



Standard Trading Conditions

1. Terms and Conditions

The terms and conditions hereinafter set out shall apply to all business conducted, or services provided by DIAMOND, including, without limiting the generality of the foregoing, arranging the transport of goods by road or by any other means of transport whatsoever.

2. Definitions

In these terms and conditions:

- 2.1 Unless the context clearly indicates a contrary intention, words importing any one gender include the other two genders, the singular includes the plural and vice versa, and natural persons include created entities and vice versa.
- 2.2 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning, namely:
 - 2.2.1 Shall mean the terms and conditions contained herein.
 - 2.2.2 "The carrier" shall mean the vehicle used to transport the goods.
 - 2.2.3 "The Customer" shall mean any person:
 - 2.2.3.1 At whose request or on whose behalf DIAMOND renders the services; and/or
 - 2.2.3.2 Who has completed an application for credit facilities and signed the declarations pertaining to the said application; and/or
 - 2.2.3.3 Who completed the waybill as the shipper; and/or
 - 2.2.3.4 Who is the owner of the goods.
 - 2.2.4 "DIAMOND" shall mean the company duly incorporated in accordance with the company laws of the Republic of South Africa, having registration number: **1996/038749/23**; hereinafter referred to as "DIAMOND."
 - 2.2.5 "the goods" shall mean any goods handled, transported or dealt with by DIAMOND on behalf of or at the instance of, or which come under control of DIAMOND or its agents, servants or nominees on the instructions of the Customer, and include any container, flat pallet, package or any other form of covering, packaging, container or equipment used in connection with or in relation to such goods.
 - 2.2.6 "the owner" shall mean the owner of the goods in respect of which DIAMOND renders the services under these terms and conditions and any other person who is or may have or acquire any interest, financial or otherwise, in such goods.
 - 2.2.7 "The parties" shall mean DIAMOND and the Customer.
 - 2.2.8 "The premises" shall mean the premises of DIAMOND situated in Johannesburg, or such addresses as DIAMOND may advise the Customer in writing from time to time.
 - 2.2.9 "The services" shall mean the business conducted or the information, advice or any other service provided by DIAMOND to the Customer.
 - 2.2.10 "The Service Agreement" shall mean the guide to the services, rates, discounts etc. that DIAMOND provides, a copy of which has been or shall be provided to the Customer.

3. Payment

- 3.1 In the event that DIAMOND has granted credit facilities to the Customer, the due date of payment of any amount due in terms of a statement rendered by DIAMOND shall be 28 [twenty-eight] days from the date of such statement, which shall be presumed to have been received by the Customer on the 7th day of each month, unless and until the contrary is proven.
- 3.2 Payment of any amount due to DIAMOND by the Customer shall be made by way Bank Transfer [EFT], free of exchange or bank charges and without deduction or set-off to such address as DIAMOND may advise the Customer in writing from time to time.
- 3.3 Interest on all overdue amounts may be charged at a rate of 7.5% [seven. five percent] per month compounded annually.
- 3.4 The Customer may qualify for discounts as specified in the service guide. Current billing discounts will only be applied if payment is received within 28 [twenty-eight days] from the date of statement in terms of 3.1 and will be credited to the following month's statement.



- 3.5 All and any monies received by DIAMOND from the Customer shall be appropriated by DIAMOND in its sole discretion in respect of any undisputed indebtedness owing by the Customer, notwithstanding that the Customer might, when making payment, seek to appropriate the payment so made to any particular debt or portion of debt.
- 3.6 A certificate signed by any director or manager of DIAMOND showing the amount owing by the Customer at any time and reflecting the amount thereon as due and unpaid, shall be *prima facie* proof of the amount owing by the Customer for the purpose of any proceedings [whether for the purpose of provisional sentence, summary judgment or otherwise].

4. Guarantee (if applicable)

The Customer undertakes to provide DIAMOND with an acceptable bank guarantee sufficient to cover their usage of the DIAMOND account for a 2 [two] month period. These guarantees will be reviewed on an ongoing basis to ensure the customers usage is always covered by their respective guarantees.

