

**WHEREAS** the Client, as a result of its involvement in the distribution of Goods in the Territory, has a need for such Goods to be transported by Agricoal subject to the terms and conditions hereof;  
**AND WHEREAS** Agricoal possesses of the necessary experience, services and staff in order to conduct the aforementioned transportation;  
**AND WHEREAS** the Client is desirous to appoint Agricoal to conduct the transportation of the Goods in the Territory on a non-exclusive basis and Agricoal is desirous to be appointed as a Carrier in terms of this Agreement;  
**NOW** the parties are desirous to reduce their agreement in writing.

## 1. DEFINITIONS AND TERMINOLOGY

In this Agreement, unless the context otherwise indicates, words and expressions shall bear the following meanings –

- 1.1 “Agreement” shall mean this signed Standard Terms and Conditions of Carriage of Goods by Road, including all annexures attached hereto as dealt with in this Agreement;
- 1.2 “AgriCoal” shall mean Agricoal Logistics (Pty) Ltd with registration number: 2008/006046/07, a private company duly registered in terms of the Companies Act 71 of 2008;
- 1.3 “the Client”
  - a) shall mean the entity as described on the cover page (page 1) of this Agreement;
  - b) any person who accepts an Agricoal quotation;
  - c) any person who instructed Agricoal to perform services in terms of this Agreement;
  - d) any person who concludes agreements with Agricoal and pays the account;
  - e) the credit receiver;
- 1.4 “Goods” shall mean agricultural products such as, but not limited to maize, grain, soya beans, sorghum, wheat, sugar, coal, chrome as well as any other Goods that Agricoal wish to carry and transport as stipulated in Annexure “A”;
- 1.5 “Party/parties” shall mean any party / both parties to this Agreement, namely Agricoal and / or the Client;
- 1.6 “Service” shall mean the services as described in clause 4 of this Agreement;
- 1.7 “Commencement date” Means the commencement date of this Agreement being the signature date of this Agreement by the Client;
- 1.8 “Day” Means business day;
- 1.9 “Delivery / Delivered” means the successful off-loading of the Goods at the end destination as stipulated in Annexure A;
- 1.10 “Loading Point” means the address stipulated by the Client in Annexure A where the Goods are to be loaded;
- 1.11 “Off-Loading Point” means the address stipulated by the Client in Annexure A where the Goods are to be off-loaded;
- 1.12 “Vehicle” means one or more of the truck and trailers to be used by AgriCoal through it’s network of sub-contractors;
- 1.13 “Consignee”
  - a) means the person who takes delivery of the Goods at the off-loading point;
  - b) means the person to whom or in the event of no name being given by the consignor, the address at which the goods are to be delivered. In the absence of the person named by the consignor as the consignee, then any person representing himself to be duly

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### AGRICOAL LOGISTICS (Pty) Ltd.

Tel: +27(0)12 111 0600 Fax: 086 633 6085 Mail: info@agricoal.co.za Web: www.agricoal.co.za  
 Physical: Monument Office Park Block 1, Cnr. of Steenbok & Elephant Road, Monument Park, 0181  
 Postal: P.O Box 27055, Monument Park, 0105, Pretoria, South Africa

Reg: 2008/006046/07  
 Directors: Mw von Wieligh,  
 RS Cramer, Christoph van Zyl

- authorized to accept delivery on behalf of the consignee and having the appearance of being a person duly authorized by the consignee to accept delivery on behalf of the consignee;
- 1.14 “Consignor” a) means the person from whom the Goods are collected at the Loading point;  
b) means the owner of the goods or the person having lawful title to the goods or possession thereof and the duly registered agent of the consignor.
- 1.15 “Territory” means the area in which Agricoal collects and receive Goods. No specific area and or routes are dedicated to any particular carrier
- 1.16 “Carrier” means AgriCoal and includes the Carrier’s servants and agents and any person or persons carrying any goods forming the subject matter of this contract under and in terms of a subcontract with the carrier, known as a Master Level Agreement with transporters.
- 1.17 “Creditor” means AgriCoal Logistics (Pty) Ltd
- 1.18 “Consignment” means the goods forming the subject matter of this Agreement, being motor vehicles transported under such vehicle’s own power, alternately on a vehicle carrier.
- 1.19 “Load Confirmation” highlights the necessary details of the load for the carrier. The load confirmation will include information like the rate confirmation, address of the loading and offloading points as well as the commodity that is transported. The load confirmation is an agreement of pay between the client and the carrier. The load confirmation forms an addendum to the Standard Terms and Conditions of Carriage of Goods by Road, which is inclusive of a personal suretyship by the signatory thereof, entered into between Agricoal Logistics (Pty) Ltd and the Client. Annexure A attached to this Agreement, includes all the relevant Information that is a load confirmation. The load confirmation will be subject to this Agreement.

