

STANDARD TRADING TERMS AND CONDITIONS
OF THE COMPANY (INCORPORATING A WRITTEN
SURETYSHIP)

1. INTERPRETATION

In these Trading Terms and Conditions:

- 1.1 The headings to the clauses are for reference purposes only and shall not aid in the interpretation of the clauses to which they relate;
- 1.2 Unless the context clearly indicates a contrary intention, words importing only one gender include the other two genders, the singular includes the plural and *vice versa*, and natural persons include created entities (corporate or unincorporated) and *vice versa*;
- 1.3 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning namely-
- 1.3.1 "Company" means either of the following entities: African Port Logistics and Infrastructure (Pty) Ltd; Maydon Wharf Port Terminals (Pty) Ltd; Coega Fruit Terminal (Pty) Ltd; or Bayhead Facility (Pty) Ltd, as further indicated on the signature page of these Terms and Conditions;
- 1.3.2 "Customer" shall mean any person, whether an agent or principal, at whose request or on whose behalf the Company undertakes any business or performs any service as reflected in terms of this or any other agreement and shall include the person who accepts the company's quotation and whom contracts with the company;

- 1.3.3 "Principals" shall mean any person with whom the Company contracts to carry out services in terms of the contract for and on behalf of the Customer;
- 1.3.4 "Agent" shall mean any person who acts or purports to act with the authority, either expressly or impliedly on behalf of the Customer.
- 1.3.5 "Owner" shall mean the owner of goods to which any business concluded hereunder relates and any other person who has or may have or may acquire in future, any interest and / or right in such goods, financial or otherwise;
- 1.3.6 "Services" includes transportation packing, paletting, packaging, warehousing, (cold) storage, weighing, handling, sorting, blast freezing, receipt, delivery, checking, loading and unloading and dispatch of goods for and on behalf of the Customer or its agent;
- 1.3.7 "Goods" shall mean any goods handled, transported or dealt with by or on behalf of or at the instance of the Company or which come under the control of the Company or its agents servants, or nominees on the instructions of the Customer, and includes any container, transportable tank, flat pallet, package or any other form of covering, packaging, container or equipment used in connection with or in relation to such goods;
- 1.3.8 "Prime rate of interest" shall mean the minimum rate of lending as published

from time to time by the Standard Bank of South Africa Limited;

1.3.9 "Contract" means the terms and conditions hereof, whether agreed to in writing or orally concluded between the Company and the Customer;

1.3.10 "Law" includes the common law, any statute, ordinance, by-law or regulation;

2. APPLICATION OF TRADING TERMS AND CONDITIONS

2.1. All and any business undertaken or services provided by the Company, whether gratuitous or not, is undertaken or provided on these trading terms and conditions.

2.2. If any provision of these trading terms and conditions are inconsistent with any provision contained in any instruction, direction or request by the Customer, agent or Company, these trading terms and conditions shall prevail.

3. TERMS OF PAYMENT

3.1 Unless the contrary is specifically agreed to in writing by the Company, the Customer shall pay to the Company, within 30 (thirty) days of presentation to it of the Company's account, all sums due to the Company without deduction or set-off and payment shall not be withheld or deferred on account of any claim or counter-claim which the Customer may allege.

3.2 The Company reserves the right to immediate payment of any and all outstanding amounts due and owing to the Company prior to the withdrawal and / or transfer of any or part of the goods to a third party by the Customer;

3.3 Any and all amounts not paid by the Customer within 30 (thirty) days, shall accrue interest at

the prime rate plus 2% (two percent) calculated on the daily balance and compounded monthly.

3.4 Any and all payments received by the Company from the Customer shall be appropriated by the Company in its sole and absolute discretion in respect of any undisputed indebtedness owing by the Customer to the company, notwithstanding that the Customer might, when making payment, seek to appropriate the payment so made to any particular debt or portion of a debt.

3.5 The Customer undertakes to pay the Company Value Added Tax at the then prescribed rate, payable in respect of the exclusive amount reflected in any invoice.

3.6 The Customer undertakes to pay, upon request by the Company, any duties or similar charges to any authority in terms of any law which may be incurred by the Company as a result of handling the goods on behalf of the Customer.

3.7 In the event of the Company having granted any credit terms or facilities to the Customer in writing, which provide the Customer a deferred period of time to affect payment of any amount due to the Company, and in the event of the Customer being in default of payment of any one or more amounts due and payable, or being in default of any other term or condition on which such credit facility was granted, then notwithstanding any other term to the contrary whatsoever contained, the Company shall be entitled to forthwith revoke such credit facilities and declare all amounts immediately due and payable and proceed for recovery of all amounts which would be due and payable to the company, were it not for the credit terms or facilities granted to the Customer.

