



## TRADING TERMS AND CONDITIONS

V3 01.02.2021

- 1. DEFINITIONS:**

  - 1.1. In these Trading Terms and Conditions , unless clearly inconsistent with or otherwise indicated by the context:
  - 1.2. **"Customer"** means any person at whose request or on whose behalf L4A undertakes any business or provides any advice, information or service;
  - 1.3. **"Goods"** means any goods handled, transported or dealt with by or on behalf of or at the instance of L4A or which come under the control of L4A 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;
  - 1.4. **"the Group"** means L4A and any company which is a holding company or subsidiary of L4A from time to time which may render a service to the Customer in terms of clause 2;
  - 1.5. **"L4A"** means L4Africa Proprietary Limited, registration number 2015/022187/07, a private company duly incorporated in accordance with the company laws of the Republic of South Africa;
  - 1.6. **"Owner"** means the owner of the Goods to which any business concluded under these trading terms and conditions relates and any other person who is or may have or acquire any interest, financial or otherwise, therein;
- 2. MEMBERS OF THE GROUP RENDERING SERVICES TO THE CUSTOMER:**

L4A may at its election perform all or any business undertaken or provide advice, information or services, whether gratuitous or not, either itself or it may procure that any member of the Group undertakes such business or provides such advice, information or services as principal upon and subject to the terms and conditions contained herein which shall apply, with the necessary changes deemed made (*mutatis mutandis*), to the Customer and any such member of the group.
- 3. APPLICATION OF THESE TRADING TERMS AND CONDITIONS:**

Subject to clause 5, all and any business undertaken or advice, information or services provided by L4A, whether gratuitous or not, is undertaken or provided on these Trading Terms and Conditions.
- 4. OWNER'S RISK:**

All handling, packing, loading, unloading, warehousing and transporting of Goods by or on behalf of or at the request of L4A are effected at the sole risk of the Customer and/or the Owner; and accordingly indemnifies and holds L4A harmless in this regard.

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- 5. APPLICABLE LEGISLATION:**
- 5.1. If L4A 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 L4A by complying therewith, shall not be deemed to waive nor abandon any of its rights in terms of these Trading Terms and Conditions.
- 5.2. In addition thereto, in complying with the law, L4A shall not be deemed to have assumed any onus, obligation, responsibility or liability in favour of the Customer and/or the Owner.
- 5.3. If any of the terms of these Trading Terms and Conditions are 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 Trading Terms and Conditions.
- 6. FIATA COMBINED TRANSPORT BILL OF LADING:**
- L4A shall be entitled to issue in respect of the whole or part of any contract for the movement of Goods a FIATA combined transport bill of lading ("FBL") provided that where a FBL is issued these Trading Terms and Conditions shall continue to apply except insofar as they conflict with the terms and conditions applicable to the FBL. The issue of the FBL by L4A shall entitle it to raise an additional charge determined by L4A, to cover its additional obligations arising under the FBL.
- 7. EXCLUSION OF OBLIGATIONS OF COMMON OR PUBLIC CARRIER:**
- L4A deals with Goods only on the basis that it is neither a common carrier nor a public carrier.
- 8. L4A'S DISCRETION IN THE ABSENCE OF INSTRUCTIONS:**
- In the absence of specific instructions given timeously in writing by the Customer to L4A:
- 8.1. It shall be in the reasonable discretion of L4A 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;
- 8.2. L4A 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;
- 8.3. 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 L4A 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.



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**9. L4A'S GENERAL DISCRETION:**

- 9.1. Notwithstanding anything to the contrary herein contained, if at any time L4A should consider it to be in the Customer's interests or for the public good to depart from any of the Customer's instructions, L4A shall be entitled to do so and shall not incur any liability in consequence of doing so.
- 9.2. If events or circumstances come to the attention of L4A, its agents, servants, or nominees which, in the opinion of L4A, make it in whole or in part, impossible or impracticable for L4A to comply with a Customer's instructions L4A 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 L4A in writing, L4A 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.