## **2. INTERPRETATION AND RELATIONSHIP**

- 2.1 The index and the headings of the clauses used in this Agreement are for reference purposes only and shall not govern the interpretation or be used to give any indication as to the meaning or effect of this Agreement.
- 2.2 In this Agreement, unless the context otherwise indicates, a reference to:
- 2.2.1 The singular shall be deemed to include a reference to the plural and vice versa;
- 2.2.2 Any gender shall be deemed to include a reference to the other genders; and
- 2.2.3 A natural person shall be deemed to include a reference to a legal person.
- 2.3 The terms defined in clause of this Agreement shall be constructed as binding provisions of this Agreement and any rights conferred and obligations imposed upon the parties by such definitions shall be binding upon them.
- 2.4 The parties for all purposes of this Agreement will act in their capacity as separate and independent legal entity with no joint and several liabilities on the part of either party. The relationship between the parties shall therefore in no way, whatsoever, be deemed to be that of an employer and an employee or a partner or an agency or representative of one another.
- 2.5 The Client shall be regarded as an independent contractor.

### **3. APPOINTMENT AND DURATION**

- 3.1 The Client hereby appoints Agricoal as a preferred, non-exclusive service provider to render the Service, as and when required by the Client, and Agricoal is willing to accept such appointment upon the terms and conditions contained in this Agreement.
- 3.2 Notwithstanding clause 3.1 above, Agricoal shall have the right to terminate this Agreement on 7 (seven) days written notice to the Client.

### **4. SCOPE OF SERVICE**

#### **4.1 OBJECTIVE**

The main objective of this Agreement is that Agricoal is to provide safe, cost effective and reliable transportation services to the Client in the Territory. Agricoal shall *inter alia* attend to the following as and when required by the Client:

- 4.1.1 The collection of Goods at the Loading Point;
- 4.1.2 The safe, timeous and reliable transportation of the Goods from the Loading Point to the Offloading Point;
- 4.1.3 The delivery of the Goods to the Offloading Point;
- 4.1.4 The correct and punctual completion of all relevant documentation required by the Client or as practice dictates.

#### **4.2 COMMITMENT**

- 4.2.1 Agricoal shall dedicate a representative who shall at all relevant times be in contact with the relevant officials of the Client in order to ensure that the Loading and Offloading instructions are properly communicated, and are effected timeously and efficiently;
- 4.2.2 Agricoal undertakes to comply with the Client's documentation requirements as indicated in this clause 4 and to ensure that the relevant documents are being signed by all relevant and dedicated officials at the Loading and Offloading points as well as any weighbridges, if applicable;
- 4.2.3 Agricoal shall at all times and when requested by the Client be able to prove the delivery of Goods;
- 4.2.4 Agricoal undertakes to liaise with the Client (when required) so as to perform in a prompt, safe and efficient manner all reasonable instructions issued by the Client, and to co-operate with the Client in all matters pertaining to this Agreement. Should any delays be incurred that would result in a late delivery, Agricoal undertakes to notify the Client of such a delay and the expected duration thereof the moment that the delay is apparent;
- 4.2.5 It is recorded that the Client shall have the right to, at its discretion, notify Agricoal of any additional requirements or terms prescribed by the Client to which Agricoal has to comply with and which requirements are to be in connection with the Service;
- 4.2.6 Agricoal shall ensure that the Goods are Delivered at the Offloading Point into the custody of the Consignee.
- 4.2.7 Agricoal shall supervise the Loading and Offloading of Goods onto or from the Vehicles;
- 4.2.8 It shall not be expected of Agricoal to warrant the quality of the Goods but shall be accepted, until proven otherwise by Agricoal, that the Goods and the quality of the Goods shall be as stipulated on the Load Confirmation;
- 4.2.9 Agricoal shall Deliver the Goods in the same condition and quantity as received at the Loading Point;