5. Deposit (if applicable)

As an alternative to 4. Above

- 5.1 The Customer shall be obliged to pay to DIAMOND a deposit in an amount to be determined by DIAMOND (“the deposit”) if so requested.
- 5.2 The Customer hereby irrevocably authorises DIAMOND to invest the deposit in an interest-bearing account, interest to accrue for the benefit of the Customer.
- 5.3 If the Customer fails at any time to pay any amount due in terms of 3.1, DIAMOND shall have the right to appropriate the whole or a part of the deposit and the interest to the amount due.

6. Failure by Customer to Pay Amounts Due

- 6.1 DIAMOND shall have a lien over all the goods, irrespective of whether the Customer is also the owner of the goods.
- 6.2 In the event of non-payment of any monies due by the Customer to DIAMOND, DIAMOND shall have the right, without any notice to the Customer:
 - 6.2.1 To open and examine any part of such goods.
 - 6.2.2 At its option to sell the goods in any way in its sole discretion may decide and to apply the proceeds of any such sale, after deducting all expenses thereof, in payment of or towards any amount due by the Customer to DIAMOND.
- 6.3 Any surplus held by DIAMOND after the sale of the goods as aforesaid shall be paid to the Customer without interest within a reasonable time after such sale, or in the event of DIAMOND being unaware of the address of the Customer, on the application of the Customer within 3 (three) months from the date of the sale, but save therefore, DIAMOND will be released from all liability whatsoever in respect of the goods or any surplus held by DIAMOND as aforesaid.
- 6.4 Where DIAMOND has, in accordance with the provisions of 6.2, sold only part of the goods and the proceeds of such sales are sufficient to pay DIAMOND all monies due to it by the Customer, the Customer shall be entitled to take delivery of the remainder of such goods. DIAMOND shall have the right to charge a reasonable sum for the storage of any goods forming part of such remainder of which delivery is not taken by the Customer and, without notice to the Customer, to recover any such sum in accordance with the provisions of 6.2 and 6.3, which shall apply *mutatis mutandis*.
- 6.5 In the event of non-payment of any monies due by the Customer to DIAMOND in terms of 3.1, DIAMOND shall have the right, in addition to its rights already specified in this clause, to:
 - 6.5.1 Suspend the carrying out of any of its then uncompleted obligations until full payment is made.
 - 6.5.2 Refuse to provide any further services to the Customer; and/or
 - 6.5.3 Rescind the credit facilities granted to the Customer.
- 6.6 The exercise by DIAMOND of any of the rights granted to it by this clause shall be without prejudice to any other rights it may have under this agreement or at common law.

7. Customer’s Risk

All handling, packaging, loading, unloading, warehousing, and transporting of the goods by DIAMOND on behalf of or at the request of the Customer shall be affected at the sole risk of the Customer, and the Customer hereby acknowledges that it shall have no claim against DIAMOND of any nature whatsoever arising out of the foregoing.



8. Applicable Legislation

- 8.1 If DIAMOND is obliged, in the execution of its duties and/or responsibilities to comply with any common law or legislative enactment (“the law”) of any nature whatsoever, then DIAMOND by complying therewith shall not be deemed to waive or abandon any of its rights in terms of these terms and conditions.
- 8.2 In addition thereto, in complying with the law, DIAMOND shall not be deemed to have assumed any onus, obligation, responsibility, or liability in favour of the Customer.
- 8.3 If any of the terms and conditions is repugnant to or in conflict with the law, then and in such event 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 terms and conditions.