**10. INSURANCE:**

L4A shall endeavour to effect any insurance the Customer timeously and in writing instructs it to effect. Such insurance will be subject to such exceptions and conditions as may be imposed by the insurance company or underwriter taking the risk and L4A shall not be obliged to obtain separate cover for any risks so excluded. Unless otherwise agreed in writing L4A 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 L4A from time to time. 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 L4A 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 L4A in respect thereof. Insofar as L4A agrees to arrange insurance L4A acts solely as agent for and on behalf of the Customer.

**11. L4A'S OBLIGATIONS IN THE ABSENCE OF INSTRUCTIONS:**

- 11.1. Unless specific written instructions are timeously given to and accepted by L4A, L4A shall not be obliged to:
- 11.2. 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, L4A 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;
- 11.3. arrange for any particular Goods to be carried, stored or handled separately from other Goods.

**12. CUSTOMER'S UNDERTAKINGS:**

- 12.1. For all purposes hereunder the Customer shall be deemed to have in relation to the Customer's business, the Goods and the services to be rendered by L4A in respect thereto, reasonable knowledge of all matters directly or indirectly relating thereto or arising therefrom including, without limitation, terms of sale and purchase and all



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matter relating thereto and the Customer undertakes to supply all pertinent information to L4A.

12.2. The Customer warrants that:

- 12.2.1. it is either the Owner or the authorised agent of the Owner of any Goods in respect of which the Customer instructs L4A and that each such person is bound by these trading terms and conditions;
- 12.2.2. in authorising the Customer to enter into any contract with L4A and/or in accepting any document issued by L4A 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 foregoing, it accepts that L4A 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;
- 12.2.3. all information and instructions supplied or to be supplied by it to L4A is and shall be accurate, true and comprehensive, and in particular, without derogating from the generality of the foregoing, the Customer shall be deemed to be bound by and warrants the accuracy of all descriptions, values and other particulars furnished to L4A for Customs, consular and other purposes, and the Customer warrants that it will not withhold any necessary or pertinent information, and indemnifies and holds L4A harmless against all claims, losses penalties, damages, expenses and fines whatsoever, whensoever and howsoever arising as a result of a breach of the foregoing whether negligently or otherwise, without derogating from the generality of the foregoing, any assessment or reassessment;
- 12.2.4. all 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 L4A 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;
- 12.2.5. 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 L4A has been given and has accepted specific written instructions to load the transport unit:
  - 12.2.5.1. that the transport unit has been properly and competently loaded;
  - 12.2.5.2. that the Goods involved are suitable for carriage in or on the transport unit; and

- 12.2.5.3. 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.

**13. RECOVERY OF DEBTS DUE TO L4A:**

L4A 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 an agent for a disclosed or undisclosed principal, as L4A in its absolute discretion deems fit.

**14. L4A ENTITLED TO ACT AS AGENT OR PRINCIPAL IN CONTRACTING:**

- 14.1. Unless otherwise agreed in writing, L4A 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.
- 14.2. 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 L4A acting as agent or as a principal.
- 14.3. The Customer acknowledges that when L4A, 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.
- 14.4. Unless otherwise agreed in writing, L4A, 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:
- 14.4.1. carriage of Goods by any route or means or person;
- 14.4.2. 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.
- 14.4.3. carriage or storage of Goods in break-bulk form in or on transport units as defined in clause 12.2.5 or with or without other Goods of whatsoever nature.

**15. SUBCONTRACTING:**

- 15.1. Any business entrusted by the Customer to L4A may, in the absolute discretion of L4A, be fulfilled by L4A itself, by its own servants performing part or all of the relevant services, or by L4A 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.
- 15.2. Where L4A employs third parties to perform all or any of the functions which it has agreed to perform, the Customer agrees that L4A shall have no responsibility or liability to its Customer for any act or omission of such third party, even though L4A may be responsible for the payment of such third party's charges; but L4A shall, if suitably indemnified against all costs, (including attorney



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and client costs) which may be incurred or awarded against L4A, take such action against the third party on the Customer's behalf as the Customer may direct.

