



## **VERTICAL CLOUD LOGISTICS (PTY) LTD**

**t/a CLOUD LOGISTICS (PTY) LTD**

### **STANDARD TRADING CONDITIONS**

Vertical Cloud Logistics (Pty) Ltd will only contract, carry on business or operate subject to the Standard Trading Conditions set out below:

#### **1. DEFINITIONS**

- 1.1 "The Carrier" shall mean Vertical Cloud Logistics (Pty) Ltd and shall include any business or firm controlled by or owned by Vertical Cloud Logistics (Pty) Ltd or any subcontractor or agent appointed by the Carrier to fulfil all or any part of the obligations of the Carrier under the Contract, and the provisions of this clause are stipulated for the benefit of those persons.
- 1.2 "Contract" shall mean any contact entered into between the Carrier and the Customer to which these standard Trading Conditions apply.
- 1.3 "Customer" shall mean the party with whom the Carrier is contracting and shall, unless the context indicates otherwise, include a reference to the owner of the Goods forming the subject matter of the Contract.
- 1.4 "Goods" shall mean any movable Goods accepted by the Carrier from the Customer, and shall include containers, or other covering or receptacle, not supplied by the Carrier.

#### **2. GENERAL TERMS**

- 2.1 The Carrier is not and shall not be a public or common Carrier in relation to the carriage of the Goods and it may refuse, for carriage, any Good or any class of Goods.
- 2.2 All and any business undertaken, including any advice, information, or service provided, whether gratuitously, by the Carrier is and shall be subjected to the terms herein after set out and each term herein after set forth shall be deemed to be incorporated in and to be a term of any agreement between the Carrier and its Customer.
- 2.3 The Customer hereby authorised the Carrier to act as its agent and to enter into Contracts or Carriage on terms and conditions no more onerous to the Customer than the conditions contained in this contract, save as are require in terms of any legislation or regulation with any other Carrier, Government Department or third party into whose possession or custody the Goods may pass, or may need to pass, or subject to whose authorities the Goods may, at any time be during the period the Contract, subject to the proviso that the terms contained in this Contract, shall continue to apply and to govern the relationship between the Carrier or the sub contactor and the Customer.
- 2.4 Goods are accepted subject to the terms and conditions stipulated by all other Carriers and parties into whose possession and custody they may for the due fulfilment of the obligations of the Carrier.
- 2.5 The execution of the Contract, notwithstanding any conditions of terms purported to be attached by the Customer to such Contract, shall not be deemed to be acceptance by the Carrier of any such conditions or terms, and the Contract between the Carrier and the Customer shall be deemed to be exclusively on the terms and conditions set out in the Contract

#### **3. QUOTATIONS AND CHARGES**

- 3.1 All quotations by the Carrier shall be in writing and signed by an authorised official of the Carrier, failing which the Carrier shall not be bound.
- 3.2 Quotations, where given, shall be on the basis of immediate acceptance and shall be subject to withdrawal or revision by the Carrier at its election.
- 3.3 If any increase occurs after the date of any quotation given by the Carrier to the Customer in the rates of freight, insurance premium or other charges applicable to the relevant Goods, the Carrier shall be entitled, with or without prior notice to the Customer, to increase the charges payable the Customer by the amount of any such increase.

#### **4. DESCRIPTION OF GOODS**

- 4.1 The Customer shall provide the Carrier, prior to loading, a full documented description of the Goods and shall be deemed to be bound by and to warrant the accuracy of all descriptions, values and other particulars furnished to the Carrier.

- 4.2 The Customer hereby indemnifies and holds harmless the Carrier against all losses, damages, expenses and fines which may arise and which may be claimed from the Carrier as a result of any inaccuracy or omission of description, values and other particulars in respect of the Goods.
- 4.3 The Customer shall properly and accurately furnish to the Carrier the name and address of the Consignee and also all documents as must of necessity accompany the Goods or such documents as the Carrier may require.
- 4.4 The onus of establishing the condition of the Goods at the time of acceptance and delivery thereof by the Carrier shall rest of the Customer and the Consignee.
- 4.5 The Carrier shall not be responsible or incur any liability for any loss or incorrect delivery of the Goods due to the name and address of Consignee being improperly stated, and the Customer indemnifies and holds harmless the Carrier against all expenses, claims or fines arising from any inaccuracy or omission of descriptions, values or other particulars, even if the inaccuracy or omission of descriptions, values or particulars occurs without negligence on the part of the Customer, and indemnifies and holds harmless the Carrier against any claim arising out of, or pursuant to any loss or incorrect delivery of the Goods, as contemplated in this clause 4.5.
- 4.6 the Carrier shall not be liable for any loss in the event of delivery being effected to some person or other than the Consignee in the event of the Consignee, or his agent, not being present to receive any accept delivery of same at the address of delivery.

