

CONTINUAL'S GENERAL CONDITIONS OF SUPPLY

THE COMPANY AND THE CLIENT AGREE THAT THE COMPANY WILL RENDER LOGISTICS MANAGEMENT SERVICES TO THE CLIENT, ON THE TERMS AND CONDITIONS AS SET OUT BELOW.

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

1.1.1 “**Agreement**” shall mean these terms and conditions and all annexures if applicable;

1.1.2 “**Company**” shall mean **CONTINUAL LOGISTICS PROPRIETARY LIMITED**, Registration number 2019/122748/07, a private company duly registered in accordance with the laws of the Republic of South Africa with its registered address at 12 Byls Bridge Boulevard, Highveld, Centurion, 0169;

1.1.3 “**Carrier**” shall mean the party who is the owner or renter of the Vehicles appointed by the Company to render the Services (or a part thereof) and includes the Carrier’s successors and permitted assignees;

1.1.4 “**Client**” shall mean the party placing the Order and includes the Client’s successors and permitted assignees;

1.1.5 “**Companies Act**” shall mean the Companies Act 71 of 2008, as amended from time to time, read with the Companies Regulations 2011, promulgated thereunder;

1.1.6 “**Goods**” shall mean any and all legally permitted products, material, cargo, commodities or goods of the Client transported or distributed by the Company;

1.1.7 “**Intellectual Property Rights**” includes any copyright, design rights, patents, inventions, logos, business names, service marks and trademarks, internet domain names, rights in databases, data, source codes, reports, drawings, specifications, know how, business methods and trade secrets, applications for registration, and the right to apply for registration, for any of these rights and all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world;

1.1.8 “**Order**” shall mean an order for the Services placed on the Company by the Client;

1.1.9 “**Party**” shall mean any one of the Parties to this Agreement. The term “**Parties**” shall have a corresponding meaning;

1.1.10 “**POD**” shall mean a document indicating the proof of delivery of any Goods;

1.1.11 “**Services**” shall mean the collection/loading, transportation and delivery/offloading services to be rendered by the Company in terms of this Agreement and consisting in the main of the collection of Goods from the loading points and the transportation and delivery thereof to the offloading points;

1.1.12 “**Prime Rate**” shall mean the publicly quoted nominal rate of interest per annum charged by ABSA Bank Limited (“**the Bank**”) from time to time on unsecured overdraft facilities to its most favoured corporate clients, as certified by any general manager of the Bank, whose authority or appointment it shall not be necessary to prove, calculated on a nominal annual compounded monthly basis in arrears;

1.1.13 “**Vehicle/s**” shall mean the various trucks, rigid vehicles, semi-trailers, side-tippers, back-tippers, grain link dumpers, flatdecks, dropside side-tippers, walking floors, tautliners, tankers and any other forms of vehicle which are to be used by the Carrier.

1.2 In this Agreement, unless the context otherwise requires:

1.2.1 if any provision in a definition is a substantive provision conferring rights or imposing obligations on a Party, notwithstanding that it is only in the interpretation clause, effect shall be given to it as if it were a substantive provision in the body of this Agreement;

1.2.2 in this Agreement a Party includes a reference to that Party’s successors in title and assignees allowed at law;

- 1.2.3 any reference in this Agreement to:
- 1.2.3.1 “**business hours**” shall be construed as being the hours between 07h30 and 16h00 on any business day. Any reference to time shall be based upon South African Standard Time;
- 1.2.3.2 “**days**” shall be construed as calendar days unless qualified by the word “**business**”, in which instance a “**business day**” will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time;
- 1.2.3.3 “**law**” means any law of general application and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law within the explicitly mentioned country;
- 1.2.3.4 “**person**” means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality; and
- 1.2.3.5 “**writing**” means legible writing and in English and includes any form of electronic communication contemplated in the Electronic Communications and Transactions Act, No 25 of 2002.
- 1.2.4 a reference to any statutory enactment shall be construed as a reference to that enactment as at the commencement date of this Agreement and as amended or substituted from time to time;
- 1.2.5 unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day;
- 1.2.6 the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;
- 1.2.7 any reference in this Agreement to “this agreement” or any other agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document, as amended, varied, novated or supplemented from time to time.