**16. TERMS AND CONDITIONS OF AGENTS AND SUBCONTRACTORS:**

Notwithstanding anything to the contrary contained herein the Customer agrees that all Goods shall be dealt with by L4A on the terms and conditions, whether or not inconsistent with these terms and conditions, stipulated by the carriers, warehousemen, government departments, and all other parties (whether acting as agents or subcontractors to L4A or not) into whose possession or custody the Goods may pass, or subject to whose authority they may at any time be.

**17. GOODS REQUIRING SPECIAL ARRANGEMENTS:**

Except under special arrangements previously made in writing L4A will not accept or deal with bullion, coin, precious stones, jewellery, valuables, antiques, pictures, human remains, livestock or plants. Should the Customer nevertheless deliver such Goods to L4A or cause L4A to handle or deal with any such Goods otherwise than under special arrangements previously made in writing L4A 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 L4A in respect of the Goods referred to in this clause 17 shall be governed by the provisions of clauses 40 and 41.

**18. GOODS REQUIRING PRIOR CONSENT OF L4A:**

- 18.1. The Customer shall obtain in advance L4A's specific written consent to accept into its possession or control or into the possession or control of any of its servants, agents or employees any Goods, including radio-active materials, which may be or become 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. 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.
- 18.2. If any such Goods are delivered to L4A, whether or not in breach of the provisions of clause 18.1, such Goods may for good reason as L4A 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 L4A being liable for any compensation to the Customer or any other party, and without prejudice to L4A's 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 L4A against all loss, liability or damage caused to L4A



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as a result of the tender of Goods to L4A and/or out of the foregoing.

- 19. PERISHABLE GOODS:**
- 19.1. Without limiting or affecting any other terms of these trading terms and conditions, Goods (whether perishable or otherwise) in the care custody or control of L4A may at the Customer's expense be sold or disposed of by L4A without notice to the Customer, sender, Owner or consignee, if:
- 19.1.1. such Goods have begun to deteriorate or are likely to deteriorate;
  - 19.1.2. such Goods are insufficiently addressed or marked;
  - 19.1.3. the Customer cannot be identified;
  - 19.1.4. the Goods have not been collected or accepted by the Customer or any other person after the expiration of 21 days from L4A notifying the Customer in writing to collect or accept such Goods, provided that if L4A 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 L4A in respect thereof shall be equivalent to delivery of such Goods.
- 19.2. Should any amount owing by the Customer to L4A in respect of any referred to in clause 19.1 become due and payable and remain unpaid, L4A shall be entitled and the Customer hereby authorises L4A 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 L4A, shall be applied in reduction or discharge as the case may be, of the Customer's obligations to L4A in respect of such Goods without prejudice to L4A's rights to recover from the Customer any balance which may remain owing to L4A after the exercise of such rights. Should the total amount collected by L4A, after deducting therefrom all costs, charges and expenses incurred by L4A in respect thereof, exceed the full amount of the Customer's obligations to L4A in respect of such Goods, L4A shall be obliged to refund such excess to the Customer.

**20. 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:

- 20.1. L4A shall be entitled to store the Goods or any part thereof at no risk to L4A and at the expense of the Customer.
- 20.2. The provisions of clause 19.2 shall apply with the necessary changes deemed made (*mutatis mutandis*).



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- 21. WAREHOUSING:** Pending forwarding and/or delivery by or on behalf of L4A, Goods may be warehoused or otherwise held at any place as determined by L4A in its absolute discretion, at the Customer's expense.
- 22. COLLECTION OF EXPENSES AND C.O.D.:**
- 22.1. When Goods are accepted or dealt with by L4A upon instructions to collect freight, duties, charges or other expenses from the consignee or any other person, the Customer shall remain responsible therefor if they are not paid by such consignee or any other person immediately when due.
- 22.2. If accepted by L4A, instructions to collect payment on delivery shall be subject to the condition that L4A will be entitled to assume that the recipient will effect payment and in the matter of such collection will not be liable for any negotiable instrument which is not met on due date for payment.
- 23. SUNDRY GOODS RECOGNISABLE AS THE CUSTOMER'S:** L4A 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.
- 24. EXAMINATION OF LANDED GOODS**
- 24.1. Where it is necessary for an examination to be held or other action to be taken by L4A in respect of any discrepancy in the Goods which are landed or discharged from any vessel, aircraft, vehicle, or transport unit, no responsibility shall attach to L4A for any failure to hold such examination or to take any other action unless L4A has been timeously advised by the landing or discharge agent that such Goods have been landed and that such a discrepancy exists.
- 24.2. L4A 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 L4A undertake to 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 L4A or otherwise. L4A shall be entitled to levy a charge on the Customer for the counting of Goods in such circumstances.
- 25. DUTIES, TAXES, IMPOSTS, LEVIES AND DEPOSITS:**
- 25.1. The Customer, whether or not the cause of payment was due to an act, instruction or omission of the sender, Owner and/or consignee and their agents, if any, shall be liable for any duties, taxes, imposts, levies, deposits or out-lays of whatsoever nature levied by or payable to the authorities, intermediaries or other parties at any port or place 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 L4A in connection therewith or arising thereout.
- 25.2. L4A shall bear no liability in consequence of the fact that there may be a change in the rate of duty, wharfage, freight, railage or cartage or any other tariff, before or after the performance by L4A of any



