

TRANSPORT SERVICES AGREEMENT

THE COMPANY AND THE APPLICANT (HEREINAFTER REFERRED TO AS THE CARRIER) AGREE THAT THE CARRIER WILL PROVIDE TRANSPORT SERVICES TO THE COMPANY, 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, including the documents referred to in clause 2.1.2 and 2.1.3 below;
- 1.1.2 **“Authority”** shall mean any government or governmental, administrative, fiscal or judicial authority, body, court, department commission, tribunal, registry or any state owned controlled or legislatively constituted authority which principally performs public, governmental or regulatory functions;
- 1.1.3 **“Carrier”** shall mean the party appointed by the Company to render the Services and includes the Carrier’s successors and permitted assignees;
- 1.1.4 **“Client”** shall mean any client of the Company where Goods are delivered or from which Goods are collected as the case may be by or on behalf of the Company;
- 1.1.5 **“Company”** shall mean **CONTINUAL LOGISTICS (PTY) LTD**, 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 Ext 73, Centurion, 0157;
- 1.1.6 **“Companies Act”** shall mean the Companies Act 71 of 2008, as amended from time to time, read with the Companies Regulations 2011, promulgated thereunder;
- 1.1.7 **“Goods”** shall mean any and all legally permitted products, material, cargo, commodities or goods transported or distributed by the Carrier;
- 1.1.8 **“Goods Declaration”** shall mean such goods declaration referenced to in the Road Traffic Act, No 93 of 1996 prepared by the Carrier for every load conveyed, reflecting details of the consignor, consignee, operator, tonnages of Goods, the distribution of such tonnages over the axles or axle units of a Vehicle and any other information which may be required;
- 1.1.9 **“Incoterms”** shall mean the international commercial terms stipulated in Incoterms® 2020 as published by the International Chamber of Commerce Paris, or any updated or amended edition thereof, as amended and updated from time to time;
- 1.1.10 **“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;
- 1.1.11 **“Law”** shall mean the common law and all legislation, statutes, regulations, directives, orders, notices, promulgations and other decrees of any Authority, which have force of law or which it would be an offence not to obey, as amended, replaced, re-enacted, restated or re-interpreted from time to time;
- 1.1.12 **“Maintenance”** shall mean the periodic service and maintenance of the Vehicles in accordance with manufacturer's requirements;
- 1.1.13 **“POD”** shall mean a document indicating the proof of delivery of any Goods;
- 1.1.14 **“Transport Purchaser Order” or “Purchase Order” or “TPO”** shall mean an official company order issued by an authorised representative of the Company for the Services, describing the quantity of the Goods to be conveyed, the loading point from which the Goods is to be collected and the offloading point to which the Goods is to be conveyed in the Vehicles, the Incoterms which may apply and the date by which the Goods must be conveyed and delivered to the offloading point;

- 1.1.15 “**Party**” shall mean any one of the Parties to this Agreement. The term “**Parties**” shall have a corresponding meaning;
- 1.1.16 “**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;
- 1.1.17 “**RFQ**” shall mean the request for quotation process whereby the Carrier is invited to respond to the Company to quote to supply the Services, as may be required on order of Clients;
- 1.1.18 “**Services**” shall mean the collection, transportation and delivery services to be rendered by the Carrier 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;
- 1.1.19 “**Transport Charges**” shall mean the transport charges payable by the Company to the Carrier in consideration for the Services, which charges are to be determined and adjusted from time to time in accordance with the RFQ process;
- 1.1.20 “**VAT**” shall mean value-added tax charged and levied in terms of the Value Added Tax Act 89 of 1991;
- 1.1.21 “**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 in rendering the Services; and
- 1.1.22 “**Weight Tolerances**” shall mean any/all weight differences, as detailed in the weighbridge certificates, in excess of the 0.25% (zero comma twenty five percent) weight loss calculated in relation to the total tonnages as per the TPO or overall tonnages per contract (between loaded weight and delivered weight), except in the case of wheaten bran and hominy chop where a weight loss in excess of 0,50% (zero comma five percent) will be applied.
- 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 assigns 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 the words “include” and “including” means “include without limitation” and “including without limitation”. The use of the words “include” and “including” followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it;
- 1.2.5 the words “shall” and “will” and “must” used in the context of any obligation or restriction imposed on a Party have the same meaning;
- 1.2.6 words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement;
- 1.2.7 unless otherwise provided, defined terms appearing in this Agreement in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning;
- 1.2.8 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;
- 1.2.9 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. It is noted that due dates for Services to be rendered may fall on weekends or public holidays;
- 1.2.10 where figures are referred to in numerals and in words and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention;
- 1.2.11 the rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting of this Agreement, shall not apply;
- 1.2.12 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;
- 1.2.13 no provision of this Agreement shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (*stipulatio alteri*) who is not a party to this Agreement;
- 1.2.14 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 AND PRECEDENCE OF DOCUMENTS

