



# STANDARD TERMS AND CONDITIONS

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### 1. DEFINITIONS

In these conditions the following words and/or terms bear the meaning ascribed herein:

1.1. "Carrier" means Opicorp (Pty) Limited T/A Auto Carriers and includes the Carrier's servants and agents and any person or persons carrying any Consignment under and in terms of a subcontract with the Carrier.

1.2. "Consignor" means the owner of the Consignment and/or the person having lawful title to the Consignment and/or possession thereof and the duly authorised agent of the Consignor.

1.3. "Consignment" means the motor vehicle/s transported individually under such motor vehicle's own power, towed or carried on board motor vehicles owned and/or operated by the Carrier.

1.4. "Consignee" means the person to whom, or in the event of no name being given by the Consignor the address at which, the Consignment is to be delivered. In the absence of the person named by the Consignor as the Consignee, then any person representing himself to be duly authorised to accept delivery on behalf of the Consignee and having the appearance of being a person authorised by the Consignor or the Consignee to accept delivery on behalf of the Consignee.

1.5. "NCA" means the National Credit Act 34 of 2005 and any promulgated regulations thereto and as amended from time to time.

### 2. APPLICATION OF THESE CONDITIONS

2.1. All business, whether gratuitous or for reward, is undertaken by the Carrier subject to these conditions which will be incorporated in and be part of any agreement between the Carrier and the Consignor.

2.2. No variation of this agreement will be of any force or effect unless reduced to writing and signed by the parties.

2.3. These terms and conditions shall have preference over 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 Consignor.

### 3. EXCLUSION OF COMMON LAW LIABILITY

The Carrier shall be deemed to act neither as a common carrier or a public carrier.

### 4. QUOTATIONS AND ADDITIONAL COSTS

4.1. Any quotation provided by the Carrier to the Consignor shall be valid for a period of 7 (seven) days only from the date appearing on the quotation, unless revoked earlier in terms of written notice to the Consignor.

4.2. All quotations will be based on quantities, dimensions and weights furnished by the Consignor and shall be subject to alteration in the event that the actual quantities, dimensions or weights are different to those provided by the Consignor.

4.3. Unless specified to the contrary in writing, quotations exclude customs duties, taxes, final clearing charges, towing charges and fines.

4.4. In the event of the Carrier being obliged to incur reasonable additional costs in the execution of its obligations, 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, with or without prior notification to the Consignor, then in such event the Consignor agrees that it will be liable for such additional costs not initially quoted on and which amounts will be invoiced to the Consignor along with the initially quoted charge. The Carrier will be entitled to recover all such additional charges incurred from the Consignor.

4.5. Any Consignment to be collected at the Carrier's depots will have free storage for 3 (three) working days from the time and notification of arrival of the consignment at the Carrier's depot. Any storage in excess of 3 (three) days per Consignment will incur storage charges which are payable prior to the Consignment being collected.

4.6. The Consignor and/or Consignee will be liable for storage charges and/or fines 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 which amount will be payable upon collection and/or delivery of the Consignment against the Carrier's invoice.

4.7. The Consignment may be carried via any route at the sole discretion of the Carrier. It is recorded that the Carrier uses predetermined routes and that all quotations are prepared in accordance with these standard routes. Should the Carrier deviate from the route as a result of circumstances beyond its control, in its sole discretion, the Carrier shall be entitled to reasonable additional remuneration and expenses incurred as a result of the deviation, which the Consignor agrees to pay immediately on presentation of an Invoice by the Carrier.

4.8. In the event that any quote which has been accepted by the Consignor has been cancelled and payment has already been made, a cancellation fee of R250.00 (two hundred and fifty Rand) per order will be applicable and will be deducted from any refund.

## 5. PAYMENT

Unless otherwise agreed between duly authorised representatives of the Carrier and the Consignor, the Consignor shall pay to the Company, in cash or as agreed, all sums upon presentation of invoice without reduction or deferment on account of any claim, counterclaim or set-off. Notwithstanding the above, payment is to be made prior to the Consignment being transported.

## 6. CONDITIONS OF CREDIT

6.1. In the event that the Carrier has granted the Consignor credit facilities in writing, the amounts due to the Carrier by the Consignor shall be paid to the Carrier without deduction or set-off of any claims of the Consignor against the Carrier within 30 (thirty) days from the date of the Carrier's statement of account. However, if day 30 falls on a Saturday, Sunday or public holiday, payment must be made on or before the preceding business day.

6.2. The Consignor may not cede, assign or in any way transfer any of its rights, title and/or interest in or to any credit facility granted by the Carrier, as set out in 6.2. above, to any other person without the prior written consent of the Carrier, which shall be entitled to withhold such consent.

