

# Standard Conditions of Carriage POLICY

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## Transnet Freight Rail Conditions of Carriage

There are special Service Conditions for the packing, loading, acceptance, transport and delivery of dangerous goods and/or, hazardous goods, explosives, perishable goods and abnormal loads carried in rail wagons or freight containers. Transnet Freight Rail must be told in advance if a Consignor wishes it to carry any of these items in order that the special Service Conditions can be complied with.

Please take special note of Clause 24, 25 & 26, which relates to exclusion of liability, optional insurance and provides that insurance claims must be lodged within 180 days.

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## 1. Information

1.1 If, prior to the transport of any traffic, the customer requires any clarification on any of the terms of these Standard Conditions of Carriage or more information, please telephone the contact person named in or to be set out in a Schedule. The Customer must note that any such clarification is for information only.

## 2. Definitions and interpretation

### 2.1 Definitions

In these Transnet Freight Rail Standard Conditions of Carriage (including the recitals if any), unless the contrary intention appears, the following words and expressions shall have the following meanings when such words and expressions are used with a capitalised first letter and cognate expressions shall have corresponding meanings, except where the context otherwise requires:

**2.1.1 "Additional Costs"** -means those costs arising additional to the railage price and charges for Transport payable by the Customer some of which may be determined or included in a Schedule and if not, as reasonably determined by Transnet Freight Rail;

**2.1.2 "Agreement"** -means these Transnet Freight Rail Standard Conditions of Carriage, together with Schedules, Service Level Agreement/s, if any and incorporating these Service Conditions for specific types of goods;

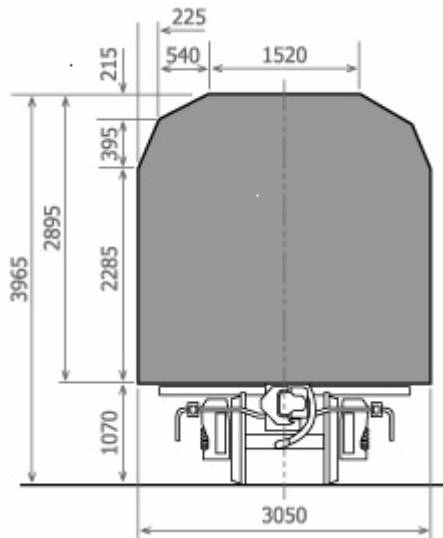
**2.1.3 "Available Capacity"** - means the availability of locomotives, rail wagons of the type required by the Customer as set out or to be set out in a Schedule and Transnet Freight Rail's other resources which, without limitation, includes Transnet Freight Rail's personnel for Transport of the Goods;

**2.1.4 "Abnormal freight container"** - means a freight container or tank container which has dimensions exceeding the standard size determined by the International Standards Organisation, or in the case of an open top container, where the load protrudes above the freight container, whether of standard size or not.

**2.1.5 "Abnormal loads"** - in relation to those carried by rail, means goods having outside dimensions which exceed those on the load profile diagram below, and/or weigh more than eighteen metric tons per package or unit. In relation to goods to be carried by road, loads are abnormal if they exceed the dimensions of a standard freight

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container and/or the axle mass load limit is exceeded, and/or the gross mass exceeds 24 000 kg.



**2.1.6 "Best Industry Practice"** -means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced supplier or professional seeking in good faith to comply with its contractual obligations, complying with all guideline documents, codes of practice and Laws and engaged in the same type of undertaking or industry and under the same or similar circumstances and conditions as those envisaged by these Transnet Freight Rail Standard Conditions of Carriage in accordance with world best class practices;

**2.1.7 "Business Day"** -means any Day other than a Saturday, Sunday or recognised public holiday in South Africa;

**2.1.8 "Business"** - means all and any business undertaken, including any advice, information or service provided, whether gratuitously or not, by Transnet Freight Rail.

**2.1.9 "Claim"** -means any claim, demand, proceedings or liability;

**2.1.10 "Combined Consignment Note & Wagon Label/ Release Pro Forma"** - means the notification from the Customer to Transnet Freight Rail in the form agreed between the Parties stipulated by Transnet Freight Rail containing;

**2.1.10.1** the wagon number of each rail wagon identifying the rail wagon;

**2.1.10.2** the total number of rail wagons when loaded;

**2.1.10.3** the mass of each loaded rail wagon;

**2.1.10.4** the Contract Number and the Consignment Number allocated to the Customer that the rail wagon has been loaded or off-loaded, is ready for collection by Transnet Freight Rail and all requirements in terms of Best Industry Practice and of any Relevant Authority with which the Customer is obliged to comply whether in terms of these Transnet Freight Rail Standard Conditions of Carriage or otherwise have been complied with;

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**2.1.11 "Consignment Number"** - means the system generated number allocated to a particular consignment for Transport requested by the Customer and approved and confirmed by Transnet Freight Rail;

**2.1.12 "Contract Number"** - means the number set out or to be set out in a Schedule;

**2.1.13 "Customer"** - means a party requesting or utilizing the services of Transnet Freight Rail;

**2.1.14 "Consignment"** - means goods conveyed under a single transport document in one or more road vehicles or rail wagons in relation to such vehicle or wagonloads, or goods conveyed in one freight container in relation to containerised goods.

**2.1.15 "Consignee"** - means the person nominated by the consignor to take delivery of the goods, and in the absence of any such nomination means the person representing himself, and reasonably accepted by Transnet Freight Rail, to be duly authorised to accept delivery on behalf of the consignee.

**2.1.16 "Consignor"** - means any person requesting Transnet Freight Rail to convey the consignment, including his agent, and whose signature appears on the Transport Documents issued by Transnet Freight Rail and completed by the consignor for a particular consignment. In Electronic Data Interchange transactions, and other instances where normal transport documents are not issued, the consignor is the person who requests Transnet Freight Rail to convey goods.

**2.1.17 "Dangerous Goods"** - means Goods, including those Goods defined as Hazardous Substances, which have the potential to cause harm to persons, property or the environment or the potential to cause pollution or degradation of the environment as contemplated in the National Environmental Management Act including such goods defined as such by the South African Bureau of Standards 0228 and the International Maritime Dangerous Goods ("*IMDG*") Code.;

**2.1.18 "Day"** - means a calendar day;

**2.1.19 "Defect"** - means any defect or deficiency, including latent defects, howsoever arising including any defect or deficiency in any Goods causing any damage, destruction, Loss or other effect arising directly or indirectly from any such defect;

**2.1.20 "Explosives"** - means the materials listed in the Explosives Act No 26 of 1956, including any amendment thereto or replacing legislation, and South African Bureau of Standards 0228 and the International Maritime Dangerous Goods ("*IMDG*") Code.

**2.1.21 "Free Time"** - means either period, set out in or to be set out in a Schedule, calculated from the time when:

**2.1.21.1** the rail wagon is Placed at the Point of Placing;

**2.1.21.2** or from the time when the rail wagon is in a position to be Placed but the Point of Placing cannot accommodate the rail wagon,

**2.1.21.2.1** and is calculated without taking into account Non-Working Days unless provided otherwise in or to be set out in a Schedule;

**2.1.22 "Force Majeure"** -means the occurrence after the Transport Agreement (Schedule) comes into effect of:

**2.1.22.1** an event the occurrence of which could not have been reasonably foreseen at the time the Transport Agreement (Schedule) came into effect; and

**2.1.22.2** includes, but is not limited to, war, whether declared or not, revolution, riot, strikes or other protestor action which strike(s) or protestor action are part of or directly related to any more widespread or general strike or other industrial action insurrection, civil commotion, invasion, armed conflict, hostile act of foreign enemy, act of terrorism, sabotage, radiation or chemical contamination, ionising radiation, Act of God, plague or other serious epidemic; and which causes either of the Parties to be unable to comply with all or a material part of the Parties' obligations or to exercise all or a material part of the Parties' rights under these Transnet Freight Rail Standard Conditions of Carriage.

**2.1.23 "Freight Container"** -means any article of transport equipment constructed in accordance with the specifications of the International Standards Organisation designed for multimodal transport, and the term includes an abnormal freight container.

**2.1.24 Global Train Plan"**- means Transnet Freight Rail's

- planned Transport Annually,
- Quarterly, Monthly and Weekly;

**2.1.25 "Goods"**-means any article, commodity, product or raw material tendered to or coming under the control of Transnet Freight Rail on behalf of any consignor or consignee, which Transnet Freight Rail has agreed to transport and shall include any container, transportable tank, bolster, pallet, package, tarpaulin or other covering not supplied by or on behalf of Transnet Freight Rail as well as any animal, whether living or dead, and dangerous goods, explosives and hazardous substances.

**2.1.26 "Hand Over Point"** - means an agreed place at a siding, station, exchange yard or an area in the Port or a road address in the case of containers on a road vehicle trailer where the Customer will Place empty or loaded wagons/containers for collection by Transnet Freight Rail;

**2.1.27 "Hazardous Substance"** - any Goods that have been designated as a Group I, II, III or IV hazardous substance or a grouped hazardous substance by the relevant minister in terms of the Hazardous Substances Act;

**2.1.28 "Laws"** - means all statutes, ordinances, regulations, proclamations, rules and other acts having the force of law of any authority having jurisdiction and includes the common law;

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**2.1.29 "Loading Profile"**- means the procedures set out or to be set out in a Schedule setting out the manner in which the Goods must be loaded and off-loaded;

**2.1.30 "Loss"** - means any loss, damage, costs, charges, damages or expenses (including legal and other professional charges and expenses) but excludes all consequential and/or indirect damages unless stated otherwise in these Transnet Freight Rail Standard Conditions of Carriage;

**2.1.31 "Mass Measuring Fee"** - means the fee set out or to be set out in a Schedule to the Transnet Freight Rail Standard Conditions of Carriage;

**2.1.32 "Month"** - means a calendar month calculated from Day to Day;

**2.1.33 "Non-Working Days"** - means any Day that the Customer has specified as a non-working day

**2.1.34 "Party/ies"** -means any one of or collectively Transnet Freight Rail and the Customer;

**2.1.35 "Perishable goods"** - means any goods which, by their nature, rot, wither or deteriorate over a period of time.

**2.1.36 "Placed"** -means that rail wagons or road vehicle trailers with containers, empty or loaded, have been Placed at the Point of Placing for loading, or off-loading and the locomotive/road vehicle has been uncoupled;

**2.1.37 "Point of Placing"** -means an agreed place at a siding, station, exchange yard or an area in the Port or a road address in the case of containers on a road vehicle trailer where Transnet Freight Rail will Place empty or loaded wagons/containers for the Customer to load or off-load rail wagons/containers;

**2.1.38 "Port"** -means the land at a South African Harbour;

**2.1.39 "Prime Rate"** -means the nominal, annual, compounded monthly in arrear prime overdraft rate of interest from time to time publicly quoted as such by Standard Bank of South Africa Limited calculated on a 365 Day factor, irrespective of whether or not the year is a leap year. If such rate quoted by the Standard Bank of South Africa Limited at any time exceeded by the inter-bank re-purchase rate as quoted by the South African Reserve Bank ("**the Repo Rate**") then the Prime Rate shall for so long as it is at any time exceeded by the Repo Rate, be deemed to be equal to the Repo Rate. A certificate issued under the hand of any manager (whose authority and appointment it shall not be necessary to prove) of the Standard Bank of South Africa Limited as to the Prime Rate or the Repo Rate from time to time shall, in the absence of manifest error, be final and binding on the Parties;

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**2.1.40 "Producer Price Index" or "PPI"** -means the producer price index for all expenditure groups: metropolitan areas (Base 2000 = 100) as published from time to time by Statistics SA (Statistical Release PO 141.1) provided that if:

**2.1.40.1** such index should cease to be published; or

**2.1.40.2** the basis of the calculation of such index has changed and pursuant to such change either of the Parties has notified the other that it is not satisfied therewith; or

**2.1.40.3** The Parties agree that, due to a change in circumstances, the index is no longer representative, or (in circumstances where the Parties are unable to reach such agreement) where such fact is confirmed by an independent actuary in the Republic of South Africa (who shall act as expert and not as arbitrator) appointed on the request of either of the Parties for such purpose by the President for the time being of the Actuarial Society of South Africa, whose determination shall be final and binding upon the Parties, then, in any such circumstances, Transnet Freight Rail will use such official information or index as may be available and acceptable to the Parties. Failing such availability or acceptability, Transnet Freight Rail shall use an index determined as fair and reasonable by a majority decision of a panel of 3 independent actuaries in the Republic of South Africa appointed for such purpose by the President for the time being of the Actuarial Society of South Africa. The determination of such actuaries shall be binding upon the Parties. Such actuaries shall act as experts and not as arbitrators. Any determination made by the majority of such panel as to the date from which any revised index shall take effect and liability for the cost of determination of the index by the panel shall be binding upon the Parties and the costs shall be borne equally;

**2.1.41 "Quarter"** - means a period of 3 consecutive months;

**2.1.42 "Rand" or "R"** -means the lawful currency of the Republic of South Africa from time to time;

**2.1.43 "Relevant Authority"** - means the Republic, any ministry, department, agency, authority or body of the Republic or any other public authority, body, entity or person having jurisdiction under the Laws of the Republic over any matter arising from or in any way connected with the Transport of the Goods;

**2.1.44 "Republic"** -means the Republic of South Africa;

**2.1.45 "Rolling Forecast"** - means the annual, Quarterly, Monthly or weekly forecast of Tonnes required to be Transported by the Customer and which is updated by the Customer Quarterly, Monthly or weekly as the case may be;

**2.1.46 "SARA Rate"** -means the monthly exchange rate of the Southern African Railways Association Rate (SARA Rate) applied by all SARA members when a customer has been quoted rates in foreign currency, which needs to be converted to Rand and vice versa for invoicing purposes;

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**2.1.47 "Schedule"** - means an Offer to Enter Into a Transport Agreement or a Transport Agreement governed by these Standard Conditions of Carriage, and recording terms of these Standard Conditions of Carriage required to be recorded in a schedule;

**2.1.48 "Service Conditions"** - means the special instructions available from Transnet Freight Rail and/or any relevant Competent Authority requirement as stipulated by applicable legislation upon request relating to loading methods for general, dangerous and/or hazardous goods, and the packaging, acceptance, transport and delivery of those goods, when conveyed in freight containers, rail wagons and road vehicles.