- 2.1 This Agreement consists of the following documents:
 - 2.1.1 the terms and conditions contained in this Agreement (including the Vendor Registration Application Form);
 - 2.1.2 the Transport Purchase Order; and
 - 2.1.3 any express written agreement from the Company which is attached to, or incorporated by reference in this Agreement.
- 2.2 The Company is not contractually bound until a formal TPO is placed by the Company and then only to the extent of the issues specifically covered by that TPO.
- 2.3 This Agreement contains the entire agreement between the Company and the Carrier with respect to its subject matter and supersedes all prior communications and negotiations between the Company and the Carrier in this regard, unless those communications expressly form part of this Agreement.

3. **ACCEPTANCE**

- 3.1 The Company only places TPOs for the services on the terms and conditions as set out herein. If the Carrier accepts the Company's TPO, it will be on the terms and conditions as set out herein and no other standard terms.
- 3.2 The TPO number stated in the TPO shall be indicated clearly on all documentation.
- 3.3 The performance of any part of this Agreement will be deemed to be acceptance on the conditions stated herein, regardless of any inconsistency in the Carrier's own small print.
- 3.4 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 Carrier with proposed amendments, can be taken to imply any acceptance by the Company of those proposed amendments.

4. **RFQ PROCESS**

- 4.1 The Company may from time to time, request the Carrier to supply a fixed and firm transport rate (exclusive of VAT) for a specified period for tonnages of Goods to be moved from specified loading points to offloading points ("**Transport Rate**") to render the Services to the Company.
- 4.2 The Transport Rate shall be inclusive of all costs, fees (including toll fees) and disbursement related to the transport request.
- 4.3 If the Carrier's Transport Rate is accepted, the Company shall, as and when required, issue a TPO for execution by the Carrier.
- 4.4 Once the Transport Rate is accepted by the Company, the Carrier may not alter the Transport Rate for the duration of the period specified therein, and the Carrier will be obligated to charge the Company the Transport Charges in accordance with the accepted Transport Rate quoted in the RFQ, subject to the adjustments allowed in clause 5 below.

5. **ADJUSTMENT OF TRANSPORT CHARGES**

- 5.1 The Carrier's Transport Rate relative to the rendering of the Services, may justify a reasonable adjustment (either by an increase or decrease, as the case may be) of the Transport Charges in the following circumstances:
 - 5.1.1 an increase or decrease in the price of fuel; or
 - 5.1.2 any statutory price movement other than in respect of fuel, including but not limited to escalations in National Bargaining Council Wage Scales, licence costs, increases in toll fees or any other statutory amendments, enactments or regulations that impact on ("**the Price Variable**").
- 5.2 The Carrier shall notify the Company of such adjustment in Transport Charges required due to the Price Variable. The Company may request further information and calculations from the Carrier in assessment of the adjustment in Transport Charges.
- 5.3 Any request to adjust Transport Charges as contemplated in clause 5.2 will be in the sole discretion of the Company to approve, and if approved, take effect on the date upon which it was agreed between the parties.

6. **COLLECTION AND DELIVERY ORDERS**

- 6.1 TPOs shall be placed on the Carrier not less than 24 (twenty-four) hours prior to the Company requiring the Carrier to render any Services.
- 6.2 Each TPO shall contain:
 - 6.2.1 the physical addresses of the applicable loading points and offloading points;
 - 6.2.2 a description and the approximate mass of the Goods forming the subject matter of the specific Services to be rendered;
 - 6.2.3 the dates upon and times at which the Company requires the Carrier to commence loading the Goods at the loading point/s concerned;
 - 6.2.4 the agreed Transport Rate for the specific route and type of Goods;
 - 6.2.5 Incoterms (if any) which may apply to the consignment; and

- 6.2.6 any special instructions applicable to the order.
- 6.3 The Company has and retains the right to revise and/or vary the directives contained in any particular collection and delivery schedule provided only that it is both reasonable and feasible to do so in the circumstances.

