



## STANDARD TRADING TERMS AND CONDITIONS

### 1. Definitions and Interpretation

1.1 In these Standard Terms and Conditions (the "**Conditions**"):

(a) "**Charges**" includes all freight, costs, fees, expenses, commissions, duties, penalties, taxes, surcharges and/or other charges payable to the Company in respect of the Services and in accordance with the applicable tariff (if any) and/or these Conditions;

(b) "**Company**" means the Muranga Forwarders Limited (MFL) (Company Number. C.44558) incorporated in the Republic of Kenya having its registered office at Mombasa of Post Office Box Number 84208-80100 Mombasa;

(c) "**Customer**" means any person, for whom the Company agrees to provide or arrange Services and includes the shipper, holder, consignee, receiver of the Goods, any person owning or entitled to the possession of the Goods and anyone acting on behalf of or as principal of such person. The term Customer includes shippers, importers, exporters, carriers, secured parties, warehousemen, buyers and/or sellers, shipper's agents, insurers and underwriters, break-bulk agents, consignees, etc. It is the responsibility of the Customer to provide notice and copy(s) of these Conditions to all its agents or representatives;

(d) "**Documentation**" shall mean all information received directly or indirectly from Customer, whether in paper or electronic form;

(e) "**Facility**" means any facility or premises, including hard standings, storage area and any buildings, owned, leased, operated or used in connection with the Services by the Company or any of its subcontractors;

(f) "**Goods**" means any goods handled, transported or dealt with by or on behalf of or at the instance of the Company or which come under the control of the Company or its agents, servants or nominees on the instructions of the Customer and includes any container, transportable tank, flat pallet, package or any other form of covering, packaging, container or equipment used in connection with or in relation to such goods;

(g) "**Information**" means data, messages, advice, and/or any information (including electronic data) in any form;

(h) "**Information System**" means any computer hardware, computer software, website, portal, communication lines and Information processing technologies operated and/or used by the Company, the Customer or any third party in connection with the Services (including, any system which sends or receives Information or is otherwise used for Information interchange).

(i) "**Instructions**" means a written statement of the specific requirements from the Customer or any party acting for and/or on his behalf.

(j) "**Owner**" means the owner of goods to which any business concluded under these trading terms and conditions relate and any other person who is or may have to acquire any interest, financial or otherwise, therein;

(k) "**Services**" means any business and/or activities of whatsoever nature undertaken by the Company in respect of the Customer and/or in relation to Goods, including but not limited to transport, carriage, unloading,

loading, pre delivery inspection (PDI), washing, warehousing, storage, logistics, customs clearance, cargo management services, and any advice or Information provided by the Company.

(l) "**Third Parties**" shall include, but not be limited to, the following: "carriers, truck men, cart men, lighter men, forwarders, ocean freight forwarders, non-vessel operating carriers, customs brokers, agents, warehousemen and others to which the goods are entrusted for transportation, cartage, handling and/or delivery and/or storage or otherwise"

(m) "**Vehicle**" is any vehicle including, but not limited to, any truck head, transporter, lorry, van, trailer, car or railway wagon or any similar transport means and/or equipment utilized by the Company or any of its subcontractors in the provision of the Services.

1.2 Headings of clauses are provided for convenience only and do not affect the interpretation of these Conditions.

1.3 In these Conditions:

(a) Words in the singular shall be deemed to include the plural and vice versa;

(b) References to persons shall include bodies of persons whether corporate or incorporate;

(c) The words include(s) or including shall be deemed to have the words "without limitation" following them.

### 2. Application

2.1 These Conditions apply to any and all Services provided by the Company and shall (together with any schedule or appendices which the parties agree in writing apply to the Services) constitute the entire agreement between the Company and the Customer in relation to the Services.

2.2 These Conditions apply to the provision of the Services to the exclusion of any other terms that the Customer seeks to impose or incorporate or which are contained in the Customer's documentation, or which are implied by statute, trade, custom, practice or course of dealing.

2.3 If the Company and the Customer have signed a specially negotiated agreement, these Conditions shall continue to apply, but such negotiated agreement shall prevail in so far as its terms are inconsistent with these Conditions, but no further.

2.4 If any legislation is compulsorily applicable to any Services, these Conditions, shall as regards such Services shall be read as subject to such legislation and nothing in these Conditions shall be construed as a surrender by the Company of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation. If any part of these Conditions is repugnant to such legislation to any extent such part shall as regards such Services be void to that extent but no further.

2.5 No agent or employee of the Company has the Company's authority to alter, modify or vary these conditions.

### 3 Agent or Independent Contractor (IC)

3.1 The Company shall be entitled to procure any or all the Services as an agent, or, to provide those Services as an IC, and save where expressly stated otherwise, these Conditions will apply whether the Company provides the Services as an agent or as an IC.

