

Standard Conditions of Ad Hoc Purchases from Sub Contractors

(Transportation, Forwarding or Warehousing of Goods)

Canal Freight & Couriers

Reg. Number: 2003/062441/23

and

Reg. Number: _____
 ("the **Sub Contractor**")

Agreement:

Canal Freight & Couriers and the **Sub Contractor** hereby enter into an ad hoc Sub-Contractor's Agreement on the terms and conditions set out in the Terms and Conditions of ad hoc purchases from Sub Contractors, attached hereto and the content of which is specifically incorporated herein.

SIGNED by the Parties and witnessed on the following dates and at the following places respectively:

PLACE	DATE	WITNESS	SIGNATURE
_____	_____	1. _____ 2. _____	For: Canal Freight & Couriers _____
_____	_____	1. _____ 2. _____	For: the Sub Contractor _____

Terms and Conditions of ad hoc purchases from Sub-Contractors

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WHEREBY IT IS AGREED AS FOLLOWS:

1. RECORDAL

It is recorded that:

- 1.1 **Canal Freight & Couriers** has concluded agreements to render certain transport services to various Consignors;
- 1.2 **Canal Freight & Couriers** is entitled to sub contract the provision of certain of the services to a sub-contractor/s in terms of its agreements with the consignors and the **Sub Contractor** is desirous to accept the appointment on the terms and conditions as stipulated in this Agreement.

2. COMMENCEMENT AND DURATION

- 2.1 **This Agreement shall commence on the Commencement Date and continue indefinitely on an ad hoc basis**, subject to early termination as contemplated by clause 18 hereof.
- 2.2 **All Orders furnished to the Sub Contractor, in the format substantially the same as set out in Annexure B, shall be deemed to have incorporated these Standard Terms and Conditions and the Sub Contractor, by accepting such order in the manner as specified in Annexure B and rendering Services in terms of the order thereby irrevocably and in rem suam bind itself hereto.**
- 2.3 **Notwithstanding anything to the contrary contained herein this agreement shall be a non-exclusive agreement and there shall be no obligation on Canal Freight & Couriers to utilise the services of the Sub Contractor.**

3. TRANSPORTATION OF THE PRODUCTS

The **Sub Contractor** undertakes, as an independent sub-contractor, to transport the Products as and when required by **Canal Freight & Couriers**, from the Loading Point to the Off-Loading Point.

4. GENERAL UNDERTAKINGS BY CANAL FREIGHT & COURIERS

During the currency of this Agreement, **Canal Freight & Couriers** undertakes to:

- 4.1 secure appropriate rights of access for the Vehicles from the:
 - 4.1.1 Consignor to the Loading Points; and
 - 4.1.2 Consignee to the Off-Loading Points,
 - 4.1.3 which access **Canal Freight & Couriers** and/or the Consignor shall be entitled to deny in the event of a Non-compliant Sub Contractor or a Non-Compliant Vehicle; pay the **Sub Contractor** in terms of the provisions of clause 9 thereof.

5. GENERAL UNDERTAKINGS BY THE SUB CONTRACTOR

- 5.1 During the currency of this Agreement, the **Sub Contractor** undertakes in respect of the Services generally, to:
 - 5.1.1 provide the Services in an efficient, prompt and professional manner;
 - 5.1.2 liaise with the staff of **Canal Freight & Couriers** on all matters concerning the implementation of this Agreement and in general to carry out all **Canal Freight & Couriers** reasonable and lawful instructions and to do all things necessary to ensure that the Services are performed in an efficient and cost effective manner;
 - 5.1.3 in general, acknowledge receipt of Product(s) which it is required to deliver in writing, when they are received at the Loading Point and specifically, after loading the Product(s) at the Loading Point, procure the signature of the Vehicle Loading Note and the weigh bridge slip by the Responsible Supervisor, which shall record the Volume of the Product(s) loaded and which together shall be *prima facie* proof of the Volume of the Product(s) loaded at the Loading Point;
 - 5.1.4 in general, obtain proof of delivery of such Product(s) at the Off-Loading Point and specifically ensure that the Consignee signs the Delivery Note at the Off-Loading Point as proof of delivery of the Product(s) and that the name of the person signing the POD is recorded as well as the time of delivery;
 - 5.1.5 comply with all **Canal Freight & Couriers**'s and the Consignor's requirements and any applicable legal requirements in relation to the inspection of the Vehicles prior to loading;
 - 5.1.6 collect the Product(s) at the relevant Loading Points as and when requested;
 - 5.1.7 deliver the Product(s) to the Off-Loading Point within the applicable time period instructed, in the same good order and condition as the Product(s) is received by it;
 - 5.1.8 take such reasonable steps as may be necessary in order to prevent external damage, spillage and contamination of the Product(s).
 - 5.1.9 procure that all documentation as contemplated by clause 5.2 is furnished to **Canal Freight & Couriers** at the earliest opportunity, but within 3 (three) working days;
 - 5.1.10 in the event of a Driver and/or Vehicles being involved in an accident, notify **Canal Freight & Couriers** and the local Rescue, Recovery and Remediation Units immediately after the occurrence of the accident and in such circumstances comply with all the requirements as stipulated in this Agreement and in terms of the applicable law;
 - 5.1.11 ensure compliance at all times with the driving standards as stipulated by Canal Freight & Couriers and/or the Consignor. The driving standards with which the **Sub Contractor** is obliged to comply, include, but are not limited to:

- 5.1.11.1 the Vehicle is fit for its purpose and has been maintained in safe working order;
 - 5.1.11.2 the number of passengers does not at any time exceed the manufacturer's specification for the Vehicle in relation thereto;
 - 5.1.11.3 the Vehicle's loads are at all times secure and do not exceed the manufacturer's specification in relation thereto or the legal limits set for the Vehicle in respect thereof;
 - 5.1.11.4 the Drivers and other personnel are appropriately assessed, licensed, trained, medically fit, and appropriately dressed to operate the Vehicle and provide the service;
 - 5.1.11.5 the Drivers and other personnel are at all times when rendering the Services appropriately rested and alert;
 - 5.1.11.6 the journey required in order to render the Services has been assessed and any journey risk management plans necessary are in place;
 - 5.1.11.7 the Drivers or other personnel are not at any time when rendering the Services under the influence of alcohol or drugs, or any other substance or medication that could impair their ability to drive;
 - 5.1.12 complete timeously such documentation as may be reasonably required to facilitate proper and timeous physical and accounting control of the Product(s) and its transport to the Off-Loading Point;
- 5.2 **The Sub Contractor shall furnish to Canal Freight & Couriers , in respect of each Delivery made:**
- 5.2.1 **the relevant Vehicle Loading Note, as further contemplated by clause 5.1.3;**
 - 5.2.2 **the Tachocharts, upon request, which have been duly signed by the Responsible Supervisor and which Tachocharts record the Vehicle's movement and utilisation, as well as verifying, *inter alia*, that:**
 - 5.2.2.1 **the Tachometer is in full working condition;**
 - 5.2.2.2 **the Driver has:**
 - 5.2.2.2.1 **complied with the number of mandatory breaks required by Canal Freight & Couriers in order to avoid fatigue;**
 - 5.2.2.2.2 **not made any unscheduled stops;**
 - 5.2.2.2.3 **adhered to road speed limits.**
 - 5.2.3 **the Delivery Note, which Delivery Note shall include:**
 - 5.2.3.1 **the date of delivery of the Product(s) by the Consignor or Canal Freight & Couriersto the Sub Contractor;**
 - 5.2.3.2 **the product grade of the Product(s);**
 - 5.2.3.3 **the Loading Point and Off-Loading Point in respect of the Delivery;**
 - 5.2.3.4 **the Volume of the Product(s) transported in respect of such Delivery;**
 - 5.2.3.5 **to the extent that it is applicable, the temperature readings, if applicable, in respect of the Product(s); and**
 - 5.2.3.6 **the signature and name of the relevant Customer signifying proof of delivery of the Product(s) (and relevant Volume thereof) listed in the Delivery Note.**
- 5.3 The **Sub Contractor** acknowledges that by virtue of the nature of **Canal Freight & Couriers** 's business and the requirements of the Company's customers it may be necessary for deliveries to be made on a continuous basis, and outside of normal working hours.
- 5.4 The **Sub Contractor** shall ensure that the **Sub Contractor**'s employees shall at all times comply with the loading, discharging and quality control procedures laid down by **Canal Freight & Couriers** , the Consignor, the Consignee or the supplier of the Product(s) from time to time. Furthermore, the **Sub Contractor** shall be responsible for ensuring that the Product(s) loaded and unloaded complies with that specified by **Canal Freight & Couriers** , the Consignor, the Consignee the supplier of the Product(s) in terms of nature and weight.
- 5.5 The Parties record and agree that, should the **Sub Contractor**, in **Canal Freight & Couriers** 's sole opinion, not be in compliance with any of **Canal Freight & Couriers** 's or the Consignor's requirements as set out in this Agreement at any time (a "**Non-Compliant Sub Contractor**" or a "**Non-Compliant Vehicle**", as the case may be), then the **Sub Contractor** shall be obliged to cease all operations with immediate effect, until it is in a position to comply with such requirements.
- 5.6 The **Sub Contractor** shall in respect of all matters arising from the fulfillment of this Agreement, conform at his own expense with all rules and regulations of the Consignee and in particular, hereto and with all regulations and by-laws and requirements of local or other authorities which are applicable to the work to be performed and shall, in the execution of this Agreement, provide for the safety and due convenience of the public.
- 5.7 The **Sub Contractor** in fulfilling his obligation under this Agreement shall be liable for all fines and penalties imposed by the State or any other statutory body which shall include fines for overloading, it being recorded that **Canal Freight & Couriers** shall take no responsibility for any overloading by the **Sub Contractor**.
- 5.8 The **Sub Contractor** shall ensure that all vehicles are presentable and receive regular thorough washing and cleaning, prior to collection of the Goods from the loading point or delivery of Goods at the offloading point.

6. VEHICLES

During the currency of this Agreement, the **Sub Contractor** undertakes in respect of the Vehicles, Drivers, and other personnel to:

- 6.1 to the extent that the Sub Contractor agrees to undertake the Services, ensure that it has in its employ at all times sufficient numbers of adequately trained Drivers or other personnel in order to fully and effectively carry out its obligations in terms of this Agreement, and that the employment of such drivers or other personnel complies with all applicable legislation pertaining thereto;
- 6.2 ensure that the Vehicles comply with **Canal Freight & Couriers** ' and the Consignor's specifications and minimum standards pertaining to the design and maintenance of Vehicles, as advised by **Canal Freight & Couriers** from time to time.
- 6.3 provide **Canal Freight & Couriers** and/or the Consignor with access to its Vehicles at all reasonable times in order for **Canal Freight & Couriers** and/or the Consignor to inspect same;
- 6.4 provide **Canal Freight & Couriers** with a copy of the identification, licence and Vehicle registration documentation in respect of each Driver and Vehicle on request, and in this regard, to comply with spot checks that may be conducted by the Responsible Supervisor at any time;
- 6.5 provide **Canal Freight & Couriers** with access to the **Sub Contractor's** records for the purposes of each inspection, which documentation shall include, but not be limited to:
 - 6.5.1 all licences and permits in respect of the Drivers and Vehicles;
 - 6.5.2 medical certificates and qualification files in respect of the Drivers;
 - 6.5.3 the **Sub Contractor's** internal Vehicle inspection reports and maintenance files;
 - 6.5.4 all Vehicle accident reports; and
 - 6.5.5 the records of the working hours of all Drivers;
- 6.6 to the extent that it is required ensure that the Vehicles are fitted with Tachometers and live satellite tracking equipment and monitoring facilities and that such Tachometers and monitoring equipment and infrastructure are maintained in good working condition, to manufacturers' standards.