7. VEHICLES, DRIVERS AND EMPLOYEES

- 7.1 The Carrier warrants, represents and undertakes that:
 - 7.1.1 the Vehicles are designed, intended and equipped to transport the Goods;
 - 7.1.2 only trucks and trailers of the configuration specified by the Company is used to execute the TPO;
 - 7.1.3 the Vehicles conform with the requirements of all relevant and applicable Law, by-laws and regulations or any specification required by the Company for a specific TPO;
 - 7.1.4 the Vehicles are kept in good working order and repair, clean, dry, leak proof, disinfected, free of insect and residue of previous goods or cargo transported and, in the condition, necessary to effectively enable the Carrier to perform the Services and to prevent any losses as a result of spillages and/or contamination of the Goods;
 - 7.1.5 it shall have sufficient Vehicles to perform the Services as directed by the Company notwithstanding increases in distances to be travelled and volumes of Goods to be loaded, transported and delivered;
 - 7.1.6 all motorised Vehicles are equipped with satellite tracking and cellular telephones, thereby enabling the drivers thereof and the Carrier's management to be in constant communication with each other at all times and to facilitate the provision by the Carrier of accurate and up to date information to the Company in relation to any specific Service being rendered;
 - 7.1.7 all of the Carrier's managers and supervisors will have unimpeded access to cellular telephones and satellite tracking to enable them to be in contact with each other and with the Carrier's drivers engaged in the performance of any particular Service/s;
 - 7.1.8 the Maintenance in relation to each Vehicle is timeously and comprehensively carried out so as to ensure roadworthiness and minimise breakdowns or failures;
 - 7.1.9 complete and comprehensive records of the operating, repairs and history of Maintenance on each Vehicle are kept and made available for inspection by the Company on reasonable notice;
 - 7.1.10 complete and comprehensive records are kept of the operating kilometres and operating hours in relation to each Vehicle engaged in the performance of the Services, copies whereof shall be made available for inspection by the Company on reasonable notice;
 - 7.1.11 complete and comprehensive records are kept of Goods Declarations in relation to each load conveyed by the Carrier in the performance of the Services, copies whereof shall be made available for inspection by the Company on reasonable notice;
 - 7.1.12 the drivers of the Vehicles will obtain and retain all documents required for invoicing, as referred to in clause 11.1 from loading and offloading facilities;
 - 7.1.13 the Carrier **will always** provide tarpaulins to prevent water damage and product loss to the Goods during transport. The Carrier further undertakes to ensure that all tarpaulins are in good working order, clean, not damaged, disinfected and free from traces of any previous cargo. Tarpaulins to be secured at all times to ensure the Goods don't get wet, lost, stolen, damaged or contaminated in any way, means or form;
 - 7.1.14 the Vehicles will be equipped with an operational tested and approved fire extinguisher of suitable design; and
 - 7.1.15 no overloaded trucks will be allowed onto any premises to execute a TPO. The gross mass of a truck may not exceed the maximum permitted weight set out in the Regulations issued in terms of the Road Traffic Act No. 93 of 1996).
- 7.2 All drivers and other employees required by the Carrier in order to render the Services shall be provided at the sole cost and expense of the Carrier.
- 7.3 The Carrier warrants, represents and undertakes that:

- 7.3.1 all drivers provided by it for the purpose of rendering the Services shall be fully qualified, licenced, fit and properly trained;
- 7.3.2 all drivers hold, and carry with them at all times an endorsed license issued in terms of the Road Traffic Act, No 93 of 1996 to operate the Vehicle, including a public driver permit and must, on request of the Company, produce such license and permit;
- 7.3.3 it complies at all times with statutory limits on working hours and minimum wages as determined by competent Authority or statute in respect of all drivers and other employees;
- 7.3.4 all drivers and employees comply at all times with security regulations which the Company may impose from time to time, co-operate and subject themselves to security checks and investigations conducted by the Company;
- 7.3.5 all drivers to adhere to all rules and regulations on all loading and offloading sites as prescribed and regulated by such sites, their management and staff;
- 7.3.6 all drivers and employees wear protective clothing where necessary and are neatly dressed, competent, reliable, of sober habits and courteous;
- 7.3.7 no person is engaged by the Carrier in the performance of the Services who, to the knowledge of the Carrier, has a criminal record for drunken driving, reckless and/or negligent driving or an offence involving an element of dishonesty; and
- 7.3.8 all drivers provided by it for the purpose of rendering the Services undergo comprehensive medical examinations to ensure that they are fit for driving purposes.
- 7.4 Upon written request by the Company, which shall take into account fair labour practice, the Carrier shall replace any driver or employee which, in the reasonable opinion of the Company, is incompetent, negligent or otherwise unsuitable for the purposes of this Agreement.