#### **4. Services as IC**

4.1 Where the Company contracts as carrier of the Goods under a contract of carriage which is evidenced by a bill of lading, sea waybill, air waybill, road consignment note or similar transport document ("**MFL Transport Document**"), the terms and conditions set out in the MFL Transport Document shall be paramount in so far as such provisions are inconsistent with these Conditions.

4.2 When the Company contracts as an IC for any part of the Services, it shall have full liberty to perform such Services itself, or, to subcontract on any terms whatsoever, the whole or any part of such Services.

#### **5. Company as Agent**

5.1 Where the Company acts as agent, the Company acts solely on behalf of the Customer in securing any element of the Services. The Company shall be entitled, and the Customer hereby expressly authorizes the Company, to enter into contracts with any third parties on behalf of the Customer as may be necessary or desirable to fulfill the Instructions, and whether such contracts as subject to the trading conditions of the parties with whom such contracts are made or otherwise, so that direct contractual relationships are established between the Customer and such third parties..

5.2 The Company shall not be liable for the acts and omissions of such third parties referred to in clause 5.1 above

#### **6. Customers as either Owners or Authorized Agents**

6.1 Customers entering into transactions of any kind with the Company expressly warrant that they are either the Owners or the authorized agents of the Owners of any goods to which the transaction relates and further warrant that they are authorized to accept and are accepting these Conditions for themselves, and also agents for and on behalf of all other persons who are or may thereafter become interested in the goods and hereby agree to indemnify the Company for any loss, expense or costs suffered or incurred by the Company as a consequence of this warranty being or becoming incorrect or untrue in any respect whatsoever.

6.2 The Customer warrants that in authorizing the Customer to enter into any contract with the Company and/or in accepting any document issued by the Company in connection with such contract, the Owner, sender or consignee is bound by these trading terms and conditions for itself and its agents and for any parties on whose behalf it or its agents may act, and in particular, but without prejudice to the generality of the foregoing, it accepts that the Company shall have the right to enforce against them jointly and severally any liability of the Customer under these trading terms and conditions or to recover from them any sums to be paid by the Customer which upon proper demand have not been paid;

#### **7. Company not a Common Carrier**

The Company is not a common carrier and accepts goods for carriage only upon that condition and the Conditions set out herein.

#### **8. Sub-Contracting**

8.1 Any business entrusted by the Customer to the Company, may, in the absolute discretion of the Company, be fulfilled by the Company itself, by its own servants performing part or all of the relevant services, or by the Company employing, or entrusting the goods or services to Third Parties on such conditions as may be stipulated by, or negotiated with, such Third Parties for the purposes of such services, or such part thereof as they may be employed to carry out and the sub- contractor

may employ any person, firm or company for performance of the Services so contracted for.

8.2 Where the Company employs third parties to perform all or any of the functions which it has agreed to perform, the Customer agrees that the Company shall have no responsibility or liability to its Customer for any act or omission of such third party, even though the Company may be responsible for the payment of such third party charges; but the Company shall, if suitably indemnified against all costs, (including attorney and client costs) which may be incurred by or awarded against the Company, take such action against the third party on the Customer's behalf as the Customer may direct.

8.3 Notwithstanding anything to the contrary contained herein the Customer agrees that all goods shall be dealt with by the Company on the terms and conditions, whether or not inconsistent with these Conditions, stipulated by the carriers, warehousemen, government departments, and all other parties (whether acting as agents or subcontractors to the Company or not) into whose possession or custody the goods may pass, or subject to whose authority they may at any time be.

#### **9. Instructions**

9.1 The Customer shall provide the Company with all necessary Information and Instructions (including but not limited to description, dimensions, weights and particulars of the Goods) required in order to enable the Company to (i) arrange and safely perform the Services for the Customer and (ii) comply with all laws, regulations and conditions applicable to the Goods and Services, within all actual and potential countries of dispatch, receipt, transit, discharge and/or delivery.

9.2 Subject to express instructions in writing given by the Customer, the Company reserves to itself absolute discretion as to the means, route and procedure to be followed in the handling, storage and transportation of goods and it shall be in the reasonable discretion of the Company to decide at what time to perform or to procure the performance of any or all of the acts which may be necessary or requisite for the discharge of its obligations to the Customer.

9.2 Pending forwarding or delivery, goods may be warehoused or otherwise held at any place or places at the sole discretion of the Company and the cost thereof shall be for the account of the Customer. All goods without exception will be handled stored and transported by the Company at the sole risk of the Customer.