2. **AGREEMENT**

By the Client accepting a quotation from the Company, the terms and conditions set out in this Agreement, together with any other standard terms and conditions of the Company and any credit application between the Company and the Client becomes legally binding. This agreement can only be changed, or other terms agreed, in written correspondence signed by a director or other senior officer of the Company. No subsequent behaviour of the Company, in accepting this agreement from the Client with proposed amendments, can be taken to imply any acceptance by the Company of those proposed amendments.

3. **PRICE**

The price of the Services shall be at the price as per the Company’s written quotation in respect of a specific Order.

4. PAYMENT

- 4.1 All invoices with supporting documents will be sent to the Client electronically.
- 4.2 All amounts due to the Company by the Client shall be made directly to the Company. No payment made to the Company's sales representatives, employees, agents, the Carrier or third parties shall be regarded as proper payment to the Company until such time as the funds have been credited to the Client's account as cleared funds.
- 4.3 Should the Client fail to make any payment, or any portion thereof, timeously and in full, the Company shall be entitled at its sole discretion to set off the amount owing by the Client against any rebate, credit, allowance or payment (if any) due to the Client by the Company.
- 4.4 Should the Client's financial position become unsatisfactory to the Company, the Company shall be entitled to demand payment for any services to be delivered in advance and/or to demand satisfactory security from the Client.
- 4.5 Unless the Client objects to the correctness of any entry on any statement, delivery note and/or invoice within 10 (ten) business days of the date of dispatch of such statement and/or invoice, the Client shall be deemed to have accepted that such entries are correct and that it does not dispute such entries.
- 4.6 Notwithstanding the timeous raising of a complaint or dispute of liability by the Client, the Client shall, under no circumstances whatsoever, be entitled to withhold payment in respect of any Services rendered by the Company, pending the resolution of such dispute or complaint.
- 4.7 Where the due date for payment falls on a Saturday or a Sunday or South African public holiday, then the amount shall be paid by the Client on the business day preceding the due date.

5. ORDERS

- 5.1 Orders for the Company's Services shall be made in writing and directed to the e-mail address as may be nominated by the Company from time to time.
- 5.2 All verbal orders shall be capable of acceptance by the Company, but the Company shall not be responsible for any errors or misunderstandings occasioned by the Client's failure to reduce such orders to writing.
- 5.3 An Order placed with the Company by the Client shall constitute an irrevocable offer to purchase the Services in question and shall be capable of acceptance by the Company, at its sole discretion, which acceptance shall be evidenced by the rendering of the Services, written acceptance and/or confirmation of the Order.
- 5.4 The Client undertakes to complete the Order as detailed as possible with the following correct information:
 - 5.4.1 the physical addresses of the applicable loading points and offloading points;
 - 5.4.2 a description and the total approximate mass of the Goods forming the subject matter of the specific Services to be rendered;
 - 5.4.3 the price of the Services as per the Company's written quotation;
 - 5.4.4 the dates upon and times at which the Client requires the Company to commence loading the Goods at the collection point/s concerned; and
 - 5.4.5 Incoterms (if any) which may apply to the consignment.
- 5.5 The directives contained in any particular collection and delivery scheduled as set out in an Order shall not be able to change unless agreed to by the Company in its sole and absolute discretion in which case an amended Order (including amended price if applicable) shall be placed on the Company for acceptance.