8. **LEGISLATION AND LICENCES**

- 8.1 The Carrier warrants, represents and undertakes to act in accordance with and maintain the necessary licences, certificates, permits, letters of good standing or exemptions relating to all legislation and subordinate legislation (including regulations and proclamations) applicable to the rendering of the services, irrespective of whether such legislation and/or subordinate legislation applies to the performance of the services, the Carrier's drivers, employees or the vehicles, which legislation shall include, but not be limited to the following:
 - 8.1.1 The National Road Traffic Act No 93 of 1996, including the Road Transport Quality System and the Administrative Adjudication of Traffic Offences Act No 46 of 1998;
 - 8.1.2 The Occupational Health and Safety Act No 85 of 1993;
 - 8.1.3 The Compensation for Occupational Injuries and Diseases Act No 130 of 1993;
 - 8.1.4 The Basic Conditions of Employment Act No 75 of 1997;
 - 8.1.5 Legislation related to any form of tax, customs and excise duties; and
 - 8.1.6 Any applicable rules, regulations and or legislation as imposed by any port authorities, or entities making use of port facilities.
- 8.2 The Carrier shall, on the written request of the Company, forthwith provide the Company with copies of all of the licenses, certificates, permits or exemptions referred to in clause 8.1 above.

9. **GENERAL UNDERTAKINGS BY THE CARRIER**

- 9.1 The Carrier warrants, represents and undertakes to:
 - 9.1.1 perform the Services in an efficient, prompt, and professional manner and in particular, but without limitation and ensuring the following:
 - 9.1.1.1 collection and/or delivery of Goods are booked daily with the Company, before the appropriate cut-off time, specified by the Company from time to time. The Carrier will immediately notify the Company of any changes to or delays in respect of a booking to load or offload Goods;
 - 9.1.1.2 when booking to load and/or offload as set out in clause 9.1.1.1, the Carrier will provide the following details to the Company:

- 9.1.1.2.1 Vehicle and Trailer(s) registration numbers; and
- 9.1.1.2.2 the driver's name, identity number and contact details.
- 9.1.1.3 the Goods are loaded and offloaded on to and from the Vehicles without any delays occasioned by any act or omission on the part of the Carrier or its drivers, agents or employees;
- 9.1.1.4 once loaded, the Goods are adequately covered by a tarpaulin, secured and protected;
- 9.1.1.5 not to overload any Vehicle, and once loaded, attend to a Goods Declaration and provide the Company with a copy thereof when delivery is completed;
- 9.1.1.6 to verify loading documents against a TPO and immediately report any discrepancies;
- 9.1.1.7 original loading documents (including TPO, loading and offloading weighbridge slips and all other relating documents) are kept for a minimum period of 5 (five) years;
- 9.1.1.8 once loaded, the Vehicles proceed directly to the relevant offloading points by the most direct and safest route possible;
- 9.1.1.9 the Vehicles are driven in such manner as ensures the safety and preservation of the Goods being transported; and
- 9.1.1.10 with the exception of attending at weighbridges and obeying traffic regulations, there are no unscheduled stops between the loading points and the offloading points. To this end, the Carrier shall ensure that all Vehicles are properly and adequately fuelled prior to rendering any specific Services;
- 9.1.2 ensure that collection and/or delivery of the Goods occur at the loading and/or offloading points during the hours that each relevant Client has agreed to accept such collection and delivery, and notify the Company immediately of any delays, break-downs, accidents, re-routing of rejected loads or any other incidents that may affect the agreed collection and delivery times and/or preventing the Carrier to execute a TPO. Claims will only be considered should the Carrier notify the Company **immediately** of any delays in collection or delivery of Goods.
- 9.1.3 to provide the Company with a written schedule with the status of any loads of Goods pertaining to a TPO, on a daily basis. Such schedule must, inter alia include:
 - 9.1.3.1 total tonnages transported;
 - 9.1.3.2 distribution of tonnages over the axle or axle units of the Vehicle;
 - 9.1.3.3 tonnages already uplifted or delivered;
 - 9.1.3.4 tonnages loaded the previous day;
 - 9.1.3.5 capacity planned/scheduled for the following week; and
 - 9.1.3.6 the outstanding balance of tonnage still to be delivered against the applicable TPO.
- 9.1.4 notify the Company immediately after becoming aware of any weight loss above the allowed Weight Tolerances, and before offloading the specific load, in order for the Company to be able to investigate and make arrangements to mitigate its risks should its client/s want to declare a dispute on the weight loss.
- 9.1.5 to report any disputes a Client may have in respect of a TPO, immediately and before the Goods are offloaded at the Client's premises;
- 9.1.6 to report if any Goods appear to be missing, damaged or contaminated, immediately and before the Goods are offloaded at the Client's premises;
- 9.1.7 ensure that the POD is signed by the Company's receiving Client, on delivery;
- 9.1.8 take out appropriate insurance in a minimum amount of R500 000 (Five Hundred Thousand Rand) in respect of each load of Goods transported by (which includes all-risk, driver fidelity cover) and contingency liability cover (in the event of sub-contracting as per clause 24) to the value of R500 000 (Five Hundred Thousand Rand), and to provide the Company, on request, with written proof of the existence of such insurance and the payment of all premiums thereon;
- 9.1.9 abide by and fully comply with the Company's procedures (as notified to the Carrier in writing from time to time) relating to the production, processing and handling of all relevant and necessary documentation pertaining to the Services including, but without limitation, delivery notes, proof of delivery and specific Goods movement documentation;