9.3 Where for any reason the goods cannot be delivered or where the goods are held by the Company "To wait order" or "To be kept till called for" and such order is not given or such goods are not removed within a reasonable time, the Company shall be under no liability for loss or damage and will in the case of perishable goods forthwith and in the case of other goods within fourteen (14) days after giving notice to the Customer of its intention to do so, sell the same and may deduct out of the proceeds of sale all proper charges in respect of the carriage and warehousing of the goods and any other expenses incurred by the Company in relation thereto.

9.4 If events or circumstances come to the attention of the Company, which, in the opinion of the Company, make it in whole or in part, impossible or impracticable for the Company to comply with the Customer's instructions written or otherwise, the Company shall take reasonable steps to inform such Customer of such events or circumstances and to seek further instructions. If such further instructions are not timeously received by the Company in writing the Company shall, at its sole discretion, be entitled to detain, return, store, sell, abandon, or destroy all or part of the goods concerned at the risk and expense of the Customer.

9.5 In any event, if in the opinion of the Company it is at any time appropriate or necessary or desirable to depart from Customer

instructions written or otherwise, the Company shall be at liberty to do so.

9.6 The Customer shall ensure that the Documentation required for receipt and for dispatch, and also the instructions, are in the Company's possession in proper time.

9.7 The Customer shall be liable for all consequences arising from inaccurate, obscure and inadequate Documentation and/or instructions and through the same not being furnished or not furnished in time.

9.8 In the absence of Documentation, the Company shall not be obliged to receive against a guarantee. Should the Company furnish a guarantee it shall be indemnified by the Customer for all consequences thereof.

9.9 Oral instructions, standing or general instructions or instructions given late, even if received by the Company without comment, shall not in any way be binding upon the Company but the Company may act thereupon in the exercise of its absolute discretion.

9.10 The Customer shall be deemed to be bound by and to warrant the accuracy of all descriptions, values and other particulars furnished to the Company for customs, consular and other purposes and he undertakes to indemnify the Company against all losses, damages, expense and fines whatsoever arising from any inaccuracy or omission or due to any negligence.

9.11 Information is provided by the Company:

(a) is in good faith, but is not held out to be, nor to be taken as guaranteed, complete, accurate or timely, and no warranty, representation or undertaking whatsoever is given in respect of any Information.

(b) is for the Customer only, and the Customer shall defend, indemnify and hold harmless the company for any liability, loss, damage, cost or expense arising out any other person relying on such Information.

9.12 The Customer is fully acquainted with the physical and geographical location and condition of the Facility, including the level and quality of fencing, protection and surveillance, and agrees that it is adequate for its needs and expectations. The Company shall have no liability for any loss or damage to the Goods howsoever arising (whether arising out of negligence or otherwise) when the loss or damage arises from the storage of unpacked Goods on an open-air compound environment and the Customer will take out proper insurances.

9.13 Presence on the Facility, or any loading and/or stowing and/or discharging maneuvers performed by the Customer, or on its behalf, will be at the Customer's risk and cost.

9.14 The Company does not undertake that the Goods or any documents shall depart, arrive, or be available on particular dates, nor does the Company accept liability for any delay in performing any Services, whether or not any such delay is caused by the negligence of the Company or the Company's subcontractors.

#### **10. Ancillary Operations**

10.1 All operations such as superintending, sampling, tallying, weighing, measuring etc., shall take place only on the Customer's specific written instructions and upon reimbursement of the costs thereof.

10.2 Nevertheless the Company shall be entitled, but not obliged, on its own authority and at the Customer's expense and risk to take all action which it considers necessary to the Customer's interest.

10.3 Where it is necessary for an examination to be held or other action to be taken by the Company in respect of any discrepancy in the goods which are landed or discharged from any vessel, aircraft, vehicle, or transport unit, no responsibility shall attach to the Company for any failure to hold such examination or to take any other action unless the Company has been timeously advised by the landing or discharging agent that such goods have been landed and that such discrepancy exists.

10.4 The Company will not be responsible for examining or counting any goods received by it where such goods are bundled, palletized or packed in any other manner such that their number cannot be quickly and easily

counted. Should the Company undertake to count goods so received, it shall incur no liability in respect of any error or inaccuracy in such counting, whether such error or inaccuracy is the result of negligence on the part of the Company or otherwise. The Company shall be entitled to levy a charge on the Customer for counting of goods in such circumstances.

10.5 The Company shall not act as an expert. It shall in no way be liable for any notification of the state, nature or quality of the goods; nor shall it be under any obligation to see that samples are identical with the lot.

#### **11. Company's Duties: Limitation of Scope**

11.1 Unless as otherwise agreed in writing the Company is not required to maintain or repair any part of the Goods or to provide any power, fuel or other supplies therefor or to maintain the same at any particular temperature or in any other particular state or condition.

11.2 Notwithstanding the foregoing, if the Company does provide any maintenance or repair services or provide any power fuel or other supplies in relation to the Goods, the Customer shall reimburse to the Company any expense reasonably incurred by the Company in taking any such action as aforesaid together with a reasonable charge for so doing.