**2.1.49 "Terms"** - means the terms of this Transnet Freight Rail Standard Conditions of Carriage;

**2.1.50 "Transport"** - means the conveyance of Goods by rail from the Point of Placing to the Hand over Point and vice versa;

**2.1.51 "Transnet Freight Rail"** - means a Division of Transnet Limited.

**2.1.52 "Transport Documents"** - means a combined consignment note and wagon label, freight transit order, driver's instruction for road vehicles, container terminal order, container list, packing declaration for dangerous goods, transport emergency cards ("*tremcards*") and the communication sent to Transnet Freight Rail in relation to Electronic Data Interchange transactions.

**2.1.53 "Value Added Tax" or "VAT"** - means Value Added Tax in terms of the Value Added Tax Act (as amended) and all amounts and prices are exclusive of such Value Added Tax;

**2.1.54 "Verified Mass Measuring Device"** - means a mass measuring device that has been verified and approved by an SABS certificate Officer or Inspector in accordance with the provisions of the Trade Metrology Act;

**2.1.55 "Writing"** - means any handwritten, typewritten, or printed communication, including any facsimile transmission or electronic mail (email); and Written has a corresponding meaning;

**2.1.56 "Wagon/Containers Delay Charges"** - means charges set out or to be set out in a Schedule which will be raised by Transnet Freight Rail and calculated from the expiry of the Free Time until the time of collection of the rail wagons/containers or the time that Transnet Freight Rail are notified by the Customer that the rail wagons/containers are ready to be collected, or where Wagons are delayed or detained in terms of **clause 18.11.2.**

**2.1.57 The conditions of this clause 2.1.57 will apply effective from 1 April 2009.**  
For purposes of clauses 2.1.57.1 to 2.1.57.7 below, the following terms shall bear meanings assigned to them below:

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2.1.57.1“**Escalation**” means an escalation in accordance with this clause 2.1.57 [*price escalations*] and “**Escalate**” and “**Escalated**” shall have corresponding meanings;

2.1.57.2“**Law**” means the common law; all applicable statutes, statutory instruments, proclamations, by-laws, regulations, orders, rules and other subsidiary legislation, treaties, directives and codes of practice having the force of law in South Africa and all localities within which Transnet Freight Rail operates; all other judicial or other decisions, determinations, notifications, rulings, findings and all similar directives that are binding on or applicable to Transnet Freight Rail; and any levies, charges, surcharges, imposts, taxes, fees and the like introduced, levied or imposed by any competent authority on Transnet Freight Rail and which are wholly or partly attributable and/or which relate directly or indirectly to Transnet Freight Rail's operations whether or not in connection with general freight;

2.1.57.3“**Projected Expenditure**” means all estimated costs and expenditure of whatsoever nature which are projected to be incurred by or on behalf of Transnet Freight Rail in terms of this Agreement and more generally in connection with general freight, including, without limitation, all estimated operating and capital expenditure of Transnet Freight Rail and all expenditure incurred or to be incurred in respect of the loading, transport and unloading of general freight;

2.1.57.4“**Projected Revenue**” means the aggregate of all revenue projected to be earned by Transnet Freight Rail in terms of this Agreement and more generally in respect of the loading, transport and unloading of general freight;

2.1.57.5“**Review Event**” means any of the following events or circumstance, or combination of such events or circumstances:

2.1.57.5.1 decreases or increases in the cost to Transnet Freight Rail of diesel, electricity, steel, labour;

2.1.57.5.2 exchange rate fluctuations which cannot be hedged effectively by Transnet Freight Rail;

2.1.57.5.3 capital cost decreases, increases or overruns which are due to unforeseen circumstances or circumstances which Transnet Freight Rail cannot reasonably control, for example, by placing orders early or entering into contracts as far ahead of time as would be reasonable in the circumstances in order to lock in costs;

2.1.57.5.4 the imposition, expansion, increase, extension or renewal of any trade or other sanctions imposed on South Africa; and

2.1.57.5.5 the coming into effect after the date of commencement of this Agreement of any Law, or any amendment or variation to any Law (other than any Law that on or before the commencement of this Agreement, has been published in a bill or as an act but has not been brought into effect); which

2.1.57.5.6 occur at any time during this Agreement; and

2.1.57.5.7 the occurrence of which is beyond the reasonable control of Transnet Freight Rail, and which could not have been avoided by Transnet Freight Rail by taking steps which might reasonably be expected of Transnet Freight Rail, acting as a reasonable and prudent rail transporter; and

2.1.57.5.8 which has or have the consequence that, as at the date of measurement, an adjustment to the railage price and other charges set out in the Schedule is required in order to take account of an increase or decrease in Project Expenditure or an increase or decrease in Projected Revenue.

2.1.57.6 If a Review Event occurs, we shall be entitled to notify you in writing, at any time after the occurrence of the Review Event, that such Review Event has occurred. Such notification (“**the Review Notice**”) shall contain a detailed description of the Review Event claimed by Transnet Freight Rail, as well as the railage price and, to the extent applicable, any other affected charges (including, if applicable, Additional Costs) as adjusted to take account of the Review Event. Such adjusted railage price, and, if applicable, charges, shall become applicable and effective in the month following the month in which the Review Notice is given to you.

2.1.57.7 Any adjustment of the prevailing railage price and, if applicable, any charges as set out in the Review Notice shall be:

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2.1.57.7.1 calculated with reference to the prevailing railage prices and charges (comprising the base date prices as subsequently escalated in terms of this clause 2.1.57); and  
2.1.57.7.2 calculated so as to take full account of the impact of the Review Event on the Projected Expenditure or Projected Revenue, and on the basis that we shall, after such calculation, be in no better and no worse position than we would have been, had the Review Event not occurred.

## 2.2 Interpretation

2.2.1 Unless the contrary intention appears, words importing:

2.2.1.1 the singular shall also include the plural and vice versa;

2.2.1.2 one gender shall also include the others; and

2.2.1.3 natural persons shall include artificial persons whether incorporated or not.

2.2.2 Headings of the clauses of these Transnet Freight Rail Standard Conditions of Carriage are for convenience only and shall not affect the interpretation or construction of these Transnet Freight Rail Standard Conditions of Carriage nor be deemed to be a part of these Transnet Freight Rail Standard Conditions of Carriage.

2.2.3 Except where the context requires otherwise, references to clauses, sub-clauses, sections, paragraphs, Schedules and annexures are references to clauses, sections, paragraphs, Schedules and annexures of these Transnet Freight Rail Standard Conditions of Carriage.

2.2.4 Reference to any person shall include the legal successors and permitted assigns of such person irrespective of whether such succession or assignment occurred before or after the coming into effect of these Transnet Freight Rail Standard Conditions of Carriage.

2.2.5 Reference in these Transnet Freight Rail Standard Conditions of Carriage to a party in respect of any obligations or liabilities of that party, shall, unless expressly otherwise provided, include agents, employees and authorised representatives of that party and its permitted subcontractors.

2.2.6 References to agreements, documents or other instruments include (subject to any relevant approvals) a reference to that agreement, document or instrument as amended, supplemented, substituted, ceded or assigned.

2.2.7 References to any statute, statutory instrument or accounting standard or any of their provisions is to be construed as a reference to that statute, statutory instrument or accounting standard or such provision as the same may have been or may from time to time after these Transnet Freight Rail Standard Conditions of Carriage comes into effect be amended, replaced or re-enacted, unless specified otherwise.

2.2.8 References to any amount of money to be paid by any party shall be deemed to be exclusive of VAT and VAT is payable at the applicable rate in respect of the goods or services to which the payment relates unless expressly stated to the contrary in these Transnet Freight Rail Standard Conditions of Carriage. The party obliged to make the payment shall add the amount of any applicable VAT to the payment.

**2.2.9** Terms such as "including", "includes" and "included" when following a general statement or terms mean "including but not limited to".

**2.2.10** 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.

**2.2.11** Expressions defined in these Transnet Freight Rail Standard Conditions of Carriage shall bear the same meanings in Schedules or annexures to these Transnet Freight Rail Standard Conditions of Carriage where such Schedules or annexures do not contain their own definitions.

**2.2.12** Where any term is defined within the context of any particular clause in these Transnet Freight Rail Standard Conditions of Carriage 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 these Transnet Freight Rail Standard Conditions of Carriage, notwithstanding that that term has not been defined in this interpretation clause.

**2.2.13** Terms, acronyms abbreviations and phrases not defined in these Transnet Freight Rail Standard Conditions of Carriage but known or used in the railway industry shall be given the meaning given to them in that industry.

**2.2.14** When any number of Days is prescribed in these Transnet Freight Rail Standard Conditions of Carriage the same shall be calculated by excluding the first Day and including the last Day, unless the last Day is not a Business Day. Where the last Day is not a Business Day, the time shall be calculated by excluding the first Day, excluding the Day that is not a Business Day and including the next Business Day.

## **2.3 English Language**

All notices, correspondence, documentation or communications of whatsoever nature, drawings, reports, certificates and specifications which are to be given, submitted or prepared under or in connection with these Transnet Freight Rail Standard Conditions of Carriage shall be in the English language.

## **2.4 Applicability of these Standard Conditions of Carriage & Other Provisions**

**2.4.1** Business is undertaken by Transnet Freight Rail subject to these Standard Conditions of Carriage which shall be deemed to be incorporated in and be a part of any agreement between Transnet Freight Rail and the Consignee or Consignor, particularly where there is a sale of goods agreement between Consignor and Consignee which expressly or impliedly contemplates that the goods will be carried by Transnet Freight Rail.

**2.4.2** Transnet Freight Rail shall not be deemed a common carrier nor a public carrier and deals with goods only on the basis set out in these Standard Conditions of Carriage.

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**2.4.3** No agent or employee of Transnet Freight Rail, other than a director or an individual authorised thereto by the board of directors, has Transnet Freight Rail's authority to alter or vary Standard Conditions of Carriage nor shall any act or omission of Transnet Freight Rail be construed as a variation or waiver of any of these Standard Conditions of Carriage.

**2.4.4** The Consignor warrants that it has the requisite authority of the Consignee and any other party who may have an interest in the goods to engage the services of Transnet Freight Rail and to contract on the basis of these Standard Conditions of Carriage.

**2.4.5** The person representing the Consignor contracting with Transnet Freight Rail warrants that he is duly authorised to do so.

**2.4.6** If any legislation is compulsorily applicable to any business undertaken by Transnet Freight Rail then these Standard Conditions of Carriage shall, in relation to that business, be read as subject to such legislation which shall be incorporated herein and if any part of these Standard Conditions of Carriage be repugnant to such legislation such part shall, in relation to that business, be void to that extent only and no further.

**2.4.7** If, and to the extent that, Transnet Freight Rail in fulfilling its obligations to a particular person is, or becomes, bound by contractual or other rights and obligations to rail service providers in countries other than South Africa, then such rights or obligations shall be incorporated in these Standard Conditions of Carriage, whether or not inconsistent with these Standard Conditions of Carriage and/or any other terms and conditions agreed to by Transnet Freight Rail.

**2.4.8** Each and every provision contained in these Standard Conditions of Carriage and any other terms and/or conditions agreed between Transnet Freight Rail and any other person shall be capable of independent enforcement, thus enabling any Court or other competent tribunal to enforce the remaining provision if it adjudges one or more provisions to be wholly or partially invalid.

**2.4.9** These Standard Conditions of Carriage shall also govern any further or additional work or service which may not initially have been contemplated but is nevertheless performed by Transnet Freight Rail.

Transnet Freight Rail will endeavour to provide the transportation and adhere to the Global Train Plan of which the Customer has been informed by way of confirmation of Next Week Business. However, this will be subject to available capacity and is not a guarantee that the transport will be provided.

**2.4.10** Transnet Freight Rail is entitled to amend and supplement these Standard Conditions of Carriage from time-to-time, but no changes will be retrospective.

## 2.5. Charges and Quotations

**2.5.1** Transnet Freight Rail shall be entitled to charge for all services rendered and goods supplied by it.

**2.5.2** Where Transnet Freight Rail has made a specific quotation for its charges based on the incorrect information furnished to it by the Consignor about the characteristics, dimensions and weight of those goods then Transnet Freight Rail shall be entitled to alter its price to reflect the true position, and to levy extra charges. In particular Transnet Freight Rail may charge up to double the applicable correct rate where there is an under declaration of weight by more than two (2) tons because such a declaration is dangerous and can lead to derailment.

**2.5.3** All reference to tonnage in a quotation shall be deemed to be metric tonnes unless otherwise expressly stated.

**2.5.4** Prices in respect of traffic on Transnet Freight Rail lines will furthermore be subjected to the raising of an [rail charge levy effective from 1 April 2009 based on the diesel fuel price increase/decreases, electricity price increases, foreign exchange rate and steel price fluctuations](#), which may occur during the period 1 April to 31 March of each year and to price adjustments related to statutory enactments. The energy surcharge/[rail charge levy](#) determination, shall be as reflected on the website [www.Transnetfreightrail.co.za](http://www.Transnetfreightrail.co.za) menu: Freight Customers and [submenu](#):

**2.5.5** All charges and quotations are subject to the provisions of clause 2.4.9.

## 2.6 Notices, Consents, Approvals, Certificates and Determinations

**2.6.1** Wherever in these Transnet Freight Rail Standard Conditions of Carriage provision is made for the giving or issuing of any notice, consent, permission, approval, certificate or determination by any person, then, unless otherwise specified, such notice, consent, approval, certificate or determination shall be in Writing and the words "notify", "certify", "consent", "permit", "approve" "certify" or "determine" shall be construed accordingly.