- 9.1.10 abide by the regulations when loading imported Goods out of a port silo. It is noted that port authorities charges storage costs, weekly over a 4-week period. The Carrier undertakes to load the Goods within the stipulated 4-week period at 25% (twenty five percent) of the TPO quantity per week. The Carrier will be responsible for any storage costs levied on loads not being moved as stipulated above or as per detailed planning provided prior to the commencement of loading on the allocated Goods. Such planning is subject to change dependant on facility or receiver requirements;
- 9.1.11 fully accommodate any increase or decrease in the volumes of Goods to be transported and distances to be travelled by the Vehicles in terms of this Agreement, provided that it receives reasonable written notice of such increase or decrease;
- 9.1.12 liaise with the Company's management on all matters concerning the implementation of this Agreement and in general to carry out all of the Company's reasonable instructions and to do all things necessary to ensure that the Services are performed in an efficient and expeditious manner; and
- 9.1.13 on request of the Company, provide a list of the Carrier's employees, drivers, agents and relevant permits, licensing and qualifications to perform the Services.

10. RISK

The risk of loss or damage in and to the Goods shall pass from the Company to the Carrier immediately upon completion of the loading of the goods onto the Vehicles at the loading points and shall remain vested in the Carrier until such time as the goods have been offloaded at the offloading points.

11. PAYMENT

- 11.1 The Carrier shall issue a tax invoice to the Company for each load executed as soon as reasonably possible. The Carrier must include the relevant TPO number, both the Company and the Carrier's registered name, registration number, VAT number and address on each tax invoice. The following supporting documents must accompany the invoice from the Carrier:
 - 11.1.1 Loading Facility Weighbridge Ticket;
 - 11.1.2 Offloading Facility Weighbridge Ticket;
 - 11.1.3 Delivery Note;
 - 11.1.4 Any documents issued to the driver of the Carrier at the loading and offloading facilities;

Without the above documentation, the Company will not be able to make payment to the Carrier.
- 11.2 All supporting documents as referred to in 11.1 shall be scanned into **one** attachment and mailed to the Company in PDF format. The PDF document must be clear and readable.
- 11.3 No invoice shall be accepted, and subsequently paid, should it not meet the requirements as stated in 11.1 and 11.2
- 11.4 The Carrier to invoice the Company against the offloaded weight of the Goods (unless otherwise specified by the Company). This mass should be the nett mass before deductions for foreign materials and moisture.
- 11.5 In addition to the provisions set out in clause 11.1 and 11.2, the Carrier shall, by not later than the third business day of each month, submit a statement electronically, in PDF and excel format, to the Company in respect of the tax invoices issued for Services rendered during the preceding month ("**statement**"). Please ensure that all payments have been allocated before statements are sent. Payments must be allocated according to the Remittance Advice received from the Accounts payable department.
- 11.6 The date your invoice was received electronically will be captured as the invoice received date. Your payment terms will be applicable to the date of receipt of invoice (and not the invoice date) dependant on the cut off date. If Invoices were received after the cut off date it will be paid in the next payment cycle.
- 11.7 Notwithstanding any other provisions contained herein, the Carrier shall not render any Services to the Company and the Company shall not incur any liability to the Carrier, including

the obligation to make any payment, until the Carrier has been provided with a valid TPO by the Company in respect of the Services to be provided.

- 11.8 The Transport Charges shall be paid to a bank account nominated by the Carrier in writing to the Company.
- 11.9 The Company shall ensure that payment is made to the Carrier's bank account on the last business day of the calendar month, subject to the aforesaid verification and agreement and being in possession of the tax invoices, schedules, statements and proof of deliveries. Please refer to the payment terms agreed with the Company.
- 11.10 The Carrier hereby waives any lien or other right of retention it may have or acquire in respect of any of the Goods conveyed by it in rendering the Services.
- 11.11 The Company may raise any claim, dispute or counterclaim as a reason for deferring payment and may, in addition, withhold any payment amounts payable by it to the Carrier until the claim is settled.
- 11.12 Payment of an invoice shall not prevent the Company from subsequently disputing all or any of the Transport Charges in good faith whether during or after the term of this Agreement.