#### **12. Obligations of Customer**

12.1 The Customer warrants that:

(a) it accepts these Conditions not only for itself, but also as a duly authorized agent for and on behalf of every other person who is or may become interested in the Goods and anyone acting on their behalf;

(b) all Information and Instructions will be provided as required under Clause 9.1 and such Instructions and Information will be complete and accurate;

(c) unless otherwise previously agreed in writing, the Customer shall not deliver to the Company or cause the Company to deal with or handle Goods of a dangerous or damaging nature, nor with Goods likely to harbor or encourage vermin or other pests, nor with Goods liable to taint or affect other cargo;

(d) the Goods are properly and sufficiently packed, marked, documented, labeled, stuffed and stowed for any operations or transactions affecting the Goods;

(e) the Goods do not require for any operations or transactions affecting the Goods, any special protection or handling (other than as may be agreed in writing between the Company and the Customer) whether arising from, but not limited to, vulnerability to heat, cold, hail, moisture, salt, natural or artificial light or proximity to other goods or from their flammability;

(f) the Goods do not require any special license or permit for transportation, exportation or importation of the Goods and, to the extent required by law or regulation, the Customer has obtained all necessary licenses or permits, including, but no limited to, export, re-export, import, transportation licenses or permits.

#### **13. Loading and Unloading**

13.1 In the event where time is inadequate for loading and/or unloading— regardless of the cause thereof – all costs resulting there from, such as demurrage etc., shall be borne by the Customer, even when the Company has accepted the bill of lading and/or charter party from which the additional costs arise without protestation.

13.2 Expenses of an exceptional nature and higher wages arising whenever carriers by virtue of any provision in the shipping document or any other pertinent document load or unload goods in the event, at night, on Saturday afternoon or on Sundays or public holidays, shall not be included in the agreed prices, unless specifically stipulated. Any such costs shall therefore be refunded by the Customer to the Company.

13.3 For work of a special nature, unusual jobs or work requiring a

special amount of time or effort, an additional reasonable amount may at all times be charged.

#### 14. Packaging & Carriage

Except where the Company is instructed in writing to pack the goods the Customer warrants that all goods have been properly and sufficiently packed and/or prepared and that all goods will be properly, adequately and appropriately prepared and packed, stored, labeled and marked, having regard inter alia to the implementation by or on behalf of the Company or at its instance of the contract involved, and the characteristics of the goods involved and are capable of withstanding the normal hazards inherent in the implementation of such contract.

#### 15. Dangerous Goods

Under special arrangements previously made in writing the Company will not accept or deal with any noxious, dangerous, hazardous or inflammable or explosive goods or any goods likely to cause damage. Should any Customer nevertheless deliver any such goods otherwise than under special arrangements previously made in writing, he shall be liable for all loss or damage caused by or to or in connection with the goods however arising and shall indemnify the Company against all penalties, claims, damages, costs and expenses arising in connection therewith and the goods may be destroyed or otherwise dealt with if they become dangerous to other goods or property. The expression "goods likely to cause damage" includes goods likely to harbor or encourage vermin or other pests

#### 16. Special goods

Except under special arrangements previously made in writing the Company will not accept or deal with bullion, coins, precious stones, jewelry, valuable, antiques, pictures, livestock or plants and other related goods. Should any Customer nevertheless deliver any such goods to the Company or cause the Company to handle or deal with any such goods otherwise than under special arrangements previously made in writing the Company shall be under no liability whatsoever for or in connection with loss or damage to the goods however caused.

#### 17. Perishable Goods

17.1 Without limiting or affecting any other terms of these trading terms and conditions, perishable goods in the care, custody or control of the Company may at the Customer's expense be sold or disposed of by the Company without notice to the Customer, sender, owner or consignee, if-  
(a). such goods have begun to deteriorate or are likely to deteriorate; or  
(b). such goods are insufficiently addressed or marked; or  
(c). the Customer cannot be identified;  
and payment or tender of the net proceeds, if any, of the sale thereof after deduction of those charges and expenses incurred by the Company in respect thereof shall be equivalent to delivery of such goods.

17.2 Should any amount become owing, due and payable by the Customer to the Company in respect of any of the occurrences referred to in paragraph (17.1) become due and payable and remain unpaid the Company shall be entitled and the Customer hereby authorizes the Company and without first obtaining an order of court, to sell all or any of the goods by public auction or on reasonable notice not exceeding 14 days by private treaty. The net proceeds of any such sale, after deducting therefrom all costs, charges and expenses incurred by the Company shall be applied in reduction or discharge, as the case may be, of the Customer's obligations to the Company in respect of such goods without prejudice to the Company's rights to recover from the Customer any balance which may remain owing to the Company after the exercise of such rights.