6.3. The Carrier reserves the right to withdraw or amend any credit facilities at any time which may have been granted to the Consignor and/or to require the Consignor to furnish guarantees and/or suretyships that are acceptable to the Carrier for its current or future obligations.

6.4. All amounts outstanding and not paid to the Carrier by the due date shall bear interest, calculated and compounded monthly in arrears, at the prime overdraft interest rate from time to time in the Republic of South Africa, expressed as a rate per annum, calculated from the due date until date of final payment. Any changes to the aforesaid prime rate shall result in the interest rate charged in terms hereof being altered on the first day of the month following such charge.

6.5. Should any amount not be received by the Carrier on or before the due date, all other amounts on account by the Consignor to the Company shall immediately (and without notice to the Consignor) become both due and payable.

6.6. The Consignor acknowledges that a certificate signed by a manager of the Carrier (whose authority and appointment shall not be necessary to prove) shall be prima facie proof of the amount of such indebtedness to the Carrier. Such certificate shall be sufficient proof of the Consignor's indebtedness for the purposes of provision sentence and/or summary judgment proceedings against the Consignor, or for any other purpose whatsoever.

6.7. An event of default shall occur or shall be deemed to have occurred if:

6.7.1. The Consignor should fail to comply with any of its obligations in terms of these terms and conditions.

6.7.2. The Consignor fails to pay any amount due to the Carrier.

6.7.3. The Consignor does anything which may prejudice the value, priority or legality of any security held by the Carrier or anything which may cause the Carrier to suffer any loss or damage under this agreement.

## 7. DELIVERY

7.1. A maximum of 10 (ten) working days will be required to affect delivery of any Consignment, from the date of receipt by the Carrier, unless otherwise agreed.

7.2 If the Consignee does not take delivery of the Consignment or any part thereof at the time and place when and where the Carrier, or any person whose services the Carrier makes use of, is entitled to call upon the Consignor and/or Consignee to take delivery thereof, the Carrier or such other person shall be entitled to store the Consignment in an open or under cover at the sole risk and expense of the Consignor. Such storage shall constitute delivery of the Consignment and the liability of the carrier shall wholly cease.

7.3. The Carrier will be entitled to charge the Consignor storage charges at a reasonable rate (it will be presumed that the Carrier's charges are reasonable until the contrary is proved by the Consignor) in respect of any period during which the Carrier is obliged to store the goods carried by reason of the failure of the Consignor or the Consignee to take delivery thereof, when tendered by the Carrier or in the event of the Carrier being unable to deliver the said Consignment due to the fault of the Consignor or Consignee.

7.4. In the event that the address provided by the Consignor is not correct, the Carrier will be released from all liability whatsoever in respect of the Consignment. The Carrier shall be entitled to deliver the Consignment to the address of the Consignee specified on the particular delivery documentation, alternatively the Carrier shall be entitled to deliver the Consignment and leave same at the closest branch of the South African Police Services, or Police Authorities should the Consignment to have been delivered outside the Border of the Republic of South Africa.

7.5. The onus is upon the Consignor to supply full delivery details to the Carrier in terms of its administration requirements. 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, in the absence of gross negligence, the Carrier will not be liable for any loss or damage incurred as a result of the Consignee, or his duly authorised agent, not being present to receive the Consignment.

7.6. The Carrier will not be liable for any delay 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, damage or detention arising therefrom if the Carrier's inability to delivery as a result of circumstances beyond its control.

#### 8. E- TAGS

All e-tags are to be removed from the Consignment prior to delivery to the Carrier by the Consignor. The Carrier will not be liable for any costs incurred as a result of any failure by the Consignor to remove e-tags from the Consignment.

#### 9. CARRIER'S LIEN

9.1. The Carrier shall have a particular lien and general lien over all Consignments carried and in the event of non- payment of any portion of monies due by the Consignor to the Carrier.

9.2. That Carrier shall, on giving 28 days' notice in writing to the Consignor, be entitled to sell or dispose of the Consignment, by way of private treaty or public auction, at the expense of the Consignor and apply the proceeds in or towards the payment of such sums. Upon accounting to the Consignor for any balance remaining after payment of any sum due to the Consignor and the costs of sale or disposal, the Carrier shall be discharged of any liability whatsoever in respect of the Consignment. If on the sale of the Consignment, the proceeds fail to realise the amount due, the Carrier shall be entitled to recover the difference from the Consignor.

9.3. The Carrier's lien shall come in existence as soon as the carrier takes possession and control of the consignor's goods and the lien will endure until all amounts owing to the Carrier from time to time have been paid in full.

9.4. If the Consignor does not affect payment of any amounts owing to the Carrier, the Carrier shall in addition to its lien, specified in this clause 9, be entitled to charge the Consignor storage in respect of all Consignments in the Carrier's possession, forming part of the Carrier's lien, which storage charges shall be market related and be calculated on a day to day basis.