- 4.2.10 AgriCoal shall keep the Goods in order and conditions, properly covered by tarpaulins or other means and secured for the duration of the transportation;
- 4.2.11 AgriCoal shall ensure that the Vehicle arrive timeously at the Loading Point and proceed to the Offloading Point without delay;

#### **4.3 LOADING AND OFFLOADING**

- 4.3.1 The Client shall, at its sole discretion, forward loading instructions to AgriCoal, addressed in accordance with Annexure “A”. The loading instructions shall include the following:
  - 4.3.1.1 The load confirmation reference number;
  - 4.3.1.2 The date on which the Goods are to be loaded;
  - 4.3.1.3 The location where the Goods are to be loaded;
  - 4.3.1.4 The date where the Goods are to be offloaded;
  - 4.3.1.5 The location where the Goods are to be offloaded;
  - 4.3.1.6 The driver’s name;
  - 4.3.1.7 The horse registration number of the Vehicle;
  - 4.3.1.8 The trailer(s) registration number(s);
  - 4.3.1.9 The transport rate;
  - 4.3.1.10 The Goods to be loaded;
  - 4.3.1.11 The invoice weight;
  - 4.3.1.12 The offloading reference number; and
  - 4.3.1.13 The AgriCoal broker responsible for the load.
- 4.3.2 The Carrier shall execute the said instructions punctually and effectively;
- 4.3.3 The facsimile / e-mail transaction report or acknowledgement of receipt or the electronic confirmation report shall be sufficient proof that the said loading instructions have been given and received;
- 4.3.4 AgriCoal shall ensure that it’s subcontractors are timeously available, present and ready to load at the designated Loading and Offloading Points;
- 4.3.5 The Carrier shall ensure that the Consignee follow proper procedure in its instructions to the driver of the vehicle and that the Goods are offloaded strictly in accordance with such instructions;
- 4.3.6 The Carrier shall ensure that the Goods offloaded comprise the correct quantity and are in good order and condition;
- 4.3.7 It is hereby recorded that the dates and times on which the Goods are to be loaded and offloaded as stipulated in Annexure A, are material and the Carrier undertakes to strictly adhere to these limits.
- 4.3.8 The Carrier shall provide all cordage, nets, tarpaulins, ropes and all other equipment reasonable necessary for the safeguarding and securing of the Goods in transit and during offloading;
- 4.3.9 The Carrier and Consignee must ensure that a sufficient declaration of all shortages or damage to the lad must be documented on the delivery note or communicated in writing as soon as possible.
- 4.3.10 The Carrier will supply Vehicles which are suited to the required load as per the Load Confirmation, refer to Annexure A.

## **5. SUBCONTRACTORS**

- 5.1 Where any Consignment is consigned to any place beyond the limit of the Carrier's usual delivery radius, the Carrier reserves the right at its discretion, to employ another carrier on the Consignor's behalf and at the Consignor's expense in order to ensure the carriage of the said consignment to the address of the consignee, whether such carriage be effected by road or by whatever means.
- 5.2 In the event of the Carrier electing to exercise its discretion as contemplated in 5.1 above, the Carrier will be entitled to agree to, and to accept any conditions of carriage imposed by any other carrier and the Consignor will be deemed to have had knowledge of, and to have accepted, any such conditions of carriage, provided that the Carrier's liability as defined herein will in no way be extended by any such conditions of carriage.

## **6. OFFICIAL INSTRUCTION**

- 6.1 The Carrier shall execute the Service upon receipt of an official instruction issued by the Client. The instruction shall include the loading instructions referred to in clause 4.3.1 above. The instruction shall be regarded as official upon receipt of a completed Annexure "A" from AgriCoal to the Client and shall constitute the Agreement between the Parties upon signature thereof by the Client.
- 6.2 The Carrier shall endeavour to avoid any delay and shall, on receipt of an official instruction from the Client:
  - 6.2.1 Commence with the Service;
  - 6.2.2 Execute the Service in such order and sequence as is required by the Client to ensure the sufficient, expeditious and timeous performance of the entire Service; and
  - 6.2.3 Maintain progress in accordance with the agreed program and schedule, meeting all milestone dates and times specified.
- 6.3 Should there appear to be any discrepancy, ambiguity or uncertainty pertaining to the meaning or effect of any information contained in the official instruction, the Carrier shall refer the matter to the Client for decision before proceeding to execute the Official Instruction.
- 6.4 Should the Carrier at any stage be unable to execute the Service and the Client prefers not to make use of the remedies available by law for breach of contract and should the Carrier's inability to supply the Service not be attributable to and as a result of the factors mentioned in clause 10 of this Agreement, then the Client shall not be entitled, without prejudice to any of its rights in terms of this Agreement or under common law, to purchase the Service that the Carrier has been unable to supply from any other carrier and recover the difference in cost from AgriCoal.