**2.6.2** Save where these Transnet Freight Rail Standard Conditions of Carriage expressly provides otherwise any such notice, consent, permission, approval, certificate or determination shall not be unreasonably withheld or delayed. Save where these Transnet Freight Rail Standard Conditions of Carriage expressly provides otherwise Transnet Freight Rail shall exercise its rights to give, grant or refuse any notice, consent, permission, approval, certificate or determination fairly and reasonably.

## 2.7 Acceptance

**2.7.1** Should any of the terms of these Transnet Rail Freight Standard Conditions of Carriage not be acceptable to the Customer, the Customer may not commence using

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Transnet Freight Rail's Transport services, and must, within 7 Days of receipt of any offer, advise the contact person named above in Writing to such effect.

**2.7.2** Should the Customer commence railing Goods without signing an Agreement the terms of these Standard Conditions of Carriage (including the railage prices, charges and Additional Costs where applicable and determined) shall be conclusively deemed to have been accepted by the Customer and shall apply from the date of Transport of any Goods for the Customer.

**2.7.3** Under no circumstances will Transnet Freight Rail entertain any Claim to adjust railage prices or charges (or Additional Costs where applicable and determined) or to deviate from these Terms for any Goods railed by the Customer.

**2.7.4** If Goods are Transported at any time when there is no agreement between the Parties (including an agreement on railage prices, charges (and Additional Costs where applicable and determined), for whatever reason, the Goods will be Transported at Transnet Freight Rail's normal railage prices, charges (and Additional Costs where applicable and determined) and Standard Conditions of Carriage. Under no circumstances will Transnet Freight Rail entertain any Claim to adjust railage prices, charges (and Additional Costs where applicable and determined) or to deviate from these Terms. The terms of clauses 28 & 29 of these Terms will apply in respect of payment.

## 2.8 Amendments

**2.8.1** No addition to, variation of or agreed cancellation of these Transnet Freight Rail Standard Conditions of Carriage including any addition to, variation of or agreed cancellation of this clause shall be of any force or effect unless in Writing and signed by the duly authorised representative of each of the Parties named in a Schedule and then such addition, variation or agreed cancellation shall be effective only in the specific instance and only for the purpose and to the extent for which made or given.

## 2.9 Delivery

**2.9.1** When the Customer, the consignor or consignee receives Goods at the Point of Placing, the Customer, the consignor or consignee undertakes to supply Transnet Freight Rail with proof of delivery from the Customer or the consignee in one of the following formats:

**2.9.1.1** Rail wagon labels signed on the reverse side; or

**2.9.1.2** A letter from the Customer, consignor or consignee reflecting details of all rail wagons with the Consignment Number allocated by Transnet Freight Rail to the consignor; or

**2.9.1.3** other documentary proof acceptable to Transnet Freight Rail, as confirmation of delivery of the Goods

**2.9.2** Should the Customer or consignor fail to provide the proof of delivery within 7 Days, the provisions of clause 2.9.3 below shall apply.

**2.9.3** If delivery cannot be established in terms of clause 2.9.2 due to a failure or refusal on the part of the Customer/consignor or that of the consignee to supply the proof of delivery, delivery shall have been effected at the Point of Placing at the time of Placing at which time risk in the Goods shall pass to the consignor or the consignee as the case may be.

**2.9.4** If the Customer is the consignor, Transnet Freight Rail will, on request, make reasonable efforts to supply the Customer/consignor with proof of delivery to the consignee in one of the formats stipulated in clause 2.9.1 above but if Transnet Freight Rail is not able to do so Transnet Freight Rail will not be liable for any Claim the Customer/consignor/consignee may have or Loss Customer/consignor/consignee may suffer as a result and the provisions of clause 2.9.2 shall apply.

**2.9.5** Transnet Freight Rail will employ reasonable measures to collect and deliver rail wagons at the times and on the dates specified in or to be specified in a Schedule from and to the Hand over Point and the Point of Placing but Transnet Freight Rail is not responsible for any Claim the Customer/consignor/consignee may have or Loss that the Customer/consignor/consignee may suffer as a result of any failure on the part of Transnet Freight Rail to do so save to the extent, if any, set out or to be set out to the contrary in a Schedule. Unless stated in a Schedule, time is not of the essence for collection or delivery.

**2.9.6** If the Customer/consignor/consignee fails or refuses to take delivery of the Goods and/or comply with their obligations in terms of clause 11 within the Free Time, Transnet Freight Rail may be entitled, and without prejudice to Transnet Freight Rail's rights in terms of clause 15.4, without notice to the Customer/consignor/consignee, if the rail wagons have not been off-loaded after the Free Time for a period in excess of the time set out or to be set out in a Schedule, to dispose of the Goods by auction and to apply the proceeds to satisfy the railage price, charges and any Additional Costs.

### **3. Diversion of Wagons En Route**

**3.1** If the Customer/consignor requests Transnet Freight Rail to divert loaded wagons en route or not yet Placed for off-loading, Transnet Freight Rail will endeavor (but without obligation) to execute the request subject to the following:

**3.1.1** The request must be in Writing and will be deemed conclusively to include;

**3.1.1.1** an undertaking by the Customer/consignor indemnifying Transnet Freight Rail against any Loss to or Claim from the original consignee or any other third party resulting from such diversion; and

**3.1.1.2** an undertaking to pay the Additional Costs for railage prices, diversion and adjustments submitted to the Customer/consignor in Writing;

**3.1.2** the railage prices for the Transport of the Goods diverted, from the Loading Point to the final Point of Placing will be calculated by Transnet Freight Rail based on the actual distance Transported, including any part of the Transport performed towards the original Point of Placing before the diversion;

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**3.1.3** Transnet Freight Rail not having entered into an agreement with any of Transnet Freight Rail's other clients which would render the diversion of the Goods impossible or expose Transnet Freight Rail to any Claims;

**3.1.4** .the Customer not being in breach of any of the terms of these Transnet Freight Rail Standard Conditions of Carriage.

**3.2** Transnet Freight Rail shall not be responsible for any malfunction, degradation, damage or passing of any "sell by date" of any Goods caused by or resulting directly or indirectly from any diversion or attempted diversion of any Goods.

**3.3** If the Goods have reached their original Point of Placing and been Placed for off-loading such Goods will be regarded as having been delivered and any request for movement to another Point of Placing will be regarded as a new order.

**3.4** If the Customer or consignor requests Transnet Freight Rail to divert the consignment (no diversion of freight containers will be entertained) destined for export to African countries Transnet Freight Rail will endeavour to do so provided the rail wagon is still on Transnet Freight Rail lines. In such an event and if Transnet Freight Rail is successful in stopping the rail wagon, the Customer/consignor will be responsible to lodge a voucher of correction with the Department of Customs & Excise, supplying Transnet Freight Rail with a copy of such document, duly processed by the Department of Customs and Excise together with all other documentation required in terms of clause 7.2 and 7.3 before Transnet Freight Rail commences to move the rail wagon to the new Point of Placing.

**3.5** Notwithstanding the terms of this clause 3 above, Transnet Freight Rail will not intercept and/or divert import traffic destined for the Customer/consignor as the consignee.

### **4. Availability of Capacity**

**4.1** The Transport of Goods will be provided to the Customer in terms of the categories set out in or to be set out in a Schedule for Mega Rail, for Flexi Rail, for Access Rail and Dual Route Rail as determined by Transnet Freight Rail based on the Customer requirements of Transport.

**4.2** The Customer must provide a Rolling Forecast of his Transport requirements on the times and dates set out in or to be set out in a Schedule.

**4.3** Transnet Freight Rail will on receipt of the weekly Rolling Forecasts (in terms of the ordering processes set out in or to be set out in a Schedule) incorporate the Customer's requirements into the design of the Global Train Plan for the next week and the Customer will be advised as soon as practical whether Transnet Freight Rail will be able (but without obligation unless stated otherwise) to meet the requirements of the Customer's forecasts subject to the category of Transport.

**4.4** Subject to clause 4.1, Transnet Freight Rail will try, without obligation, to adhere to the Global Train Plan of which the Customer has been advised, however, this will be subject to the Available Capacity and is not a guarantee that the Transport will be provided unless stated otherwise in a Schedule.

## 4.5 Mega Rail

**4.5.1** Any prices offered to the Customer, may not be used by the Customer to undermine or destabilise Transnet Freight Rail's business with Transnet Freight Rail's other customers.

**4.5.2** In terms of this category of Transport the Customer guarantees to offer Quarterly for Transport the tonnes of Goods reflected in the Customer Quarterly Forecast as stated in a Schedule to be Transported for the duration of the Agreement on a 'take or pay' basis, that is to say the Customer must pay the railage prices, charges and Additional Costs irrespective of whether the Customer Transports Goods or not, and subject to the provisions of clause 4.5.5 and 4.5.6.

**4.5.3** Transnet Freight Rail will make available sufficient rail wagons to Transport the volume of Goods in clause 4.5.2 for the relevant Quarter. The Available Capacity is subject to the Rolling Forecast to be provided by the Customer annually, Quarterly, Monthly and weekly. The rail wagons will be made available to the Customer at the dates and times agreed for Transport on the routes as set out or to be set out in a Schedule.

**4.5.4** The provision of Transport in terms of Mega Rail will be on a fixed train plan and will not be changed unless advance notice is received at least 1 Month prior to commencement of the Quarter and Transnet Freight Rail have agreed to such change. Transportation will be on fixed Days and times set out or to be set out in a Schedule hereto.

**4.5.5** The Customer acknowledges and accepts that notwithstanding the ordering process, Transport under this category is on a "take or pay" basis with the locomotives and rail wagons being committed well in advance.

**4.5.6** The Customer shall on a Tuesday preceding a week on which the rail wagons are required, notify Transnet Freight Rail of the Customer's weekly request for Transport.

**4.5.7** On the Friday preceding a week during which the rail wagons are required, Transnet Freight Rail will confirm its intention to supply the rail wagons for the coming week by fax, e-mail or other media in Writing detailing the Consignment Number, dates and times for collection and delivery of the Transport to be provided to the Customer for the coming week.

**4.5.8** A failure to place an order as set out in clause 4.5.6 to clause 4.5.7 will result in the Transport not being undertaken but the Customer will still be liable for the railage price of the Transport under the 'take or pay' principle.

**4.5.9** If Transnet Freight Rail fails to supply the rail wagons as per the Customer's request the following shall take place:

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**4.5.9.1** Transnet Freight Rail shall immediately take steps to eliminate within 2 months any backlog in the Transport of Goods that has arisen due to Transnet Freight Rail's failure;

**4.5.9.2** at the end of 2 months from the date of the failure in clause 4.5.9 if Transnet Freight Rail has failed to eliminate the backlog the Customer shall be entitled to damages not exceeding the railage price for the backlog and the number of tonnes making up the backlog will be removed from the Quarterly Forecast.

**4.5.10** Transnet Freight Rail may use for other purposes any rail wagons, which the Customer has failed to use.

### **4.6 Flexi Rail**

**4.6.1** Any prices offered to the Customer, shall not be used by the Customer to undermine or destabilise Transnet Freight Rail's business.

**4.6.2** Transnet Freight Rail shall endeavour (but without obligation) based on Available Capacity from time to time to provide Transport to the Customer.

**4.6.3** The Customer must notify Transnet Freight Rail of the Customer's Rolling Forecasts for Transport. The weekly Forecast shall be provided on the Tuesday of the preceding week.

**4.6.4** The Rolling Forecasts are for Transnet Freight Rail's planning purposes only, Transnet Freight Rail do not guarantee Available Capacity for Transport and shall not be bound to collect or deliver on any particular Day. Time is not of the essence.

**4.6.5** Transnet Freight Rail will endeavour to make available to the Customer the number of rail wagons required according to the Customer's request.

**4.6.6** The Customer must comply with the ordering procedure set out in a Schedule to confirm the Transport the Customer requires.

### **4.7 Access Rail**

**4.7.1** Any prices offered to the Customer, shall not be used by the Customer to undermine or destabilise Transnet Freight Rail's business.

**4.7.2** Transnet Freight Rail shall endeavour (without obligation) as and when Transnet Freight Rail has Available Capacity to provide rail wagons on an ad hoc basis to the Customer for Transport of the Goods.

**4.7.3** The Customer must notify Transnet Freight Rail of the Customer's Rolling Forecasts for Transport. The weekly Forecast shall be provided on the Tuesday of the preceding week.

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**4.7.4** The Rolling Forecasts are for Transnet Freight Rail's planning purposes only, Transnet Freight Rail does not guarantee availability of Transport and shall not be bound to collect or deliver on any particular Day. Time is not of the essence.

**4.7.5** Transnet Freight Rail will endeavour to make available to the Customer the number of rail wagons required according to the Customer's request.

**4.7.6** The Customer must comply with the ordering procedure set out in a schedule to confirm the Transport the Customer requires.

### **5. Dual Route**

**5.1** The supply of rail wagons is dependant on the loading by another party, or the Customer's consignee or a new consignor (collectively "**the New Consignor**") as the case may be, of the Customer's rail wagons to be Placed at the Customer's Point of Placing.

**5.2** The Customer and the New Consignor must communicate the Customer's Rolling Forecasts both to each other and to Transnet Freight Rail and ensure that the Customer and the New Consignor shall be able to meet the commitment in clause 5.1.

**5.3** The Customer's weekly Forecasts must be provided on the Tuesday of the preceding week. The Rolling Forecasts are for Transnet Freight Rail's planning purposes only, Transnet Freight Rail does not guarantee availability of Transport and shall not be bound to collect or deliver on any particular Day. Time is not of the essence. The Customer and the New Consignor must comply with the ordering procedure as set out in a Schedule.