4. QUOTATIONS

- 4.1 The Company shall, upon request by the Customer, issue a written quotation to the Customer, which will only be valid and open for acceptance by the Customer for a period of 15 (fifteen) days from the quotation date, unless the Company expressly agrees to an extended period for such acceptance;
- 4.2 The Company shall only be obligated to perform in terms of any written quotation where the Company receives written acceptance of the quotation from the Customer within 15 (fifteen) days of the quotation date.
- 4.3 Any written quotation issued by the Company shall lapse 15 (fifteen) days after issue of the quotation and shall have no force and effect and will no longer be open for acceptance by the Customer 15 (fifteen) days after the quotation date;
- 4.4 Verbal quotations are not binding, regardless of any alleged acceptance (whether verbally or in writing) thereof;
- 4.5 Where a Customer has obtained more than one quotation from the Company for a particular enquiry, the latest quotation will apply and any earlier quotations will have lapsed and / or be superseded by a later quotation.

5 OBLIGATIONS OF COMPANY

The Company shall only be obligated to perform provided:

- 5.1 The Company, in its sole opinion, has received sufficient notice and detail of the Customer's requirements to enable it to perform the required services;

- 5.2 The Customer is not in breach of any terms or conditions of this contract or any other agreement concluded with the Company;
- 5.3 The Company is satisfied as to the Customer's solvency and ability and readiness to pay for the services to be rendered within the time and in the manner therein prescribed;
- 5.4 That at any time, in the Company's sole opinion, it is not impossible, impractical or dangerous for the Company to continue to comply with its obligations by reasons of riots, strikes, lock-outs, labour disturbances or disputes, boycotts, economic sanctions, acts of state, industrial legislation, war, terrorism, civil commotion or disturbances, attacks upon its employees or vehicles, floods, rationing or non-availability of fuel, vehicle accident, breakdown in vehicle or equipment, commercial exigencies, or any other cause whatsoever beyond the reasonable control of the principals.

6 WARRANTY BY THE CUSTOMER

- 6.1 For all purposes hereunder the Customer shall be deemed to have in relation to the Customer's business and the services to be rendered by the Company, reasonable knowledge of all matters directly or indirectly relating thereto or arising therefrom, including, but not limited to, the terms and conditions of trade, and the Customer undertakes to supply all pertinent information to the Company.
- 6.2 All information and instructions supplied and to be supplied by the Customer to the Company are and shall be accurate, true and comprehensive and the Customer shall be bound to and warrants the accuracy of all information and instructions supplied to the

INITIAL

Company by the Customer or any agent of the Customer;

6.3 The Customer warrants that should any goods be sold or transferred to a third party, the purchaser or receiver of the goods has been notified of the contents hereof and the contents will be binding on the purchaser or receiver of the goods.

6.4 The Customer specifically indemnifies the Company from any liability whatsoever to any person whatsoever for:

4.1.1 Indirect or consequential damages of any nature or for any loss of profits or special damages of any nature and whether in the contemplation of the parties or not, which the Customer or any of its agents, Customers or related parties may suffer;

4.1.2 Any liability for loss or damages on the grounds of breach of contract and / or negligence howsoever arising.

7 TRANSPORT DOCUMENTS

7.1 The Company shall be entitled to issue in respect of the whole or part of any contract for the movement of goods, a combined transport document or bill of lading ("CTBL") in a form that shall be within the Company's discretion, including the FIATA combined transport Bill of Lading, a warehouse and / or forwarding receipt, and air or sea waybill, a consignment or delivery note, a container movement or transport order, a Groupage or House Bill of Lading or a received for shipment or dispatch Bill of Lading, (any of which may reflect the Company or another as a carrier in terms thereof) provided that where a CTBL is issued,

these trading terms and conditions shall continue to apply as between the Company on the one part and the Customer and / or the owner on the other part, (save with regard to the owner, to the extent that they conflict with the terms and conditions applicable to the CTBL, in which event the provisions of the CTBL shall to the extent of such conflict only, have precedence).

7.2 The issue of the CTBL by the Company shall entitle it to raise an additional charge determined by the Company, to cover any additional obligations arising under the CTBL.

8 EXCLUSION OF OBLIGATIONS OF COMMON OR PUBLIC CARRIER

The Company deals with goods only on the basis that it is neither a common carrier nor a public carrier. The transportation of all goods is undertaken at the sole risk and expenses of the Customer and subject to these conditions.