9. Customer’s undertaking

The Customer warrants and undertakes that –

- 9.1 In the event of any default by the Customer of any provision of this agreement, the Customer hereby consents and authorizes the Company to furnish the name, credit record and repayment history of the Customer to any credit bureau as a delinquent debtor. It is also agreed that the company may use any means to verify the information contained in this document.
- 9.2 It is the owner or the duly authorised agent of the owner of the goods which are the subject of the Customer’s instructions to DIAMOND and, if it is the authorised agent of the owner, that such owner is bound by this agreement.
- 9.3 By authorising the Customer to enter into any contract with DIAMOND, the owner, sender or consignee is bound by this agreement and any other person on behalf of whom such owner, sender or consignee is acting is bound by this agreement and, in particular, without derogating from the generality of the a foregoing, the owner, sender or consignee accepts that it shall be jointly and severally liable with the Customer for the due performance by the Customer of all its obligations under this agreement;
- 9.4 All descriptions, values, marks, brands, weights, numbers, contents quality and other particulars in respect of the goods furnished by it to DIAMOND for customs, consular and other purposes are accurate, and accordingly indemnifies DIAMOND against all claims, losses, penalties, damages, expenses and fines whatsoever which DIAMOND may suffer or sustain arising out of or in connection with the breach of this warranty, whether negligently or otherwise;
- 9.5 All goods subject to this agreement shall be properly, adequately and appropriately prepared and packed, stowed, labelled and marked and such goods are capable of withstanding the normal hazards inherent in the implementation of this agreement.
- 9.6 Where goods are carried in or on containers, trailers, flats, tilts, railway wagons, tanks, igloos, or any other unit load devices specifically constructed for the carriage of goods by land, sea or air, (each such device hereinafter individually referred to as “the transport unit”) then, save where DIAMOND has been given and has accepted specific written instructions to load the transport unit –
 - 9.6.1 The transport unit has been properly and competently loaded; and
 - 9.6.2 The goods involved are suitable for carriage in or on the transport unit: and the transport unit is itself in a suitable condition to carry the goods loaded therein and complies with the requirements of all relevant transport authorities and laws.

10. The Customer’s Obligation

- 10.1 The Customer shall deliver the goods to be transported to the premises and arrange for collection of the goods on arrival of the goods at the destination unless the parties have expressly agreed otherwise.
- 10.2 The Customer shall complete and sign an air waybill in respect of the goods to be transported reflecting as a minimum:
 - 10.2.1 The Customer’s name, address, and telephone number.
 - 10.2.2 The Customer’s account number.



- 10.2.3 The consignee's name, address, and telephone number.
- 10.2.4 The consignee's account number, if relevant.
- 10.2.5 The airport of destination.
- 10.2.6 The handling information specifying the service level required as detailed in the service guide.
- 10.2.7 The declared value of the goods if the Customer requires insurance cover in terms of 17.1.2.

11. Examination of Goods

All goods delivered by the Customer in terms of 10.1 shall be examined by DIAMOND either manually or by way of an x-ray machine before transport of such goods to ensure that no dangerous goods as referred to in clause 12. or goods requiring a special arrangement with DIAMOND in terms of clause 13. are to be transported. If we suspect Dangerous goods are being moved after being x-rayed, then a delay may take place while the contents are checked.

12. Dangerous Goods

- 12.1 The Customer shall obtain in advance DIAMOND's specific written consent to accept into its possession or control or into the possession or control of any of its servants, agents or employees any goods, including without limitation, radio-active materials, which may be or become dangerous, inflammable or noxious, or which by their nature may injure, damage, taint or contaminate, or in any way whatsoever adversely affect or cause damage to any person, goods or property, including without limitation, goods likely to harbour or attract vermin or other pests. The goods referred to above shall include, without limiting the generality of the foregoing, all goods falling within the definition of "hazardous and dangerous goods" as specified by the South African Railways Regulations and the International Maritime Dangerous Goods Code (MCO Code) and any other regulations governing the transport or movement of dangerous and hazardous cargo.
- 12.2 The Customer warrants that such goods, or where applicable, the crate, box, drum, canister, tank, flat, pallet, package or other holder or covering of such goods will comply with any applicable laws, regulations, or requirements of any authority and that the nature and characteristics of such goods and all other data required by such laws, regulations or requirements will be prominently and clearly marked on the outside cover of such goods.
- 12.3 If any such goods are delivered to DIAMOND, whether or not in breach of the provisions of 12.1, such goods may for good reason as DIAMOND in its discretion deem fit including, without limitation, the risk to other goods, property, life or health be destroyed, disposed of, abandoned or rendered harmless or otherwise dealt with at the risk and expense of the Customer and without DIAMOND being liable for any compensation to the Customer or any other party, and without prejudice to DIAMOND's rights to recover its charges and/or fees including the costs of such destruction, disposal, abandonment or rendering harmless or other dealing with the goods.
- 12.4 The Customer hereby indemnifies and holds DIAMOND harmless against all loss, liability or damage caused by the Customer or DIAMOND or any other person as a result of the delivery of goods to DIAMOND in breach of 12.1.
- 12.5 A penalty will be implemented to the Customer if undeclared Dangerous goods are detected in accordance with DCA, IATA rules and regulations.