**5.4** For the purposes of this category of Transport it shall be the responsibility of the Customer and the New Consignor to ensure that the rail wagons are Placed at the Point of Placing for the use of the other party, either the Customer or the New Consignor as the case may be, at least by the end of Free Time.

**5.5** The Customer and the New Consignor shall individually and collectively comply with, and agree that they are jointly and severally bound by the Agreement, both in respect of their relationship with Transnet Freight Rail and with each other, where applicable.

Notwithstanding the provisions of clause 24 and 25 of the Terms, the Customer and The New Consignor agree to indemnify Transnet Freight Rail for any loss or liability suffered by the other or by any third party caused due to delays by the other.

### **6. Transport Documents & Special Instruction**

**6.1** Transnet Freight Rail shall only accept goods for transport if it has been timeously furnished with fully completed transport documents, or the relevant Electronic Data Interchange information, by the Consignor who warrants that all information

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reflected on the transport documents is accurate in all respects, and especially for Customs and Consular purposes.

**6.2** The Consignor shall indemnify Transnet Freight Rail and hold it harmless against all losses, damages, expenses and fines arising from any inaccuracy or omission made by the Consignor in the transport documents.

**6.3** Wherever it is necessary, for the purpose of these conditions or any other purpose whatever, for special instructions such as stoppage or diversion (which will only be accepted in the case of wagon load traffic) of goods to be given to Transnet Freight Rail, such instructions shall only be recognised by Transnet Freight Rail as valid if they are timeously given and agreed to by Transnet Freight Rail.

**6.4** In addition, in order to render such special instructions valid, they shall either be given in writing by the Consignor or, if owing to the urgency of the situation it is not practicable to give same in writing and if this is agreed to by Transnet Freight Rail, they may be given orally and thereafter confirmed in writing as soon as reasonably practicable.

## **7. Documentation Necessary for Goods Transported in Rail Wagons**

**7.1** Transport will commence on receipt of the standard Combined Consignment Note & Wagon Label/Release Pro Forma issued by Transnet Freight Rail, (or where the Customer uses its own Combined Consignment Note & Wagon Label/Release Pro Forma then this must be approved by Transnet Freight Rail), to release the loaded wagons reflecting the Customer as either the consignor or consignee (after completion of loading) and will end when the rail wagon is Placed at the Hand Over Point.

**7.2** In terms of the Customs and Excise Act, the Transport of Goods for export/import over South African borders must be supported by the necessary custom clearance documentation.

**7.3** Without limitation, the following documentation, must be submitted at the time of release of the Goods for Transport over the border for export or at the time of delivery of the Goods at the border for import:

### **7.3.1** Consignments to and from African Countries:

A copy of the SAD 500 Custom & Excise document duly processed at a Customs and Excise regional office;

**7.4** Goods will not be moved or Placed for off-loading without the customs clearance documentation stipulated in clause 7.2 and 7.3.

**7.5** SA Revenue Services (Customs and Excise) may find it necessary to stop and inspect Goods for export or import and Transnet Freight Rail must adhere to such requests. Additional Costs resulting from such inspections will, however, be for the

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Customer's account and Transnet Freight Rail will not incur any liability arising out of such stoppages and inspections.

**7.6** Transnet Freight Rail will not be held liable for any costs or any other liability arising from or connected with the Customer's failure to comply with the terms set out in clauses 7.2, 7.3 and 7.5 the Customs and Excise Act, any regulations or the requirements of any Relevant Authority.

**7.7** The Customer indemnifies Transnet Freight Rail against all Losses incurred by or Claims made against Transnet Freight Rail as a result of the Customer's failure to comply with:

**7.7.1** the terms of these Transnet Freight Rail Standard Conditions of Carriage; or

**7.7.2** the provisions of the Customs and Excise Act, any regulations or the requirements of any Relevant Authority relating to the importation or exportation of Goods.

**7.8** The Customer undertakes that all foreign laws and regulations relating to the Transport of the Goods into, out of or within a foreign country have been or will be fully complied with in respect of all the Transport of all Goods by Transnet Freight Rail to, from or within any such foreign country. The Customer indemnifies Transnet Freight Rail against any Losses incurred by or Claims made against Transnet Freight Rail as a result of any such non-compliance by the Customer.

**7.9** Notwithstanding any information furnished to the Customer by Transnet Freight Rail regarding any documentation required, Transnet Freight Rail will not be liable to the Customer or any third party for any Claim made or Loss suffered if such information is incorrect or incomplete in any respect. It is the Customer's entire and sole responsibility to arrange all documentation required.

## **8. Things over which Transnet Freight Rail has no Reasonable Control**

**8.1** In the event of any situation or circumstance arising over which Transnet Freight Rail has no reasonable control and which renders the fulfilment of its obligations impracticable or impossible, then notwithstanding anything to the contrary in this agreement Transnet Freight Rail shall consult with the Consignor or Consignee to make alternative arrangements. If no agreement is reached after those consultations Transnet Freight Rail shall be entitled to deliver the goods to the nearest reasonable destination or to make use of any reasonable alternative route to that initially commenced by or agreed to by Transnet Freight Rail.

## **9. Liberty to Deviate & Make Special Arrangements**

**9.1** If at any stage while it is conveying, or otherwise dealing with the goods Transnet Freight Rail, in its sole discretion, considers that it is in the interests of the Consignor, Consignee or other party who owns the goods, to depart from any special instructions, Transnet Freight Rail shall be entitled to do so with impunity.

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**9.2** Transnet Freight Rail shall have absolute discretion as to the means, route and procedure to be followed in performing the carriage of goods or other business.

**9.3** In all cases where there is a choice of tariff rates or premiums offered by carriers, warehousemen, underwriters, or others depending upon the value declared or the extent of the liability assumed by the carrier, warehousemen, underwriter or other person, Transnet Freight Rail shall have absolute discretion and authority to determine what liability, if any, shall be imposed on the carrier, warehousemen, underwriter or other persons, and to declare the value of the goods, unless express instructions in writing are timeously given by the Consignor.

**9.4** Transnet Freight Rail is not obliged to make any declaration for the purpose of any statute or convention or contract as to the nature of goods, nor as to any special interest in delivery or otherwise, nor to seek any special protection from any carrier unless expressly instructed by the Consignor in writing.

### **10. Packing, Loading & Securing Goods on Wagons**

**10.1** The Customer is responsible for ensuring that all Goods for Transport have, in accordance with Best Industry Practice and the requirements of all Relevant Authorities, been properly, lawfully and sufficiently packed, loaded, secured and prepared to:

**10.1.1** withstand all modes of Transport applicable to the Transport contemplated;

**10.1.2** prevent injury to any person or damage to Transnet Freight Rail's or any third party equipment.

**10.2** Transnet Freight Rail may refuse to Transport any Goods that are not properly, lawfully and sufficiently packed, loaded, secured and prepared for Transport. The Customer will be liable for Wagon Delay Charges as set out in or to be set out in a Schedule if delays arise as a result of the aforementioned.

**10.3** Inadequate packing may result in any Claim for damage being rejected by Transnet Freight Rail's insurers where that was the proximate cause of Loss.

**10.4** The Customer will be liable for Additional Costs to correct any packaging or packing of the Customer's Goods on Transnet Freight Rail's rail wagons which creates any danger. The Customer will also be liable for Wagon Delay Charges as set out in or to be set out in a Schedule if such delays arise.

**10.4.1** Guidelines for packaging, packing and loading methods are available from Transnet Freight Rail on request and/or from the Relevant Authorities as required in terms of applicable legislation.

**10.4.2** If goods are likely to harbour or encourage vermin or other pests the Consignor must ensure that those goods are free from such creatures upon loading and are packaged appropriately.

**10.5** The Customer indemnifies Transnet Freight Rail against any Claims of third parties arising from or connected with any inadequate, incorrect packaging or packing or securing of the Goods.

## **11. Loading and Off-loading**

**11.1** The Consignor shall, unless otherwise agreed, arrange:

**11.1.1** that the goods are delivered to the freight container, rail wagon or road vehicle in which they are to be transported; and

**11.2** The Customer is responsible for the loading and off-loading of the Customer's Goods whether the Customer does so personally or arranges for a third party or instructs the Customer's consignor or consignee (whichever applies) to do so, unless specific arrangements between the parties are set out in a Schedule.

**11.3** The Customer must schedule the loading and off-loading of wagons at each specific Hand Over Point and Point of Placing in such a manner that the number of rail wagons to be loaded or off-loaded are within the loading and off-loading capability at that Hand Over Point or Point of Placing as the case may be.

**11.4** If the number of rail wagons requested by the Customer to be loaded or off-loaded at any Hand Over Point or Point of Placing on any Day, exceeds the handling capacity of such Hand Over Point or Point of Placing and 1 or more or all of the rail wagons dispatched to that Hand Over Point or Point of Placing is or are delayed beyond the Free Time, the Customer's account will be debited with the Wagon Delay Charges set out in or to be set out in a Schedule.

**11.5** If a Schedule includes or refers to a Loading Profile the Customer is obliged to load the Goods on the rail wagon according to that Loading Profile and, if the Customer fails to do so, Transnet Freight Rail shall be entitled to require the Customer to re-load before Transnet Freight Rail accepts:

**11.5.1** the Goods for Transport; or

**11.5.2** a Combined Consignment Note & Wagon Label/Release Pro Forma

**11.6** The Customer is liable for any Additional Costs incurred by Transnet Freight Rail and any Wagon Delay Charges incurred as a result of re-loading.

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**11.7** The Customer is responsible for off-loading of the rail wagons and must ensure that all rail wagons:

**11.7.1** are fully off-loaded in terms of the requirements of any Relevant Authority and Best Industry Practice or Loading Profile; and

**11.7.2** clean for re-loading, before any empty rail wagons are handed back to Transnet Freight Rail.

**11.8** Transnet Freight Rail will be entitled to recover from the Customer all Additional Cost and Losses incurred by Transnet Freight Rail in loading, off-loading, fully or in part, any rail wagon, the storage of the Goods or the disposal of any debris.

**11.9** The Consignor shall indemnify Transnet Freight Rail against all and any losses and/or damages sustained by the latter arising out of the Consignor loading goods onto a rail wagon or road vehicle and the Consignee unloading goods from rail wagons or road vehicles.

## **12. Inspection**

**12.1** Transnet Freight Rail shall at all times be entitled, but not obliged (unless it has been ordered to do so by the Relevant Authorities or in terms of a Court Order), to unpack any goods to inspect same in order to establish whether the nature and manner of packing or stowage endangers the employees, premises or equipment of Transnet Freight Rail. If, in the opinion of Transnet Freight Rail, the goods do so endanger its employees, premises or equipment then the actual cost of repacking or restowing to the satisfaction of Transnet Freight Rail shall be borne by the Consignor.

## **13. Containers & Rail Wagons**

**13.1** The Consignor warrants the suitability and safety of all containers and freight containers supplied by it, and that it shall take reasonable steps to ensure that any freight containers or rail wagons supplied by Transnet Freight Rail are in suitable condition for the conveyance of the goods concerned.

## **14. Marking**

**14.1** The Consignor warrants that all goods have been properly, lawfully and sufficiently marked for identification and labelled and shall indemnify Transnet Freight Rail against all losses, damages, expenses and fines arising from any inaccuracy or omission in that respect.

## **15. Free Time for loading and unloading/off loading**

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**15.1** The Free Time will commence:

**15.1.1** when the rail wagon is Placed at the Hand Over Point or Point of Placing as the case may be;

**15.1.2** when the rail wagon was available to be Placed if the Customer or consignor or consignee were not in a position or failed to receive it; or

whichever occurs first;

**15.1.3** and will expire at the time when the wagon is cleared from the Hand Over Point or Point of Placing or the time when the Customer or the Customer's consignor/consignee offers the rail wagons for clearance whichever occurs first.

**15.1.4** If placement takes place on a non-working day, the relevant free time shall commence at 08:00 on the next business day.

**15.2** If the Customer, consignor or consignee, whichever is applicable, is unable to load or off-load in the Free Time, Transnet Freight Rail will record such events and notify the Customer with the view to discussing the causes thereof with the Customer.

**15.3** The Customer must take the necessary steps to load or off-load within the Free Time.

**15.4** Transnet Freight Rail is entitled to charge the Wagon Delay Charges after the expiry of the free time stipulated in clause 15.8 below, in relation to the equipment specified unless otherwise agreed as set out in or to be set out in a Schedule for any rail wagon/container released after Free Time.

**15.5** At the completion of loading or off-loading the Customer must provide Transnet Freight Rail or the person named in clause 1.1 with the Combined Consignment Note & Wagon Label/Release Pro Forma completed to the extent applicable to the Customer.

**15.6** If Transnet Freight Rail has not received a Combined Consignment Note & Wagon Label/Pro Forma Note after the expiry of the Free Time collection of the rail wagons will in such circumstances be dependent on Available Capacity.

**15.7** If the Customer is importing or exporting Goods in shipload quantities or the Customer has limited capacity in any private siding where the Goods are to be loaded or off-loaded, the provisions of clauses 11.3 to 11.9 and 15.1 to 15.6 will apply, unless the Customer has made prior Written arrangements with Transnet Freight Rail to accommodate possible rail wagon delays caused by loading or off-loading Goods in shipload quantities or at such private siding with limited capacity.

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<b>15.8</b>	The time limits for the various types of equipment are as follows: -	
<b>15.8.1</b>	rail wagons only	24 hours
<b>15.8.2</b>	freight containers on rail wagons	12 hours
<b>15.8.3</b>	freight containers and tank containers measuring 6 metres or more in length collected/delivered by road	4 hours
<b>15.8.4</b>	freight containers and tank containers measuring 3 metres in length collected/delivered by road	2 hours
<b>15.8.5</b>	if the cartage driver is in attendance upon request of consignor or consignee	15 minutes

## 16. Overloading and mass declared

**16.1** The Customer may not overload wagons in excess of their carrying capacity or modified/amended carrying capacity as prescribed for lines with axle load restrictions nor under declare the net mass per wagon. The Customer is responsible to ensure compliance with this clause by the Customer's consignor, or transport coordinator if applicable.

