

## GENERAL TERMS AND CONDITIONS OF CONTRACT

FP DU TOIT TRANSPORT (PTY) LTD. hereinafter called "THE CARRIER" contracts for the carriage of consignments by road on the following terms and conditions which will apply to each and every order, whether verbal, written or otherwise placed on and accepted by the carrier whether present or future and whether specifically referred to in such order or not and no order shall be executed otherwise than in terms hereof:

### 1. DEFINITIONS

For the purposes of these terms and conditions and unless inconsistent with the context:

- a) "CARRIAGE" and "CARRY" includes loading, unloading, storage, conveyance and all other work done or services rendered by the carrier under or by virtue of the contract whether the carrier is obliged to perform such work or render such service or not.
- b) "CARRIER" includes any other carrier that the CARRIER may decide to use as sub-contractor and is further referred to herein as "GROUP".
- c) "CONSIGNOR" means the customer who contracts for the services of the carrier.
- d) "CONSIGNMENT" means any goods or property which is carried or stored (temporarily or otherwise) for the consignor.
- e) "DANGEROUS GOODS" shall be those considered by the carrier as dangerous.
- f) "LAW" includes the Common law and any statute, ordinance, by-law or regulation as applicable in Namibia.

### 2. CUSTOMER'S UNDERTAKINGS

2.1 For all purposes hereunder the CONSIGNOR shall be deemed to have in relation to the CONSIGNOR's business, the goods and the services to be rendered by the CARRIER in regard thereto, reasonable knowledge of all matters directly or indirectly relating thereto or arising therefrom including, without limitation, terms of sale and purchase and all matters relating thereto and the CONSIGNOR undertakes to supply all pertinent information to the CARRIER.

2.2 The CONSIGNOR warrants that:

2.2.1 it is either the owner or the authorised agent of the owner of any goods in respect of which the CONSIGNOR instructs the CARRIER and that each such person is bound by these trading terms and conditions;

2.2.2 in authorising the CONSIGNOR to enter into any contract with the CARRIER and/or in accepting any document issued by the CARRIER 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 the CARRIER shall have the right to enforce against them jointly and severally any liability of the CONSIGNOR under these

trading terms and conditions or to recover from them any sums to be paid by the CONSIGNOR which upon proper demand have not been paid;

### 3. RECOVERY OF DEBTS DUE TO THE COMPANY

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

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

### 4. LIABILITY FOR LOSS OR DAMAGE

Notwithstanding anything to the contrary contained herein and notwithstanding any common law liability the carrier declares that the "Contract is out of liability" and that:

i) All transport work carried out in terms of this Contract, including the consignment, loading, offloading, packing, storing and or safe-keeping of any and all goods, is done at the exclusive risk of the owner/consignor; agent of such goods.

ii) The Carrier is not responsible for any loss and / or damage, including consequential damages, which the owner / consignor / agent or any other party may suffer as a result of the performance of services by the carrier in terms of this contract and the owner / consignor / agent indemnifies the carrier against liability for any damages which the owner / consignor / agent may suffer.

### 5. INSURANCE

a) It is the consignors responsibility to effect insurance in respect of any loss or damage to the goods or services to which this agreement relates, and in so doing the consignor shall nominate the carrier as co/insured in the policy.

### 6. VARIATIONS

No agent or employee of the Carrier has any authority to alter, vary or qualify in any way these terms and conditions, nor enter into any contract, sign any receipts or documents on behalf of the Carrier unless previously submitted to and approved in writing by the Carrier. No variation of these conditions including this condition shall be binding upon the carrier unless recorded in writing and signed by the carrier or its agent expressly authorised in writing to do so.

### 7. CONSIGNOR'S WARRANTY OF AUTHORITY

If the consignor is not the owner of some or all the goods in any consignment, he warrants that it he authorised to enter into this contract on behalf of the owner(s).

### 8. PERMITS

a) If any permit or other consent or approval is required by the carrier under any law for the performance of the contract none of its obligations under the contract shall take effect unless and until it obtains all such permits, consents and approvals.

b) The consignor shall provide all assistance and information required by the carrier for the purpose of applying for and obtaining any permit or other consent or approval referred to in (a).

9. INFORMATION TO BE SUPPLIED BY THE CONSIGNOR

The consignor shall at the time of entering into the contract provide:-

- i) Exact relevant details and dimensions and weights of the goods (the consignor acknowledges that this information will be used by the carrier in obtaining all necessary permits, consents and approvals and furthermore accepts full liability for the correctness thereof):
- ii) The correct and adequate addresses of the point of collection and the point of delivery.