## **5. DANGEROUS GOODS**

- 5.1 The Carrier shall not handle any dangerous, noxious, hazardous, inflammable or explosive Goods, including any Goods that are likely to harbour or encourage vermin or other pest and all such Goods as fall within the definition of "hazardous" in terms of regulations past in terms of any applicable legislation, including, but not limited to, regulations passed in terms of Road Traffic Act of 1996 ("Dangerous Goods").
- 5.2 The Customer warrants that all Goods that it requires for it to be handled by the Carrier are fit to be handled in the ordinary way and are not Dangerous Goods.
- 5.3 The Customer hereby indemnifies and holds the Carrier harmless against any loss against any loss or damage arising out of or pursuant to the carriage or handling of any Dangerous Goods it require the Carrier to carry, whether the Customer of the Carrier was aware that the Goods consigned were Dangerous Goods or not.

## **6. COLLECTION AND DELIVERY**

- 6.1 The Carrier will not be responsible for any loss or damage howsoever arising from or during the loading and unloading of the vehicle, whether by reason of any negligence on the part of the Carrier or otherwise.
- 6.2 Without limiting the generality of the foregoing, it is the express responsibility of the Customer to ensure:
  - 6.2.1 that the freight to be transported has been suitably packed and sealed in order to allow safe and secure transit and
  - 6.2.2 that all goods loaded shall be in such condition as to enable them to be freely offloaded at the offloading point and
  - 6.2.3 that suitable access and offloading facilities will be provided at the offloading point.
- 6.3 the Customer hereby indemnifies the Carrier and hold it harmless against all costs, expenses, claims, losses, damages or injuries to any person or property howsoever arising and of whatsoever nature and whether direct or indirect arising out of or during the cause of any such loading or unloading and including any costs, expenses, claims, losses, damages or injuries arising out of the contamination of any Goods whatsoever.
- 6.4 in the event of the Consignee refusing to accept delivery of the Goods in whole or in part or in the event of the Carrier being unable to effect delivery by reason of the address of the Consignee being improperly or inaccurately stated:
  - 6.4.1 and the Carrier being compelled to return the Goods to the Customer, then the Customer shall be liable for all costs incurred in the return of such goods whether on the same basis as originally agreed upon or on any other basis whatsoever;
  - 6.4.2 or the Carrier being compelled to dispose of such Goods by reason of their perishable nature or for whatsoever other reason, the Carrier shall not be liable to, or loss of such Goods, or any loss or damage arising out of the disposal thereof and the Customer shall be liable to the Carrier of all costs incurred in connection with the disposal of such Goods.

## **7. TRANSIT AND STORAGE**

- 7.1 In the absence of a written agreement to the contrary, it shall at all times to the sole discretion of the Carrier to decide at what time and in what manner to perform any or all of its obligations in terms of the contract.
- 7.2 The Carrier shall not be liable for any delay or detention of Goods or for any loss, damage or deterioration therein unless the date and time for delivery of goods is expressly stipulated as being of the essence of the Contract. In such event, the Carrier shall not be liable for any such loss, damage or deterioration unless such delay or deterioration is attributable to wilful default or gross negligence on the part of the Carrier or its employees acting in the scope and course of their employees. Without limiting the foregoing, the Carrier shall be entitled to refuse any contract where the date and/or time are unreasonable.
- 7.3 The Carrier does not accept any responsibility for any demurrage charges howsoever incurred.

- 7.4 Goods left upon the Carriers vehicle for any reason to suit the convenience of the Customer are held at the sole risk of the Customer, pending forwarding and delivery and such Goods may be warehoused or otherwise held at any place or places at the sole discretion of the Carrier at the Customer's risk and expense.
- 7.5 Demurrage will be payable by the customer at a rate to be specified by the Carrier on all vehicle detained beyond reasonable period, from whatsoever cause.
- 7.6 If without prior arrangement of carriage, the receiver if the Goods refuses to accept them or if the goods remain uncollected for a period of more than seven (7) days after the date upon which the Goods are due to be delivered or collected (as may be applicable), the Goods will be returned to the sender who accepts responsibility for all costs incurred.
- 7.7 The Carrier reserves the right to dispose of unclaimed goods as envisaged in clause 7.6 after a period of ten (10) days after the date upon which the Goods are due to be delivered or collected (as may be applicable), in order defray expenses. Any monies collected will be set off against amounts outstanding but will not limit the Carriers rights to the balance outstanding.

## **8. VIS MAJOR**

Notwithstanding anything to the contrary, the Carrier shall not be liable in any way whatsoever in the event of it not being prevented from fulfilling its obligations in terms of the contract by any act of God, vis major, casus fortuitous, damnum fatale, and inherent defect vice or weakness or some action of the Goods themselves, civil riot or commotion, labour unrest amongst the Carrier's employees, inevitable accident, in act of State, enemies or any inevitable superior force or any other cause beyond the control of the Carrier.