## **7. HARDSHIP**

Should either party suffer undue and/or unreasonable hardship as a result of the execution or implementation of any of the provisions of this Agreement, then, provided the party in question is not entitled to claim relief in terms of clause 14 as Force Majeure, such party shall forthwith indicate which of the provisions of this Agreement is causing such party hardship suffered together with a proposal as to how to remove the hardship. The parties shall thereupon negotiate on a bona fide basis for the removal of the undue and/or unreasonable hardship. However, such negotiation shall not extend the deadlines for any performance of an obligation otherwise established hereunder, without the written consent of both parties.

## **8. ARBITRATION**

- 8.1 The parties agree that all disputes which may arise from this Agreement, its terms and conditions, interpretation, application, execution or otherwise will be settled by way of arbitration, subject thereto that urgent relief may be sought from a competent Court by any party.
- 8.2 The Arbitration Act No. 42 of 1965 and the laws of the Republic of South Africa will be applicable to such arbitration.
- 8.3 Arbitration will be done in an informal and expedited manner.
- 8.4 Same will be referred to a practising advocate of not less than ten years of standing to be nominated by the parties, to adjudicate and rule on the impasse.
- 8.5 In the event of both Parties not being able to agree on the appointment of such practising advocate, such appointment shall be made by the chairperson from time to time of the Pretoria Bar Council who in his sole discretion may appoint a practising advocate of not less than ten years standing.
- 8.6 The decision of the duly appointed practising advocate on any issue submitted to him/her for adjudication and a ruling shall be final and binding on the Parties.
- 8.7 The Arbitrator will make a finding and a reward which he deems fair and reasonable with regard to the dispute submitted to him. He will therefore not be bound to strictly comply with the applicable rules of the law.

## **9. CONFIDENTIALITY**

- 9.1 Both parties acknowledge that the details of this Agreement and any communication between the parties arising out of or in connection with this Agreement is strictly confidential and shall not be disclosed to any third party without the prior written approval of the party, who shall have the right to grant or refuse such consent in its absolute discretion.
- 9.2 Each party therefore agrees:
  - 9.2.1 To use reasonable means, not less than that used to protect its own proprietary information, to safeguard the proprietary information of the other party;
  - 9.2.2 Not to disclose any proprietary information of the other party to any unauthorized person;
  - 9.2.3 Not to make any copies of the proprietary information of the other party except as required only for the purposes of this Agreement;
  - 9.2.4 To return all proprietary information to the other party upon receipt of written instruction to do so or at date of termination of this Agreement; and
  - 9.2.5 To ensure that the provisions of clause 9 of this Agreement is not violated by any labourer, employee, sub-carrier, agent or any other person employed by it in terms of this Agreement.

## **10. FORCE MAJEURE**

- 10.1 Neither of the Parties shall be held liable in respect of any failure to fulfil its obligations or commitments in terms of this Agreement, when such failure is caused by or arises from force majeure such as, but not limited to war, civil commotion, riots, insurrection, fires, explosions, floods or other circumstances, in so far as any of the aforementioned events are beyond its control and have not been caused by its negligence or that of its employees. The party so prevented from fulfilling its obligations hereunder shall immediately notify the other to that effect and confirm this in writing, giving a full and complete explanation of the circumstances responsible for such a failure or occurrence as well as the estimated duration thereof and, if requested, the action(s) such

party is taking or proposes to take to remove the said circumstances with the least possible delay as well as the action(s) to be taken to prevent future recurrences.

10.2 Should the Carrier due to force majeure not be able to supply the Service, then the Client shall be entitled to appoint any other person to execute the Service until such time that the Carrier is able to render the Service.

10.3 Should such occurrence continue for a period of thirty (30) days or longer, either party may terminate this Agreement or any part thereof, unless the parties agree to continue on such new terms and conditions acceptable to both parties.