10. ACCESS TO PRIVATE PROPERTY

The carrier shall in its sole discretion decide what route it shall follow. Should there not be suitable roads over which the carrier's vehicles (and where applicable, its cranes and plant) can pass or would there not be a convenient place affording hard solid standing without overhead wires or other obstructions for collection and delivery and for lifting and handling in connection therewith the carrier shall notify the consignor thereof without delay whereupon the carrier may in its sole discretion refuse to load or offload the goods or may deliver them to another point chosen by the carrier. The carrier shall in either event be deemed to have performed in terms of the contract and shall be entitled to payment therefore.

11. CARRIER'S CHARGES

- a) The carrier's charges for the carriage shall be payable by the consignor within the agreed terms of payment after date of invoice but without prejudice to the carrier's rights against the consignee or any other person; provided that if the goods are consigned "Consignee to pay" the consignor shall not be required to pay those charges unless the consignee fails to pay them within 3(three) days after being called upon to do so by carrier.
- b) Except where the quotation stated otherwise, all quotations based on a tonnage rate shall apply to the gross weight, unless the goods exceed 1 cubic meter in measurement per ton weight, in which case the tonnage rate shall be computed upon, and apply to, each measurement of 1 cubic meter or any part thereof.
- c) All payments to be made to the carrier shall be made without deduction and no amount may be deferred or withheld by reason of any claim or counter-claim.
- d) In the event that payment is not made by the consignor to the carrier within the period specified in 11(a) above the consignor accepts that the carrier may at its sole discretion raise interest on the overdue amount at 2 percent per month or portion thereof.

12. DANGEROUS GOODS

- a) Unless otherwise agreed to in writing, the consignor warrants that the goods are fit for carriage in the ordinary way and are not dangerous or fragile and do not require special purpose vehicles for their conveyance,
- b) Should the carrier accept any dangerous goods or goods unfit to be carried in the ordinary way;
  - i) the consignor shall furnish with the goods a written declaration of their nature and contents:
  - ii) The goods shall be properly and safely packed by the consignor, ready for carriage and in accordance with any law applicable.
  - c) If in the opinion of the carrier any consignment or portion thereof (whether declared unfit for ordinary carriage or dangerous or not) becomes a danger to any person or property or otherwise unfit for carriage the carrier shall be entitled immediately and without notice to the consignor to dispose of the goods in question or to take such other steps as in its sole

discretion it deems prudent to avert the danger or to avoid the consequences of such unfitness and

- i) any such disposal steps shall be deemed to be work done under this contract; and
- ii) the carrier shall be deemed to have performed in terms of the contract and shall be entitled to payment of its full charges and costs including any costs incurred by it in disposing of such goods or taking other steps.

#### 13. LOADING OR UNLOADING

- a) The consignor shall be obliged to provide any plant, power or labour that is required in addition to the carrier's car-men for loading or unloading.
- b) The consignor warrants that if any goods require special appliances for loading upon or unloading from the carrier's vehicle those appliances will be available at the point of collection or place of delivery of the consignment.

#### 14. ONUS

- a) The onus of providing the condition or the declared nature, quantity or weight of any goods in the consignment at the time the consignment is received or delivered by the carrier shall at all times rest on the consignor and no document given or signed by the carrier shall be evidence thereof.
- b) It shall be the responsibility of the consignor to ensure that the entire consignment is carried and that no goods are left behind or carried in error and the carrier shall be deemed to have performed in terms of the contract and shall be entitled to full payment notwithstanding a failure to carry any portion of the consignment and shall be paid for any additional goods carried.
- c) The onus of declaring the existence of delicate or fragile computerised equipment or delicate control instrumentation rests exclusively with the Consignor and the carrier accepts no liability for any damage caused to such equipment through any cause whatsoever.

#### 15. TRANSIT

- a) Transit shall commence:-
  - i) if the consignment is handed to the carrier at its own premises and accepted by the carrier, or
  - ii) if the consignment is collected by the carrier at any other point, when the consignment has been loaded onto and finally secured to the carrier's vehicle at that other point.
- b) Transit shall (unless otherwise previously terminated) end when the consignment is tendered at the usual place of delivery at the consignee's address within the customary cartage hours of the district provided that:-
  - i) if no safe and adequate access or no adequate unloading facilities exist there, transit shall be deemed to end at the expiry of one clear day after notice (which may be verbal) of the arrival of the consignment at the carrier's premises, has been given to the consignee: and
  - ii) if for any other reason whatever a consignment cannot be delivered or if a consignment is held by a carrier "to await order" or "to be kept until called for" or upon any similar instructions and those instructions are not given, or the consignment is not called for and removed within a reasonable time, transit shall be deemed to end and the CARRIER will be entitled to charge demurrage at its applicable rate at that time..