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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.

**26. RECOVERY OF DUTIES INCORRECTLY PAID:**

Where as a result of any act or omission by or on behalf or at the instance of L4A and whether or not such act or omission was negligent, any duty, tax, levy, railage, wharfage, freight, cartage or any other impost or charge has been paid or levied in an incorrect amount, then any responsibility or liability to the Customer which L4A may otherwise have will cease and fall away if the Customer does not:

- 26.1. within a reasonable time having regard to all the circumstances, and in particular to the time allowed for the recovery from the payee of the amount overpaid, advise L4A that an incorrect amount has been paid or levied, and
- 26.2. do all such acts as are necessary to enable L4A to effect recovery of the amount incorrectly paid.

The fact that the Customer may not be aware that any such incorrect payment has been made shall not constitute a circumstance to be taken into account in calculating what is a reasonable time for the purpose of clause 26.1. Should any act or omission by the Customer, whether or not such act or omission was due to ignorance on the part of the Customer, and whether or not such ignorance was reasonable or justified in the circumstances, prejudice L4A's right of recovery, the Customer shall be deemed not to have complied with the provisions of clauses 26.1 and 26.2.

**27. PAYMENT BY THE CUSTOMER:**

- 27.1. Unless otherwise specifically agreed by L4A in writing the Customer shall pay to L4A in cash immediately upon presentation of account all sums due to L4A 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.
- 27.2. All and any moneys received by L4A from the Customer shall be appropriated by L4A in its sole and absolute discretion in respect of any undisputed indebtedness owing by the Customer to L4A, notwithstanding that the Customer might, when making payment, seek to appropriate the payment so made to any particular debt or portion of a debt.

**28. DEBITING FEES AND DISBURSEMENTS:**

L4A 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.

**29. RISK OF POSTED ITEMS:**

Notwithstanding any prior dealings between L4A and the Customer all documents, cash, cheques, bank drafts or other remittances, sent to L4A



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through the post shall be deemed not to have been received by L4A unless and until they are actually received by L4A.

**30. QUOTATIONS:**

- 30.1. L4A shall be entitled at any time by notice to the Customer to cancel or resile from any quotation or executory agreement in circumstances where it becomes impracticable or uneconomical for L4A to carry out the contract at the quoted rate and the Customer shall have no claim whatsoever against L4A for any loss that the Customer might incur as a result of L4A cancelling or resiling from the quotation or executory agreement.
- 30.2. Without in any way limiting the provisions of clause 30.1 all quotations 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 L4A 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 L4A or any other auditors nominated by L4A, who in such determination shall act as experts and not as arbitrators and whose decision shall be final and binding on the parties.

**31. NO CLAIMS AGAINST COMPANY DIRECTORS AND EMPLOYEES:**

The Customer undertakes that no claims shall be made against any director, servant or employee of L4A 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 hereby waive all and any such claims.