9 INSPECTION OF GOODS

9.1 The Company reserves the right, at any time, to inspect any and all goods stored with the Company.

9.2 If the goods are found to be unsound, damaged and / or defective. the Company may:

9.2.1 refuse to accept any goods; or

9.2.2 call for the immediate removal of the goods from the premises.

10 OWNER'S RISK

All packing, unpacking, palletizing or de-palletizing, sorting, storing, (whether in the open or otherwise) loading, unloading, warehousing, transporting or other handling of the goods by or

on behalf of or at the request of the Customer, owner or the Company, is effected at the sole risk of the Customer and / or the owner and the Customer indemnifies the Company against any claim which might be brought against the Company, howsoever arising from such packing, unpacking, palletizing or de-palletizing, sorting or storing (whether in the open or otherwise) loading, unloading, warehousing, transporting or other handling of the goods.

11 CUSTOMS FORMALITIES

The Company may refuse to transfer and / or release any goods to the Customer were duties and / or penalties are owed to Customs and Excise (South African Revenue Service) or any other relevant authority in respect of the goods of the Customer.

12 APPLICABLE LEGISLATION

- 12.1 These trading terms and conditions will be interpreted and governed in accordance with the laws of the Republic of South Africa.
- 12.2 If the Company is obliged, in execution of any of its duties and/or responsibilities, to comply with any common law, then the Company by complying therewith shall not be deemed to waive nor abandon any of its rights in terms of these trading terms and conditions.
- 12.3 In addition thereto, in complying with the law, the Company shall not be deemed to have assumed any onus, obligation, responsibility or liability in favor of the Customer.

13 BREACH

- 13.1 Should the Company breach any of these trading terms and conditions or any agreement between it and the Customer and fails to remedy such breach within 10 (ten) days of the date of receipt of written notice requiring it to do so, the Customer shall be entitled to compel performance by the Company of the obligations it has defaulted in, but shall not be entitled to cancel these trading terms and conditions or any agreement between the Customer and the company.
- 13.2 No provision in these trading terms and conditions shall derogate from the company's common law rights in the event that the Customer breaches any term or condition of this agreement.
- 13.3 The Company shall be entitled to cancel any agreement between it and the Customer by written notice if:
 - 13.3.1 The Customer commits any breach of its obligations under the agreement and fails to remedy that breach within 10 (ten) days of it being given written notice to do so;
 - 13.3.2 The Customer commits any act of insolvency in terms of any applicable insolvency legislation;
 - 13.3.3 The Customer is deemed to be unable to pay its debts in terms of any deeming provision of any applicable legislation relating to companies or insolvency;
 - 13.3.4 The Customer compromises or attempts to compromise with its creditors;
 - 13.3.5 Any provisional or final order is granted for the sequestration, winding up,

INITIAL

bankruptcy or judicial management of the Customer, or any equivalent order is made in terms of any applicable law with regards to the status of the Customer.

13.3.6 The Customer fails to satisfy any default or other judgment granted against it within 10 (ten) days.

14 INSURANCE

14.1. The Company shall have no obligations whatsoever to obtain any form of insurance cover on behalf of the Customer in respect of the goods.

14.2. The Company shall, under no circumstances, be liable for any consequences of any failure on the part of the Customer to obtain insurance cover of the goods.

15 DISPUTE

15.1 The Customer will address any dispute to the Company in writing within 14 (fourteen) days of the occurrence of the event which gave rise to the dispute.

15.2 Should there be any dispute of any nature whatsoever between the parties in regard to any aspect, matter or clause relating hereto and whether or not the Company has executed its obligations in terms of any agreement it has with the Customer, then and in such event the Customer shall nevertheless be obliged to perform its obligations in terms of any such agreement as though the Company had performed properly and to the customer's satisfaction.

15.3 The Customer's remedy, having performed its obligations as provided in sub clause 1 shall be

limited to an action against the Company for repayment of either the whole or portion of the amount which the Customer alleges constitutes an overpayment.

15.4 Without affecting the generality of sub clauses 1 and 2 above, the Customer shall not be entitled to withhold payment of any amounts by reason of any disputes with the Company, whether in relation to the Company's performance in terms of any agreement, or lack of performance or otherwise, after which payment the customer's rights of action against the Company in terms of this clause can be enforced.

15.5 Until such payment is made, any rights that the Customer may have, shall be deemed not yet to have arisen and it is only the payment to the Company which releases such rights and makes them available to the Customer in respect of any claim that he may have against the Company.

15.6 In any dispute arises between the Company and the Customer:

15.6.1 The Company shall be deemed to have performed its obligations in a reasonable, proper and / or workmanlike manner and strictly in accordance with any agreement between it and the Customer.