#### 10. CONDITION OF CONSIGNMENT AT TIME OF DELIVERY TO CARRIER

The condition of the Consignment shall be deemed to be that as stated on the condition report at the time of collection/delivery and that document shall be prima facie proof of the contents and condition of any Consignment at the time of delivery, loading and/or collection. On acceptance of the condition report by the Consignor's duly authorised representative, it shall be deemed that the Consignment was collected and/or delivered in an undamaged condition and the Consignor shall bear the burden of proving the contrary.

#### 11. LIABILITY FOR DAMAGE TO OR LOSS OF GOODS

11.1. The Carrier shall have no liability in respect of damage to, or loss of, the Consignment unless the Consignor shall establish that such loss or damage was caused by the negligence of the Carrier.

11.2. In the event of total loss of the Consignment, any liability of the Carrier shall be limited to the current market value of the Consignment as evidenced in the Auto Digest published by TransUnion Auto Dealers Guide from time to time.

11.3. In the event of partial damage to the Consignment, any liability of the Carrier shall be limited to reasonable cost of repair of such damage as assessed by the Carrier's assessor.

11.4. In the event of loss of any items referred to on the vehicle check sheet on delivery of the Consignment to the Carrier, any liability of the Carrier shall be limited to reasonable wholesale replacement cost of such items.

11.5. In the event of damage to any items referred to on the vehicle check sheet on delivery of the Consignment to the Carrier, any liability of the Carrier shall be limited to reasonable cost of repair of such items as assessed by the Carrier's assessor.

11.6. No claims in respect of the items referred to in 11.4. and 11.5. above shall be entertained unless such loss and/or damage is reported to the Carrier's representative at the time of delivery of the Consignment.

11.7. The onus of proving any loss or damage occurred whilst the Consignment was in the possession of the Carrier rests with the Consignor.

11.8. The Carrier excludes liability in circumstances where any damage to or loss of any Consignment is occasioned as a result of a patent or latent defect in the Consignment.

11.9. All claims will strictly be handled in accordance of the Carriers' Claims Procedure of which a copy is available on request.

11.10. A levy equivalent to 25% of the quote will be charged for any non-runner Consignment transported and/or stored by the Carrier and the Carrier reserves the right to employ, if necessary, the services of an outside Towing Contractor at the Consignors expense as to assist in the further delivery of the non-runner Consignment.

11.11. Should a vehicle be driven under its own power by an employee or agent of the Carrier, such employee shall be deemed to be the Consignor's employee and agent, furthering the Consignor's interests in the transport of the specific goods.

11.12. 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 Consignor for any reason whatsoever and the Consignor indemnifies the Carrier against any claims of whatever nature in this regard.

11.13. The Carrier shall be advised by the Consignor/Consignee of any damages within a period of 24 hours from date of delivery of the Consignment to the Consignee and such damages shall be recorded on the Proof of Delivery document presented to the Consignee and/or its nominated Agent at the time of delivery.

11.14. Any claim for damages by the Consignor must be instituted within 3 months of submission of the Proof of Delivery mentioned in 11.13. above.

11.15. Should the Consignor not institute a claim for damage within a three-month period, the Consignor shall not be entitled to proceed for recovery of any amounts against the Carrier in respect of the specific load and shall have no claim in respect of any alleged damages under any circumstances whatsoever.

11.16. The Carrier will not accept liability for any personal effects and/or loose articles placed in the Consignment.

11.17. The Carrier will not accept liability for mechanical failures and electrical defects that a Consignment may encounter whilst driven under own power on to or off the car transporter.

11.18. Notwithstanding the above, the Carrier will indemnify the Consignor in respect of any damage to the Consignment, subject to the limits of liability in this clause 11 and these terms and conditions generally, in the event that the Consignor accepts and pays for the Loss Damage Waiver option included in the Quotation.

## 12. SPECIAL LIMITATION OF THE CARRIER'S

### LIABILITY

12.1. The Carrier will not be liable for loss of profits, indirect or consequential damages or penalties.

12.2. The Carrier shall not be liable for claims arising from or connected with arising from riots, civil commotion, strikes, lockouts, explosion, fire, flood, storm or stoppage of work from whatever cause, whether partial or general.

## 13. INSURANCE

13.1. The Consignor shall be obliged to procure insurance cover over the Consignment for the period of the transport by the Carrier as require by Regulation 330D of the regulations to the National Road Traffic Act 93 of 1996.

13.2. The Consignor shall be obliged to provide the Carrier with proof of the insurance mentioned in 13.1. above on or before delivery of the Consignment to the Carrier by the Consignor.