## **9. INSURANCE**

The Carrier shall endeavour to affect any insurance which the Customer timeously and in writing instructs it to effect;

- 9.1 such insurance will be subject to such expectations and conditions as maybe imposed by the insurance company or underwriter taking the risk and the Carrier shall not be obliged to obtain separate cover for any risks excluded.
- 9.2 Unless otherwise agreed in writing, the Carrier shall not be under any obligation to obtain separate insurance in respect of separate consignments under any open or general policy held by the Carrier from time to time.
- 9.3 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 the Carriers 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 the Carrier in respect thereof.
- 9.4 Insofar as the Carrier agrees to arrange insurance the Carrier acts solely as agent for and on behalf of the Customer.

## **10. LIMITATION OF CARRIER'S LIABILITY**

- 10.1 All goods handled shall at all times be at the risk of the Customer or the owner of the Goods.
- 10.2 The Carrier shall not, in any circumstances, be liable for the loss or damage to Goods as well as for any consequential loss or damage arising out of the carriage if the Goods or custody of the Goods in terms of this contract, from whatsoever cause however arising, including the negligence of the Carrier's employees, unless such loss or consequential damage occurs whilst the Goods are in actual custody of the Carrier and under its actual control and unless such loss is due to the wilful acts or default of the Carrier or its employees in the course and scope of their employment.
- 10.3 in circumstances where the Carrier is adjudged by an authority having competent jurisdiction to be liable for the loss or damage to Goods as set out below, subject to the provisions of this clause 10.
- 10.4 The Carrier accepts liability for direct loss or damage to the Goods, subject to the following conditions:
  - 10.4.1 The liability of the Carrier shall be limited to a maximum total of no more than R50 (Fifty Rand) per consignment.
  - 10.4.2 The Carrier shall not be liable for any loss or damage until the Customer has established and proven that such loss or damage was caused by the wilful acts or default of the Carrier or any of its employees during the course and scope of their employment.
- 10.5 The Carrier shall not, in any circumstances be liable for:
  - 10.5.1 Any loss or damage whatsoever by the hazardous, perishable, fragile or brittle nature of Goods not for the mechanical derangement of the Goods; and/or
  - 10.5.2 The scratching, cracking, denting, chipping, bruising or breakage or other loss or damage to inadequately packed Goods handed to the Carrier for consignment; and/or
  - 10.5.3 Any loss or expense arising or in any way connected with marks, weight, numbers, brands, contents, quality or description of any Goods; and/or
  - 10.5.4 Any duty, tax import or outlays of whatever nature levied by the authorities at any port of place in connection with the Goods and for any payment, fines, expenses, loss or damage incurred or sustained by the Carrier in connection therewith.

- 10.6 The Carrier shall not accept any liability for the transport of any bullion, coins, precious stones, jewellery, valuables, antiques, pictures, bank notes, securities and other valuable documents or articles, livestock, perishable Goods, plants, glass, earthenware, china, asbestos cast cement, marble or plaster products, unless special arrangements have been made in writing prior to the commencement of the transport. If such special arrangements are made, any liability will be restricted mutatis mutandis, this clause 10.
- 10.7 The Carrier shall not be liable for any delay occasioned by compliance with any instructions issued by the Police or Authority but any extra costs incurred by the Carrier as a result of compliance with any such instructions shall be added to its charges.
- 10.8 none of the servants or agents of the Carrier or its subcontractors shall be under any liability whatsoever to the customer and the provisions of this clause are stipulated for the benefit of those persons.
- 10.9 Any loss or damage to the Goods transported must be recorded on the Carriers delivery documentation at the time of delivery as proof of the loss or damage. In the absence of this record, no claim whatsoever shall be enforceable against the Carrier.
- 10.10 The Carrier shall not accept any unqualified or unchecked endorsement on the Carriers delivery documents as proof of any loss or damage.
- 10.11 Any loss or damage to the goods must be reported to the Carrier in writing in seven (7) days of delivery. Such writing must contain precise details of the nature and extent of the loss or damage suffered by the Customer. Endorsement or notes on the Carriers delivery documentation shall not amount to compliance with the requirements of this clause. In the absence of such notification, no claim of whatsoever nature howsoever arising shall lie or be enforceable against the Carrier.