#### 18. Removal of uncollected Goods

18.1 Without prejudice to the right of the Company to levy storage charges, the Customer will ensure that the Goods are collected from the Facility on or before the end of the agreed period for storage, or in the event that no period was agreed within a reasonable period of time of their deposit there ("**Storage Period**").

18.2 If the Goods have remained at the Facility for a period exceeding the Storage Period, then the Company shall be entitled to give notice to the Customer requiring the removal of the Goods by the date stated in the notice ("**The Removal Date**").

18.3 If the Goods remain uncollected after the Removal Date then the Company shall be entitled to continue levy storage charges and it may at its discretion, and without any responsibility or liability attaching to the Company, sell or otherwise dispose of the Goods at the sole risk and expense of the Customer. The net proceeds of any such sale, after deducting therefrom all costs, charges and expenses incurred by the Company shall be applied in reduction or discharge, as the case may be, of the Customer's obligations to the Company in respect of such goods without prejudice to the Company's rights to recover from the Customer any balance which may remain owing to the Company after the exercise of such rights.

#### 19. Duty of the Customer to pay expenses for removal of debris

In the event that the Goods are damaged by fire, sandstorms and/or floods or other similar events outside the control of the Company, the Customer shall arrange the collection and lawful disposal of such damaged Goods, and the Company shall be entitled to recover from the Customer all costs whatsoever resulting from the Customer's failure to do so and all costs incurred or suffered by the Company in connection with such damaged Goods, including costs of cleaning and sanitation of the land and/or of the Facilities.

#### 20. Customer to review all documents

20.1 Customer acknowledges that it is required to review all documents and declarations prepared and/or filed with the Customs Department of the Kenya Revenue Authority or any other government departments and/or third parties, and will immediately advise the Company of any errors, discrepancies, incorrect statements, or omissions on any declaration filed on Customer's behalf;

20.2 In preparing and submitting customs entries, export and import declarations, applications, documentation and/or import or export data to the customs department or authorities and/or a third party, the Company relies on the correctness of all documentation, whether in written or electronic format, and all information furnished by Customer; Customer shall use reasonable care to ensure the correctness of all such information and shall indemnify and hold the Company harmless from any and all claims asserted and/or liability or losses suffered by reason of the Customer's failure to disclose information or any incorrect or false statement by the Customer upon which the Company reasonably relied. The Customer agrees that the Customer has an affirmative non-delegable duty to disclose any and all information required to import, export or enter the goods.

#### 21. Quotations

21.1 Quotations are given on the basis of immediate acceptance and subject to the right of withdrawal or revision. Quotations as to fees, rates of duty, freight charges, insurance premiums or other charges given by the Company to the Customer are for informational purposes only and are subject to change without notice; no quotation shall be binding upon the Company unless:

(a) the Company in writing agrees to undertake the handling or transportation of the shipment or consignment at a specific rate or amount set forth in the quotation and payment arrangements are agreed to between the Company and the Customer; or

(b) the Company has started to perform Customer instructions pursuant to the quotation. 'Performance' shall also hereby mean taking any potential preparatory action such as the Company placing orders with third parties. If any changes occur in the rates of duty, freight charges (road, sea or air), insurance premiums, fuel prices or other charges given or quoted by the Company, quotations and charges shall be subject to revision accordingly with or without notice.

## **22. Payment by Customer**

22.1 Unless otherwise specifically agreed by the Company in writing the Customer shall pay to the Company immediately upon presentation of invoice(s) all sums due to the Company without deduction or setoff and payments shall not be withheld or deferred on account of any claim or counterclaim which the Customer may allege.

22.2 All Charges shall be paid immediately when due by the Customer to the Company without reduction or deferment on account of any claim, counterclaim or set off. Payment shall be made in the country, in the manner, and in the currency stipulated in the invoice. All bank charges associated with the making of such payment shall be for the account of the Customer

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

22.4 The Customer shall not be entitled to withhold payments of any amounts by reason of any disputes with the Company, whether in relation to the Company's performance in terms of any agreement, or lack of performance or otherwise. Until such payment is made, any rights that the Customer may have shall be deemed not yet to have arisen.

22.5 The Company is entitled to retain and be paid all brokerages, commissions, allowances and other remuneration.

22.6 On all "Amounts Overdue" to the Company, the Company shall be entitled to interest at the rate advised by the Company in writing, or if no such rate is advised, at the annual rate of three (three) per cent above the minimum lending rate set by the national or central bank, as applicable, of the country or territory of the relevant currency. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount. The expression "Amounts Overdue" shall mean all or any outstanding sums or parts thereof remaining unpaid by the Customer to the Company for a period of 30 days from the date of issuance of the invoice

22.7 Where a suit or process is filed by the Company for recovery of outstanding payment, the Company shall be entitled to all costs of such suit or process including the collection charges and lawyer's fees.