**32. CUSTOMER'S ORAL INSTRUCTIONS:**

The Customer's instructions to L4A shall be precise, clear and comprehensive and in particular, but without limitation, shall cover any valuation or determination issued by the Customs in respect of any Goods to be dealt with by or on behalf of or at the request of L4A. Instructions given by the Customer shall be recognised by L4A as valid only if timeously given specifically in relation to a particular mater in question. Oral instructions, standing or general instructions or instructions given late, even if received by L4A without comment, shall not in any way be binding upon L4A, but L4A may act thereupon in the exercise of its absolute discretion.

**33. VARIATION OF THESE TRADING TERMS AND CONDITIONS**

No variation of these trading terms and conditions, including this clause, shall be binding on L4A unless embodied in a written document signed by a duly authorised director of L4A. Any purported variation or alteration of these trading terms and conditions, including this clause, 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.



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- 34. NON WAIVER:** No extension of time or waiver or relaxation of any of the trading terms and conditions shall operate as an estoppel against any party in respect of its rights under these trading terms and conditions, nor shall it operate so as to preclude such party thereafter from exercising its rights strictly in accordance with these trading terms and conditions.
- 35. GOVERNING LAW:** These trading terms and conditions and all agreements entered into between L4A and the Customer pursuant thereto and on the terms thereof shall be governed by and construed in accordance with the laws of the Republic of South Africa.
- 36. SUBMISSION TO JURISDICTION:** The parties agree that any legal action or proceedings arising out of or in connection with these trading terms and conditions shall be brought in the division of the High Court of South Africa where L4A's head office is situated at the commencement of the proceedings, and the Customer irrevocably submits to the non-exclusive jurisdiction of such court.
- 37. BENEFIT OF DISCOUNTS:** L4A is entitled to the benefits of any discounts obtained and to retain and be paid all brokerages, commissions, allowances and other remunerations of whatsoever nature and kind and shall not be obliged to disclose or account to the Customer, or principal for any such amounts received or receivable by it.
- 38. LIEN:** 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 and pledge either for moneys due in respect of such Goods or for other moneys due to L4A from the Customer, sender, Owner, consignee, importer or the holder of the bill of lading or their agents, if any. If any moneys due to L4A 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 auction or otherwise or in some other way disposed of for value at the sole discretion of L4A and at the expense of such person, and the nett proceeds applied in or towards satisfaction of the indebtedness.
- 39. INDEMNITY BY THE CUSTOMER:** Without prejudice to any of L4A's rights and securities under these trading terms and conditions, the Customer indemnifies and holds harmless L4A against all liabilities, damages, costs and expenses whatsoever incurred or suffered by L4A 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 L4A in relation to any Goods and in particular, but without limitation of the foregoing, in respect of any liability whatsoever which may be incurred:
- 39.1. 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



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person having an interest in such Goods or by any other person whatsoever; and/or

- 39.2. to any Owner or consignee of such Goods who is not the Customer of L4A where L4A performs the service of a deconsolidation agent, or any other service; and/or
- 39.3. to any carrier of the Goods if L4A is the consignor or consignee of the Goods; and/or
- 39.4. in respect of any Goods referred to in clause 18.

**40. LIMITATION OF COMPANY'S LIABILITY:**

40.1. Subject to the provisions of clause 40.2 and clause 41, L4A 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:

- 40.1.1. any negligent act or omission or statement by L4A or its servants, agents or nominees ; and/or
- 40.1.2. any act or omission of the Customer or agent of the Customer with whom L4A deals; and/or
- 40.1.3. 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
- 40.1.4. 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
- 40.1.5. any loss, damage or expense arising from or in any way connected with any circumstance, cause or event beyond the reasonable control of L4A, including but without limiting the generality of the aforesaid, strike, lock-out, stoppage or restraint of labour; and/or
- 40.1.6. damages arising from loss of market or attributable to delay in forwarding or in transit or failure to carry out any instructions given to L4A; and/or
- 40.1.7. 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
- 40.1.8. damage or injury suffered by the Customer or any person whatsoever arising out of any cause whatsoever as a result of L4A's execution or attempted execution of its obligations to the Customer and/or the Customer's requirements or mandate;

unless:

- 40.1.9. such claim arises from an intentionally wrongful act or omission on the part of L4A or its servants; and
- 40.1.10. such claim arises at a time when the Goods in question are in the actual custody of L4A and under its actual control; and



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40.1.11. in the instance provided in clause 40.1.7 above, L4A receives a written notice within 5 days after the end of the transit where the transit ends in the Republic of South Africa and within 14 days after the end of the transit where the transit ends at a place outside the Republic of South Africa.