## **11. DEFAULT**

11.1 Either party shall be entitled to cancel this Agreement on written notice to that effect to the other party and to claim such damages as it may have suffered as a result of such breach, upon the occurrence of one or more of the following events:

11.1.1 If the other party should fail to make any payment which is owed by it in terms of this Agreement, on due date, and remains in default for 14 (FOURTEEN) days after having received written notice calling upon it to remedy such a failure;

11.1.2 If the other party commits a breach of any other material provision of this Agreement and fails to remedy such breach within 14 (FOURTEEN) days after having received written notice calling upon it to remedy such failure;

11.1.3 If the other party commits a non-material breach of this Agreement and fails to remedy such breach within 30 (THIRTY) days after having received written notice calling upon it to remedy such failure;

11.1.4 If any provisional or final order is made or a resolution is passed for the winding-up of such other party;

11.2 Should any party institute legal action against the other as a result of breach of this Agreement by the other, the party instituting such action shall be entitled to recover legal costs from the guilty part on a scale as calculated between attorney and own client.

## **12. LAW AND REGULATION**

In the event of any dispute arising out of this Agreement or the terms hereof, or the interpretation thereof, the laws of the Republic of South Africa shall apply.

## **13. JURISDICTION**

The parties consent to the jurisdiction of the Magistrates Court in respect of any legal action which either of the parties may institute against the other, provided that such consent shall not be construed as excluding the right of either party to pursue legal action in the High Court of South Africa. Should either party institute action against the other, the successful party shall be entitled to recover all costs incurred on the scale of fees as between attorney and client.

## **14. LIMITATION OF LIABILITY**

AgriCoal shall not be held liable to the Client for loss of profits or for any indirect, incidental, special or consequential losses or damages arising from this Agreement.

## **15. DOMICILIA AND NOTICES**

15.1 The *domicilia citandi et executandi* of the parties for all purposes arising from or pursuant to this Agreement are as follows:

Agricoal –

The Client –

- 15.2 Any notice required to be given by the Carrier to the Client will be deemed to have been validly given if posted, emailed or delivered to the *domicilia citandi et executandi* of the Client alternatively emailed to the Client's contact person and will be deemed to have been received by the Client on the date of sending.
- 15.3 Either party may by written notice to the other party change its aforesaid *domicilia citandi et executandi* to any address within the Republic of South Africa, which is not a post office box or poste restante.
- 15.4 Any notice give and/or payment made by either party to the other which:
- 15.4.1 Is delivered by hand during the normal business hours of the addressee at the addressee's *domicilia citandi et executandi* for the time being shall be presumed to have been received by the addressee at the time of delivery;
  - 15.4.2 Is send by email shall be presumed to have been received by the addressee on the day and time it was received by the recipient's email server, unless prove otherwise; or
  - 15.4.3 Is sent by facsimile during the normal business hours of the addressee to the officials of the addressee referred to in this Agreement shall be presumed to have been received on the first business day following the date of the successful transmission thereof.
- 15.5 All correspondence / queries to AgriCoal shall be submitted to Christoph van Zyl who can be contacted on cellphone 072 604 1117 / facsimile 086 632 9532 / email at [christoph@agrcoal.co.za](mailto:christoph@agrcoal.co.za)

## **16. RELEASE OF OBLIGATIONS**

- 16.1 Should the address of delivery of the Consignment be incorrect, not be found or should the delivery address of the Consignee on the application be incorrect, the Carrier will be released from all liability whatsoever in respect of the Consignment. The Carrier shall be entitled to deliver the goods to the address of the Consignee specified on the Load Confirmation or Quote (Refer to Annexure A and B), alternatively the Carrier shall be entitled to deliver the goods to the closest branch of the South African Police Services, or Police Authorities (in the event of the Consignment's delivery address be outside the Borders of the Republic of South Africa), alternatively, the Carrier may at its sole discretion retain the Consignment pending instruction from the Client and the Carrier will be entitled to levy storage charges accordingly.
- 16.2 Upon the happening of any event referred to in paragraph 15.1 above, the Carrier shall remain entitled to its agreed upon fee as specified in the quotation accepted by the Consignor and charge additional costs as referred to in paragraph 19.