## **11 TERMS OF PAYMENT**

- 11.1 Unless prior arrangements have been made in writing, all accounts are due and payable without deduction or setoff within thirty (30) days from the date of the Carriers monthly statement of account and failure to pay timeously shall entitle the Carrier, in its sole discretion and without notice and without prejudice, to any other rights or remedies that may be available to the Carrier in law, so immediately to suspend credit facilities to the customer. Interest at the current prime rate plus two (2) percent will be charged on overdue accounts.
- 11.2 In the event of any account being handed over to the Carriers attorney for collection, the costs of such attorneys shall be payable by the Customer as between attorney and client including collection commission, which the carrier is obliged to pay to its attorney.
- 11.3 Payment shall not be withheld by the Customer pending the settlement of any dispute.
- 11.4 In the event of non-payment of the Carrier's charges by the sender or receiver, as the case may be, the Carriers shall be entitled to retain possession of the Goods pending payment, without prejudice to any other rights which the Carrier might have against the Customer.
- 11.5 The Carrier shall be entitled to charge the Customer storage charges in respect of any period during which the Goods are stored after tender of delivery up to and including the time of payment of all monies owing to the Carrier by the Consignor.

## **12 CARRIER'S LIEN OVER GOODS**

- 12.1 The Carrier shall have lien over all Goods as security for all monies owing for the handling of the Goods.
- 12.2 In addition the Carrier shall be entitled to hold all Goods as security for any other monies which may be owing to it or which may become owing to it by the Customer from any cause.
- 12.3 Notwithstanding that credit may have been originally granted by the Carrier to the Customer, the Carrier may at any time in its sole discretion retain possession of any Goods pending the discharge of all of the Customer's indebtedness to the Carrier whether or not such indebtedness is related to the handling of the Goods in question.
- 12.4 If any monies owing to the Carrier are not paid by the Customer within 30 (thirty) days after they become due, the Carrier shall be entitled without further notice:
  - 12.4.1 to open and examine the Goods
  - 12.4.2 to apply the proceeds of any sale after deducting all expenses thereof in payment of reduction of any amounts due by the Customer to the Carrier, provided that any surplus shall be paid over to the Customer without interest immediately after the sale, if its address is known and if not, upon demand made by the Customer within 90 (ninety) days of the sale.
- 12.5 Upon the sale of any Goods in terms of 12.4.2 above, the Carrier shall be released from all liability to the Customer (other than that referred to in 12.4.3 above) in respect of the Goods.
- 12.6 The Carrier's rights under this clause are not exhaustive and are in addition to any other rights which it may have against the Customer.

## **13. DETENTION OF THE CARRIER'S VEHICLE**

The Customer shall be liable for any unreasonable detention of the Carrier's vehicles, containers, equipment or the like caused by the Customer, but the Carrier's rights against any other person(s) shall remain unaffected

#### 14. GENERAL

- 14.1 The conditions set out herein shall govern all contracts concluded between the Carrier and the Customer, including prior and future contracts and no alternation, cancellation, variation of, or addition hereto shall be of any force and effect unless reduced to writing.
- 14.2 This document contains the entire agreement between parties and no party shall be bound by any undertakings, representations, warranties, promises or the like not recorded herein.
- 14.3 No indulgence, leniency or extension of time which the Carrier may grant or show to the Customer, shall in any way prejudice the Carrier or preclude the Carrier from exercising any of its rights in the future.
- 14.4 The headings in the Standard Trading Conditions are for the benefit of the parties and shall not be taken into account in the construction of interpretation of the Contract.
- 14.5 These conditions and all agreements made by the Carrier with its Customers wherever made, shall be governed and construed according to the laws of the Republic of South Africa and shall be subject to the exclusive jurisdiction of the South African Courts.
- 14.6 The Customer hereby consents to the jurisdiction of the Magistrate's Court having jurisdiction, subject, however to the Carrier's right to proceed in its discretion in any High Court having jurisdiction.
- 14.7 The Customer appoints its address as reflected on the original Credit Application as its *domicilium citandi et executandi* for all purposes relating to this Agreement and shall immediately notify the Carrier of any change of such address.
- 14.8 in the event of the Carrier instructing its attorneys to recover monies from the Customer, the Customer shall be liable for and shall pay all legal costs incurred by the Carrier on an attorney and client scale, inclusive of collection commission.
- 14.9 Notwithstanding any prior dealings between the Carrier and its Customer, all documents and other matter (including cheques, bank drafts and other remittances), sent to the Carrier through the post shall be deemed not to have been received by the Carrier unless and until they are actually delivered to the Carrier by the postal authorities, or placed in the Carrier's Post office box, if so addressed.
- 14.10 The Carrier shall have no obligation to take any action in respect of any Goods which may be recognisable as belonging to its Customer, unless it has received suitable instructions relating to such Goods together with all necessary documents, in particular, the Carrier shall not be obliged to notify its Customers of the existence or whereabouts of the Goods or to examine them or to take any other steps for their identification, protection or preservation or for the preservation of any claim by the Customer, or any other party against the Carrier, insurer or third party.