**16.2** The Customer will be liable for Losses (including any consequential losses notwithstanding any other term of these Transnet Freight Rail Standard Conditions of Carriage) caused directly or indirectly by such overloading or under declaration. The Customer must, in order to avoid overloading, load the rail wagons in accordance with the Loading Profile, if any, set out in or to be set out in a Schedule.

**16.3** Should overloading of a rail wagon in excess of its carrying capacity or amended carrying capacity be detected during or after Transport, the charges calculated on the actual mass conveyed in the rail wagon as determined below, will furthermore be subject to a surcharge of 35% plus a Mass Measuring and an Adjustment Fee:

**16.3.1** if a per ton railage price applies, the railage price payable will be calculated on the actual mass;

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**16.3.2** if a per rail wagon railage price applies, the railage price payable will be increased by a factor derived by dividing the actual mass Transported in the rail wagon by the carrying capacity or the amended carrying capacity of the rail wagon.

**16.4** The Customer must declare or, if the Customer is not the consignor, ensure that the consignor declares the correct net mass of the Goods per rail wagon on the Combined Consignment Note & Wagon Label/Release Pro Forma provided by Transnet Freight Rail. Transnet Freight Rail is entitled to verify the mass declared by Mass Measuring each rail wagon prior to, during or after Transport of the Goods. Should Transnet Freight Rail find that the mass per rail wagon has been under declared the amount payable by the Customer will be as set out in 16.4.1.

**16.4.1** In the event of an under-declaration of mass but the wagon is not overloaded in terms of clause 16.1, the following will apply:

**16.4.1.1** If the under-declaration is 2 tons or less, the amount payable will be calculated on the measured mass subject to the minimum mass per rail wagon stipulated in a Schedule;

**16.4.1.2** If the under-declaration is more than 2 tons and the measured mass is in excess of the minimum mass per rail wagon stipulated in a Schedule or if the under-declaration is more than 2 tons and no minimum mass per rail wagon applies (i.e. where the full holding capacity or actual mass condition applies) the amount payable will be calculated on:

- The measured mass plus 35% (twenty five percent) surcharge; plus
- A Mass Measuring Fee per rail wagon as set out in a Schedule; plus
- An Adjustment Fee per consignment as set out in a Schedule.

**16.5** Where the Customer provides Transnet Freight Rail voluntarily with the actual mass measurement of the wagon the surcharge, the Mass Measuring and Adjustment Fee in terms of clauses 16.3 and 16.4 will not apply provided the Customer takes the necessary steps to curtail overloading.

**16.6** If Transnet Freight Rail finds that mass has been under declared or that a rail wagon is overloaded, Transnet Freight Rail will furnish the Customer or the Customer and the consignor, where applicable, with a report of the results with the view to discussing the causes thereof with the Customer.

**16.7** Transnet Freight Rail reserves the right to hold back a rail wagon found to be overloaded (either at the Hand over Point or en route) and Transnet Freight Rail may require the Customer to off-load or arrange to off-load sufficient quantity of the Goods to bring the mass of the rail wagon within the carrying capacity of the rail wagon. Wagon Delay Charges as set out in or to be set out in a Schedule, Mass Measuring Fee and all other charges and Additional Costs reasonably attributable to or arising out of the holding back of the rail wagon will be for the Customer's account.

**16.8** If the Customer wish to load the excess mass of Goods into another rail wagon, subject to available capacity, the applicable railage price stipulated in or to be

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set out in a Schedule will apply but the carrying capacity of the rail wagon will be used as a minimum.

**16.9** It is advisable for the Customer to have a Verified Mass Measuring Device in the Customer's siding to ensure accurate weighing of the goods to be transported by Transnet Freight Rail.

**16.10** If either of the Parties disputes the accuracy of the other's Verified Mass Measuring Device, the accuracy of the device will have to be verified in accordance with the provisions of the Trade Metrology Act 77 of 1973. If the accuracy of the device is verified the cost of the certification will be borne by the party who disputed its accuracy. If the accuracy of the device is not verified the cost of the certification will be borne by the party whose device it is.

**16.11** The accuracy of any Verified Mass Measuring Device owned by Transnet Freight Rail shall be presumed and the Customer shall bear the onus of disproving its accuracy or the accuracy of the records of such device or both.

## 17. Non-utilisation

**17.1** The Customer must cancel an order or part of an order:

**17.1.1** before rail wagons are Placed;

**17.1.2** before the time when rail wagons were available to be Placed,

if the Customer is not going to utilize all or some of the rail wagons ordered.

**17.2** If the Customer fails to notify Transnet Freight Rail in terms of clause 17.1 at least 48 hours before the scheduled time of Placing, Transnet Freight Rail shall be entitled to levy the charges set out in or to be set out in a Schedule.

## 18. Conditions Related to Containerized Traffic

**18.1** Only containers that conform to the requirements of the International Standards Organisation (ISO) will be conveyed under this agreement except as detailed in clause 18.15.

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**18.2** The under-mentioned international codes indicate the size of the various ISO containers (ISO containers are containers that conform to the requirements of the International Standards Organisation):

CODE	OUTER LENGTH OF CONTAINER	OUTER WIDTH OF CONTAINER	OUTER HEIGHT OF CONTAINER	MAXIMUM GROSS MASS
*IA	12 meter	2,438 meter	2,43 meter	30 480 kg
*IAA	12 meter	2,438 meter	2,591 meter	30 480 kg
*IB	9 meter	2,438 meter	2,438 meter	25 400 kg
*IBB	9 meter	2,438 meter	2,591 meter	25 400 kg
*IC	6 meter	2,438 meter	2,438 meter	24 000 kg
*ICC	6 meter	2,438 meter	2,591 meter	24 000 kg
**IC	6 meter	2,438 meter	2,438 meter	20 320 kg
**ICC	6 meter	2,438 meter	2,591 meter	20 320 kg
***ICCC	6,2 meter	2,600 meter	2,800 meter	24 000 kg
*ID	3 meter	2,438 meter	2,438 meter	10 160 kg
**ID	3 meter	2,438 meter	2,438 meter	10 160 kg

### Notes:

\*Private ISO containers with the maximum gross mass as stipulated above.

\*\*Transnet Freight Rail containers and tank containers with the maximum gross mass stipulated above.

\*\*\*Transnet Freight Rail containers that are palette friendly containers numbered in the series SARU 167000 onwards.

The stencilled gross mass, if less than stipulated above, may not be exceeded.

**18.3** Containers, conveyed under the terms and conditions of this agreement will be priced according to the actual nett mass loaded based on the following mass intervals:

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	CONTAINER SIZE	MASS INTERVALL (NETT KILOGRAMS)	RELEVANT PRICE
<b>A</b>	<b>MASS INTERVAL 1 (ONE) (EMPTY CONTAINERS)</b>		
(i)	3, 6, 9 and 12 Meter empty containers	Empty containers	Priced on mass indicated as 0 (zero) kilograms (empty containers).  The conveyance of empty Transnet Freight Rail containers will be subject to a discount of 100% (i.e. conveyed to loading points free of charge).
<b>B</b>	<b>MASS INTERVAL 2 (TWO) (3 M NORMAL AND 6 TO 12 M LIGHT):</b>		
(i)	3 Metre containers	1 to 9 000 kilograms	Priced on masses 1 to 9 000 kilograms
(ii)	6 Metre containers	1 to 13 000 kilograms	Priced on masses 1 to 13 000 kilograms
(iii)	9 and 12 Metre containers	1 to 26 000 kilograms	Priced on masses 1 to 26 000 kilograms.
<b>C</b>	<b>MASS INTERVAL 3 (THREE) (3 M OVERMASS AND 6 TO 12 M HEAVY):</b>		
(i)	3 Metre containers	> 9 000 kilograms	Conditions of clause 36.13 applicable. Double the relevant price for 1 to 9 000 kilograms
(ii)	6 Metre containers	13 001 to 22 000 kilograms	Priced on masses 13 001 to 22 000 kilograms
(iii)	9 and 12 Metre containers	26 001 to 29 400 kilograms	Priced on masses 26 001 to 29 400 kilograms.
<b>D</b>	<b>MASS INTERVAL 4 (FOUR) (6 TO 12 M OVERMASS):</b>		
(i)	6 Metre containers	> 22 000 kilograms	Conditions of clause 36.13 applicable. Double the relevant price for 13 001 to 22 000 kilograms
(ii)	9 and 12 Metre containers	> 29 400 kilograms	Conditions of clause 36.13 applicable. Double the relevant price for 26 001 to 29 400 kilograms

**NOTE:**

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- (i) For ease of reference and for clarity the previously known Light and Heavy containers will now fall under Mass Interval 2 (light) and 3 (heavy).
- (ii) Containers must not exceed the maximum gross mass as stipulated in clause 18.2 above.

### 18.4 Packing/filling/loading and unpacking/decanting/off-loading of containers

**18.4.1** The Customer will be responsible for:

**18.4.1.1** packing and unpacking of containers/ filling and decanting of tank containers placed in a private siding or at a station or placed at the Customer's premises by cartage vehicle; and

**18.4.1.2** loading and off-loading of containers from the cartage trailer or rail wagon unless this service is rendered by Transnet Freight Rail, in which event such service will be provided for in a Schedule;

whether the Customer does so personally or arranges for a third party or instructs the Customer's consignor or consignee (whichever applies) to do so unless specific arrangements have been agreed upon between the Parties.

**18.5** Free time where containers are delivered/collected by cartage vehicle.

**18.5.1** packing/unpacking of 6, 9 and 12 metre containers and filling/decanting of 6 metre tank container: **4 hours**.

**18.5.2** packing/filling or unpacking/decanting of a 3 metre container/tank container: **2 hours**

**18.5.3** Filling/decanting of tank container with dangerous/hazardous goods (cartage driver in attendance on request of consignor/consignee): **15 minutes**

**18.6** Containers delayed beyond the free times allowed above will be subject to delay charges stipulated in a Schedule.

**18.7** Cartage **haulage vehicles** that are delayed.

**18.7.1** The cartage haulage vehicle used for the delivery/collection of containers is allowed 15 minutes free period for placing/removal/ packing/un-packing/loading/off-loading of containers.

**18.7.2** Delay charge for cartage haulage vehicles delayed beyond the free time allowed will be raised at the price stipulated in a Schedule.

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**18.8** Transnet Freight Rail containers ordered and delivered but not utilised will be subject to the applicable cartage charges and non-utilisation charges for such delivery.

**18.8.1** Cartage charges applicable to the relevant container for futile trips will be raised should a container not be ready when the driver calls and the cartage haulage vehicle returns, after expiry of the free period allowed, without a load to the container depot/terminal.

**18.9** Free time where containers are delivered/collected by rail in private siding or station: **12 working hours**.

**18.9.1** Where the free time is exceeded in respect of:

**18.9.1.1.** Private containers a delay charge will be raised **only** in respect of the rail wagon as stipulated in a Schedule;

**18.9.1.2** Transnet Freight Rail containers: a delay charge will be raised in respect of the container including the rail wagon as stipulated in a Schedule.

**18.9.2** Free time referred to in clause 18.9 will commence at the actual time of placing of containers in the siding or the Customer's premises or the time when the containers were available to be placed but the Customer or the Customer's consignor or consignee were not in a position to receive them. Please note: Where more than one container is delivered to a consignor/consignee at the same time, the free time in terms of clause 18.9 will apply simultaneously to all containers.

**18.9.3** In the event of the Customer, the Customer's consignor or consignee, whichever is applicable, being unable to keep to the agreed loading and off-loading times, Transnet Freight Rail will record such events with the view to discuss the causes thereof with the Customer, who undertakes to take the necessary steps to overcome the problems giving rise to such inability to keep to the agreed loading and unloading time, failing which, Transnet Freight Rail reserves the right to claim from the Customer the delay charges stipulated in clause 18.9, unless such problems were caused by Transnet Freight Rail.

**18.10** In the event of the Customer being unable to accept containers where:

**18.10.1** the Customer has insufficient capacity at the Customer's premises to receive or despatch the number of containers involved; or

**18.10.2** containers need to be staged prior to delivery; or

**18.10.3** a container for whatever reason is refused prior to delivery;

**18.10.4** the provisions of clause 18.9 will apply, unless the Customer has made prior written arrangements with Transnet Freight Rail to accommodate possible delays caused by receiving or despatching containers.

### **18.11 Export containers**

**18.11.1** Where export containers arrive at a Portnet Container Terminal or Conventional Berth, prior to the stack opening date or after the stack closing date, for the nominated vessel, rail wagon delay charges as stipulated in a Schedule shall be levied from the date the rail wagon is received at the harbour up to and including the date the stack opens.

**18.11.2** Where empty or packed export containers are despatched to a Portnet Container Terminal or Conventional Berth, prior to the stack opening date for the nominated vessel, and such containers are held back en-route, rail Wagon Delay Charges as stipulated in a Schedule, shall be levied from the date the rail wagon (s) is/are released by the consignor/exporter up to and including the date prior to the date of departure of the train conveying the containers to arrive on the date the stack opens.

### **18.12 Non utilisation**

**18.12.1** The Customer must cancel an order or part of an order four working hours before containers/rail wagons are placed, if the Customer is not going to utilize all the containers/rail wagons ordered.

**18.12.2** A non-utilisation charge, plus cartage charges where applicable, if the order is not cancelled within the time stipulated in clause 18.12.1 before the containers/rail wagons are placed will be raised as stipulated in a Schedule.