## **23. General Customer Liability**

The Customer shall be liable to pay any duties, taxes imposed, levies deposits or outlays of any kind levied by the authorities at any port or place for or in connection with the goods and for any payments fines, expenses, loss or damage whatsoever incurred or sustained by the Company in connection herewith. When goods are accepted or dealt with upon instructions to collect freight, duties, charges or other expenses from the consignee or any other person, the Customer shall remain responsible for the same if they are not paid by such consignee or other person immediately.

## **24. Disclaimers; Company Not Liable**

24.1 Except as specifically set forth herein, Company makes no express or implied warranties in connection with its services;

24.2 Company shall not be liable for any loss or mis-delivery of or damage

to or in connection with the Goods however or whenever caused and whether or not caused or contributed to directly or indirectly by any act, omission, neglect, default or other wrong doing on the part of the Company, its servants, agents, and the Company shall in no event be liable for the acts of third parties;

24.3 For avoidance of any doubt, the Company shall not under any circumstances be liable for any loss, destruction, damage, deficiency or deterioration of any goods whilst the same are in the physical or constructive possession of the Company. Without prejudice to the generality of the foregoing, the Company shall not be responsible for any loss whatsoever nature resulting from the Company's handling of Customer's goods and/or documents whether the loss results from the negligence or willful default of the Company, its agents and servants or not.

24.4 Even in the event of taking over transport, the Company shall provide services under the present conditions and not as carrier.

24.5 In no event shall Company be liable or responsible for statutory or punitive damages even if it has been put on notice of the possibility of such damages.

24.6 The Company shall not have any liability for any loss of profit, loss of sale, loss of business, loss of goodwill or reputation, third party claims (in which case whether direct or indirect) or for indirect or consequential loss

## **25. No Liability for the Selection or Services of Third Parties and/or Routes.**

25.1 The Company reserves complete freedom to decide the manner or procedure to be adopted for any or all of the various acts that will be necessary for the completion of the Services. That discretion will be varied only by instruction delivered by the Customer to the Company in writing and acknowledged by the Company in writing in sufficient time before the performance of any service to reasonably allow the Company to adopt the manner of performing the services required by the special instructions.

25.2 Unless services are performed by persons or firms engaged pursuant to express written instructions from the Customer, Company shall use reasonable care in its selection of third parties, or in selecting the means, route and procedure to be followed in the handling, transportation, clearance and delivery of the goods and/or shipment; advice by the Company that a particular person or firm has been selected to render services with respect to the goods, shall not be construed to mean that the Company warrants or represents that such person or firm will render such services nor does Company assume responsibility or liability for any action(s) and/or inaction(s) of such third parties and/or its agents, and shall not be liable for any delay or loss of any kind, which occurs while goods or a shipment or consignment is in the custody or control of a third party or the agent of a third party; all claims in connection with the act of a third party shall be brought solely against such party and/or agents; in connection with any such claim, the Company shall reasonably cooperate with the Customer, which shall be liable for any charges or costs incurred by the Company.

## **26. Company's Liability Limits Available to Third Parties**

26.1 By delivering the Goods to the Company pursuant to these Conditions, the Customer shall be deemed to confer severally upon the Company, the employees and agents of the Company, and upon its or their independent contractors, and upon all other persons who may be required to render services in relation to the Goods in connection herewith, the benefit of all the warranties, representations, limitations and exclusions of or exemptions from liability, indemnities, defenses and rights herein provided for the benefit of the Company.

26.2 The Customer shall defend, indemnify and hold harmless the

Company from and against any claim, cost or demand whatsoever and by whomsoever made in connection with the Services and /or the Goods to the extent that such claim, cost or demand is in excess of the liability of the Company under these Conditions. Without prejudice to the generality of this Clause, this indemnity shall cover any claim, costs or demands in connection with the Services and/or the Goods whether arising from or in connection with the negligence of the Company, its servants, subcontractors, or agents or otherwise.

## **27. Insurance**

No insurance will be affected except upon express instructions given in writing by the Customer and all insurance affected by the Company are subject to the usual exceptions and conditions of the policies of the insurance company or underwriters taking the risk. The company shall not be under any obligation to affect a separate insurance on each consignment but may declare it on any open or general policy. Should the insurers dispute their liability for any reason, the insured shall have recourse against the insurer's only and the Company shall not be under any responsibility or liability whatsoever in relation thereto.