## **17. INSOLVENCY**

Should an application be made for the surrender or sequestration of a party's estate, or should an order be issued, whether provisional or final, for the sequestration of a party's estate, or should a party enter into or propose any deed of assignment to any of its creditors for settlement of its debts, or if execution is issued against a party by virtue of any judgement, or if a party commits any act of insolvency, or, being a legal entity, is placed under judicial management, or commences to be wound up in a liquidation that is not merely a voluntary liquidation for the purpose of reconstruction, then the other party may, without prejudice to any of its rights in terms of this Agreement or common law, forthwith terminate this Agreement and any amount outstanding will immediately become due and payable.



## **18. ENTIRE AGREEMENT AND PURPOSE OF ANNEXURE “A” AND “B”**

18.1 The parties record that:

18.1.1 This agreement together with Annexure “A” and/or Annexure “B”, record the terms and conditions of the agreement between the Parties and regulate the affairs between the Parties;

18.1.2 The Client however accepts that it would be impossible alternatively unpractical for the Parties to sign this Agreement or issue an official instruction for every Service rendered to the Client by AgriCoal from time to time;

18.2 Every agreement between AgriCoal and the Client shall be concluded in the following matter:

18.2.1 The Client shall sign this Agreement which shall form the basis of every request of Service.

18.2.2 A request of Service shall be made by the Client to AgriCoal through:

a) Forwarding a copy of Annexure “A” in its completed form to the email address of AgriCoal at the email address stipulated in paragraph 14.4;

b) Recording the Acceptance of Annexure “B” in written format or per telephone;

18.2.3 The request of Service shall be regarded as accepted either upon confirmation of the Client that it accepts the Service alternatively upon the Client releasing the Goods at the Loading Point into the custody of the Carrier;

18.2.4 Upon the happening of either one of the two events mentioned in paragraph 16.2.3, the Agreement shall be regarded as concluded on the basis as set out in this Agreement read together with Annexure “A” and / or Annexure “B”;

18.2.5 Every request of Service and acceptance thereof in accordance with paragraph 16.2.3 above, shall constitute a separate cause of action;

18.3 It is hereby agreed that any Consignment carried is accepted subject to the terms and conditions contained in this Agreement read together with Annexure “A” and / or Annexure “B” and no variation of this Agreement will be of any force or effect unless it is recorded in writing and signed by both Parties before the variation occurs.

18.4 No latitude, indulgence, consent or forbearance or any other similar act by either party in enforcing any provisions of this Agreement shall constitute a variation or novation of this Agreement or a waiver of rights to estoppel in terms of this Agreement.

18.5 The parties, by signing the Agreement, shall be deemed to have satisfied themselves as to all the conditions and circumstances affecting this Agreement.

18.6 Each party shall bear and pay its own costs incidental to the negotiations, drafting and conclusion of this Agreement.

18.7 Each person signing this Agreement for and behalf of a party warrants in his personal capacity that he is duly authorized by such party to do so.

## **19. PAYMENT OF CARRIER’S REMUNERATION**

The Carriers remuneration will be payable on presentation of its invoice to the Client. These terms can only be amended in writing, prior to the Annexure “B” being accepted by the Client in writing. Any other amendment will be in breach will be in breach of this contract.

## **20. INCREASE IN QUOTATIONS AND REMUNERATION**

20.1 In the event of the Carrier being obliged to incur reasonable additional costs in the execution of its obligation in that it has to purchase and / or hire additional services, equipment or materials, including licenses or permits, to enable the Carrier to deliver a Consignment, then in such event the Client hereby authorizes the Carrier to incur such costs on its behalf and agrees to be liable for

such additional costs not initially quoted on and which amounts will be invoiced to the Client together with the initially quoted charge, on condition that the Carrier advise the Client prior to incurring such expense. The Carrier will be entitled to recover the additional charges incurred in this matter from the Client.