13. Goods Requiring Special Arrangements

- 13.1 Save in accordance with special arrangements previously made in writing DIAMOND will not accept or deal with bullion, coin, bank notes and other currency, precious stones, jewellery, valuables, antiques, pictures, human remains, livestock or plants.
- 13.2 Should the Customer deliver any such goods to DIAMOND or cause DIAMOND to handle or deal with any such goods otherwise than in accordance with special arrangements previously made in writing, DIAMOND shall incur no liability whatsoever in respect of such goods, and in particular, shall incur no liability in respect of its negligent acts or omissions in respect of such goods.



13.3 The Customer hereby indemnifies and holds DIAMOND harmless against all loss, liability or damage suffered by DIAMOND or the Customer or any other person as a result of the breach by the Customer of the provisions of 13.1.

14. Goods Delivered At Destination Airport

- 14.1 Goods delivered at the destination airport and in the care, custody or control of DIAMOND or its representative, may, at the Customer's expense be disposed of or sold in accordance with the provisions of 6.2, at the option of DIAMOND, if:
 - 14.1.1 Such goods are insufficiently addressed or otherwise marked so as to identify the Customer or consignee.
 - 14.1.2 The Customer, owner or consignee of such goods cannot be identified or located after DIAMOND has taken reasonable steps so as to identify or locate the said persons.
 - 14.1.3 Such goods have begun to deteriorate or are likely to deteriorate; or
 - 14.1.4 Such goods have not been collected by the Customer or any other person within 72 (seventy two) hours from the time that the goods were delivered at the destination airport and after DIAMOND has advised the Customer or the consignee, telephonically or in writing, that the goods are ready for collection.
- 14.2 Notwithstanding the provisions of 14.1, DIAMOND shall be entitled, in the circumstances referred to in 14.1.4, to store such goods at no risk to DIAMOND and at the expense of the Customer.

15. DIAMONDS Discretion in the Absence of Instruction

In the absence of specific instructions on the waybill prepared by the Customer in terms of 10.2 or given timeously in writing by the Customer to DIAMOND:

- 15.1 DIAMOND shall be entitled to decide, in its reasonable discretion at what time to perform or to procure the performance of any or all of the services it has agreed to perform.
- 15.2 DIAMOND shall have an absolute discretion to determine the means, route and procedure to be followed by it in performing all or any of the services it has agreed to perform.
- 15.3 In all cases where there is a choice of tariff rates or premiums offered by any carrier, warehouseman, underwriter, or other person depending upon the declared value of the relevant goods or to the extent of the liability assumed by the carrier, warehouseman, underwriter, or any other person, it shall be at the discretion of DIAMOND as to what declaration, if any, shall be made, and what liability, if any, shall be imposed on the carrier, warehouseman, underwriter or other person.

16. DIAMONDS General Discretion

- 16.1 Should DIAMOND deem it to be in the interests of the Customer or in the public interest to depart from any of the instructions of the Customer, DIAMOND shall be entitled to do so, shall take reasonable steps to advise the Customer accordingly and shall not incur any liability whatsoever as a result thereof.
- 16.2 Should it, in the opinion of DIAMOND, be impossible or impractical for DIAMOND to comply with the Customer's instructions in whole or part, DIAMOND undertakes to take reasonable steps to inform the Customer of the circumstances giving rise to such impossibility or impracticability and the Customer shall furnish DIAMOND with further instructions. Should such further instructions not be timeously received in writing, DIAMOND may in its discretion detain, return, store, sell, abandon or destroy at the risk and expense of the Customer all or any part of the goods involved.