#### 16. ROUTE

- a) It is a condition precedent to the carrier's obligation to perform the contract that the competent authorities approve, the passage of the loaded vehicle, the route on which the carrier's charges have been based and that passage over such route is possible.

b) Any extra costs incurred by the carrier as a result of any compliance with any instructions:

i) issued by any authority referred to in (a), after the date of the contract and which varies the recommended route referred to in (a), or

ii) of the police or any other competent authority, shall be added to the carrier's charges and such compliance shall be work done under the contract.

#### 17. OBSTRUCTIONS

The consignor shall pay the carrier on written demand the amount of any charges made by any competent authority or other person for work done or services rendered necessary for the passage of the loaded vehicle including the removal and, or reinstatement of overhead cables or lines or traffic signs or bollards or other authorised obstructions.

#### 18. LIEN

a) i) The carrier shall have a lien over all goods as a security for all monies owing for the carriage of the goods.

ii) In addition, the carrier shall be entitled to hold all goods as a security for any other monies which may be due and payable to it by the consignor from any cause whatsoever.

b) If any monies owing are not paid within 30 (thirty) days after they become due the carrier shall be entitled without further notice to the consignor

i) to open and examine any part of the consignment;

ii) to sell the whole or any part of the consignment in such manner and on such terms and conditions as it deems fit; and

iii) to apply the proceeds of any sale, after deducting all expenses thereof, in payment or reduction of any amount due by the consignor to the carrier, provided that any surplus shall be paid over to the consignor without interest as soon as possible after the sale if the consignor's address is known, or if not, upon demand by the consignor.

c) Upon payment or tender of the proceeds of any such sale the carrier shall be released from all liability to the consignor in respect of the goods.

d) The carrier's rights under this clause 18 are not exhaustive and are in addition to any other rights which the carrier may have against the consignor.

#### 19. DETENTION AND DEMURRAGE

a) The consignor shall be liable for any detention or delay for any reason whatsoever of the carrier's vehicles, containers, sheets, etc., before commencement of or after termination of transit without prejudice to the carrier's rights against any other person;

b) The consignor shall pay demurrage at a reasonable rate in respect of any vehicle, containers, sheets, etc., so detained or delayed. In the event of there being any dispute as to what is a reasonable rate the amount fixed by the Chairman for the time being of the Professional Haulier's Association or its successor shall be deemed to be reasonable.

#### 20. GENERAL INDEMNITY

The consignor shall and does guarantee and indemnify the carrier against all actions, claims, injury, loss or damage whatsoever that the carrier or any third party may sustain or be involved in either directly or indirectly arising from any cause whatsoever out of the carriage of the consignment.

#### 21. JURISDICTION

The carrier shall be entitled to institute any proceedings in any court having jurisdiction in respect of the carrier's domicile.

#### 22. DOMICILIUM

The carrier shall be entitled to use the address given by the consignor as its domicillium citandi et executandi for all purposes hereunder.

#### 23. LEGAL COSTS

Should the consignor / consignee default in any respect he shall be liable for all legal cost on the scale as between attorney and own client.

#### 24. QUOTATIONS

Quotations are firm for 31 (thirty-one) days from the date thereon, and are subject to:

- a) Work being carried out by the methods and route to be decided by the Carrier without interruption, hindrance or postponement.
- b) The Carrier having vehicles and, or staff available on the dates required.
- c) All parts loads being conveyed and delivered at the Carrier's convenience.
- d) Any increase in the Carrier's costs coming into force after the date of the quotation over which the Carrier has no control, will be for the consignor's account.
- e) Any delay due to interruption, hindrance, local traffic or Municipal Regulations or non production of necessary licensed, permits or customs forms will be charged to the consignor.
- f) Where the volumes, quantities or scope of work have increased over what had been quoted for, the consignors will be charged for any additions on a pro-rata basis.
- g) A charge increase should there be a change of route due to reasons beyond the Carrier's control.
- h) Any postponement or cancellation by the consignor entitles the Carrier to make a charge to cover the expenses incurred and 'or losses to the Carrier arising there from.
- i) The Carrier shall have the right to increase the charge specified in the event of stoppages or delays in carrying out the work to which the contract relates provided that such stoppages or delays are caused by circumstances beyond the control of the Carrier or are such that the Carrier could not reasonably foresee or prevent the cause of such stoppages or delays arising.

25. Except where the Carrier is instructed in writing to pack the goods, the consignor warrants that all goods have been properly and sufficiently packed and, or prepared.

26. Pending forwarding and delivery, goods may be warehoused or otherwise held at any place at the sole discretion of the Carrier at the consignor's risk and expense.

27. An FP du Toit Transport Proof of Delivery (POD) document will be the only valid proof of delivery supplied and no payment may be withheld if FP du Toit Transport provided such a duly signed document.