- 20.2 The Carrier will be entitled to unilaterally increase the remuneration specified in its quotation for a Consignment in the event of the Client altering the quantity of the Consignment.
- 20.3 In the event of the Carrier being obliged to deviate from the route selected by it, or to carry the Consignment over another route, for any reason necessitating such detour, including but not limited to the following: adverse weather conditions, impassable or dangerous roads, bridges, pontoons, ferries, civil unrest or riots/strikes the Carrier will be entitled to charge any additional expense as a result of such a deviation including but not limited to tolls, liability cover or charges levied by lawful authorities. The Carrier will be entitled to deviate from the route selected and charge an additional expense. The Carrier will be entitled to recover the additional charges incurred in this matter from the Client.
- 20.4 The Client shall be liable for storage charges and/or fines/ demurrage charges incurred by the carrier or its agent in respect of the safekeeping of the Consignment at any border post or other area nominated by the Carrier.
- 20.5 Should the Consignment differ in specification from that provided to the Carrier at the time of quotation, the Carrier shall be entitled to accept the Consignment and levy such additional charges as it deem appropriate, which charges shall be in accordance with the rates as set out in Annexure "A" annexed hereto.
- 20.6 The Carrier will be entitled to charge the Client storage charges at a reasonable rate (it will be presumed that the Carrier's charges are reasonable until the contrary is proved by the Client) in respect of any period during which the Carrier is obliged to store the Goods carried by reason of the failure of the Client or the Consignee to take delivery thereof, when tendered by the Carrier for delivery or in the event of the Carrier being unable to deliver the said Consignment due to the fault of the Client or Consignee.

## **21. CARRIER'S LIEN**

- 21.1 The Carrier shall have a general lien over all Consignments carried and in the event of non-payment of any portion of monies due by the Client to the Carrier, the Carrier's general lien shall become effective upon the Carrier taking possession and control of the Client's goods and the general lien will continue to exist until all amounts owing by the Client to the Carrier have been paid in full, whether or not the costs relate to the goods in the Carrier's possession at the time.
- 21.2 It is specifically agreed that all goods in the Carrier's possession shall serve as security for payment of all and any amounts that may be due by the Client to the Carrier. The Carrier's general lien shall further endure until such time as all amounts have been paid and the general lien shall not lapse as a result of delivery of any goods to a Consignee. The Carrier shall be entitled to retrieve the goods from a Consignee in the event of the Client defaulting on any payment obligations to the Carrier.
- 21.3 If the Client does not affect payment of any amounts owing to the Carrier, the Carrier shall in addition to its general lien, specified in clause 21.1 above, be entitled to charge the Client storage fees in respect of all goods in the Carrier's possession, forming part of the Carrier's general lien, which storage charges shall be market related and be calculated on a day to day basis.
- 21.4 The Carrier will be entitled to recover the additional charges incurred in this matter from the Client.
- 21.5

## **22. INTEREST**

The Carrier shall be entitled to levy interest on all overdue amounts at the rate of prime plus 2%.

## **23. NO REPRESENTATIONS**

23.1 The Agreement constitutes the sole record of the Agreement between the parties with regard to the subject matter thereof. This Agreement correctly reflects the intentions of the parties.

23.2 The terms of the Agreement shall supersede any other agreement, or terms of carriage which may be the subject matter of any prior, or subsequent document entered into between the Carrier and the Client.

The Neither party shall be entitled to apply for rectification of this Agreement, nor shall its conditions be susceptible to renunciation or estoppel.

## **24. INSURANCE**

24.1 The Carrier shall procure and maintain comprehensive all risk insurance at its own cost with an insurer covering loss of or damage to the Goods whilst in the possession of the Carrier.

24.2 In the event of a claim arising out of loss or damage to a Consignment, the Client agrees to accept the remuneration offered by the Insurer in terms of the relevant Liability Cover as full and final settlement of any damages or loss suffered and will have no further claim against the Carrier for any reason whatsoever.

24.3 Liability of the Carrier in respect of any claim arising out of loss or damage to a Consignment may not exceed the Client's value reflected on the Client's invoice in respect of the Consignment regardless of the circumstances.

24.4 The Client indemnifies the AgriCoal from any liability or damages suffered in circumstances where any damage to or loss of any Consignment is occasioned as a result of a patent or latent defect in the Vehicle;

24.5 Any compensation payable or awarded to the Carrier or its Insurer arising as a result of damage or loss to any Consignment shall be payable in the Currency and Country where the liability cover was acquired.

24.6 In circumstances where the Client and /or Carrier fails to pay the Liability Cover, administration / handling fee, or elects not to accept Liability Cover over the Consignment or part thereof, then the sole risk in respect of the carriage of any such Consignment shall be borne by the Client and the Carrier is excluded from any liability arising from the transportation thereof.

24.7 Liability Cover will lapse immediately on the signing by the Client or Consignee or their respective agents of the Carrier's proof of delivery note.

24.8 The Carrier shall not be liable for payment of any damages to any third party as a result of the Carrier carrying the consignment on behalf of the Client for any reason whatsoever and the Client hereby indemnifies the Carrier against any claims of whatever nature in this regard.