40.2. Notwithstanding anything to the contrary contained in these trading terms and conditions, L4A shall not be liable for any indirect, special and/or consequential loss or damages arising from any act or omission or statement by L4A, its agents, servants or nominees, whether negligent or otherwise.

**41. MONETARY  
LIMITATION OF  
LIABILITY OF L4A:**

41.1. In those cases where L4A is liable to the Customer in terms of clause 40.1, in no such case whatsoever shall any liability of L4A, howsoever arising, exceed whichever is the least of the following respective amounts:

41.1.1. 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;

41.1.2. the value of the Goods declared for insurance purposes;

41.1.3. the amount of the fees raised by L4A for its services in connection with the Goods, but excluding any amount payable to sub-contractors, agents and third parties.

41.2. If it is desired that the liability of L4A in those cases where it is liable to the Customer in terms of clause 40.1 should not be governed by the limits referred to in clause 40.1 written notice thereof must be received by L4A before any Goods or documents are entrusted to or delivered to or into the control of L4A (or its agents or sub-contractors), together with a statement of the value of the Goods. Upon receipt of such notice L4A 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 L4A the amount of the premium payable by L4A for such insurance. If L4A does not so agree the limits referred to in clause 41.1 shall apply.

**42. GENERAL AVERAGE:**

The Customer indemnifies and holds harmless L4A in respect of any claims of a general average nature which may be made against L4A and the Customer shall provide such security as may be required by L4A in this connection.

**43. BREACH:**

If L4A 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 L4A of the



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obligations it has defaulted in, but shall not be entitled to cancel these trading terms and conditions and any agreement between the Customer and L4A.

**44. WARRANTIES AND REPRESENTATIONS BY L4A:**

L4A makes no warranties and representations to the Customer save as may be specifically provided herein, and any and all warranties and representations not specifically provided herein are hereby excluded to the maximum extent permitted by law. The Customer acknowledges that L4A 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 L4A, 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 of the board of directors of L4A in response to a written enquiry specifying accurately and in complete detail what information is required.

**45. DISPUTES:**

- 45.1. Should there be any dispute of any nature whatsoever between the parties in regard to any aspect, matter or thing relating to these trading terms and conditions and whether or not L4A has executed its obligations in terms of any agreement it has with the Customer, then and in such event the Customer shall nevertheless be obliged to perform its obligations in terms of any such agreement as though L4A had performed properly and to the Customer's satisfaction.
- 45.2. The Customer's remedy, having performed its obligations as provided in clause 45.1, shall be limited to an action against L4A for repayment of either the whole or portion of the amount which the Customer alleges, constitutes an overpayment.
- 45.3. Without affecting the generality of clauses 45.1 and 45.2 the Customer shall not be entitled to withhold payment of any amounts, by reason of any dispute with L4A, whether in relation to L4A's performance in terms of any agreement, or lack of performance or otherwise, after which payment the Customer's rights of action against L4A in terms of this clause can be enforced. Until such payment is made, any rights that the Customer may have, shall be deemed not yet to have arisen and it is only the payment to L4A which releases such rights and makes them available to the Customer in respect of any claim that he may have against L4A.
- 45.4. In any dispute between L4A and the Customer L4A shall be deemed to have performed its obligations in a proper and workmanlike manner and strictly in accordance with any agreement between it and the Customer, until such time as the Customer proves the contrary.

**46. TIME FOR PERFORMANCE BY THE CUSTOMER:**

Time is of the essence for the performance by the Customer of all obligations owed to L4A in terms of any agreement with it governed by these terms and conditions.



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**47. SEVERABILITY:**

If any provision of these terms and conditions is unenforceable, then L4A 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 of full force and effect.

**L4A CONTACT DETAILS:**

**Company Name:** L4Africa (Pty) Ltd  
**Registration Number:** 2015/022187/07  
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