17. Liability of DIAMOND

- 17.1 It is hereby agreed that DIAMOND is neither a common carrier nor a public carrier in relation to the carriage of goods in terms of this agreement.
- 17.2 DIAMOND shall not be liable to the Customer for any loss of profit or any damages, direct or indirect, consequential, or otherwise arising from:



- 17.2.1 The conveyance, transport, or storage of any goods by DIAMOND; and/or
- 17.2.2 Loss or damage to any goods; and/or
- 17.2.3 Loss or non-delivery of any separate package forming part of a consignment or loss from a package or an unpacked consignment or for damage or miss-delivery; and/or
- 17.2.4 Any negligent act, omission or statement by DIAMOND, or its employees, agents, or representatives; and/or
- 17.2.5 Any act, or omission or statement of the Customer or the agent of the Customer with whom DIAMOND deals; and/or
- 17.2.6 The marking, labelling, numbering, non-delivery, miss-delivery, or late delivery of any goods.
- 17.2.7 Or/and in any way connected with the weight, measurements, contents, quality, inherent vice, defect, or description of any of the goods; and/or
- 17.2.8 Any circumstances beyond DIAMOND's control including, without limiting the generality of a foregoing, fire, flood, earthquake, wind, storm, inclement weather, or other natural disaster, act of God, strike, riot, war and acts of State; crime, vehicle hi-jacking and/or
- 17.2.9 Damage or injury suffered by the Customer or any person whatsoever because of DIAMOND's execution or attempted execution of its obligations to the Customer and/or the Customer/s requirements or mandate.
- 17.3 If, notwithstanding the provisions of 18.2, the Customer alleges that DIAMOND is liable for loss or damage suffered by it, the Customer shall notify DIAMOND thereof giving DIAMOND within 10 (ten) business days of receipt of the goods allegedly damaged or of it coming to the Customer's attention that the goods were lost.
- 17.4 The Customer shall, in the case of alleged damaged goods, make such goods available for inspection by DIAMOND or its representative.
- 17.5 DIAMOND shall accept or reject liability for the loss or damage within a reasonable time after receiving a duly completed claim form.

18. Monetary Limitation of Liability of DIAMOND

- 18.1 In those cases where DIAMOND takes a commercial decision in terms of settlement, DIAMOND liability to the client in respect of goods in its care is as follows:
 - 18.1.1 Will terminate once proof of delivery has been obtained from the receiving party,
 - 18.1.2 Shall be limited to an amount of R5, 000.00 (five thousand Rand) per Waybill subject to clause 18.2 below,
 - 18.1.3 Shall exclude indirect or consequential damage or loss.
- 18.2 **Where DIAMOND has agreed to accept the risk of carriage, such risk shall never exceed R5, 000.00 (five thousand Rand) relating to any one waybill or master waybill, subject to the acceptance of Freight Guard insurance premium per waybill, should the customer wish not to accept the Freight Guard insurance premium per waybill, a limited liability of R50 per waybill will apply.** This risk relates to the loss of goods and does not cover damage resulting from inadequate packaging of the items by the customer or its agents. This acceptance of risk relates exclusively to the direct cost of replacement of goods (**limited to the above stipulated amount of R5000-00**) and shall in no way cover any indirect or consequential losses.
- 18.3 Any claim for loss or damage must be **lodged within 7 days of such loss** by sending an e-mail to **claims@diamondexpress.co.za**. Any claims submitted after this period will not be considered.
- 18.4 If it is desired that the liability of DIAMOND in those cases where it is liable to the Customer should not be governed by the limits referred to in clause 18.1, written notice thereof must be received by DIAMOND before any such goods or documents are entrusted to or delivered to or into the control of DIAMOND (or its agents or subcontractors), together with a statement of the value of the goods. Upon receipt of such notice DIAMOND may in the exercise of its absolute



discretion agree in writing to its liability being increased to a maximum amount to the amount equivalent to the amount stated in the notice, in which case it will be entitled to effect special insurance to cover its maximum liability and the Customer giving the notice shall be deemed, by doing so, to have agreed and undertaken to pay to DIAMOND the amount of the premium payable by DIAMOND for such insurance. If DIAMOND does not so agree to the limits stated in the notice, the provisions of 18.1 shall apply.