7. LABOUR AND EMPLOYEES

- 7.1 The **Sub Contractor** shall ensure that all drivers and labour employed in the execution of the Agreement shall at all times:
 - 7.1.1 be adequately trained, equipped and be in such numbers as to carry out their duties efficiently and safely; comply with the requirements of both the Occupational Health and Safety Act and the National Occupational Safety Association;
 - 7.1.2 comply with all municipal and other regulations which may be in force from time to time with regard to traffic and general use of public roads;
 - 7.1.3 hold valid, endorsement free, and appropriate drivers licences and a valid professional driving permit and shall be adequately trained to operate the vehicles; and
 - 7.1.4 hold valid, endorsement free, and appropriate Dangerous Goods certificate, where applicable, and shall be adequately trained to operate a Dangerous Goods vehicle and load; and
 - 7.1.5 comply with the rules applicable at the Loading and Off-Loading Point, and reasonable instructions including **Canal Freight & Couriers** ' or the Consignor's safety instructions and security checks at the Loading Point and the Consignee's safety instructions and security checks at the Off-Loading Point and otherwise comply with all applicable laws, by-laws and regulations.
- 7.2 The **Sub Contractor** shall ensure that such precautions as may be agreed between the Parties and as may be necessary in regard to Industrial Health, shall be enforced.
- 7.3 The **Sub Contractor** shall notify the Company of all drivers appointed by him to undertake the Service and **Canal Freight & Couriers** shall be at liberty to object to any driver or person employed by the **Sub Contractor** in the execution of the work to be performed, who in the opinion of **Canal Freight & Couriers** is guilty of misconduct himself, or is incompetent or negligent or otherwise unsatisfactory, and the **Sub Contractor** shall immediately replace the person so objected to, upon receipt from **Canal Freight & Couriers** of notice in writing requiring him to do so.
- 7.4 The **Sub Contractor** shall insure under the Compensation for Occupational Injuries and Diseases Act, 130 of 1993, or any amendments thereto, or any Act passed in substitution thereof, against all claims by workmen employed by it and also under the Common Law, with an Insurance Company to be approved by **Canal Freight & Couriers** , for an amount or amounts sufficient to satisfy any and all claims for compensation which any of its workmen or their dependants may make under the said Act or Common Law and shall continue such insurance uninterrupted for the duration of this Agreement.
- 7.5 In addition, the **Sub Contractor** shall at its own expense insure and keep insured all persons employed by it, who do not fall within the ambit of the provisions of the Compensation for Occupational Injuries and Diseases Act, against all risks arising out of their employment.
- 7.6 The **Sub Contractor** shall from time to time, when so required by **Canal Freight & Couriers** , submit to **Canal Freight & Couriers** all policies required in terms of this Agreement, as well as proof that all premiums have been paid.
- 7.7 **Canal Freight & Couriers** shall not be liable for or in respect of or in consequence of any accident or injury to any employee of the **Sub Contractor** and the **Sub Contractor** shall indemnify **Canal Freight & Couriers** against all damages and compensation against all claims, demands, proceedings, costs, charges and expenses, whatsoever, in respect thereof or in relation thereto.

8. HEALTH, SAFETY, SECURITY AND ENVIRONMENT

- 8.1 To the extent applicable, the **Sub Contractor** shall ensure compliance at all times with the Operating and HSSE Standards and with all the policies, requirements and specifications of **Canal Freight & Couriers**, the Consignor and the Consignee, as advised by **Canal Freight & Couriers** to the **Sub Contractor**, in writing from time to time. The **Sub Contractor** shall further comply with all applicable legislation. The **Sub Contractor** shall *inter alia* comply with all the stipulations as contained in Annexure C and in the event of the **Sub Contractor** failing to comply with the abovementioned, such failure shall amount to a material breach of the terms and conditions of this Agreement.
- 8.2 To the extent that the **Sub Contractor** transports dangerous goods, then the **Sub Contractor** shall, as a material term of this agreement, simultaneously with this agreement enter into an operational agreement in order to comply with the stipulations for the road transportation of dangerous goods and substances in terms of the National Road Traffic Act and SABS Standard Specifications and Codes of Practice, which agreement shall be materially similar to the agreement entered into in this regard between the Consignor and Canal Freight & Couriers.

9. REMUNERATION AND PAYMENT

- 9.1 **Canal Freight & Couriers** will remunerate the **Sub Contractor**:
- 9.1.1 at the Rates and in the manner as set out in Annexure B to this Agreement within 30 (thirty) days of receipt of the statement; or
- 9.1.2 at the Rate as set out in the Order within 30 (thirty) days of receipt of the statement.
- 9.2 **Canal Freight & Couriers** reserves the right to amend the Rates from time to time after discussion and in accordance with agreed rates between both parties.

10. SET OFF AND DEDUCTIONS

Canal Freight & Couriers shall be entitled to apply the whole or any monies which may become payable to the **Sub Contractor** in terms of this Agreement, towards any indebtedness of the **Sub Contractor** to **Canal Freight & Couriers** which shall include, but not be limited to, claims by the Consignor and/or Consignee against **Canal Freight & Couriers** due to any failure on the part of the **Sub Contractor** to fulfill its obligations in terms of this Agreement. Should such indebtedness not be a liquidated amount in money, a genuine *bona fide* estimate thereof, authorised by a general manager of **Canal Freight & Couriers** from time to time, shall be applied until such amount is determined.

11. INDEPENDENT SUB CONTRACTOR

- 11.1 It is recorded that the **Sub Contractor** is an independent **Sub Contractor**, and under no circumstances whatsoever will the **Sub Contractor** or any employees of the **Sub Contractor** be deemed to be the employees of **Canal Freight & Couriers**. However, notwithstanding the aforementioned, in the event of the **Sub Contractor** being deemed an employee of **Canal Freight & Couriers** by any governing authority, **Canal Freight & Couriers** reserves the right to deduct from remuneration paid to the **Sub Contractor** whatever tax it is legislated to deduct by the said governing authority.
- 11.2 The **Sub Contractor** shall be obliged to comply with any directive of **Canal Freight & Couriers** where such directive would reasonably be observed by independent Sub Contractor transporting materials on behalf of **Canal Freight & Couriers**, the Consignor and the Consignee.

12. INCOME TAX DEDUCTIONS

- 12.1 The **Sub Contractor** warrants that it is not a personal service company as defined in the Fourth Schedule of the Income Tax Act 58 of 1962.
- 12.2 Unless the **Sub Contractor** is able to provide **Canal Freight & Couriers**, within 21 (twenty one) days of signature of this agreement and annually thereafter, with either a certificate of exemption of a valid tax directive to the effect that **Canal Freight & Couriers** is not obliged to deduct or withhold employees' tax, **Canal Freight & Couriers** is entitled to deduct or withhold employees' tax at the applicable rate from all payments accruing to the **Sub Contractor** in terms of this agreement and to make payment of such amounts to the South African Revenue Services, if appropriate.
- 12.3 If the **Sub Contractor's** circumstances change at any time or should the certificate of exemption or tax directive envisaged in 12.2 above be cancelled, withdrawn or not renewed, the **Sub Contractor** must notify **Canal Freight & Couriers** in writing within 2 (two) days of such change, withdrawal, cancellation or non-renewal, failing which **Canal Freight & Couriers** is entitled to cancel this agreement without notice and without prejudice to any of its other rights.
- 12.4 The **Sub Contractor**, if requested to do so by **Canal Freight & Couriers**, hereby irrevocably undertakes, at the Sub Contractors cost, to apply for a ruling from the South African Revenue Services in terms of Section 76 of the Income Tax Act 58 of 1962.
- 12.5 The **Sub Contractor** hereby indemnifies **Canal Freight & Couriers** and holds it harmless against any loss, damage, claim or costs (including attorney and own client costs and interest, from the date the cause of action arises) arising out of or in connection with a breach by the **Sub Contractor** of its warranties and undertakings set out in this clause 12 and/or failure on the part of **Canal Freight & Couriers** to deduct employees' tax from any payments accruing to the **Sub Contractor**.

13. RISK AND OWNERSHIP

- 13.1 In the event that **Canal Freight & Couriers** or the Consignor or the supplier of the Product(s) is responsible for the loading of the Product(s), the risk in performing the Services and in the Product(s) shall pass from **Canal Freight & Couriers** to the **Sub Contractor** the moment the Vehicle has been loaded and such risk will remain with the **Sub Contractor** until delivery of the relevant load has been effected, and signatures obtained on the Delivery Notes, which have to be clearly signed by a responsible official at the designated point of delivery.

- 13.2 In the event that the **Sub Contractor** is responsible for the loading of the Product(s), the risk in performing the Services and in the Product(s) shall pass to the **Sub Contractor** at the moment at which the **Sub Contractor** has been given access to the Loading Point and such risk will remain with the **Sub Contractor** until delivery of the relevant load has been effected, and signatures obtained on the Delivery Notes, which have to be clearly signed by a responsible official at the designated point of delivery.
- 13.3 The **Sub Contractor** shall be liable for any damage to goods and/or for any loss, destruction, contamination or deterioration of goods which may occur whilst they are being conveyed or otherwise handled by the **Sub Contractor**, irrespective of the cause thereof, such liability in particular not being dependent upon the negligence or unlawful conduct of the **Sub Contractor**.
- 13.4 **Canal Freight & Couriers** shall not be liable for, in respect of or in consequence of, any accident or damage caused to any property belonging to the **Sub Contractor** or third Parties while under the control of the **Sub Contractor** and the **Sub Contractor** shall indemnify **Canal Freight & Couriers** against all such damages, and compensation against all claims, demands, proceedings, costs, charges and expenses, whatsoever, in respect thereof or in relation thereto.
- 13.5 Any assistance given by **Canal Freight & Couriers** to the **Sub Contractor** in the performance of the Services shall be at the sole risk of **Sub Contractor**.

14. INSURANCE AND INDEMNITY

- 14.1 The **Sub Contractor** shall be obliged at its cost to take out and keep in force from the Commencement date:
- 14.1.1 public liability insurance to a minimum value of R10 000 000 (ten million rand). This policy shall include cover against all potential impacts of any losses flowing directly through the transportation of the Product(s) including cover for the contamination of the Product(s) and consequential loss arising from any such contamination, spillages or related events including all clean-up rehabilitation and like costs in the amount of not less than R5 000 000 (five million rand) per claim. **Canal Freight & Couriers** reserves the right to request increased public liability insurance to be taken out by the **Sub Contractor** at any time on the giving of one month's written notice. This policy will provide adequate indemnity in respect of all claims which may foreseeably arise arising out of the conduct of the Sub Contractor of the Service, which shall include, but not be limited to:
- 14.1.1.1 death or injury to any persons, including the Drivers or employees of the **Sub Contractor**, arising from the Services;
- 14.1.1.2 any claims, loss, damages or costs arising from a delay in or non delivery of the Product(s) to the Consignee or a delivery of Off-Specification Product(s);
- 14.1.1.3 damage to property arising from the Services;
- 14.1.2 a "goods in transit" insurance policy in respect of any loss or damage to the Product(s) whilst in transit, but not less than R500 000.00 (five hundred thousand Rand) per load and for the period during which the **Sub Contractor** bears the risk in relation to the Product(s), with such insurance company and on such terms as may be approved by **Canal Freight & Couriers** from time to time; and
- 14.1.3 balance of third Party cover in respect of the Vehicle. If the equipment / trailers are supplied by **Canal Freight & Couriers** the **Sub Contractor** is obliged to at its cost take out and keep in place fully comprehensive insurance at market value, including SASRIA cover, in respect of the Vehicle.
- 14.2 The **Sub Contractor** shall pay all premiums due in respect of the policies of insurance referred to in clause 14.1 and shall furnish **Canal Freight & Couriers** upon request from time to time with copies of the said policies of insurance and proof to the reasonable satisfaction of **Canal Freight & Couriers** that all premiums in respect thereof have been paid and that all conditions thereof have been complied with. In the event of the **Sub Contractor's** failure to effect the insurance referred to in clause 14.1, **Canal Freight & Couriers** shall be entitled to effect and/or keep in force such insurance and to pay any premium which may be necessary for that purpose and to recover from the **Sub Contractor** on demand all amounts expended by **Canal Freight & Couriers** in this regard. In the event that the **Sub Contractor** fails to reimburse **Canal Freight & Couriers** for all amounts expended by **Canal Freight & Couriers** in this regard, **Canal Freight & Couriers** retains the right to apply set-off in terms of any moneys due to the **Sub Contractor** by **Canal Freight & Couriers** in terms of this Agreement.
- 14.3 The **Sub Contractor** hereby indemnifies **Canal Freight & Couriers** against losses incurred by **Canal Freight & Couriers** and claims against it by third Parties, including such Parties' employees, in respect of damage to property or bodily injury, illness or death arising out of any act or omission of the **Sub Contractor** or its agents, employees or assigns in connection with the provision of Services under this Agreement irrespective of the cause thereof, in respect of which **Canal Freight & Couriers** may be held vicariously liable, such liability of the **Sub Contractor** not being dependent upon the negligence or other unlawful conduct of the **Sub Contractor** or its agents, employees or assigns. This indemnity includes but is not limited to any liability for direct and / or consequential loss or damages arising from any cause.
- 14.4 Where an action is instituted against **Canal Freight & Couriers** in addition to, or instead of the **Sub Contractor**, pursuant to any claims contemplated by this clause 14, **Canal Freight & Couriers** will be reimbursed by the **Sub Contractor** for:
- 14.4.1 the reasonable costs, on an attorney and own client scale, incurred by **Canal Freight & Couriers** to its attorneys and counsel, in the defence of such action, provided that, if **Canal Freight & Couriers** is successful in defending any such claim and is awarded costs against the plaintiff, all recoveries of costs previously paid by the **Sub Contractor** shall be refunded by **Canal Freight & Couriers** to the **Sub Contractor**. Payment by the **Sub Contractor** to **Canal Freight & Couriers** for such costs shall be due as and when each invoice is rendered to **Canal Freight & Couriers** by **Canal Freight & Couriers**'s attorneys; and
- any of the plaintiff's costs recoverable from **Canal Freight & Couriers**, in terms of an order of court, on whatever scale ordered by that court. Payment of these costs is due by the **Sub Contractor** to **Canal Freight & Couriers** on date of taxation of the same by the plaintiff.

15. LIMITATION OF LIABILITY

- 15.1 The **Sub Contractor**, including the **Sub Contractors** employees, agents, representatives and sub-contractors indemnifies and holds **Canal Freight & Couriers** harmless against any claims, losses and/or costs suffered by the Consignee and/or the Consignor including any consequential loss or damages, and all warranties, whether express, implied or tacit, and any other liability from whatsoever cause arising.
- 15.2 **Canal Freight & Couriers** shall not be liable to the **Sub Contractor** for any loss or damages suffered either by the **Sub Contractor** or any other person as a result of the delivery of any Off-Specification Product(s) to the **Sub Contractor** for transport, including any consequential loss or damages, and all warranties, whether express, implied or tacit, and any other liability from whatsoever cause arising are hereby expressly excluded.
- 15.3 In the event of the Products becoming damaged or contaminated then notwithstanding the fact that the requisite wash bay certificate has been presented to **Canal Freight & Couriers**, the **Sub Contractor** will be solely liable for any such claim for damage or contamination of the Products and the **Sub Contractor** further indemnifies and holds **Canal Freight & Couriers** harmless against all and any claims arising out of such occurrence howsoever caused.
- 15.4 **Canal Freight & Couriers** shall not be liable for demurrage or storage charges of any nature whatsoever and howsoever arising. Where any such demurrage and/or storage charges are paid by **Canal Freight & Couriers**, such charges shall be refunded to **Canal Freight & Couriers** by the **Sub Contractor** on demand. The **Sub Contractor** hereby appoints **Canal Freight & Couriers** irrevocably and in rem suam as its agent and in its name, place and stead, to contract for the storage of the goods upon such terms and conditions as **Canal Freight & Couriers** may, in its sole discretion elect, and without any liability whatsoever attaching to **Canal Freight & Couriers** to attend to such storage.

16. CONFIDENTIALITY

- 16.1 The Parties agree that the terms of this Agreement and all confidential and proprietary information of the Parties communicated to them in connection with this agreement will be received in strict confidence and be used only for the purposes of this Agreement. Each Party will use the same means as it uses to protect its own confidential information, but in no event less than confidentiality of such information. The recipient Party, its agents, representatives or employees without the prior written consent of the other Party, will not disclose such information.
- 16.2 These provisions do not apply to information which is:
- 16.2.1 publicly known or becomes publicly known through no unauthorized act of the recipient Party;
 - 16.2.2 rightfully received by the recipient Party from a third Party;
 - 16.2.3 disclosed by the other Party to a third Party without similar restrictions;
 - 16.2.4 required to be disclosed pursuant to a requirement of a governmental agency or any applicable law, so long as the Party required to disclose the information gives the other Party prior notice of such disclosure; or
 - 16.2.5 publicly disclosed with the other Party's written consent in terms of 16.1.
- 16.3 Should it be found that the Sub Contractor or any of its sub contractors approach the Consignor or any other Consignor that has any business dealings with Canal Freight & Couriers directly in terms of a direct service provision of any nature, the Sub Contractor will forfeit all monies owing to the Sub Contractor, and the agreement will be terminated with immediate effect. Confidentiality includes, but is not limited to, present Consignors, potential future consignors where contact has been made between Canal Freight & Couriers and the prospective Consignor, business plans, legal documents, business practises of the company, and any other relevant confidential information shared between Canal Freight & Couriers and the Sub Contractor. Canal Freight & Couriers hereby agrees to maintain the same level of confidentiality pertaining to the business of the Sub Contractor.

17. VIS MAIOR AND CASUS FORTUITUS

- 17.1 Failure on the part of a Party ("Affected Party") to perform in terms of or comply with the provisions of the Agreement shall not be deemed to be a breach of the Agreement by the Affected Party, insofar as such failure is due to an event or circumstance of *vis maior* (ie any superior force, power or agency which cannot be resisted or controlled by an ordinary individual – including acts of nature and acts of man) or is due to *casus fortuitus* (ie an inevitable event that is something exceptional, extraordinary or unforeseen and which human foresight cannot be expected to anticipate or to reasonably foresee, or if it can be foreseen, it cannot be avoided by the exercise of reasonable care or caution).
- 17.2 Without limiting the generality and intention of clause 17.1 in any way, the event or circumstances may include (without being limited thereto):
- 17.2.1 acts of God; war, hostilities, riots, civil or military insurrection and like political disturbances; natural disasters such as earthquakes, fires, floods and storms; acts or omissions by Governments (central, federal, regional, provincial, local, municipal) and state organs/public authorities; terrorism or sabotage; denial of the use of railway or other means of public transport,
 - 17.2.2 provided that inconvenience, hardship, discomfort, strikes, lock-outs and the mere shortage of labour, materials or utilities shall not constitute *vis maior* or *casus fortuitus*, unless caused by events or circumstances which themselves are *vis maior* or *casus fortuitus*.
- 17.3 If the Affected Party is by reason of *vis maior* or *casus fortuitus* prevented from fulfilling its obligations under the Agreement, the Affected Party shall immediately notify the other Party in writing thereof. Such notice shall stipulate:
- 17.3.1 the cause, nature and extent of the event or circumstances;
 - 17.3.2 the expected duration of the circumstances or event;

- 17.3.3 the extent to which the performance of the Affected Party will be affected.
- 17.4 The Parties shall then promptly confer within 3 (three) days with a view to dealing with the matter in a cost-effective basis.
- 17.5 To the extent that the Affected Party is prevented to perform its obligations in terms of the Agreement due to *vis maior* or *casus fortuitus*, the Affected Party shall for the duration of *vis maior* or *casus fortuitus* be temporarily excused from its liability to perform such obligations – provided, always, that the Affected Party shall not be so excused or discharged from its obligations if its non-performance is due to the fault, negligence or wilful act/omission of the Affected Party.
- 17.6 The Affected Party shall within 3 (three) days of its notice to the other Party in terms of clause 17.2, having regard to all the relevant factors, submit in good faith alternative proposals to the other Party as to how the event or circumstances can be overcome. Such proposals shall be in sufficient detail to enable the other Party to technically and financially assess the alternatives and to decide whether any of the alternatives are acceptable to the other Party. Should the other Party, in its sole discretion, not accept any of the alternative proposals, the other Party may terminate the Agreement by giving the Affected Party written notice without this termination giving rise to any claim for damages, compensation or loss of any nature against the Affected Party or the other Party.
- 17.7 Until the other Party has made its decision referred to in clause 17.4 above and if the other Party has decided not to terminate the Agreement as aforesaid, the following provisions shall apply:
- 17.7.1 the Affected Party shall make every effort to mitigate the effect on the other Party of its failure or omission to perform fully;
- 17.7.2 the Affected Party shall keep the other Party fully informed about the situation.
- 17.8 To the extent that the Affected Party is prevented by *vis maior* or *casus fortuitus* to comply fully with its obligations in terms of the Agreement, the other Party shall not have any claim for damages, compensation or loss of any nature against the Affected Party – provided, always, that the other Party shall have a claim for damages or other lawful remedy against the Affected Party in the event that the non-performance by the Affected Party is due to the fault, negligence or wilful act/omission of the Affected Party.
- 17.9 In the event that the period of *vis maior* or *casus fortuitus* exceeds an uninterrupted period of 30 (thirty) days, either Party may terminate the Agreement in writing.

18. BREACH AND TERMINATION

- 18.1 If any Party breaches any material provision or term of this agreement (other than those which contain their own remedies or limit the remedies in the event of a breach thereof) and fails to remedy such breach within 14 (fourteen) days of receipt of written notice requiring it to do so (or if it is not reasonably possible to remedy the breach within 14 (fourteen) days, within such further period as may be reasonable in the circumstances provided that the Party in breach furnishes evidence within the period of 14 (fourteen) days, reasonably satisfactory to the other Party, that it has taken whatever steps are available to it, to commence remedying the breach)) then the aggrieved Party shall be entitled without notice, in addition to any other remedy available to it at law or under this agreement, including obtaining an interdict, to cancel this agreement or to claim specific performance of any obligation whether or not the due date for performance has arrived, in either event without prejudice to the aggrieved Party's right to claim damages, provided that notwithstanding anything to the contrary contained elsewhere herein the right immediately to terminate the Agreement shall also accrue to **Canal Freight & Couriers** in the event of:
- 18.1.1 any breach contemplated in 18.1 occurring 2 (two) times during any period of 12 (twelve) consecutive months; and
- 18.1.2 any other material breach of this Agreement occurring more than once in any period of 12 (twelve) consecutive months.
- 18.2 **Canal Freight & Couriers** shall further have the right forthwith to terminate this Agreement in the event of the **Sub Contractor**:
- 18.2.1 committing any act of insolvency as defined in the Insolvency Act 1936; or
- 18.2.2 being wound up, whether provisionally or finally and whether compulsorily or voluntarily or being placed under judicial management; or
- 18.2.3 entering into any arrangement or compromise with any of its creditors; or
- 18.2.4 being the subject of any resolution passed for its winding up or dissolution; or
- 18.2.5 having a judgement given against it in any court of law which, if appealable, is not appealed against within the period allowed for the lodging of such an appeal or, if not subject to an appeal, remains unsatisfied for a period of 10 (ten) days; or
- 18.2.6 be found guilty of any offence involving dishonesty; or
- 18.2.7 or
- 18.2.8 fail to ensure that the Vehicle is in good working order and condition and available to carry the Product(s); or
- 18.2.9 at any time fail to maintain insurance cover in terms of this Agreement; or
- 18.2.10 wilfully and without good reason discontinue the Services for any reason whatsoever.
- 18.2.11 Breach the confidentiality agreement in terms of clause 16.3

Notwithstanding anything to the contrary contained in this agreement **Canal Freight & Couriers** shall be entitled at any time to terminate this Agreement on giving 24 (twenty four) hour's written notice to the **Sub Contractor**.

19. JURISDICTION AND LEGAL COST

In the event of **Canal Freight & Couriers** instructing its attorneys to take measures for the enforcement of any of **Canal Freight & Couriers**'s rights under this Agreement, the **Sub Contractor** shall pay to **Canal Freight & Couriers** such collection charges and other legal costs, on an attorney and own client basis, as shall be lawfully charged by such attorneys to **Canal Freight & Couriers**, on demand made therefore by **Canal Freight & Couriers**.

20. DISPUTE RESOLUTION AND ARBITRATION

- 20.1 **Canal Freight & Couriers** and the **Sub Contractor** shall use their best efforts to negotiate in good faith and settle amicably any dispute or deadlock that may arise out of or relate to this Agreement or a breach thereof. If any such dispute cannot be settled amicably through ordinary negotiations by appropriate representatives of **Canal Freight & Couriers** and the **Sub Contractor**, the dispute shall be referred to the Chief Executive Officers of **Canal Freight & Couriers** and the **Sub Contractor** who shall meet (either personally or through each of their respective nominees) in order to attempt to resolve the dispute. If any such meeting fails to result in a settlement, the matter at the election of either party may be submitted for resolution by arbitration pursuant to clause 20.3 below.
- 20.2 Subject to the provisions of clause 20.1 above, any dispute between the parties in regard to:-
- 20.2.1 the interpretation of;
 - 20.2.2 the effect of;
 - 20.2.3 the party's respective rights and obligations under;
 - 20.2.4 a breach of;
 - 20.2.5 any matter arising out of,
- this Agreement shall be decided by arbitration in the manner set out in this clause.
- 20.3 The said arbitration shall be held subject to the provisions of this clause:-
- 20.3.1 at Johannesburg;
 - 20.3.2 informally;
 - 20.3.3 otherwise in accordance with the provisions of the Arbitration Act No. 42 of 1965, as amended,
- it being the intention that if possible it shall be held and concluded within 21 (twenty one) working days after it has been demanded.
- 20.4 The arbitrator shall be, if the question in issue is:-
- 20.4.1 primarily an accounting matter, an independent accountant with no less than 10 (ten) years standing agreed upon between the parties;
 - 20.4.2 primarily a legal matter, a practising senior counsel with no less than 10 (ten) years standing agreed upon between the parties;
 - 20.4.3 any other matter, an independent person agreed upon between the parties.
- 20.5 If the parties cannot agree upon a particular arbitrator in terms of 20.4 above within 7 (seven) working days after the arbitration has been demanded, the nomination in terms of clause 20.4.1 to 20.4.3, as the case may be, shall be made by the President of the Law Society of the Northern Provinces within 7 (seven) days after the parties have failed to so agree.
- 20.6 Subject to the parties right of appeal set out below, the parties irrevocably agree that the decision in these arbitration proceedings:-
- 20.6.1 shall be binding on them;
 - 20.6.2 shall be carried into effect;
 - 20.6.3 may be made an order of any court of competent jurisdiction.
- 20.7 Any Party to the arbitration may appeal the decision of the arbitrator in accordance with the rules of the Arbitration Act No. 42 of 1965, as amended by a panel of 3 (three) arbitrators appointed in terms of the Act within a period of 21 (twenty one) days after the arbitrator's ruling has been handed down by giving written notice to that effect to the other Party or Parties to the arbitration.

21. DOMICILIUM CITANDI ET EXECUTANDI

- 21.1 The Parties choose as their *domicilia citandi et executandi* for all purposes under this agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses :
- 21.1.1 **Canal Freight & Couriers**
 - Physical: 5 Carolina street, Verwoerdpark, Alberton, 1449
 - Postal: 5 Carolina street, Verwoerdpark, Alberton, 1449
 - Facsimile: 088 011 902 7562
 - Attention: The Member;
 - 21.1.2 The **Sub Contractor** as stipulated in Annexure A.

- 21.2 Subject to clause 21.4, any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if in writing but it shall be competent to give notice by telefax.
- 21.3 Either Party may by notice to the other Party change the physical address chosen as its *domicilium citandi et executandi* to another physical address where postal delivery occurs in the Republic of South Africa or its postal address or its telefax number, provided that the change shall become effective on the 14th (fourteenth) Business Day from the deemed receipt of the notice by the other Party.
- 21.4 Any notice to a Party:-
- 21.4.1 sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at an address chosen as its *domicilium citandi et executandi* to which post is delivered shall be deemed to have been received on the 14th(fourteenth) Business Day after posting (unless the contrary is proved); or
- 21.4.2 delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; and
- 21.4.3 sent by telefax to its chosen telefax number stipulated in clause 21.1, shall be deemed to have been received on the date of despatch (unless the contrary is proved).
- 21.5 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.
- 21.6 The provisions of this clause 21 shall not apply to routine communications between the Parties in the ordinary course of business, or to the performance of their day to day obligations in terms of this Agreement.

22. PASS THROUGH CLAUSE

- 22.1 The agreement between the Consignor and **Canal Freight & Couriers** contains duties and obligations, including the duty by **Canal Freight & Couriers** to comply with certain policies and procedures, legislation, indemnities and liabilities which will have a financial implication on **Canal Freight & Couriers** .
- 22.2 It is recorded that **Canal Freight & Couriers** in terms of this Agreement subcontracted and delegated some of its duties and obligations flowing from the Consignor agreements and the **Sub Contractor** hereby undertakes and warrants that it will at all times comply with the same duties and obligations that **Canal Freight & Couriers** would have had to comply with but for this Agreement. The **Sub Contractor** shall accordingly render such Services, comply with such duties and obligations and be liable for such liabilities imposed on **Canal Freight & Couriers** in terms the Consignor agreements or by common law, for which the **Sub Contractor** is liable for in terms of this Agreement, as if it stepped into the shoes of **Canal Freight & Couriers** .
- 22.3 If **Canal Freight & Couriers** held liable for any loss, damage, liability, cost, charge, expense or payment flowing directly or indirectly from the rendering of the Services, then the amount invoiced or other amount demanded by the Consignor shall be deemed to be liquid damages and the **Sub Contractor** shall repay any such amount to **Canal Freight & Couriers** on demand. Notwithstanding anything to the contrary contained in this Agreement **Canal Freight & Couriers** , shall be entitled to apply set-off in respect of same. The **Sub Contractor** hereby indemnifies and holds **Canal Freight & Couriers** harmless in irrevocably and *reum suam* in respect of any such loss, damage, liability, cost, charge or expense.
- 22.4 The **Sub Contractor** recognises that its failure to meet an agreed service level may have a material adverse impact on the business and operations of **Canal Freight & Couriers** and/or the Consignor and that the damage from the **Sub Contractor's** failure to meet any service level is not susceptible to precise determination. Accordingly, in the event that the **Sub Contractor** fails to meet a service level, then in addition to any non-monetary remedies available to **Canal Freight & Couriers** , the Consignor agreements may permit the Consignors in lieu of pursuing other monetary remedies to recover as its sole and exclusive monetary remedy for such failure to meet a service level a penalty determined by reference to Consignor agreements as liquidated damages.
- 22.5 To the extent that:
- 22.5.1 additional duties, obligations and/or liabilities; and/or
- 22.5.2 similar duties, obligations and/or liabilities:
- 22.5.2.1 containing higher levels of care; or
- 22.5.2.2 which are more onerous on the **Sub Contractor**,
- 22.5.3 exist in the Consignor agreements such duties, obligations and liabilities shall *mutates mutandis* be incorporated herein and the **Sub Contractor** shall, to the maximum extent practically possible, be bound thereto.
- 22.6 The **Sub Contractor** is deemed to be aware of the content of all copies of the policies and procedures contained in the Consignor agreements.

23. ASSIGNMENT CESSION AND SUB-CONTRACTING

- 23.1 **Canal Freight & Couriers** shall be entitled to cede, delegate, assign or transfer any of its rights and/or obligations in terms of this Agreement, or any part thereof. **Canal Freight & Couriers** shall further be entitled to sub-contract any or all its obligations in terms of this Agreement to any third Party without having to obtain the consent of the **Sub Contractor**.
- 23.2 The **Sub Contractor** shall not be entitled to cede, delegate, assign or transfer any of its rights and/or obligations in terms of this Agreement to any person without the prior written consent of **Canal Freight & Couriers**, which consent **Canal Freight & Couriers** may not unreasonably withhold.

24. WARRANTY OF AUTHORITY

Each of the persons signing on behalf of the Parties to this agreement warrants that each Party has the full power, authority and legal right to execute, deliver and perform the obligations imposed on it in terms of this agreement and will be duly authorised by all the necessary action of the Party concerned and its officers and officials and that any obligations arising from this agreement are valid and binding on the Party concerned.

25. GENERAL

- 25.1 This Agreement constitutes the whole of the agreement between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on any of the Parties.
- 25.2 No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of this Agreement will be of any force or effect unless in writing and signed by the Parties.
- 25.3 No waiver of any of the terms and conditions of this Agreement will be binding and effectual for any purpose unless in writing and signed by the Party giving the same. Any such waiver will be effective only in the specific instance and for the purpose given. Failure or delay on the part of any Party in exercising any right, power or privilege hereunder will not 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.
- 25.4 All provisions and the various clauses of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this Agreement which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions and clauses of this Agreement shall remain of full force and effect. The Parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.
- 25.5 Neither this Agreement nor any part, share or interest herein nor any rights or obligations hereunder may be ceded, delegated or assigned by any Party without the prior written consent of the other Parties, save as otherwise provided herein.
- 25.6 This Agreement may be executed in counterparts, each of which shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.