6. GENERAL UNDERTAKINGS BY THE CLIENT

- 6.1 The Client warrants, represents and undertakes that:
 - 6.1.1 the Goods to be transported on any given day shall be available for immediate loading at the collection points and immediate offloading at the delivery points concerned upon the arrival of the relevant Vehicles; and
 - 6.1.2 all documentation necessary for the transportation of the Goods is fully and correctly prepared, (to the extent possible) by the Client and handed to the Carrier when the Goods are loaded.
- 6.2 The Client must immediately inform and provide details to the Company about any delays, break-downs, re-routing of rejected loads or any other issues that may affect the agreed loading and offloading times. In order for the Company to mitigate costs, regular updates must be provided by the Client on how long the delay will last and the expected loading and offloading times.
- 6.3 Any costs incurred by the Company as a result of such delays caused by the Client will be for the account of the Client.

7. WARRANTIES, REPRESENTATIONS AND INDEMNITIES BY THE COMPANY

- 7.1 The Company makes the representations and warranties set out in this clause as at the acceptance date of this Agreement and for the duration of this Agreement and acknowledges that the Client has entered into this Agreement in reliance on these representations and warranties, each of which is material and a material representation inducing the Client to enter into this Agreement.
- 7.2 The Company has the power to execute and deliver this Agreement and to perform all its obligations thereunder and all corporate and other action required to authorise its execution and its performance of such obligations, have been duly taken.
- 7.3 The Company hereby warrants, represents and undertakes that:
 - 7.3.1 the Company is in full compliance with all applicable laws, regulations and standard industry practices, which includes but is not limited to the protection of the environment and is not aware of any circumstances which may prevent full compliance in future.
- 7.4 Except as expressly stated in this Agreement, all warranties and conditions, whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.

8. BREACH

- 8.1 In the event of either of the Parties ("**the defaulting party**") committing a breach of any of the provisions of this Agreement and failing to remedy such breach within a period of 10 (ten) days after receipt of a written notice from the other Party ("**the aggrieved party**") calling upon the defaulting party so to remedy, then the aggrieved party shall be entitled, at its sole discretion and without prejudice to any of its other rights in Law, either:
 - 8.1.1 to claim immediate payment and/or performance by the defaulting party of all of the defaulting party's obligations under this Agreement, whether or not the due date for such payment and/or performance shall have arrived; or
 - 8.1.2 to cancel this Agreement as against the defaulting party, in either event without prejudice to the aggrieved party's rights to claim damages.
- 8.2 Notwithstanding anything to the contrary contained in this Agreement and clause 8.1 in particular, the aggrieved party shall not be entitled to cancel this Agreement as a result of a breach by the defaulting party unless such breach is a material breach going to the root of this Agreement and is incapable of being remedied by the payment of monetary compensation, or if it is so capable of being remedied, the defaulting party fails to pay the amount concerned within 10 (ten) days after such amount has been finally determined. If any dispute shall arise as to whether a particular breach is:

- 8.2.1 a material breach which goes to the root of this Agreement; or
- 8.2.2 incapable of being remedied by the payment of monetary compensation, such dispute shall be determined, mutatis mutandis, in accordance with the provisions of clause 9 below.
- 8.3 Any amount falling due for payment by either Party in terms of or pursuant to this Agreement including any amount which may be payable as damages shall bear interest at the Prime Rate plus 4 basis points, calculated from the due date for payment (or, in the case of any amount payable by way of damages, with effect from the date upon which those damages are sustained) to the actual date of payment thereof, both dates inclusive.

9. **DISPUTE RESOLUTION**

- 9.1 Should any dispute, disagreement or claim (excluding non-payment of invoices) arise between the Parties (“**the Dispute**”) concerning this Agreement (including its terms and/or the rectification hereof, its termination and/or cancellation) and such Dispute cannot be resolved between the Parties within 15 (fifteen) days after the Dispute arose, then the Dispute shall be submitted to arbitration for resolution in accordance with the rules of the Arbitration Foundation of South Africa (“**AFSA**”) by an arbitrator or arbitrators appointed by AFSA and utilising such expedited proceedings as may be available in terms of such rules.
- 9.2 The Parties hereby irrevocably agrees that the decision of the arbitrator in the arbitration proceedings shall be final and binding on the Parties and will be carried into effect.
- 9.3 Unless otherwise agreed in writing by the Parties, any arbitration in terms of this clause 9 shall be held in Pretoria.
- 9.4 Nothing in this clause 9 shall prevent any Party from seeking relief on an urgent or interlocutory basis with any competent court having jurisdiction.
- 9.5 For the purposes of this clause 9 and for the purposes of having any award made by the arbitrator/s being made an order of court, the Parties hereby submit to the jurisdiction of the North Gauteng High Court.
- 9.6 Notwithstanding anything to the contrary contained in this Agreement and/or in law and/or in the AFSA rules, the powers of the arbitrator(s) referred to in this clause 9 shall include the power to amend the provisions of this Agreement and to impose contractual terms on the Parties in relation to the Dispute in circumstances where this Agreement specifically makes provision for such amendment or imposition and such relief is requested by a Party, if any.