19. LIABILITY OF THE CARRIER

- 19.1 For the purpose of this clause “carrier” shall mean any carrier involved in the carriage of the cargo on behalf of DIAMOND.
- 19.2 It is recorded that where the goods are transported by the carrier in terms of this agreement, the carrier shall not be liable to the Customer or any other person for:
 - 19.2.1 Loss, damage or delay arising out of the carriage of the goods or other services performed by the carrier incidental thereto, unless such loss or damage or delay is occasioned by an in-flight accident; excluding in-flight accidents caused or occasioned by the negligence or wilful misconduct of DIAMOND.
 - 19.2.2 Any indirect or consequential damages of any nature or any loss of profit or other special damages of any nature which the customer may suffer as a result of an in-transit accident, excluding in-transit accidents caused or occasioned by the negligence or wilful misconduct of DIAMOND.
 - 19.2.3. The delay or loss of market attributable to, or associated with, the transport of livestock and perishables.
 - 19.2.4 Any inherent vice or defect (whether latent or apparent) in the cargo or the goods conveyed by the carrier.
 - 19.2.5 Any act or omission of any of the carrier’s agents, contractors or third parties required to perform any services for and on behalf of the carrier.
- 19.3 Subject to and without in any way limiting the provisions of 20.2:
 - 19.3.1. The liability of the carrier for any damages sustained by the Customer for any in-transit accident, excluding in-transit accidents caused or occasioned by the negligence or wilful misconduct of DIAMOND shall be limited as to the amount, which amount DIAMOND shall advise the Customer of on request.
 - 19.3.2. The carrier shall not be liable to DIAMOND for any claim for in-transit accidents, excluding in-transit accidents caused or occasioned by the negligence or willful misconduct of DIAMOND, made by the Customer or any other third party unless such a claim is made in writing within 6 (six) months after the claim arises.

20. Subcontracting

- 20.1 Any services rendered by DIAMOND in terms of this agreement may, in the absolute discretion of DIAMOND, be fulfilled by DIAMOND itself, by its own employees performing part of or all of the relevant services, or by DIAMOND 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.
- 20.2 When DIAMOND employs third parties to perform all or any of the functions which it has agreed to perform, the Customer agrees that DIAMOND shall have no responsibility or liability to the Customer for any act or omission of such third party, even though DIAMOND may be responsible for the payment of such third party’s charges; but DIAMOND shall upon being requested to do so cede to the Customer any right of action which it may have against such third party.
- 20.3. Notwithstanding anything to the contrary contained herein, the Customer agrees that all goods shall be dealt with by DIAMOND on the terms and conditions, whether or not inconsistent with these terms and conditions, stipulated by the carriers, warehousemen, government departments, and all other third parties.
(Whether acting as agents or subcontractors to DIAMOND or not) into whose possession or custody the goods may pass or subject to whose authority they may at any time be.
- 20.4 Notwithstanding anything to the contrary contained herein, it is expressly recorded that the Customer shall have no claim against any air carrier into whose possession or control the goods may pass or subject to whose authority the goods may be at any time.

21. Risk of Posted Items



No documents, cheques or any material sent to DIAMOND through the post shall be deemed to have been received by DIAMOND unless they are actually received by DIAMOND.

22. Quotations

- 22.1 Any instruction given to DIAMOND based on any quotation furnished by DIAMOND to the customer shall be deemed to be an offer by the Customer to DIAMOND to conclude a contract between the Customer and DIAMOND based on such instructions and quotation. DIAMOND shall not be bound by any instructions or quotations unless it has notified the Customer in writing of its acceptance.
- 22.2 Quotations are given on the basis of costs and exchange rates prevailing at the date of the quotation. Should DIAMOND's costs including, without limitation, rates of freight, insurance premiums, equipment rental and labour and any other charges applicable to the goods, increase thereafter for any reason beyond the control of DIAMOND, DIAMOND shall be entitled to increase its charges to the Customer to the extent necessary to recoup such additional costs.
- 22.3 DIAMOND reserves the right to levy an administration fee of 10% (ten percent) on such increased or additional charges.
- 22.4 If the Customer disputes any increase in DIAMOND's charges, the dispute shall be determined by DIAMOND's auditors for the time being acting as experts and not as arbitrators and their decision shall be final and binding upon DIAMOND and upon the Customer.

23. Rates

DIAMOND shall be entitled at any time by notice to the Customer to cancel or resale from any published rate in circumstances where it becomes impractical or uneconomical for DIAMOND to carry out the agreement at the published rate and the Customer shall have no claim whatsoever against DIAMOND for any loss that the Customer might incur as a result of DIAMOND cancelling or reselling from the published rate.