## **28. Indemnity to Company**

28.1 The Customer agrees to indemnify, defend, and hold the Company harmless from any claims and/or liability arising from the importation or exportation of Customer merchandise and/or any conduct of the Customer, which violates any laws, and further agrees to indemnify and hold the Company harmless against any and all liability, loss, damages, costs, claims and/or expenses, including but not limited to reasonable lawyer's fees, which the Company may hereafter incur, suffer or be required to pay by reason of such claims; in the event that any claim, suit or proceeding is brought against the Company, it shall give notice in writing to the Customer by mail at its address on file with the Company. Further, the Customer shall save harmless and keep the Company indemnified and reimburse the Company all costs and expenses whatsoever whether envisaged and/or unforeseen and/or contingent (including without prejudice to the generality of the foregoing all duties, taxes, imposts, levies, deposits and outlays of whatsoever nature levied by any government authority or private entity upon the Company in relation to services provided by the Company to the Customer).

28.2 The Customer shall defend, indemnify and hold harmless the Company against all liability, loss, damage, costs, demands, penalties, demurrage and expenses (including without limitation reasonable legal expenses) suffered or incurred by the Company as a result of or in connection with:

- (a) the Company acting in accordance with the Customer's Instructions;
- (b) the loss, damage, contamination or soiling caused by the Goods or the Customer, any of its employees, agents or subcontractors to property, including, but not limited to, the Facility, the Vehicles, other cargo, any container, vessel or other property owned by the Company or a third party;
- (c) any breach by the Customer of any of the warranties or obligation contained in these Conditions.

## **29. Security, Lien, Sale of Goods**

29.1 The Company has a general and continuing lien on any and all property (Goods and documents) of Customer coming into Company's actual or constructive possession or control, not only for any Charges and expenses due thereon, but also for all monies owed by the Customer to the Company on any account. The Company shall be entitled, on at least 21 days notice in writing to the Customer, to sell by public auction or private treaty or dispose of such Goods or documents at the expense of the Customer and without any liability to the Customer. The Company shall be entitled to apply the proceeds towards the satisfaction of all such Charges, expenses and monies on whatsoever account owing, and also

towards all charges and expenses arising during the exercise of such lien. If on the sale of the Goods, the proceeds fail to realize the amount due, the Company shall be entitled to receive the difference from the Customer. It is understood that the Company may refuse to release the Goods until all monies owed to the Company have been paid in full.

29.2 If at any time any sum due from Customer to the Company shall not have been paid in accordance with these Conditions, without prejudice to any other rights or remedies the Company may have against the Customer, the Company shall be entitled at any time to suspend the provision of all or any part of the Services.

29.3 All sub-contractors contracted by the Company will on basis of reciprocity be entitled to make use and invoke the payment securities and liens stipulated in the conditions of the sub-contracting companies, and will be entitled to enforce securities and liens upon any of the Customer's goods which are held by them.

## **30. No Variation Unless Written.**

These terms and conditions of service may only be modified, altered or amended in writing signed by both Customer and Company; any attempt to unilaterally modify, alter or amend same shall be null and void.

## **31. Severability.**

In the event any Paragraph(s) and/or portions(s) hereof is found to be invalid and/or unenforceable, then in such event the remainder hereof shall remain in full force and effect.

## **32. Breach**

If the Company breaches any of these trading terms and conditions or any agreement between it and the Customer and fails to remedy such breach within 30 days of the date of receipt of written notice requiring it to do so then the Customer shall by a further 30 days' notice compel performance by the Company of the obligations it has defaulted in, but shall not be entitled to cancel these trading terms and conditions and any agreement between Customer and the Company.

## **33. Right of Termination**

33.1 The Company may terminate an agreement it has entered into with the Customer based on these terms and conditions for violation of any of these terms and conditions upon written notice to the Customer provided that the Customer is given fourteen (14) days from receipt of written notice to remedy the breach.

33.2 Any party may also terminate for any just cause upon thirty (30) days advance notice in writing to the other party.

33.3 If either party is adjudged bankrupt; or if a general assignment of either party's assets is made for the benefit of its creditors; or if a receiver or trustee is appointed to either party or any of its property, then either party may forthwith terminate an agreement premised on these terms and conditions by notice to the other party; such termination shall not preclude either party from exercising its right to demand payment from the other party of actual damages and costs resulting from such termination or any accrued rights up to the date of termination.

33.4 Any termination of this Agreement shall not prejudice the rights or claims of either party which it may have accrued prior to such termination.

## **34. Force Majeure**

34.1 Regardless in which capacity the Company may act or which kind of services may be performed under these Terms and Conditions of Trading, the Company shall not be liable for whatsoever reason and shall be relieved of any liability if the loss or damage, property or financial damage has been caused by the following liability exemption

cases:

- a) an act or omission of the Customer, a Contractor or any person acting on behalf of the Customer
- b) failure, incompleteness and/or lack of compliance by the Customer with legal requirements, non-observance of provisions and necessary instructions in respect of security, safety and environmental provisions or Codes;
- c) handling, loading, stowage or unloading of the goods by the Customer or a person acting on his behalf;
- d) inherent vice of the goods;
- e) lack, insufficiency or defective condition of the packing of goods, containers or transport units; insufficiency or inadequacy of marks and/or numbers on the goods or unit loads;
- f) war, threat of war, official action, quarantine, civil disturbance, sabotage, strike, lock-out, interference with communications, lack of transport, labour and/or storage accommodation;
- g) storm, fog, lightning, flood, high and low tide, frost, freezing, ice;
- h) fire, explosions, water used against fires, smoke, burglary, theft, loss, subsidence, collapse, water, seepage, damp odour, stench, worms and rodents, damage through rats, mice, insects and other creatures;
- i) the natural properties of goods, changes in quality, spontaneous deterioration, self generated heat, combustion, explosion, drying, mould, yeasts, leaks, rot and mildew, rust and sweating;
- j) breakage of glass, wickered bottles and flasks, cast-iron and other brittle articles;
- k) Any incident or circumstance the Company could not avoid by reasonable care and the consequences of which it was unable to foresee and prevent by the exercise of due diligence.

### 35. Consequences of Force Majeure

35.1 In the event of force majeure, the contract(s) between the Company and Customer shall remain in force; the Company's obligations shall, however, be suspended for so long as the *force majeure* lasts.

35.2 All costs and expenses incurred by the Company until the occurrence of an event of force majeure shall be reimbursed by the Customer to the Company and all additional costs caused by *force majeure* such as carriage and storage charges, warehouse or yard rentals, demurrage for vessels or trucks, insurance, delivery from warehouses, bonded or otherwise, etc., shall be borne by the Customer.

### 36. Notice of claim, time bar

36.1 The Company shall be discharged of all liability and no action shall lie against the Company unless:

- (a) notice of any claim is received in writing by the Company or its agent within fourteen (14) days after the date specified in Clause 36.2 below, except where the Customer can show that it was impossible to comply with this time limit and that the claims has been made as soon as it was reasonably possible to do so, and
  - (b) suit is brought in the proper forum within six (6) months after the date specified in 36.2 below.
- 36.2 For the purposes of Clause 36.1, the date shall be:
- (a) in the case of loss or damage to Goods, the date of delivery of the Goods,
  - (b) in the case of delay, transport of the Goods to the incorrect destination, the planned date of delivery (if the Company advised the Customer of such a date),
  - (c) in any other case, the date of the event giving rise to the claim.

### 37. Notices

37.1 Any notice or other communication between Company and Customer is to be in writing in the English language and signed by or on behalf of the party giving it. And unless otherwise provided for in these terms and conditions the notice may be served by being delivered

personally or sending it by facsimile transmission or by registered post to the intended recipient due to receive the notice or communication at the address provided by the said recipient.

In the absence of evidence of earlier receipt any notice or communication so served is deemed to have been received:

- (a) in the case of personal service, on delivery;
- (b) in the case of facsimile transmission, on completion of such transmission except where the time of transmission is not during the addressee's normal business hours in which case it shall be 10.30 a.m on the next Business day and provided electronic confirmation of such transmission is obtained; and
- (c) in the case of registered post, seven (7) days from the date of posting.

### 38. Governing Law;

38.1 These terms and conditions of service and the relationship of the parties shall be construed according to the laws of the Republic of Kenya without giving consideration to principles of conflict of laws.

(a) If the Company is obliged, in the execution of any of its duties and/or responsibilities to comply with any common law or legislative enactment ("the law") of any nature whatsoever, then the Company by complying therewith shall not be deemed to waive nor abandon any of its rights in terms of these trading terms and conditions.

(b) In addition thereto, in complying with the law, the Company shall not be deemed to have assumed any onus, obligation, responsibility or liability in favour of the Customer.

(c) If any of the terms of these trading terms and conditions is repugnant to or in conflict with the law, then and in such even the conflicting term embodied herein shall be deemed to be amended and/or altered to conform therewith, and such amendment and/or alteration shall not in any way affect the remaining provisions of these trading terms and conditions.

### 39. Consent to Jurisdiction and Venue.

39.1 Customer and Company:

- (a) Irrevocable consent to the jurisdiction of the Courts of Kenya;
- (b) agree that any action relating to the services performed by Company, shall only be brought in the Courts of Kenya and unless otherwise consented to in writing by the Company, no legal proceeding against the Company may be instituted by the Customer, its assigns or subrogate except in the city of Mombasa;
- (c) consent to the exercise of *in personam* jurisdiction by said courts over it, and
- (d) further agree that any action to enforce a judgment may be instituted in any jurisdiction.

MURANGA FORWARDERS LIMITED

P. O.BOX 84208-80100

MOMBASA

KENYA

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