10. **NOTICES**

- 10.1 Any notice or other document to be served under this Agreement to a Party may be served at its nominated address.
- 10.2 The nominated address of the Client shall be the address of the Client specified in Point 3 under SECTION A: GENERAL INFORMATION of the Client Credit Application.
- 10.3 For the Company, the nominated address shall be as follows:
 - 12 Byls Bridge Boulevard
 - Highveld
 - Centurion
 - E-mail: Phillippus.Oosthuizen@continual.co.za
 - Attention: Phillippus Oosthuizen
- 10.4 A Party shall be entitled from time to time, by written notice to the other, to vary its *domicilium* address to any other address within the Republic of South Africa, which is not a post office box.
- 10.5 All notices given in terms of this Agreement shall be in writing and any notice given by one Party to the other (the addressee) which:
 - 10.5.1 is delivered by hand during the normal business hours at the addressee’s *domicilium* shall be deemed to have been received by the addressee at the time of delivery; or

- 10.5.2 is sent by e-mail to the addressee's e-mail number shall be deemed to have been received by the addressee on the 1st (first) business day after the date of transmission thereof.
- 10.6 Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication received by one of the Parties from the other including by way of e-mail transmission shall be adequate written notice or communication to such Party.

11. **CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS**

- 11.1 To the full extent reasonably possible, each Party agrees and undertakes to and in favour of the other:
- 11.1.1 not to disclose any of the terms and conditions contained in this Agreement to any third party; and
- 11.1.2 not to utilise or disclose to any third party any trade secrets or confidential information of the other of them, which trade secrets or confidential information is not in the public domain, disclosed or made available to it under and by virtue of this Agreement and/or during the course of the implementation thereof, other than as may be necessary for the fulfilment of its duties, functions and obligations under this Agreement.
- 11.2 The Parties acknowledge their respective obligations to comply with the substantive provisions of the Protection of Personal Information Act, 4 of 2013 (“**POPI**”).
- 11.3 All Intellectual Property rights belonging to a Party prior to the commencement date of this Agreement shall remain vested in that Party.
- 11.4 All Intellectual Property Rights developed or created in the rendering of the Services shall remain vested in the Company. The Client shall accordingly assign all such Intellectual Property Rights to the Company upon written request by the Company.
- 11.5 None of the Intellectual Property Rights in the Company's trademarks and brands shall be used by the Client for any purpose without the Company's prior written consent.
- 11.6 Where there are modifications to pre-existing material which are inseparable from the pre-existing material, then the Party which owns the pre-existing material will own the modifications.

12. **CESSION AND ASSIGNMENT**

A Party shall not be entitled to assign, cede or delegate any of its rights and/or obligations in terms of this Agreement to any other person without the prior written consent of the other Party being obtained, provided that such consent shall not be unreasonably withheld or delayed in the event that such assignment, cession and delegation is to an affiliate of a Party.