24. Negotiable Instruments

No negotiable instrument received by DIAMOND from a Customer shall constitute a novation of the debt for which it is given, and the Customer waives presentment, notice of dishonour and protest where applicable. No negotiable instrument, document or notice shall be deemed to have been received by DIAMOND until same has actually been delivered to DIAMOND at its principal place of business.

25. Benefit of Discounts

DIAMOND is entitled to the benefit of any discounts obtained and to retain and be paid all brokerages, commission, allowances and other remunerations of whatsoever nature and kind and shall not be obliged to disclose or account to the Customer for any such amounts received or receivable by it.

26. Pledge

The Customer shall not be entitled to effect or allow to be effected any security in respect of the goods or the documents relating to the goods, including without limitation, any general or special notarial bond, pledge, hypothec, right of retention, or lien and pledge, without the prior written consent of DIAMOND.

27. General Indemnity by the Customer

Without prejudice to any rights and securities which DIAMOND may have under this agreement, the Customer indemnifies and holds DIAMOND harmless against all liabilities, damages, costs and expenses whatsoever incurred or suffered by the Customer or DIAMOND or any other person arising directly or indirectly from or in connection with the Customer's express or implied instructions or their implementation by or on behalf of or at the insistence of DIAMOND in relation to any goods in particular, but without limitation of the a foregoing, in respect of any liability whatsoever which may be incurred –



- 27.1 To any haulier, carrier, warehouseman or other person whatsoever at any time involved with such goods arising out of any claim made directly or indirectly against any such person by the Customer or by the consignor, consignee, or owner of such goods or by any person having an interest in such goods or by any other person whatsoever; and/or
- 27.2 To any owner or consignee of such goods who is not the customer of DIAMOND; and/or
- 27.3 To any carrier of the goods if DIAMOND is the consignor or consignee of the goods; and/or
- 27.4 In respect of any goods referred to in clause [12.] above.

28. Warranties and representations by DIAMOND

DIAMOND makes no warranties and representations to the Customer save as may be specifically provided herein or as notified in writing by DIAMOND to the Customer from time to time. The Customer acknowledges that DIAMOND is not in any way bound by any oral statement, representations, guarantee, promise, undertaking, inducement or otherwise which may have been made at any time by any salesman, employee or any person acting or purporting to act for and on behalf of DIAMOND, whether negligently or otherwise, unless such statements, representations, guarantees, promises, undertakings, warranties or inducements are supplied or made in writing by an employee duly authorised by written resolution of the board of directors of DIAMOND in response to a written enquiry specifying accurately and in complete detail what information is required.

29. Severability

If any provision of this agreement is unenforceable, DIAMOND shall be entitled to elect (which election may be made at any time) that such provision shall be severed from the remaining provisions of this agreement which shall not be affected and shall remain of full force and effect.

30. Breach

- 30.1 Subject to the provisions of 31.2 and in the event of a party breaching any of its obligations under this agreement (“the defaulting party”) and failing to remedy such breach within 7 (seven) days of receiving written notice from the other party requiring it to do so, the other party may, without prejudice to any other right which it may have in law, including the right to claim damages, in the case of:
 - 30.1.1 A material breach, which breach is not capable of being remedied, cancel this agreement; or
 - 30.1.2 Any other breach, claim specific performance or cancel this agreement.
- 30.2 DIAMOND shall be entitled to cancel this agreement and rescind the credit facility granted to the Customer immediately:
 - 30.2.1 Upon DIAMOND ascertaining that any information supplied by the Customer in the credit application form is false, and/or
 - 30.2.2 If the Customer fails to comply with any of the conditions contained herein, and/or
 - 30.2.3 If the Customer is placed under provisional or final liquidation, judicial management or sequestration or commits an act of insolvency as defined in the Insolvency Act or ceases to carry on business, and/or
 - 30.2.4 If the customer fails to adhere to any condition of repayment contained herein and/or in any other subsequent agreement reached between DIAMOND and the Customer; and/or
 - 30.2.5 If the Customer fails to pay any amount due in terms hereof or any other agreement subsequently reached between DIAMOND and the Customer; and/or
 - 30.2.6 If the Customer takes any action which, in the opinion of DIAMOND, may prejudice DIAMOND’s rights in any way; and/or
 - 30.2.7 If the purchaser is:
 - 30.2.7.1 A sole proprietor and sells or disposes of part or the whole of his business; or
 - 30.2.7.2 A partnership and, for any reason, whatsoever, whether by operation of law or agreement or otherwise, is dissolved; or
 - 30.2.7.3 A seller or a close corporation and one or more of its shareholders or members sells or disposes of his shareholding or member’s interest, as the case may be, irrespective of the size of the shareholders or members shareholding or member’s interest, as the case may be; without the prior written consent of the seller;