12. CARRIER'S LIABILITY, SHORTAGES AND FAILURE TO DELIVER

- 12.1 Notwithstanding any provision of any law to the contrary, the Carrier will be liable for and hereby indemnifies the Company against any loss or damage suffered by the Company or any clients arising from the point in time that the Carrier has loaded the Goods onto the Vehicles, up until the time the Goods have been offloaded at the offloading point and a POD have been issued, which loss or damages include inter alia:
 - 12.1.1 any weight difference in excess of the Weight Tolerances;
 - 12.1.2 demurrage costs charged at a loading or offloading point and legal costs incurred for the recovery thereof;
 - 12.1.3 additional insurance premiums incurred by the Company in relation to a TPO;
 - 12.1.4 loss of Goods due to theft, hi-jacking or road accidents;
 - 12.1.5 damages to goods due to handling and transportation;
 - 12.1.6 destruction, contamination, deterioration;
 - 12.1.7 any direct or indirect damages charged by a Client due to the Carrier's failure to deliver the goods timeously or at all;
 - 12.1.8 any or all costs incurred by the Company to replace the Carrier with another Carrier, due to the Carrier's failure to execute a TPO issued; and
 - 12.1.9 losses or damages caused by the Carrier's negligent act, omission or wilful misconduct.
- 12.2 The Carrier shall immediately notify the Company (to be confirmed in writing as soon thereafter as is possible) of any delays, accident, breakdown, theft and interference with any Vehicle or its contents or of any other circumstance, which could adversely affect the condition of any Goods or the anticipated time of their collection and or delivery.
- 12.3 The Company will debit the Carrier by way of a separate invoice for all losses in volume of Goods occurring on any single trip. The losses shall be calculated at actual cost (ex-factory) in the case of deliveries and collections and will exclude loss of profits or loss of market share and custom or any other consequential losses. The Company may withhold payment of such invoice amount, as stipulated in clause 11.11 until the claim is paid by the Carrier.
- 12.4 The Company may request any information or documents from the Carrier relevant to an incident described in clause 12.2 above, insofar the information may be required by the provisions of any Law, or during any court proceedings, by the rules or regulations of any recognised stock exchange or by an insurer to process any insurance claim relevant to such incident.

13. CLAIMS

- 13.1 All claims for standing time or any other type of claim ("Claim") shall be submitted in the prescribed manner provided for in clause 13.2 and according to the Company's Payment Terms and Invoice Process, as soon as the incident occurred and no later than 30 (thirty) days

after the Services was rendered, failing which the Company may, in its sole discretion, refuse to accept any claim.

- 13.2 A detailed incident report, summarised tracking report and any other supporting documents applicable must be presented to the Company in writing for any Claim incurred.
- 13.3 The charges will be presented to the applicable factory, silo, loading or offloading point for investigation and approval.
- 13.4 Once the Company receive approval from the points listed in 13.3, a TPO will be issued for the costs, for the Carrier to invoice the charges. It is noted that no Claim from the Carrier will be paid without an approved TPO number from the Company.

14. COMPANY'S LIABILITY

- 14.1 The Company, its employees and/or agents shall not be liable (to the fullest extent permissible in law) for any loss or damage of whatsoever nature sustained by the Carrier or any other person in rendering the services, nor shall the Company be liable for delictual, special, direct, indirect, general and/or consequential damages, including (but not limited to) loss of profits, business, revenue, goodwill or anticipated savings.
- 14.2 In the event the Company, its employees and/or agents is found to be liable for damages in terms of this agreement, the extent of the Company's liability shall not exceed (to the extent permissible in law) the value of an amount of R50 000.00 (Fifty Thousand Rand).

15. WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS BY THE CARRIER

- 15.1 The Carrier hereby warrants, represents and undertakes that:
 - 15.1.1 the Carrier 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.
- 15.2 The Carrier shall at all times whether during or after termination or expiry of this agreement indemnify and keep the Company or their respective directors, officers, agents, employees, members, subsidiaries and successors interest (together the "indemnified persons") harmless against:
 - 15.2.1 all losses, claims, damages, liabilities and expenses (including all reasonable legal fees) which may arise (because of this agreement or any other facility and/or the Company having an interest in the Carrier's assets) in respect of a breach of, or a failure to meet any of the aforesaid representations, warranties and/or undertakings in clauses 7, 8, 9 and this clause 15;
 - 15.2.2 all and any claims which may be made against the Company by any third party (including the Carrier's drivers or employees) in respect of damage to property or bodily injury or death arising from any negligent acts or omissions of the Carrier or its drivers, agents or employees whilst acting in the course of or within the scope of their employment with the Carrier.
- 15.3 The Carrier undertakes to notify the Company immediately of:
 - 15.3.1 any change of address;
 - 15.3.2 cessation of business; and / or
 - 15.3.3 change in ownership or shareholding of the Carrier.
- 15.4 The Carrier acknowledges and accepts that, notwithstanding any sale of business interest, he/she/ they shall remain liable in full for the settlement of the debt (claims) to the Company and he/she/they undertake to inform the Company within 7 (seven) days in writing, of any such change.
- 15.5 The Carrier will be liable for all losses, damages, costs, expenses and liabilities (including legal fees) incurred by or awarded against the Company or their respective directors, officers, agents, employees, members, subsidiaries and successors in interest (together the "Indemnified Persons") in connection with any proceedings, claim or action against an Indemnified Person resulting from a breach by the Carrier of any Regulatory Requirements.
- 15.6 The Carrier will hold harmless each of the Indemnified Persons and indemnify each Indemnified Person on written demand in respect of all losses, damage, costs, expenses and

liabilities (including legal fees) incurred by or awarded against an Indemnified Person in connection with any proceedings, claim or action against an Indemnified Person resulting from a breach by the Carrier of any Regulatory Requirements.

- 15.7 The Carrier shall at all times whether during or after termination or expiry of this agreement indemnify and keep the Company indemnified against all losses, claims, damages, liabilities and expenses (including all reasonable legal fees) resulting from any advice given, recommendations made, services rendered or arising from any cause whatsoever as envisaged in the preceding paragraphs.

16. BREACH

- 16.1 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:
- 16.1.1 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
- 16.1.2 to cancel this Agreement as against the defaulting party, in either event without prejudice to the aggrieved party's rights to claim damages.
- 16.2 Notwithstanding anything to the contrary contained in this Agreement and clause 17.1 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:
- 16.2.1 a material breach which goes to the root of this Agreement; or
- 16.2.2 incapable of being remedied by the payment of monetary compensation, such dispute shall be determined, mutatis mutandis, in accordance with the provisions of clause 18 below.
- 16.3 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.
- 16.4 All costs, charges and expenses of whatsoever nature which may be incurred by either Party in enforcing its rights in terms hereof including legal costs on the scale as between attorney and own client and collection commission, irrespective of whether any action has been actually instituted, shall be recoverable by the successful Party from the Party in breach.

17. DISPUTE RESOLUTION

- 17.1 Should any dispute, disagreement or claim 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.
- 17.2 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.
- 17.3 Unless otherwise agreed in writing by the Parties, any arbitration in terms of this clause 17 shall be held in Pretoria.

- 17.4 Nothing in this clause 17 shall prevent any Party from seeking relief on an urgent or interlocutory basis with any competent court having jurisdiction.
- 17.5 For the purposes of this clause 17 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.
- 17.6 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 18 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 Agreement specifically makes provision for such amendment or imposition and such relief is requested by a Party, if any.

18. NOTICES

- 18.1 Any notice or other document to be served under this Agreement to a Party may be served at its nominated address.
- 18.2 The nominated address of the Carrier shall be the registered address of the Carrier specified in the Vendor Application Form.
- 18.3 For the Company, the nominated address shall be as follows:
12 Byls Bridge Boulevard
Highveld
Centurion
E-mail: Phillippus.Oosthuizen@continual.co.za
Attention: Phillipus Oosthuizen
- 18.4 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.
- 18.5 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:
- 18.5.1 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
- 18.5.2 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.
- 18.6 Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication actually 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.

19. CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS

- 19.1 To the full extent reasonably possible, each Party agrees and undertakes to and in favour of the other:
- 19.1.1 not to disclose any of the terms and conditions contained in this Agreement to any third party; and
- 19.1.2 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.
- 19.2 The Parties acknowledge their respective obligations to comply with the substantive provisions of the Protection of Personal Information Act, 4 of 2013 (“POPI”).
- 19.3 Where any Party receives any personal information as defined in POPI it shall ensure that it fully complies with the provisions of the Act and only deal with the personal information to fulfil its obligations under this Agreement. The personal information received shall not be further processed or disclosed without the consent of the disclosing party.
- 19.4 Each Party therefore understands and agrees, notwithstanding any contrary provision in any other agreement between the Parties, that each Party retains its full rights to pursue legal or equitable remedies in the event of any breach or threatened breach of the provisions dealing

with POPI, and may prevent the other Party, any of its agents or subcontractors, or any third party who has received records from that Party from violating this Agreement by any legal means available. Each Party further understands that violation of the provisions dealing with POPI may subject that Party to applicable legal penalties, including those provided under POPI.