26. INTERPRETATION

The headings of the clauses in this agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this agreement nor any clause hereof. Unless a contrary intention clearly appears:-

26.1 Words importing:-

- 26.1.1 any one gender include the other two genders;
- 26.1.2 the singular include the plural and vice versa; and
- 26.1.3 natural persons include created entities (corporate or unincorporated) and the state and vice versa;

26.2 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:-

- 26.2.1 "Agreement" means this Agreement together with all annexures and schedules hereto and all documents incorporated herein by reference as they may be from time to time;
- 26.2.2 "Business Day" means any day other than a Saturday, Sunday or public holiday officially recognised as such in the Republic of South Africa;
- 26.2.3 "**Sub Contractor**" means the service provider identified on the cover page of this Agreement, which performs the Services on the terms and conditions set out in this Agreement;
- 26.2.4 "Commencement Date" means the date identified as such in Annexure A hereto, notwithstanding the Signature Date;
- 26.2.5 "Consignor" means Canal Freight & Couriers' client on whose behalf the Product(s) are transported as per the Order;
- 26.2.6 "Consignee" means a third Party who purchases the Product(s) from the Consignor and to whom the **Sub Contractor** delivers the Product(s) in terms of this Agreement;
- 26.2.7 "Delivery" means each individual delivery trip made by the **Sub Contractor** in terms of this Agreement, in the course of it rendering the Services;

- 26.2.8 "Delivery Note" means a document produced by the **Sub Contractor** in writing or by electronic means, as contemplated by clause 5.2.3 hereof;
- 26.2.9 "Drivers" means all licensed and authorised drivers of the Vehicles employed by the **Sub Contractor** from time to time and a reference to "Driver" shall be a reference to any one of them;
- 26.2.10 "HSSE" means health, safety, security and environment;
- 26.2.11 "Loading Point" means the depot or terminal from which the Product(s) to be transported in terms of this Agreement are to be collected and loaded by the **Sub Contractor**, as specified by **Canal Freight & Couriers** in the Order, which may be amended by **Canal Freight & Couriers** from time to time;
- 26.2.12 "National Road Traffic Act" means the National Road Traffic Act No. 93 of 1996 as amended from time to time, or any successor legislation thereto which comes into force after the signature date, and any regulations promulgated thereunder from time to time;
- 26.2.13 "Occupational Health and Safety Act" means the Occupational Health and Safety Act No. 85 of 1993 as amended from time to time, or any successor legislation thereto which comes into force after the signature date, and any regulations promulgated thereunder from time to time;
- 26.2.14 "Off-Loading Point" means the depot or terminal at which the Product(s) are to be off-loaded and delivered by the **Sub Contractor** to the Consignee, as specified by **Canal Freight & Couriers** in the Order, which may be amended by **Canal Freight & Couriers** and notified to the **Sub Contractor** in writing from time to time;
- 26.2.15 "Operating and HSSE Standards" means the operating and health, safety, environment and security standards and information as stipulated by Canal Freight & Couriers and the Consignor from time to time, which standards and information may be amended, updated or substituted by **Canal Freight & Couriers** from time to time;
- 26.2.16 "Order" means the orders furnished to the **Sub Contractor** by **Canal Freight & Couriers** herein in terms of which the **Sub Contractor** will render the Services;
- 26.2.17 "Parties" means **Canal Freight & Couriers** and the **Sub Contractor** and "Party" shall mean either one of them, as the context may indicate;
- 26.2.18 "Product(s)" means the product(s) as stipulated in the Order, and such other products as may be agreed by the Parties from time to time, and "Product(s)" shall mean any one of them, as indicated by the context;
- 26.2.19 "Rates" means the transport rate/s payable by **Canal Freight & Couriers** to the **Sub Contractor** from time to time in terms of this Agreement;
- 26.2.20 "Responsible Supervisor" means the **Canal Freight & Couriers** and/or Consignor employee appointed by **Canal Freight & Couriers** and/or the Consignor as the responsible individual(s) for supervising the activities of the **Sub Contractor** at the Loading Point, which appointment may vary from time to time in the sole discretion of **Canal Freight & Couriers** ;
- 26.2.21 "Signature Date" means the date upon which this agreement is signed by the last Party so to sign;
- 26.2.22 "Tachocharts" means the charts that record the Vehicle's movements and utilisation, as described further in clause 5.2.2 hereof, which charts are produced by the Tachometer;
- 26.2.23 "Tachometer" means the monitoring equipment purchased and installed in the Vehicle by the **Sub Contractor**, which updates the Vehicle's movements and utilisation onto Tachocharts;
- 26.2.24 "Services" means the *ad hoc* conveyance of the Product(s) by the **Sub Contractor** (sub-contracted from Canal Freight & Couriers) for the **Consignor**, on the terms and conditions of this Agreement from time to time;
- 26.2.25 "**Canal Freight & Couriers** " means Canal Freight & Couriers Supply Chain (Proprietary) Limited (Registration Number 2000/025471/07);
- 26.2.26 "Vehicles" means the vehicles of the **Sub Contractor** used to transport the Product(s), together with all accessory equipment affixed thereto, which shall include, but not be limited to, the fuel tanks, Tachometers, Tachocharts, pipes and pumps which are used in the course of loading, transporting and off-loading the Product(s), and "Vehicle" shall mean any one of them inter alia as set out in Annexure C;
- 26.2.27 "Vehicle Loading Note" means the note to be completed by the **Sub Contractor** at the Loading Point, as contemplated by clause 5.1.3 hereof;
- 26.2.28 "Volumes" means the respective quantities of the respective Product(s) transported by the **Sub Contractor** in terms of this Agreement, measured in litres, and recorded in the Order and/or the Delivery Note in respect of each Delivery;
- 26.3 any reference to an enactment is to that enactment as at the signature date and as amended or re-enacted from time to time;
- 26.4 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement;
- 26.5 when any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
- 26.6 should the day for the performance of any payment obligation in terms of this Agreement fall on a Saturday, Sunday or public holiday, then such obligation shall be performed on the next date which is not a Saturday, Sunday or public holiday;
- 26.7 where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;

- 26.8 expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own conflicting definitions;
- 26.9 reference to day/s, month/s or year/s shall be construed as Gregorian calendar day/s, month/s or year/s;
- 26.10 the use of any expression in this Agreement covering a process available under South African law such as a winding-up (without limitation eiusdem generis) shall, if any of the Parties to this agreement is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such defined jurisdiction;
- 26.11 this Agreement shall be executed in the English language. Translations in any other language may be made for convenience purposes, but such translations shall in no event limit, alter, interpret, define or amend the contents of the English version of this Agreement;
- 26.12 the provisions of this Agreement and its implementation shall be governed by the laws of the Republic of South Africa, as they apply from time to time;
- 26.13 where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause;
- 26.14 this Agreement shall be binding on and enforceable by the estates, heirs, executors, administrators, trustees, permitted assigns or liquidators of the Parties as fully and effectually as if they had signed this Agreement in the first instance and reference to either Party shall be deemed to include such Party's estate, heirs, executors, administrators, trustees, permitted assigns or liquidators, as the case may be;
- 26.15 prior drafts of this Agreement shall not be admissible in any proceedings as evidence of any matter relating to any negotiations preceding the date of signature of this Agreement;
- 26.16 a reference to a document includes an amendment or supplement to or replacement or notation of that document; the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provided for, 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; and
- 26.17 the rule of construction that the contract shall be interpreted against the Party responsible for the drafting or preparation of the agreement, shall not apply.
- 26.18 the rule of construction that the contract shall be interpreted against the Party responsible for the drafting or preparation of the agreement, shall not apply.