## 14. SUBCONTRACTORS

14.1. The Carrier may, in its absolute discretion, transport the Consignment itself, by its own servants performing the relevant services, or by the Carrier employing or instructing or entrusting the Consignment 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, but such sub- contracting shall not relieve the Carrier of its obligations under these terms and conditions.

14.2. In the event of such power being exercised, 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.

14.3. The Consignor undertakes that no claim shall be made against any servant, sub-contractor or agent of the Carrier which imposes or attempts to impose upon any of them any liability whatsoever in connection with the services or activities of the Carrier, or the Goods, and, if any such claim should nevertheless be made, to indemnify the Carrier against all consequences thereof.

14.4. Without prejudice to the foregoing, every such servant, sub-contractor or agent shall have the benefit of all provisions herein, as if such provisions were expressly for their benefit. In entering into this contract the Carrier, to the extent of those provisions, does so not only on his behalf, but as agent and trustee for such servants, sub-contractors and agents.

14.5. The Consignor shall defend, indemnify and hold harmless the Carrier from and against all claims, costs and demands whatsoever and by whomsoever made or preferred in excess of the liability of the Carrier under the terms of these terms and conditions and without prejudice to the generality of this clause this indemnity shall cover all claims, costs and demands arising from or in connection with the negligence of the Company, its servants, sub-contractors and agents.

## 15. BREACH

Without prejudice to any other rights which it may have, the Carrier shall be entitled to cancel any agreement between it and the Consignor by written notice if:

15.1. the Consignor commits any breach of its obligations under these conditions or any other terms and conditions agreed between the Parties.

15.2. the Consignor commits an act of insolvency in terms of any applicable insolvency legislation.

15.3. the Consignor is deemed to be unable to pay its debts in terms of any deeming provision of any applicable legislation relating to companies or insolvency.

## 16. NOTICES AND DOMICILIUM ET EXECUTANDI

16.1. All notices in terms of these Conditions shall be given in writing and delivered by hand or sent by telefax.

16.2. Any notice served by the Carrier by telefax shall be deemed to have been given on the first day, excluding a Saturday, Sunday or Public Holiday, following the day on which it was telefaxed to the Consignor's telefax number last known to the Carrier.

16.3. Any notice required to be given by the carrier to the consignor will be deemed to have been validly given if posted to the domicilium citandi et executandi of the consignor and will be deemed to have been received by the consignor within 5 (five) days of the date of posting.

16.4. The Consignor appoints as its domicilium citandi et executandi for all purposes under these Conditions its physical address most recently provided by the Consignor to the Carrier on any document generated or completed by the Consignor.

## 17. LAW AND JURISDICTION

17.1. These terms and conditions shall be governed by and interpreted in accordance with the laws of the Republic of South Africa.

17.2. 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 Supreme 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.

## 18. UNENFORCEABLE PROVISIONS

If any of these terms and conditions are unenforceable, illegal, void or contrary to public policy then they will be considered to be legally separated from the rest of these terms and conditions. The rest of these terms and conditions will, however, remain binding and enforceable.

## 19. GENERAL

19.1. No agent or employee of the Carrier, other than a director or an individual authorised thereto by the board of directors, has the Carrier's authority to alter or vary these terms and conditions.

19.2. The Consignor warrants that it has the authority on behalf of all persons who have or may acquire any proprietary, possessory or other rights in and to the Consignment to engage the services of the Carrier and to contract on the basis of these terms and conditions.

19.3. The person representing the Consignor warrants that he is duly authorised to do so.

19.4. The Consignor shall not be entitled to assign its rights and obligations under these terms and conditions and any other terms and/or conditions agreed between the Consignor and the Carrier without the written consent of the Carrier.

19.5. No indulgence or relaxation of rights granted by the Carrier to the Consignor shall constitute a waiver of any of the Carrier's rights under these terms and conditions.

19.6. The Carrier is entitled to amend these terms and conditions and to publish supplementary terms and conditions. All amendments and supplements shall take effect 30 days from the date on which such amendment or supplement is made by the Carrier. As and when any such amendment or supplement is made such amendment or supplement shall be available at the offices of the Carrier. Whilst the Carrier will take reasonable steps to publicise amendments, its failure to do so shall not in any way prevent the amendment or supplement taking effect.

19.7. The defences and limits of liability provided for in these terms and conditions shall apply in any action against the Carrier whether such action be founded in contract or delict (tort) or otherwise.

19.8. The Consignor shall defend, indemnify and hold harmless the Carrier against all liability, loss, damage, costs and expenses arising:

19.8.1. from the nature of the Consignment unless caused

by the Carrier's negligence;

19.8.2. out of the Carrier acting in accordance with the

Consignor's instructions, or

19.8.3. from a breach of warranty or obligation by the

Consignor or arising from the negligence of the Consignor.