15.6.2 The Customer shall not be excluded from enforcing any right or remedy contained in the Consumer Protection Act, 68 of 2008.

15.6.3 The Customer will bear the onus of proving the Company acted contrary to the provisions of this or any other agreement and not in a reasonable, proper and / or workmanlike manner.

16 NO CLAIMS AGAINST COMPANY DIRECTORS AND EMPLOYEES

The Customer undertakes that no claims shall be made against any director, servant or employee of the Company which imposes or attempts to impose upon him any liability in connection with the rendering of any services which are the subject of these trading terms and conditions and the Customer hereby waives all and any such claims.

17 RECOVERY OF DEBTS DUE TO THE COMPANY

- 17.1 The Company shall be entitled to recover any and all amounts due by the Customer in respect of instructions relating to and in terms of any contract in respect of services rendered, as the Company in its absolute discretion deems fit.
- 17.2 Should any amount owing by the Customer to the Company become due and payable and remain unpaid, the Company shall be entitled and the Customer hereby authorizes the Company to, without first obtaining an order of Court, sell all or any of the goods by public auction on reasonable notice, which notice need not exceed 14 days, alternatively by private treaty. The net proceeds of any such sale, after deduction therefrom of all costs, charges and expenses incurred by the Company shall be applied in reduction or discharge, as the case may be, of the Customer's obligations to the Company in respect of such goods, without prejudice to the Companies rights to recover from the Customer any balance which remains owing to the Company after the exercise of such rights.

Should the total amount collected by the Company, after deducting therefrom all costs, charges and expenses incurred by the Company in respect thereof, exceed the full amount of the Customer's obligations to the Company in respect of such goods, the Company shall be obliged to refund such excess to the Customer.

- 17.3 The Customer agrees that in the event of the Company instituting legal proceedings against the Customer for the recovery of any amounts due to the Company in terms of any agreement or for the breach of these trading terms and conditions or for enforcement of any other obligations or for the recovery of damages owed by the Customer in terms of such agreement, the Customer shall be liable for all costs incurred by the Company, on the scale as between attorney and own client, as well as collection commission and tracing agent's fees even if legal proceedings have not commenced.

18 LIEN

All goods and documents relating to goods, including bills of lading and import permits, as well as all refunds, repayments, claims and other recoveries, shall be subject to a special and general lien and pledge, either for money due in respect of such goods or for other money due to the Company by the Customer, sender, owner, consignee, importer or the holder of the bill of lading or their agents, if any. If money due to the Company are not paid within 14 days after notice has been given to the person from whom the monies are due that such goods or documents are being detained by the Company, the goods may be sold by auction or otherwise or in some other way disposed of for value at the sole discretion of the Company and at the expense

INITIAL

of such person, and the net proceeds applied in or towards satisfaction of such indebtedness.

19 INDEMNITY

19.1 The Company shall not be liable for any loss, damage, shortage or delay, regardless of its cause, except if the Customer proves in a court of law that such loss, damage, shortage or delay was due entirely to the Company's gross negligence or wilful misconduct. This limitation of our liability implies that the Company will not be liable to the Customer or the Owner for any loss, damage, shortage or delay arising out of the maintenance of too high or too low a temperature, failure of machinery or plant, negligent conduct with regard to your property, flood, wind, sprinkler leakage, fire, leakage, defects in the storage area or assets or equipment, dampness, sweat, decay, putrefaction or destruction by vermin, Acts of God, civil commotion, military authority, insurrection, strikes, lockouts, labour disputes, the State President's enemies, quarantine, war, explosion, the nature of the goods, inherent vice, contact with or proximity to other goods, concealed damage, variation or shrinkage in mass, defective or insufficient packages or containers, theft, delay in delivery of goods, or any other cause whatsoever (except for gross negligence or wilful misconduct on our part).

19.2 Despite anything stated to the contrary in this Contract, our liability to compensate the Customer for loss suffered or to refund the contract price shall not be more than R1000 (one thousand rand) per metric tonne, unless we agree in writing and on an annual basis to such higher amount that the goods are worth.

19.3 The Customer shall compensate the Company and hold the Company harmless for and against any claims (and related costs) that the Company may possibly face from consumers who rely on the Consumer Protection Act to allege that the Company is liable for damage caused by the goods stored with us or transported or for a refund, replacement or repair of goods as producer of the goods, by reason of performing additional services at your request (although we deny that we are the producer of the goods), or on the basis that the Company supplied defective goods in conjunction with supplying such additional services requested by the Customer.