### **18.13 Overloading and mass declared**

**18.13.1** The Customer must ensure that containers are not loaded in excess of their total nett mass, as per clause 18.2 above, and instruct the Customer's consignor or consignee, whichever is applicable, to adhere to the Customer's instruction, as in either case this may result in derailment or damage to infrastructure and equipment which the Customer will be liable for.

**18.13.2** Should overloading of a container in excess of its applicable nett mass as per clauses 18.2 above be detected prior to transit, and such containers are accepted for conveyance, or during or after transit, such container will be regarded as over mass and the price for that container will be levied at double the applicable mass interval price (double the 3 m normal [Mass Interval 2] and in respect of 6 to 12 m double the heavy price [Mass Interval 3]).

**18.13.3** Instances where the nett mass of a container is under-declared by more than 1 000 kilograms the following additional charges will also apply:

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**18.13.3.1** Relevant rail price for the mass as measured; plus

**18.13.3.2** Mass measuring charge; plus

**18.13.3.3** Adjustment fee; plus

**18.13.3.4** Following surcharge:

**18.13.3.4.1** Container not loaded in excess of its attainable total nett mass will be subject to a surcharge equal to fifty percent of the relevant rail price.

**18.13.3.4.2** Containers loaded in excess of its attainable total nett mass will be subject to a surcharge as stipulated in clause 18.13.2 above.

**18.13.4** The Customer will declare, or where the Customer is not the consignor, ensure that the consignor declares the actual or estimated nett mass of the container on the freight transit/ orders/container terminal order. Transnet Freight Rail may verify the mass declared by mass measuring each container prior to, during or after transportation thereof. Should Transnet Freight Rail find that the mass per container has been over loaded/under-/over declared, the Customer or both the Customer and the consignor, where applicable, will be furnished with a written report of the results and the charges payable by the Customer will be calculated in terms of this clause 18.13.

**18.14** Non standard containers:

**18.14.1** Please note containers containing dangerous/hazardous goods (Classification in accordance with Section 5 of the General Introduction to the International Maritime Dangerous Goods Code (IMDG code), i.e. IMCO classes 2.1, 3.1, 3.2, 4.1, 4.2, 4.3, 5.1, 5.2, 6.1, 6.2, 7.1, 7.2, 7.3 and 8) will be conveyed at the applicable contract price plus the extra charges stipulated in a Schedule.

**18.14.2** Containers of which the dimensions exceed the ISO standard dimensions will be dealt with in terms of the conditions applicable to abnormal containers, which will be provided by Transnet Freight Rail where applicable.

**18.14.3** Containers which, when loaded on SHLJ-13 rail wagons, are within the loading gauge applicable to such rail wagon, are regarded as normal containerised traffic, however, a surcharge equal to 10 (ten) per cent of the applicable contract price as stipulated in a Schedule, shall be leviable.

**18.14.4** Containers of which the dimensions are outside the ISO standard dimensions but do not exceed 2 900 mm (high) x 2 438 mm (wide) or 2 800 mm (high) x 2 600 mm (wide) and conveyed on standard container rail wagons (maximum height 1065 mm) shall be regarded as normal containers when conveyed on specific routes only.

**18.15** Containers transported only under special arrangement:

**18.15.1** Please note that Transnet Freight Rail will not in terms of this agreement transport, without special arrangement,

**18.15.1.1** containers of which the mass, nature or dimensions of the load require special transport arrangements; and

**18.15.1.2** containers containing dangerous/hazardous goods (Classification in accordance with section 5 of the General Introduction to the International Maritime Dangerous Goods Code (IMDG code), i.e. IMCO classes 1.1 to 1.6.

In instances where dangerous/hazardous products (i.e. IMCO classes 1.1 to 1.6) are conveyed, it is a safety requirement to use empty containers as blockers to prevent access to containers containing dangerous/hazardous products. In these instances the fee for the conveyance of the blocker containers as stipulated in a Schedule will apply.

## **19 Goods Forwarded From or Destined To Other Railways**

**19.1** If Goods having a Point of Placing on other railways, are dispatched from points on Transnet Freight Rail lines, the shortest route principle will be followed unless otherwise authorised by Transnet Freight Rail.

**19.2** The Transport of Goods over the lines of other railways will be subject to the terms of the railways concerned at time of dispatch while the Goods are in their possession.

**19.3** Prices, charges (and Additional Costs where applicable and determined) for the Transport of Goods to or from Hand Over Points on other railways will be quoted to the Customer prior to the Transport of such Goods. If these quotations are acceptable to the Customer they will be included in the railage price.

**19.4** The provisions of clause 0 above shall apply to the Transport provided in this clause 19 insofar as they are applicable.

## **20 Agents**

**20.3** If the Customer, at any time, engages the services of an agent to perform their obligations or exercise their rights in terms of the Agreement with Transnet Freight Rail, Transnet Freight Rail shall be entitled to require a copy of the Customer's agreement with any agent to be furnished to Transnet Freight Rail prior to the Customer's agent so performing or exercising any obligations or rights. The Customer shall not enter into an agreement with any agent on terms and conditions that are substantially different from, or conflict with, or frustrate the spirit, purport and intent of the Agreement.

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**20.4** The agreement between the Customer and the agent must specify that the agent acts on the Customer's behalf and that the Customer is liable for any act or omission of the Customer's agent.

**20.5** The Customer indemnifies Transnet Freight Rail against any Claim against Transnet Freight Rail or Loss Transnet Freight Rail may suffer as a result of any action or omission of the Customer's agent.

**20.6** If the Customer acts as agent for an undisclosed principal the Customer indemnifies Transnet Freight Rail against any Loss Transnet Freight Rail may suffer as a result of any action or omission of the Customer's undisclosed principal.

**20.7** Where applicable and relevant, the Customer acknowledges the role of the Customer's supplier in the ordering of the Goods. In the event of a conflict between the Customer's order and that of the Customer's supplier, the Customer accepts as per the industry practice that the Customer's order shall be superseded by the order of the Customer's supplier.

**20.7.1** Should the Customer persist with an order in conflict with the order placed by the Customer's supplier, Transnet Freight Rail shall as per industry practice not place wagons on the Customer's behalf and shall not be liable for any damages arising as a result of the conflicting orders.

### **21. Transnet Freight Rail Entitled to Act as Agent or Principal in Contracting with Third Parties**

**21.1** Unless otherwise agreed in writing, Transnet Freight Rail shall, in procuring the carriage, storage, packaging or handling of the goods, be entitled to subcontract all or any of those duties.

**21.2** Transnet Freight Rail shall be entitled to act as the agent of the Consignor, Consignee or other person having risk in and title to the goods, in dealing with rail service providers in countries other than South Africa.

### **22. Safety**

**22.1** If the Hand Over Point or the Point of Placing is a private siding the Customer must ensure that there is safe and proper access at the Points. The Customer accepts all responsibility for any Loss of or damage to the Goods or Transnet Freight Rail's rolling stock due to any unsuitability of the access to the Hand Over Point or the Point of Placing and the Customer indemnifies Transnet Freight Rail against any Claims arising from damage to property or injury or death to persons arising directly or indirectly as a result of the Customer's failure to provide proper and safe access.

**22.2** Transnet Freight Rail and the Customer agrees that all persons, whether employed by or subcontracted by Transnet Freight Rail or the Customer, to undertake shunting of rolling stock within a private siding or an exchange yard will be trained in terms of and will comply with and adhere to the Best Industry Practice while performing their services.

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**22.3** The customer must keep walkways in their siding clear of obstruction to ensure safety for Transnet Freight Rail's train marshalling crew. Transnet Freight Rail reserves the right not to shunt where Transnet Freight Rail considers the siding unsafe.

### **23. Legal Requirements and Dangerous Traffic**

**23.1** Each of the Parties will comply with all Laws and requirements of all Relevant Authorities applicable to the performance of Transnet Freight Rail's obligations in terms of these Transnet Freight Rail Standard Conditions of Carriage.

**23.2** Without derogating from the provisions of this clause each of the Parties will with regard to employees of the other conducting work in the vicinity of Hand Over Point or the Point of Placing comply, and without limitation, with the provisions of the Occupational Health and Safety Act, the Compensation for Occupational Injuries and Diseases Act, and the Minerals Act, Mine Health and Safety Act and the regulations in the Parties' places of work respectively.

**23.3** Transnet Freight Rail is regulated by the provisions of the National Railway Safety Regulator Act, which provides that to ensure that railway operations are conducted safely, Transnet Freight Rail must adhere to strict safety requirements in the manner in which Goods are Transported by rail. The Customer:

**23.3.1** represents to Transnet Freight Rail that the Customer is familiar with the provisions of the National Railway Safety Regulator Act;

**23.3.2** undertakes not to act or omit to act in any manner that will result in Transnet Freight Rail contravening the provisions of the National Railway Safety Regulator Act in Transporting Goods;

**23.3.3** will comply with all requirements of any Relevant Authority and Best Industry Practice;

**23.3.4** indemnifies Transnet Freight Rail against any Claim against Transnet Freight Rail arising out of a breach by the Customer of this clause 23.

**23.4** The Customer must assist Transnet Freight Rail to comply, without limitation, with the provisions of the National Railway Safety Regulator Act, Occupational Health and Safety Act, Hazardous Substances Act, National Environmental Management Act, the National Water Act and any requirement of any other Relevant Authority in the Transportation of Goods.

**23.5** In compliance with the requirements of any Law, Relevant Authority and Best Industry Practice, Transnet Freight Rail requires the Customer to abide by Transnet Freight Rail's guidelines on loading. Transnet Freight Rail is not liable for any Claim or Loss arising from or connected with compliance or non-compliance by the Customer with such guidelines, requirements of any Relevant Authority and Best Industry Practice. The Customer must advise Transnet Freight Rail of any improvements or enhancements to such guidelines that the Customer may consider desirable but Transnet Freight Rail is not obliged to adopt any suggestions by the Customer.

**23.6** Transnet Freight Rail will not Transport Dangerous Goods in terms of these Transnet Freight Rail Standard Conditions of Carriage save to the extent and on the terms set out in or to be set out in a Schedule and the other terms of these Transnet Freight Rail Standard Conditions of Carriage.

**23.7** The Customer will be responsible for:

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**23.7.1** using and completing the correct rail documentation for the transport of Dangerous Goods;

**23.7.2** signing the declaration on the reverse of above documentation which states that *"I hereby declare that the contents of this consignment are fully and accurately described by the proper shipping name and are classified, packed marked and labelled/placarded, and are in all respects in proper condition for transport according Best Industry Practice and requirements of any Relevant Authority"*;

**23.7.3** loading and off-loading of Dangerous Goods to be Transported; ensuring that Dangerous Goods have been properly and sufficiently secured to withstand loading, Transportation by rail and off-loading;

**23.7.4.1** observing and implementing Best Industry Practice;

**23.7.4.2** the requirements of Law or any Relevant Authority, in the packaging, loading, securing and off-loading of any such Dangerous Goods.

**23.8** Transnet Freight Rail may refuse to Transport any Dangerous Goods that are not properly, lawfully and sufficiently packed, loaded, secured and prepared for Transport in accordance with any requirements of any Relevant Authority, Best Industry Practice and Transnet Freight Rail's guidelines.

**23.9.** [The Customer undertakes to comply with the National Environmental Management Act \(107 of 1998\)](#)

**23.9.1** The Customer undertakes to comply with all the provisions of the National Environmental Management Act (107 of 1998) ("the Act").

**23.9.2** The Customer hereby indemnifies Transnet Freight Rail against any liability including any penalties, damages, fines or any other forms of compensation for which Transnet Freight Rail is held liable in terms of the Act.

**23.9.3** The Customer also indemnifies Transnet Freight Rail in the event of any other obligation or obligations being imposed on Transnet Freight Rail in terms of any of the provisions of the Act.

**23.9.4** Should the Customer fail to comply with any provisions of the Act, and any penalties, damages, fines or any other forms of compensation are imposed on Transnet Freight Rail as a result thereof, the Customer undertakes to refund the full amount of such penalties, damages, fines or compensation to Transnet Freight Rail within seven (7) days after written notice to that effect has been made or given by Transnet Freight Rail to the Customer.

**23.10.** [Atmospheric Pollution Prevention Act, 1965 \(Act 45 of 1965\)](#)

**23.10.1** The Customer undertakes to comply with all the provisions of the Atmospheric Pollution Prevention Act, 1965 (Act 45 of 1965) ("the Act").

**23.10.2** The Customer hereby indemnifies Transnet Freight Rail against any liability including any penalties, damages, fines or any other forms of compensation for which Transnet Freight Rail is held liable in terms of the Act, or in terms of Section 34 of the National Environmental Management Act read with Section 9 of the Act.

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23.10.3 The Customer also indemnifies Transnet Freight Rail in the event of any other obligation or obligations being imposed on Transnet Freight Rail in terms of any of the provisions of the Act.

23.10.4 Should the Customer fail to comply with any provisions of the Act, and any penalties, damages, fines or any other forms of compensation are imposed on Transnet Freight Rail as a result thereof, the Customer undertakes to refund the full amount of such penalties, damages, fines or compensation to Transnet Freight Rail within seven (7) days after written notice to that effect has been made or given by Transnet Freight Rail to the Customer.

### 23.11. National Water Act 1998 (Act 36 of 1998)

The Customer undertakes to comply with all the conditions laid down in terms of the above-mentioned Act. Should the Customer fail to comply with any such conditions and penalties are imposed on Transnet Freight Rail as a result thereof, the Customer undertakes to refund the full amount of such penalties to Transnet Freight Rail within seven (7) days after written notice to that effect has been made or given by Transnet Freight Rail to the Customer.

### 23.12. Conservation of Agricultural Resources Act, 1983 (Act 43 of 1983)

23.12.1 The Customer undertakes to comply with all the provisions of the Conservation of Agricultural Resources Act, 1983 (Act 43 of 1983) ("the Act").