- 19.5 All Intellectual Property rights belonging to a Party prior to the commencement date of this Agreement shall remain vested in that Party.
- 19.6 None of the Intellectual Property Rights in the Company's trademarks and brands shall be used by the Carrier for any purpose without the Company's prior written consent.
- 19.7 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.

20. FORCE MAJEURE

- 20.1 Performance of each Party's obligations under this Agreement shall be suspended for as long as and to the extent that such Party is prevented or hindered from performance by circumstances of force majeure.
- 20.2 In such circumstances:
 - 20.2.1 the Party so affected shall give prompt written notice to the other Party setting forth the nature and estimated duration of the relevant circumstances of force majeure; and
 - 20.2.2 the Parties shall co-operate and apply all reasonable efforts to minimise the effects of such force majeure;
- 20.3 If the circumstances of force majeure are such as to substantially or permanently prevent the performance by either Party of its obligations in terms of this Agreement for a continuous period of more than 90 (ninety) days, either Party shall be entitled, on 7 (seven) days' written notice, to terminate this Agreement in respect of any obligations still to be performed hereunder.
- 20.4 The Parties shall co-operate and apply all reasonable efforts to minimise the effects of such force majeure.
- 20.5 If, notwithstanding the provisions of 20.4 above, it is still not possible for the Services to be performed, the Carrier shall be entitled, at its sole cost and expense, to engage another transport contractor to provide the Services and the Carrier shall invoice the Company with the Transport Charges as set forth in this Agreement.
- 20.6 For the purpose of this Agreement, the expression "**force majeure**" shall include war, earthquake, fire, flood, tempest, Act of God, riots, strikes, pandemics or any other cause beyond the control of the Party affected thereby, but excluding financial inability.

21. 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.

22. LEGAL PROCEEDINGS

- 22.1 The Carrier 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 arrears accounts from the Carrier, shall be for the account of the Carrier.
- 22.2 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 Carrier to the Company; shall be prima facie evidence of the Carrier's indebtedness to the Company.
- 22.3 All amounts due to the Company shall be deemed to be a liquid amount for the purposes of provisional sentence or summary judgment.

22.4 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.

22.5 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.

23. CHANGE IN LAW

In the event of any material change in the law applicable to this Agreement or its implementation, the Parties shall, on the basis of their respective declared good faith intention to implement this Agreement for the duration hereof, discuss with each other as to the impact of such event(s) and seek to agree such amendments to this Agreement as may be necessitated thereby and so as to account for such inconsistency but so as to as nearly as possible preserve the commercial balance between them. In the event of the failure of such discussions, the provisions of clause 17 shall apply.

24. 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 subcontractors of the other any benefit, commission, fee, rebate, or any gift or entertainment of value in connection with this Agreement.

25. SUB-CONTRACTING

25.1 The Carrier may employ or make use of sub-contractors for the purpose of complying with its obligations in terms of this Agreement.

25.2 In the event of any sub-contractor being employed or utilised, the Carrier shall:

25.2.1 be and remain responsible for the due and timeous performance of all of its obligations under or arising out of this Agreement, whether or not any one or more of such obligations has been delegated by the Carrier to a sub-contractor; and

25.2.2 ensure that the Carrier and the sub-contractor holds adequate insurance, meeting the requirements set out in the provisions of clause 9.1.8 (General Undertakings by the Carrier) above.

26. 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.

27. WHOLE AGREEMENT

This Agreement constitutes the whole agreement between the Parties as to its subject matter and no agreement, representations or warranties between the Parties other than those set out herein are binding on the Parties.

28. VARIATION

No addition to or variation, consensual cancellation or novation of this Agreement and no waiver of any right arising from this Agreement, or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the Parties or their duly authorised representatives.

29. FURTHER ASSURANCE

The Parties shall co-operate with each other and execute and deliver to each other instruments and documents and take such other actions as may be reasonably requested of

the Parties from time to time in order to carry out, evidence and confirm its rights and the intended purpose of this Agreement.

30. 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 18 shall apply.

31. 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.

32. 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.

33. 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.

34. ANTI-BRIBERY AND CORRUPTION

Both Parties represent and affirm that (i) they will comply with all Laws relating to anti-bribery and anti-corruption and (ii) they will not promise, offer, give or receive bribes or corrupt actions in relation to the procurement or performance of the Agreement. For purposes of this clause, 'bribes or corrupt actions' mean any payment, gift or gratuity, whether in cash or kind, intend to obtain or retain an advantage, or any other action deemed to be corrupt under the applicable Laws.