20 SURETYSHIP

The signatory/ies hereto acknowledge and bind himself / herself / themselves jointly and severally in his / her / their personal and individual capacity/ies as surety and co-principal debtor *in solidum* for the Customer for any and all payments due and owing to the Company.

21 IDENTIFYING MARKS AND NUMBERS AND CONDITION OF PRODUCT STORED

All goods stored with us, and/or transported by us, shall bear identifying marks and numbers. All goods are accepted on the basis that the contents, mass, quantities, quality, hygiene, safety, condition and values are unknown to us, unless we have written and signed a special statement to the contrary on our receipt issued to you.

22 CESSION

22.1 The Customer shall not cede any of its rights nor assign any of its obligations hereunder,

INITIAL

without the prior written notification and consent of the Company.

- 21.2 The Company shall be entitled to cede any and all of its rights in terms thereof without notice to the Customer, and the Customer agrees to recognize the cessionary and act in accordance with such cessionary's requirements

23 SUSPENSION OF PERFORMANCE

Whilst any of the conditions referred to in clause 13 remains unfulfilled and the Customer remains in default, the Company shall be entitled to refuse or suspend performance without being liable in any manner whatsoever, and without prejudice to the Company's right to recover money due and owing to the Company in respect of services already performed.

24 WHOLE AGREEMENT

- 24.1 The terms and conditions of this agreement, together with any Addendum thereto, shall govern the relationship between the Company and the Customer and each and every contract between them and constitutes the entire standard trading terms and conditions applicable thereto.
- 24.2 No warranty or representation other than is herein expressly contained, shall be of any force and effect against the company, unless reduced to writing and signed for and on behalf of the Company;
- 24.3 No amendment, variation or consensual cancellation of any contract shall be of any force and effect, unless such amendment, variation and/or consensual cancellation is reduced to writing and signed by or on behalf of the Company.

- 24.4 No course of conduct other than a written agreement signed by the company, shall constitute a variation or novation of a contract or a waiver or estoppel of the Company's rights herein under.

25 NON-WAIVER

- 25.1 No waiver of any of these terms and conditions shall be binding or effectual for any purpose unless in writing and signed for or on behalf of the party giving the same. Any such waiver will be effective in a specific instance and for the purpose given.
- 25.2 No failure or delay on the part of either party hereto in exercising any right, power or privilege hereunder will constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 25.3 No variation of these trading terms and conditions shall be binding on the company, unless embodied in a written document signed by or on behalf of the company. Any purported variation or alteration of these trading terms and conditions otherwise as set out above shall be of no force and effect, whether such purported variation or alteration is written or oral, or takes place before or after receipt of these standard trading terms and conditions by the Customer.

26 SEVERABILITY

If any provision of these terms and conditions are unenforceable, then the Company shall be entitled to elect (which election may be made at any time) that such provision shall be severed from the remaining

INITIAL

provisions of these terms and conditions, which shall not be affected and shall remain of full force and effect.

27 NOTICES AND DOMICILIA

27.1 All notices in terms of these trading terms and conditions shall be given in writing and delivered by hand or sent by email or telefax.

27.2 The Customer appoints as his / her / its *domicilium citandi et executandi* for all purposes under the standard terms and conditions, its physical address, email or telefax number provided by the Customer to the Companion any letterhead, order or other document generated or completed by the Customer.

28 JURISDICTION

The parties agree to the jurisdiction of any Magistrate’s Court in the event that the Company institutes legal proceedings against the Customer, notwithstanding that the value of the claim or the matter in dispute may exceed the jurisdiction of the Magistrate’s Court. The use of the Magistrate’s Court will be at the discretion of the Company.

SIGNED at _____ **on this** _____ **day of** _____
20__

(Duly authorized representative /agent of the Customer and liable jointly and severally in his / her personal and individual capacity as surety and co-principal debtor *in solidum* with the Customer for any debts of the Customer as per clause 20 above)

SIGNATORY FULL NAME:

PHYSICAL ADDRESS:

EMAIL ADDRESS:

WITNESSES:

1. _____

2. _____

SIGNED at _____ **on this** _____ **day of** _____
20__

Duly authorized representative of the Company:

Name of APLI Entity:

(the “**Company**”)

WITNESSES:

1. _____

2. _____

INITIAL

CUSTOMER INFORMATION

REGISTERED NAME:

REGISTRATION NUMBER:

REGISTERED ADDRESS:

PHYSICAL BUSINESS ADDRESS:

POSTAL ADDRESS:

INCOME TAX NUMBER:

VAT REGISTRATION NUMBER:

TELEPHONE NUMBER:

FAX NUMBER:

FULL NAME(S) OF AUTHORISED SIGNATORY / IES: