41.3.6 The Customer fails to satisfy any default or other judgement granted against it, within 10 (ten) days.

41.3.7 The financial position of, or business conducted by, the Customer, has in the sole opinion of FX, changed in any way from the time when any such agreement was concluded.

41.3.8 Within the sole discretion of FX, the services originally agreed to be undertaken on behalf of the Customer are no longer profitable, viable, or for any other reason in FX's opinion, are services which it no longer wishes to provide to the Customer.

42. **WARRANTIES AND REPRESENTATIONS BY FX**

FX makes no warranties and representations to the Customer save as may be specifically provided herein or as notified in writing by it to the Customer from time to time. The Customer acknowledges that FX is not in any way bound by any oral statement, representation, guarantee, promise, undertaking, inducement or otherwise which may have been made at any time by any salesman, employee, representative or any person acting or purporting to act for or on behalf of FX, whether negligently or otherwise unless such statements, representations, guarantees, promises, undertakings, warranties or inducements are supplied or made in writing by an employee duly authorised by written resolution by the members of FX in response to a written enquiry specifying accurately and in complete detail what information is required.

43. **SEVERABILITY**

If any provision of these terms and conditions is unenforceable, then FX shall be entitled to elect (which election may be made at any time) that such provision shall be severed from the remaining provisions of these terms and conditions which shall not be affected and shall remain of full force and effect.

44. **TIME BAR**

44.1 No claim of any nature whatsoever and howsoever arising in respect of any loss or damage to goods, mis-delivery of goods, delay in the delivery of any goods or in respect of any other damages, loss or cause of action whatsoever (whether or not similar to, or in the nature of, the foregoing), may be brought against FX or

(subject in any event to the provisions of clause 30) any of its members or Employees, unless it/they have received written notice of the claim from the Customer specifying full details of the claim, within 5 days of the end of any transit or of the cause of the claim coming to the Customers knowledge, or the date when such cause should reasonably have come to their knowledge (whichever shall, as applicable, be the sooner), nor may any such claim be brought after the expiry of a period of nine months calculated from the date of the cause of the claim coming to the Customers knowledge, or the date when such cause should reasonably have come to their knowledge, or the date of delivery of the goods or, in the event that goods have not been delivered, the date upon which the goods should have been delivered in the ordinary course of business (whichever shall, as applicable, be the sooner),

44.2 FX shall in any event be discharged from all liability whatsoever and howsoever arising in respect of any service provided to the Customer or which FX has undertaken to provide, unless summons or other process initiating legal proceedings is issued and served on FX within nine months after the cause of action in respect of any such alleged liability arose and immediate notice is given in writing to FX of such a suit having been brought.

45. **INCOTERMS**

Any INCOTERM which might be made applicable to any contract between FX and the Customer or between FX acting on behalf of the Customer and any third party, shall be interpreted in accordance with the published guidelines issued from time to time by the International Chamber of Commerce and particularly the Introduction to the official publication containing the latest INCOTERMS published and in force as at the time of the incorporation of INCOTERMS into such contract. In the event that any specific Incoterm as published, is in the view of FX inappropriate for the transaction to be undertaken, or is unclear, then FX shall, within its sole discretion, have the right to amend or vary that term, or add rules or provisions for the interpretation thereof.

46. **NOTICES**

All notices in terms of these trading terms and conditions shall be given in writing and delivered by hand or sent by telefax. The Customer appoints as his/her/its *domicilium citandi et executandi* for all purposes under these standard terms and conditions the physical address and telefax number stipulated in the Application to which these terms and conditions are annexed, or any other physical address or telefax number provided by the Customer to FX on any letterhead, order or other document generated or completed by the Customer.

47. **SPECIAL CONDITIONS RELATED TO ELECTRONIC DATA**

- 47.1 Notwithstanding the provisions of any legislation or other law regulating electronic communications and transactions, FX shall only be deemed to have received electronic data and/or messages when such electronic data and/or messages have been retrieved, processed and read by the addressee.
- 47.2 Under no circumstances whatsoever and howsoever arising (including negligence on the part of FX or its employees) shall FX be liable for any loss or damage arising from or consequent upon the provision by FX to the Customer in whatever manner and/or form, of incorrect information, including electronically communicated information or data, where such incorrect information or data has been generated by and provided to FX by any person with whom it conducts business, and/or any other third party.
- 47.3 FX shall furthermore under no circumstances whatsoever be liable for any loss or damage arising from or consequent upon any failure and/or malfunction, for whatever reason, and regardless of negligence in whatever degree on the part of FX, its computer systems and/or software programmes, provided and/or operated by FX and/or by any person with whom it conducts business, and/or any third party, and which systems shall include the FX's electronic automated information service provided to its Customers.

48. **AMENDMENTS**

FX may unilaterally amend these Conditions at any time by publishing the amendments on its website. All contracts concluded or services rendered by FX and the Customer after such publication shall be subject to the amended Conditions.