13. **LEGAL PROCEEDINGS**

- 13.1 The Client agrees and accepts that the Company shall be entitled, in its sole discretion, but not compelled or obliged to institute any legal proceedings, which may arise from or in connection with this Agreement, all costs and disbursements incurred by the Company, including legal costs on an attorney and own client basis in collecting arrear accounts from the Client, shall be for the account of the Client.
- 13.2 A certificate issued and signed by any director or manager of the Company, whose authority need not be proved, in respect of any indebtedness of the Client to the Company; or in respect of any other fact including (but not limited to) the fact that the Services was rendered, shall be prima facie evidence of the Client's indebtedness to the Company.
- 13.3 The Client's address stated in clause 10 above, shall be recognised as the Client's *domicilium citandi et executandi* for the service of any court documents resulting from this Agreement. The Client's physical, e-mail and / or postal addresses as per this Agreement will be deemed to be the Client's service addresses for all other documents resulting from or in terms of this Agreement.

- 13.4 It will not be necessary for the Company to prove that the documents referred to in clause 13.3 above were received by the Client. In the event of the Client not receiving any of the documents in clause 13.3 above, the Client must timeously acquire a duplicate from the Company, failing which it will be accepted that said documents were received by the Client.
- 13.5 All amounts due to the Company shall be deemed to be a liquid amount for the purposes of provisional sentence or summary judgment.
- 13.6 Termination of this Agreement for any cause whatsoever shall not release a Party from any liability which at the time of termination has already accrued to the other Party or which thereafter may accrue in respect of any act or omission prior to such termination.
- 13.7 Except as expressly provided for in this Agreement, the rights and remedies contained herein are cumulative and are not exclusive of any other rights or remedies provided in law or otherwise.
- 13.8 The Client renounces the benefits of the legal exceptions: non causa debiti (an exception taken to the effect that there is no cause for the obligation and renunciation places the onus on the Client to prove that a debt does not exist); non numerate pecunia (an exception which may be taken by the Client on the ground that the amount thereof was not paid over) and error calculi (a revision of accounts and errors of calculation and no values received).
14. **CONFLICT OF INTEREST**
Neither of the Parties nor any of their respective representatives, employees, agents or subcontractors shall give to, or receive from the other, any of its affiliates or any representatives, employees, agents or sub-contractors of the other any benefit, commission, fee, rebate, or any gift or entertainment of value in connection with this Agreement.
15. **SUB-CONTRACTING**
It is specifically recorded that the Company will appoint the Carrier to make such Vehicles available to the Company to enable the Company to render the Services to the Client as envisaged hereunder.
16. **NON-PARTNERSHIP**
Nothing in this Agreement shall be construed as creating a partnership or joint venture of any kind between the Parties or as constituting neither Parties as the agent of the other for any purpose whatsoever. Neither of the Parties shall have the authority to bind the other or to contract in the name of or create a liability against the other in any way or for any purpose.
17. **FURTHER ASSURANCE**
The Parties shall co-operate with each other, to execute and deliver such other instruments and documents and take such actions as may be reasonably requested of the Parties from time to time to carry out, evidence and confirm its rights and the intended purpose of this Agreement.
18. **SEVERABILITY OF INVALID PROVISIONS**
If any provision of this Agreement is declared to be invalid, the other provisions shall not thereby be affected or impaired and shall continue to be of full force and effect. In such event, the Parties shall seek in good faith to negotiate valid substitute provisions for the provision so declared to be invalid that will as nearly as possible preserve the commercial balance between them. In the event of the failure of such discussions, the provisions of clause 13 shall apply.

19. **RELAXATION**

No latitude, lenience, extension of time or other indulgence which may be given or allowed by a Party to the other in respect of the performance of any obligation hereunder or enforcement of any right arising from this Agreement or in law and no single or partial exercise of any right by a party shall under any circumstances be construed to be an implied consent by such Party or operate as a waiver or a novation of, or otherwise affect any of that Party's rights in terms of or arising from this Agreement or in law or estop such Party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

20. **RIGHTS OF THIRD PARTIES**

The provisions of this Agreement are intended solely for the benefit of the Parties and their respective successors and it is not the intention of the Parties to confer any rights upon third parties.

21. **JURISDICTION**

This Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa and shall be subject to the exclusive jurisdiction of the Courts of the Republic of South Africa.