23.12.2 The Customer hereby indemnifies Transnet Freight Rail against any liability including any penalties, damages, fines or any other forms of compensation for which Transnet Freight Rail is held liable in terms of the Act, or in terms of Section 34 of the National Environmental Management Act read with Section 6 and 7 of the Act.

23.12.3 The Customer also indemnifies Transnet Freight Rail in the event of any other obligation or obligations being imposed on Transnet Freight Rail in terms of any of the provisions of the Act.

23.12.4 Should the Customer fail to comply with any provisions of the Act, and any penalties, damages, fines or any other forms of compensation are imposed on Transnet Freight Rail as a result thereof, the Customer undertakes to refund the full amount of such penalties, damages, fines or compensation to Transnet Freight Rail within seven (7) days after written notice to that effect has been made or given by Transnet Freight Rail to the Customer.

Specific mention of the above legislation is to draw the Customer's attention thereto, and shall not derogate from, or diminish the Customer's general obligation to comply with all other laws in force at all times during this agreement.

## **24 Liability**

**24.1** Transnet Freight Rail Transports and deals with all Goods at the risk of the owner of the Goods or any other person in whom the risk of Loss of or damage to the Goods lies at any relevant time. Unless stated otherwise in a Schedule Transnet Freight Rail is not liable for:

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**24.1.1** any Loss of or damage to the Goods whatsoever, whether due in whole or in part to any negligence or breach of contract on Transnet Freight Rail's part save, in the case of either a breach of the terms of these Transnet Freight Rail Standard Conditions of Carriage or Transnet Freight Rail's negligence in either case causing Loss, for an amount not exceeding that stated in or to be set out in a Schedule;

**24.1.2** any consequential or economic Loss whatsoever, including but not limited to Loss of production or profit, whether arising out of such Loss or not;

**24.1.3** any direct or indirect, incidental, special or consequential damages, revenue, incurred by the Customer or any third party, even if Transnet Freight Rail have been advised of the possibility of such damages.

**24.2** The Customer indemnifies Transnet Freight Rail against all Claims made against Transnet Freight Rail by any third party arising out of Loss of or damage to the Goods if the Customer is not the owner or the person in whom the risk of Loss of or damage to the Goods lies at the relevant time.

**24.3** If the Customer wishes to proceed with any Claim against Transnet Freight Rail the Customer must report any Loss to the person named in or to be set out in a Schedule and obtain an incident number from Transnet Freight Rail.

**24.4** If a Claim of any nature is lodged for any reason it must be lodged with the person named in or to be set out in a Schedule within 180 Days from the date the Goods arrived, or ought to have arrived at their final destination, failing which the Claim will irrevocably lapse and be of no further effect.

**24.5** The risk of loss or damage to Transnet Freight Rail's rolling stock will pass to the Customer at the Point Of Placing and will pass back to Transnet Freight Rail at the time the rail wagons are coupled back to Transnet Freight Rail's locomotive for dispatch.

**24.6** The Customer:

**24.6.1** must take care when shunting wagons in the Customer's siding or exchange yard;

**24.6.2** notify Transnet Freight Rail immediately of derailment of any wagons in the siding;

**24.6.3** must under no circumstances attempt to re-rail a derailed wagon without Transnet Freight Rail's technical personnel being involved.

## **25. Limitation of Liability, Indemnity**

**25.1** Transnet Freight Rail shall not be liable to the Customer whether in terms of any indemnity or otherwise for any Loss arising in whole or in part from any act or omission of the Customer to the extent that such Loss was reasonably attributable to the act or omission concerned. Subject to the other terms of the Agreement, if the Loss is caused partly by Transnet Freight Rail and partly by the Customer, the Loss shall be born proportionately to the respective degrees of fault.

**25.2** The Customer indemnifies and holds Transnet Freight Rail harmless against any Loss suffered by or Claims made against Transnet Freight Rail as a result of or in connection with any act or omission of the Customer and/or any of the Customer's responsible persons (including any default or failure by the Customer to comply with any of the Customer's obligations under the Agreement except to the extent that any

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such liability arises as a result of any breach of the Agreement by Transnet Freight Rail and/or any of Transnet Freight Rail's responsible persons or any breach of statutory duty on the part of Transnet Freight Rail and/or any of Transnet Freight Rail's responsible persons save for those of Transnet Freight Rail's statutory duties with which the Customer must comply as well.

**25.3** For the purposes of this clause 25, "responsible persons" means any subcontractor, agent, servant, officer or employee of the party concerned.

**25.4** If any legal action is brought or Claim is made against Transnet Freight Rail and Transnet Freight Rail is entitled to be indemnified pursuant to this clause 25, the Customer shall be entitled at his own expense to defend, have conduct of, or settle any such action or Claim and Transnet Freight Rail shall notify the Customer promptly of any such Claims or any such threatened Claims and take such action as the Customer reasonably directs. Transnet Freight Rail shall be entitled to engage its own legal counsel and the Customer shall co-ordinate their defence with Transnet Freight Rail. If the Customer fails to defend, deal with or negotiate any such action or Claim diligently, Transnet Freight Rail may, after first giving the Customer reasonable notice so to act, defend or settle, without the Customer's consent and without relieving the Customer of the obligation to indemnify Transnet Freight Rail as provided in sub-clause 0.

**25.5** Insofar as the performance of any obligation or duty by either of the Parties in terms of the Agreement is performed by any of the Parties' respective responsible persons, clauses limiting and/or excluding the liability of or indemnifying the Customer or Transnet Freight Rail are stipulated for the benefit of such responsible persons as well as the benefit of the Customer or Transnet Freight Rail and their liability shall be limited and/or excluded and they shall be indemnified accordingly.

**25.6** Notwithstanding anything to the contrary contained in the Agreement, Transnet Freight Rail's liability to the Customer in terms of clause 24 where specifically undertaken in the Agreement or for any other cause under the Agreement is limited to the amount set out or to be set out in a Schedule.

## **26. Optional Insurance & Claims**

**26.1** Transnet Freight Rail shall endeavour to effect any insurance the Consignor or Consignee validly instructs Transnet Freight Rail to effect over a particular consignment of goods and/or a freight container not owned by Transnet Freight Rail before despatch of same, or attachment of risk, whichever happens earlier. Instructions may validly be given in any of the following ways:-

**26.1.1** indicating in the appropriate space on the transport documents that insurance is required; or

**26.1.2** an indication to the Transnet Freight Rail employee making telephonic bookings that insurance is required; or

**26.1.3** notification on the relevant Electronic Data Interchange communication with Transnet Freight Rail that insurance is required.

**26.2** Any of the above valid indications by the Consignor that insurance is required shall be deemed to be made for and on behalf of the person bearing the risk in the goods at the time they are lost or damaged.

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**26.3** The Consignor shall be liable to pay the insurance premium, unless and until it has been paid by another person. If the premium is not paid by the due date there will be no insurance cover.

**26.4** Any insurance effected shall be subject to such exceptions and conditions as may be imposed by the insurance company or underwriters taking the risk. In particular the insurance shall be limited to physical loss or damage to the goods themselves, including all packing materials, labels and the like when necessary for commercial purposes, and/or a freight container not owned by Transnet Freight Rail together with a refund of railage in proportion to the loss if included in the insured value of the goods.

**26.5** Transnet Freight Rail shall not be obliged to obtain separate cover for any risks so excluded.

**26.6** Transnet Freight Rail shall not be under any obligation to obtain separate cover for individual consignments but may insure all or any of such consignments under any open or general policy held by Transnet Freight Rail from time to time, and in particular Transnet Freight Rail shall be entitled should it so wish to declare the goods on any open or general insurance policy.

**26.7** Should any insurer dispute its liability, whether in whole or in part, under any insurance policy in respect of any goods, the consignor or consignee concerned shall have recourse against such insurer only, and Transnet Freight Rail shall not have any responsibility or liability whatsoever in relation thereto notwithstanding that the premium paid on such policy may differ from the amount paid by the consignee or consignor to Transnet Freight Rail in respect thereof.

**26.8** In so far as Transnet Freight Rail agrees to arrange insurance, Transnet Freight Rail acts solely as agent for and on behalf of the Consignor, and/or any other person bearing the risk in the goods at the time they are lost or damaged.

**26.9** Documentary proof of the insurance concerned may be inspected or obtained during business hours from the relevant Transnet Freight Rail Manager involved in arranging the insurance.

**26.10** Claims: - Any claim brought against the insurers may be lodged during business hours with Transnet Freight Rail's Account/Customer Manager, who will accept notification of the claim in the capacity as agent of the insurers or underwriters.

**26.11** It will be in the interests of any claimant to *IMMEDIATELY* report any discrepancy, loss or damage to Transnet Freight Rail telephonically in order to arrange inspection of the goods, and to obtain an incident number from Transnet Freight Rail.

**26.12** A claim form (Obtainable from Transnet Freight Rail) must be lodged with the Transnet Freight Rail Account/Customer Manager within 180 (One Hundred and Eighty) calendar days from the date the goods reached, or ought to have reached, their final destination, failing which the claim will irrevocably lapse and be of no force and effect.

**26.13** If the claim is rejected, summons may be served on Transnet Ltd at following addresses:

Manager, Credit Management, Room 2501, Carlton International Trade Centre,  
Johannesburg; and/or Manager, Risk Management, Room 407, 222 Smit Street,  
Braamfontein.

## **27. Claims Against the Servants & Employees of Transnet Freight Rail by the Consignor, Consignee or Third Party**

**27.1** The Consignor and Consignee undertake that no claim shall be made by either of them, nor any party, against any servant or employee of Transnet Freight Rail personally for any loss or damage caused by such persons while acting in the course and scope of their employment.

## **28. Account number**

**28.1** If Transnet Freight Rail has granted credit facilities to the Customer, Transnet Freight Rail will allocate an account number to the Customer ("the Customer's account") set out or to be set out in a Schedule. The account number must be quoted on all orders and payments.

## **29. Credit facilities and payment**

**29.1** Unless otherwise agreed between duly authorised representatives of Transnet Freight Rail and the Consignor respectively, the terms of payment to Transnet Freight Rail shall be by means of a cash deposit into Transnet Freight Rail's Bank Account, in advance of conveyance. The granting, amendment, or extension of credit facilities will be subject to the Customer providing Transnet Freight Rail with an appropriate bank guarantee in terms of this clause 29.1. In order to ensure that the Customer's obligations to Transnet Freight Rail can be fulfilled, the Customer must furnish Transnet Freight Rail with such a guarantee within 30 Days of Transnet Freight Rail's request in the amount requested. If:

**29.1.1** the guarantee is at any time withdrawn according to its terms or is held to be unenforceable for any reason; or

**29.1.2** the Customer fails to provide the bank guarantee as requested; or

**29.1.3** the Customer fails to make alternative arrangements satisfactory to Transnet Freight Rail,

Transnet Freight Rail will be entitled to immediately terminate the Agreement and/or suspend all Transport of consignments.

**29.2** The Customer will be invoiced and be held liable for all amounts, which Transnet Freight Rail may pay on the Customer's behalf to other Railway administrations, hauliers or other persons.

**29.3** If the Customer's authorized credit limit on such an account is exceeded, the Customer must make an immediate interim payment in order to bring the account within the authorized credit limit failing which Transnet Freight Rail shall be entitled to suspend all Transport of consignments.

**29.4** Transnet Freight Rail will render a weekly tax invoice to the Customer, which will serve as an account for consignments transported by Transnet Freight Rail including Wagon Delay Charges. Any other amounts due to Transnet Freight Rail by the Customer in terms of these Transnet Freight Rail Standard Conditions of Carriage such as interest charges will appear on the monthly statement, which serves as a summary of all transactions on the Customer's account. The weekly tax invoice will furthermore also be:

**29.5** a VAT invoice; and

**29.5.1** proof of the VAT payable.

**29.6** Debits to the Customer's account raised in any particular month must be paid by the Customer on or before the 25th Day of the month following the month in which the debits were raised. Payments must be made into such account as Transnet Freight Rail may from time to time notify the Customer. When the 25th is not a Business Day payment is required on the last Business Day prior to the 25<sup>th</sup>.

**29.7** If any railage prices are quoted in a foreign currency, the prevailing monthly SARA exchange rate for the month during which specific consignments were transported, will be applied in converting the foreign currency to Rand for invoicing purposes.

**29.8** Unless otherwise agreed by Transnet Freight Rail and permitted by the SA Reserve Bank invoices and accounts will be:

**29.8.1** Rand based; and

**29.8.2** be payable in Rand.

**29.9** Overdue amounts shall bear interest at a rate above the published prime overdraft rate of the Standard Bank of South Africa Limited based on the Customer's credit worthiness evaluated by Transnet Freight Rail and as set out or to be set out in a Schedule, as applicable from time to time calculated daily and compounded monthly in arrears. Any change in the prime overdraft interest rate will be applied from the first Day of the next month.

**29.10** The Customer may query any invoice in Writing within 90 Days of the invoice date, if no query is received in the said period the invoice will be:

**29.10.1** deemed to be correct; and

**29.10.2** final and binding on all parties.

**29.11** If any amount is erroneously debited to the Customer's account due to a mistake on the part of the Customer or their agent and the Customer subsequently requests Transnet Freight Rail to transfer the debit to another account, such transfer will not be done without the prior written consent of the account holder concerned. The Customer will be liable to compensate Transnet Freight Rail for an adjustment fee arising out of the correction of any such errors. Interest will also be payable by the Customer from the date of first debit as if the amount had been originally included to the correct account number. No request for the transfer of debits lodged 90 Days or more after the date of the statement will be entertained.

**29.12** Transnet Freight Rail is entitled to refuse to Transport any consignment for the Customer (whether on a cash in advance basis or not) if any amount due by the Customer to Transnet Freight Rail is overdue for payment.