24.9 AgriCoal will ensure that the Goods in Transit insurance cover is in place capped at a value of R750 000 which is sufficient to cover the market value of the Goods loaded for any one full load and will be calculated pro rata on part loads;

24.10 AgriCoal will upon request from the Client submit proof of payment of the premiums and renewal premiums in respect of said policy.

24.11 AgriCoal will at all times inform the Client of any material changes to the insurance policy that will adversely affect the Client as well as any obligation that the Client have in terms of the insurance policy in order to successfully claim in the event of loss or damage to the Consignment.

24.12 For the purpose of this Agreement Goods will be deemed to be in the possession of or under the control of the Carrier from the time of loading of the Goods onto the Vehicle and shall continue through the ordinary course of transit and terminate once proof of receipt of the Goods are received from the Offloading Point.

24.13 Immediately upon the occurrence of any loss of or damage to the Goods whilst in the possession of or under the control of the Carrier, the Carrier shall notify the Client and will furnish in writing full particulars of the occurrence given rise to the loss or damage and the extent of the loss or damage, and shall assist the Client to prepare and submit a Goods in Transit claim.

24.14 All claims will be handled in accordance with the Carrier's Claim Procedure.

**25. INDEMNITY**

25.1 The Client hereby indemnifies and holds AgriCoal harmless against any claim, of whatsoever nature and any losses or damages that the Client might suffer from receiving the Service. The Carrier will not be liable for indirect or consequential damages or the loss or damage arising from riots, civil commotion, strikes, lockouts, Acts of God, pandemics or stoppage of work from whatever cause, whether partial or general.

25.2 The onus is upon the consignor to supply full and accurate delivery details to the carrier. The Carrier will not be responsible for any loss or damage in respect of incorrect delivery of the consignment due to incomplete or incorrect delivery details being supplied to the Carrier and, the Carrier will not be liable for any loss or damage incurred as a result of the Consignee, or his duly authorized agent, not being present to receive the consignment.

25.3 The Carrier will deliver the Consignment in terms of the times and dates of delivery as specified on the Load Confirmation attached as Annexure "A". The Carrier will not be liable for any delays in delivery of the Consignment, including but not limited to the detention thereof by any border post authority or traffic authority or for any loss or damage arising there from.

**26. CONSENT TO CREDIT BUREAU INFORMATION**

26.1 The Client consents to the Carrier accessing its credit information with any and all credit bureaus whether within the territory of South Africa or internationally. This information will remain confidential to the parties undersigning this contract.

26.2 The Client further consents to the Carrier making information regarding the Client's conduct of its account available to any of the recognized credit bureaus in South Africa.

**27. SURETY**

I / We , ..... the undersigned ("the Applicant"), in my capacity as owner / in my capacity as director / member / partner / trustee of (trading as)

..... ("the Client") confirm that in the event of the applicant being a company, close corporation, partnership or trust:

20.1 I am authorised to bind the company, close corporation, partnership or trust herein; and

20.2 I bind myself as surety and co-principal debtor jointly and severally together with the debtor in favour of AgriCoal Logistics (Pty) Ltd for the repayment or demand of any sums of money

which the debtor owes to AgriCoal Logistics (Pty) Ltd from whatever cause arising whether such debts already exist or may arise in future;

20.3 I hereby renounce the benefits of the legal exceptions “*non causa debiti*”, “*non numeratae pecuniae*”, “*excussions*”, “*no value received*” and revision of accounts, the force meaning and effect of all of which I declare myself to be fully acquainted with and to understand same.

**I have read and understood the provisions of the Clause 20 and regard these terms binding on me in person.**

\_\_\_\_\_

Signature

\_\_\_\_\_

Full Name

\_\_\_\_\_

Position

\_\_\_\_\_

ID number \_\_\_\_\_ Date

\_\_\_\_\_

Place

**THUS DONE AND SIGNED BY THE CLIENT:**

Signed at \_\_\_\_\_ on \_\_\_\_\_ the day of \_\_\_\_\_

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
FOR AND ON BEHALF OF THE CLIENT

**THUS DONE AND SIGNED BY THE AGRICOAL:**

Signed at \_\_\_\_\_ on \_\_\_\_\_ the day of \_\_\_\_\_

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
FOR AND ON BEHALF OF AGRICOAL