30.3 In the event that DIAMOND cancels this agreement as a result of a breach by the Customer or in accordance with the provisions of 31.2, DIAMOND shall be entitled to retain any payments already made by the Customer in terms of this agreement, including any deposit paid, either as rouwkoop, or by way of penalty, or as liquidated damages, or as payment in respect of the prejudice which the parties hereby agree will be suffered by DIAMOND as a result of the Customer's breach as aforementioned.

31. Disputes

If:

- 31.1 There is any dispute regarding the interpretation of this agreement; or
- 31.2 There is any other dispute between the parties arising from or in connection with this agreement or action taken pursuant to its provisions or its termination, then such matter ("the dispute") shall be determined by an expert in the particular field.
- 31.3 The parties shall within 7 (seven) days agree upon the person of such expert and, should they fail to agree, the expert shall be appointed by the President for the time being of the Law Society of the Transvaal.
- 31.4 Such expert shall act as an expert and not as an arbitrator and shall in his sole discretion lay down the procedure to be followed and the manner in which evidence, if any, shall be allowed.
- 31.5 The dispute shall be determined in Johannesburg, Republic of South Africa.
- 31.6 Notwithstanding the provisions of 34, any party may apply to any court having competent jurisdiction, for a temporary interdict or other relief of an urgent nature, pending the decision of the expert.

32. Cost of Proceedings

In the event that DIAMOND institutes legal proceedings against the Customer in terms hereof or for any reason whatsoever, the Customer shall pay all costs incurred by DIAMOND including collection commission and legal costs on an attorney-and-own client scale.

33. Jurisdiction

- 33.1 The Customer consents to the jurisdiction of the High Court and the Magistrate's Court of either Bloemfontein or Johannesburg in respect of any action of proceedings which may be brought against it, notwithstanding the quantum of Diamonds claim.
- 33.2 Notwithstanding 34.1, DIAMOND shall be entitled to bring proceedings against the Customer in any other appropriate court having jurisdiction.

34. Domicilium Citandi ET Excutandi

- 34.1 The parties choose their *domicilia citandi et executandi* for the purpose of giving any notice, the serving of any process or for any purpose arising from this agreement at the addresses reflected on the first page of the credit application form.
- 34.2 Each of the parties shall be entitled from time to time, by giving written notice to the other, to vary the chosen *domicilium* to any other address in the Republic which is not a post office box or post restante, provided that such change shall become effective on the 7th day after the receipt of such notice by the other party.
- 34.3 The Customer shall give notice to DIAMOND at DIAMOND's *domicilium* of any change of address or in the form of legal entity or name of ownership under which the account and credit facilities are being used within seven (7) days from the date that such change takes effect.

35. General Provisions

DIAMOND and the Customer agree that the terms and conditions contained herein embody the entire agreement between them and confirm that:

- 35.1 None of the terms and conditions of this agreement is capable of being waived, amended, added to or deleted, unless such waiver, amendment, addition or deletion is reduced to writing and is signed by the parties.
- 35.2 No representations or warranties have been made by either of the parties, save as are expressed herein.



- 35.3 The clause headings herein are for reference purposes only and shall not be used for the purposes of interpreting the terms and conditions contained herein;
- 35.4 No indulgence granted by a party shall constitute a waiver or abandonment or any of that party's rights hereunder: accordingly, that party shall not be precluded, as a consequence of having granted that indulgence, from exercising any rights against the other party which may have arisen in the past or which may arise in the future.