**29.13** The Customer is not entitled to:

**29.13.1** withhold payment of any amount due by the Customer for services because of any loss claimed by the Customer;

**29.13.2** set off any amounts due by the Customer to Transnet Freight Rail against any amount due to or alleged to be due to the Customer by Transnet Freight Rail.

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**29.14** The Customer must furnish Transnet Freight Rail on request with such information and references relating to the Customer's financial position as Transnet Freight Rail may from time to time require.

**29.15** If at any time during the term of the Agreement, and after an evaluation of the Customer's financial position in terms of clause 0, Transnet Freight Rail requires an additional bank guarantee on the same terms as clause 29.1 in order to ensure that the Customer's obligations to Transnet Freight Rail can be fulfilled, the Customer must furnish Transnet Freight Rail with such a guarantee within 30 Days of that request in the amount requested.

**29.16** Transnet Freight Rail may at any time in Transnet Freight Rail's sole discretion amend, vary or revoke the Customer's credit facilities.

**29.17** The terms of the Agreement are without prejudice to Transnet Freight Rail's rights to exercise a lien over the Customer's consignments in Transnet Freight Rail's possession for unpaid storage, railage and other charges and additional costs and the Customer agrees that Transnet Freight Rail may exercise such a lien whether or not the unpaid amounts relate to the consignments in question.

Transnet Freight Rail shall be entitled, without prejudice to any other rights, which it may have, and without further notice to the Consignor or Consignee –

**29.17.1** to open and examine any part of the consignment, and

**29.17.2** at the option of Transnet Freight Rail, to sell the whole or any part of the consignment, either by public auction or by private treaty, and to apply the proceeds of any such sale, after deducting all the expenses thereof, in payment of or towards any sum due by the Consignor or Consignee, to Transnet Freight Rail.

Transnet Freight Rail shall pay over the surplus (if any) of the proceeds of such sale under this clause to the Consignor, but shall otherwise be released from all liability whatsoever in respect of the consignment.

The Consignor and Consignee jointly and severally indemnify Transnet Freight Rail against any claims or fines which may be instituted or levied against Transnet Freight Rail arising out of or as a result of any sale under this agreement.

The Customer may authorise anyone to despatch goods for the debit of the Customer's account, provided the Customer has advised Transnet Freight Rail in Writing prior to granting such authorisation. The Customer may withdraw any such authorisation on 14 Days notice to Transnet Freight Rail. The Customer will remain liable before the lapse of such notice period for all debits against the Customer's account in terms of the authorisation.

## **30. Unclaimed Goods**

**30.1** Transnet Freight Rail shall be entitled to sell or dispose of any goods where:

**30.1.1** a Consignee cannot be identified; or

**30.1.2** the goods cannot be delivered because they are insufficiently or incorrectly addressed; or

**30.1.3** where the goods have not been collected or accepted by the Consignee or any other person within 7 (*SEVEN*) days of their having arrived or being tendered for

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delivery by Transnet Freight Rail, as the case may be. Provided that where Transnet Freight Rail has an address for the Consignee (or in the case of a freight container, the container operator) then sale or disposal shall be effected only after the expiration of 30 (*THIRTY*) days from the posting of a written notice of its intention to do so to that address by registered mail.

**30.2 PERISHABLE GOODS:** - Notwithstanding anything to the contrary in this Agreement, if perishable goods arrive at their destination in such a condition that they will, in the opinion of Transnet Freight Rail, become worthless if the owner or person entitled to claim them has not claimed them, or refuses to claim them, Transnet Freight Rail may, AFTER reasonable attempts to obtain disposal instructions from the Consignor and Consignee, immediately sell such goods in any manner, or if the goods have in fact become worthless, to destroy them or arrange for their disposal.

### 31. Certificate

The Customer agrees that any certificate given under the signature of any credit manager of Transnet Freight Rail (whose signature and capacity it shall not be necessary to prove) shall be *prima facie* evidence of:

any amount owing by the Customer to Transnet Freight Rail, whether liquid, liquidated or illiquid, including any interest and the rate thereof;

the reasonableness or normality of any charge raised by Transnet Freight Rail against the Customer.

### 32. Breach

**32.1** Subject to 32.2 should either of the Parties ("**the aggrieved party**") commit a breach of a term of the Agreement, then the other of the Parties ("**the non-defaulting party**") shall be entitled to give the defaulting party notice to remedy such breach within 30 Days of receipt of such notice and, if the defaulting party fails to comply with the notice, the aggrieved party shall be entitled, but not obliged, without prejudice to any other rights or remedies which it may have, including the right to claim damages:

**32.1.1** cancel the Agreement; or

**32.1.2** claim specific performance.

**32.2** The aggrieved party shall not be entitled to exercise the rights granted to it in terms of sub-clause 32 until such time as the aggrieved party shall first have given the defaulting party notice as contemplated in sub-clause 2.6 and the defaulting party shall have failed to comply therewith within a period of 30 Days reckoned from the date upon which the defaulting party received such notice.

**32.3** The Agreement may be terminated forthwith by either of the Parties if the other is Placed under winding-up or judicial management, whether provisional or final.

**32.4** Transnet Freight Rail reserves a right, on 7 Days Written notice, to terminate the Agreement if the Customer's account is in arrears in excess of 30 Days.

**32.5** The termination of the Agreement shall have the effect of terminating Transnet Freight Rail's respective rights and obligations save for the rights of either of the Parties that have already accrued prior to the event giving rise to the termination.

### **33. Cession and delegation**

**33.1** Neither of the Parties shall be entitled to cede any of their rights or delegate any of the Parties' obligations in terms of the Agreement save with the prior approval of the other which approval in the case of a cession shall not be unreasonably withheld.

### **34. Force Majeure**

#### **34.1 Notice of Force Majeure**

Each of the Parties shall promptly notify the other of the occurrence of a perceived or actual event of Force Majeure and when such event has ceased.

#### **34.2 Continuation of performance**

**34.2.1** Each of the Parties shall take all reasonable steps to prevent, limit and minimise the effect of events of Force Majeure on the performance of its obligations in terms of the Agreement.

**34.2.2** Decisions concerning Force Majeure and the application of this clause shall be directed toward the performance to the extent possible of all obligations under the Agreement for the period of the Agreement.

**34.2.3** A party affected by the occurrence of the Force Majeure shall be excused from performance of its obligations in terms of the Agreement to the extent that it is unable to perform those obligations as a result of such Force Majeure and neither of the Parties shall be entitled to:

**34.2.3.1** terminate the Agreement on account of such occurrence other than in accordance with the terms of this clause; and/or

**34.2.3.2** claim damages, penalties or other compensation from the other of the Parties as a result of such failure to perform.

#### **34.3 Insured events of Force Majeure**

To the extent that the consequences of an event of Force Majeure fall within any insurance cover then the party who is insured shall forthwith make the appropriate Claims thereunder and shall apply the proceeds in rectification of those consequences.

#### **34.4 Consequences of Force Majeure**

**34.4.1** If Transnet Freight Rail agrees, or it is determined that an event of Force Majeure has occurred, Transnet Freight Rail shall promptly consult to agree a mutually satisfactory resolution to the changed circumstances resulting from the event of Force Majeure.

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**34.4.2** If an event of Force Majeure (or its consequences) continues for an aggregate of 60 or more Days in any 180 Day period or 180 consecutive Days and Transnet Freight Rail has not reached a mutually satisfactory resolution to the changed circumstances and the effect of the Force Majeure is continuing, the Agreement as stipulated in a Schedule may, upon 14 Days prior notice, be terminated by either of the Parties.

**34.4.3** Neither of the Parties shall be obliged to counter-perform any obligation where performance of the other has not taken place as a result of Force Majeure.

### **35. Notices and Communications**

**35.1** The Parties choose as their respective *domicilia citandi et executandi* for all purposes in terms of the Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the addresses for Transnet Freight Rail stipulated in a Schedule or Room 2531, 25<sup>th</sup> floor, Carlton International Trade Centre, 150 Commissioner Street, Johannesburg and the Customer at its official address set out in a Schedule or the address appearing in the relevant transport document as the case may be.

**35.2** Any notice or communication required or permitted in terms of the Agreement shall be valid and effective only if in Writing, but it shall be competent to give notice by facsimile.

**35.3** Either of the Parties may by notice to the other change the physical address chosen as their *domicilium citandi et executandi* to another physical address or change their postal address or their telefax number, provided that the change shall become effective on the 20<sup>th</sup> Business Day from the receipt of the notice by the addressee.

#### **35.4 Any notice to either of the Parties:**

**35.4.1** sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to the addressee at an address chosen as the *domicilium citandi et executandi* and to which post is delivered shall be deemed to have been received on the 14<sup>th</sup> Business Day after posting (unless the contrary is proved);

**35.4.2.** delivered by hand to a responsible person during ordinary Business hours at the physical address chosen as the *domicilium citandi et executandi* shall be deemed to have been received on the Day of delivery; or

**35.4.3** sent by telefax to the chosen telefax number stipulated in clause 0, shall be deemed to have been received on the date of despatch if that Day is a Business Day and, if it is not a Business Day, on the next succeeding Business Day (unless the contrary is proved).

**35.5** Notwithstanding anything to the contrary in the Agreement, a notice or communication actually received by one of the Parties shall be an adequate notice or communication notwithstanding that it was not sent to or delivered at the chosen *domicilium citandi et executandi*.

### **36. Miscellaneous**

**36.1** No approvals, comments, instructions, consents or advice from one of the Parties to the other in connection with the subject matter of the Agreement shall in anyway relieve the other from its obligations under the Agreement.

**36.2** The Parties' respective rights and remedies under the Agreement are cumulative, may be exercised as often as either of the Parties consider appropriate and are, save where such rights are limited in terms of the Agreement in addition to the Parties' respective rights and remedies in Law.

**36.3** The Parties' respective rights and remedies whether arising under the Agreement or in Law shall not be capable of being waived or varied otherwise than by an express waiver or variation in Writing duly executed by an authorised representative of the holder of such right or remedy.

**36.4** The waiver by either of the Parties of any breach of the terms of the Agreement by the other shall not prejudice any remedy of the waiving party in respect of any continuing or other breach of the terms of the Agreement.

**36.5** No failure, delay, relaxation or indulgence on the part of either of the Parties in exercising any power, right or remedy conferred on such Party under the Agreement or by Law shall operate as a waiver of such power, right or remedy whether of a like or different character nor shall any single or partial exercise of any such power, right or remedy preclude any other or further exercises of such power, right or remedy or the exercise of any other power, right or remedy of either of the Parties.

**36.6** If any of the provisions in the Agreement is or becomes invalid, illegal or unenforceable in any respect under any Law the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired and:

**36.6.1** that provision shall be deemed for all purposes to be severable from all the other provisions of the Agreement, which provisions shall continue in force unaffected;

**36.6.2** The Agreement thus continuing shall (subject and without prejudice to any appeal to higher authority as to the status of that provision) exclude the offending provision but, if such deletion substantially affects or alters the commercial basis of the Agreement, then the Agreement, including such provision shall be amended in such manner as Transnet Freight Rail agrees which will, while not being void or unenforceable, most nearly achieve the object of the allegedly void or unenforceable provisions.

**36.7** The Agreement shall be binding upon and inure to the benefit of each of the Parties and the Parties' respective successors, legal representatives and permitted assigns.

### **37. Laws and Jurisdiction**

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**37.1** The Agreement shall be governed by and interpreted according to the Law of the Republic of South Africa irrespective of where Goods are collected, or delivered and irrespective of where the Transport is carried out.

**37.2** Subject to the provisions of clause 38 each of the Parties submits to the exclusive jurisdiction of the South African courts in respect of any matter arising from or in connection with the Agreement, including its termination. Each of the Parties further consents to the jurisdiction of the High Court of South Africa (Witwatersrand Local Division).

### **38. Dispute Resolution**

Any dispute arising in connection with any aspect of the Agreement, including its termination ("**Dispute**") shall be resolved in accordance with this clause.

Save in respect of those provisions of the Agreement which provide their own remedy, a Dispute shall:

in the first instance, be referred to the responsible Account/Customer managers of each of the Parties, who shall attempt to resolve the dispute amicably within 5 Business Days of the dispute being referred to them; and

if not resolved, be referred to the responsible executive managers of each of the Parties, who shall attempt to resolve the dispute amicably within 5 Business Days of the dispute being referred to them; and

if the dispute still remains unresolved, be submitted to and decided by arbitration in accordance with the rules of the Arbitration Foundation of Southern Africa ("**AFSA**") or its successor by an arbitrator appointed by AFSA in accordance with its rules.

**The arbitration proceedings shall take place in Johannesburg, Gauteng.**

**38.3.1** The arbitrator shall be that person agreed upon by both of the Parties or, failing such agreement, the person appointed by The Arbitration Foundation of Southern Africa in terms of its Expedited Rules.

**38.3.2** The Parties shall endeavour to ensure that the arbitration is completed within 90 Days after the appointment of the arbitrator.

**38.3.3** The arbitration shall be governed by the Arbitration Act, as amended.

**38.3.4** The procedure to be followed in the arbitration shall be the procedure provided for in the aforesaid rules of AFSA.

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**38.3.5** The arbitrator shall give written reasons for his award, if so requested by either of the Parties.

**38.4** The provisions of this clause 38:

**38.4.1** constitute an irrevocable consent by each of the Parties to any proceedings in terms hereof and neither of the Parties shall be entitled to withdraw there from or claim at any such proceedings that it is not bound by such provisions;

**38.4.2** are severable from the rest of the Agreement, and shall remain in effect despite the termination of or invalidity for any reason of the Agreement.

## **39. Execution**

**39.1** The Agreement may be executed in several counterparts, which shall each be deemed an original, but all of which shall constitute the same instrument.

**39.2** The signatories warrant their authority to enter into the Agreement, and the capacity of their principal, if signing in a representative capacity, to enter into the Agreement