

# Agrivest Shipping DMCC - Standard Trading Terms

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## 1 Definitions and interpretation

1.1 In these Terms, unless the context indicates otherwise an expression which denotes the singular includes the plural, and the plural includes the singular and the words below shall have the meanings assigned to them hereunder:

- (1) **Abnormal Goods** means goods which by reason for their nature, weight (mass), dimensions or otherwise require special preparations to be made or unusual or special care, treatment or precautions to be taken for the storage, transport or movement thereof or such goods which AGRIVEST in its sole discretion regards as abnormal;
- (2) **Additional Services** means any services rendered by AGRIVEST to the Customer, in addition to the Services, or any action taken by AGRIVEST in the circumstances described in clause 8;
- (3) **AGRIVEST** means **AGRIVEST SHIPPING DMCC**, with principal place of business at Unit no. 30-01-1527, floor no. 1, building no. 3, plot no. 550-554, J&G, DMCC, Dubai, United Arab Emirates and with company registration number JLT5791;
- (4) **Authority** means any duly constituted legal or administrative person, acting within its legal powers and exercising jurisdiction within any country, municipality or port
- (5) **Business Day** means any day other than a Saturday, Sunday or official public holiday in United Arab Emirates;
- (6) **Consignee** means the consignee or any party to which the Goods are delivered in terms of the Instructions;
- (7) **Consignor** means the consignor or any party from which Goods are collected in terms of the Instructions;
- (8) **Container** means an article of transport equipment constructed to the specifications of the International Standards Organisation, including all its ancillary equipment;
- (9) **Contract** means an agreement concluded between AGRIVEST and the Customer for the provision of Services incorporating the quotation accepted by the Customer, these Terms and the relevant Instructions accepted by AGRIVEST in terms of clause 5.2;
- (10) **Contract of Carriage** means any contract for the carriage or transportation of the Goods, whether evidenced by bills of lading, waybills or otherwise;
- (11) **Customer** means any person, whether an agent or a principal, at whose request or on whose behalf AGRIVEST undertakes or renders any Service, who, if not the owner of the Goods, warrants that it has the authority of the owner of the Goods to enter into a Contract on behalf of the owner;
- (12) **Dangerous Goods** means:
  - (a) goods which, in the opinion of AGRIVEST are likely to cause any injury or damage whatsoever to persons or property;
  - (b) goods that are or may become of a dangerous, hazardous, noxious, explosive, inflammable, radio-active or damaging nature;
  - (c) goods liable to taint or affect other goods; and/or
  - (d) goods likely to harbour or encourage vermin or other pests;

including without limitation any goods described as such in the International Maritime Organisation Dangerous Goods Code, as amended from time to time;

- (13) **Delivery Note** means a binding written delivery/cartage/transport instruction issued by AGRIVEST setting out the details of the delivery, including without limitation, the Consignor's and Consignee's address (being the collection and delivery addresses), the time of dispatch and delivery, the quantity and condition of the Goods received, Container details, vehicle and trailer details and any other specific details required by AGRIVEST
- (14) **Freight Forwarding Services** means any services relating exclusively to the carriage, consolidation, storage, handling, packing and/or distribution of Goods, as well as ancillary and advisory services in connection therewith, including, but not limited to, customs and fiscal matters, declaring the Goods for official purposes and collecting or procuring payment or documents relating to the Goods;
- (15) **Goods** means any goods stored or transported hereunder or otherwise coming under the control of AGRIVEST, on behalf of the Customer and shall include Containers in which the Goods are packed, packaging, other coverings and equipment not supplied by AGRIVEST and any documents relating to or generated in respect of the Goods or to the Services;
- (16) **Goods Received Note** means the written notification signed by or on behalf of the Customer and AGRIVEST on delivery to it of any Goods for Warehousing Services, in a form acceptable to AGRIVEST which shall set out the following information: the Customer details, the rates and charges, the Customer reference, the Vehicle details, description of the type, quality and condition of the Goods and any shortages or damage to the Goods;
- (17) **Instructions** means the written instructions given to AGRIVEST by the Customer, setting out the details of the Services required including without limitation, those set out in the Delivery Note, as described in clause 5;
- (18) **Legal Requirements** means all laws (whether national, provincial local or municipal), by-laws, regulations, policies, procedures or requirements of any license, permit, convention of any applicable authority
- (19) **Logistics Services** means the management of the flow of Goods between the point of origin and the point of destination in order to meet the Customer's requirements;
- (20) **Parties** means AGRIVEST and the Customer and Party means, as the context requires, either one of them;
- (21) **Road Haulier** means any person or persons, whether a company, partnership, firm, association or any other entity that provides road transport services to AGRIVEST;
- (22) **Services** means the Logistics Services, Transport Services, Warehousing Services and/ or Freight Forwarding Services rendered by AGRIVEST to the Customer in terms of these Terms and Instructions, accepted by AGRIVEST in terms of clause 5;
- (23) **Sub-contractor** means any person with whom AGRIVEST contracts, whether as agent of the Customer or as principal, to render any Service, and including that person's servants and agents;
- (24) **Terms** means these standard trading terms;
- (25) **Ton** means a metric ton of 1,000 kilograms;
- (26) **Transport Services** means the conveyance of the Goods, in the Vehicles, by the contracted Road Hauliers;

- (27) **Vehicle** means a vehicle owned by a Road Haulier including the mechanical horse and any trailer or trailers.
- (28) **Warehouse** means any warehouse or container yard owned or leased or nominated by AGRIVEST, and nominated by the Customer in the Instructions, subject to the provisions of clause 5.6;
- (29) **Warehousing Services** means services relating exclusively to warehousing Goods, including the handling, stacking, storing, monitoring and any other related services specifically requested by the Customer in Instructions;
- (30) **written or in writing** means by letter, facsimile or e-mail; and

## 2 Application of Terms

- 2.1 All Services and Additional Services rendered by AGRIVEST and all other business undertaken or advice, information or services provided by AGRIVEST, whether gratuitous or not, is undertaken subject to these Terms which shall be deemed to be incorporated in and be a part of any agreement concluded between AGRIVEST and the Customer.
- 2.2 If the Customer amends or strikes out any term in these Terms it must bring that amendment or striking out to the attention of AGRIVEST in writing. Any such amendment or striking out amounts to a counter offer by the Customer and is only effective if AGRIVEST acknowledges and consents to the amendment or striking out in writing.
- 2.3 These Terms supersede all other terms and conditions (including without limitation any other general and standard trading terms and conditions of the Customer), unless otherwise specifically agreed to in writing by AGRIVEST, by specific reference to such other terms and conditions.

## 3 Status of AGRIVEST

AGRIVEST provides all Services subject to these Terms only and expressly not as a bailee, depositree or common or public carrier, whether for reward or gratuitously. AGRIVEST does not warrant or guarantee that it will provide the Services.

## 4 Quotations and rates

- 4.1 Any quotations given by AGRIVEST shall only be open for acceptance for a period of (14) fourteen days from the date of the quotation.
- 4.2 The rates and charges quoted by AGRIVEST for any Services shall not, unless otherwise specified, include any taxes, surcharges, fines, levies, deposits, or other government, provincial or municipal charges or duties, which shall be payable by the Customer on demand.
- 4.3 Quotations are non-binding estimates and AGRIVEST is only bound to perform on written acceptance of an Instruction from the Customer by a senior manager of AGRIVEST. Prior to that acceptance by AGRIVEST, AGRIVEST is entitled to withdraw and/or amend its quotation.
- 4.4 The rates and charges quoted by AGRIVEST ("the original quotation") are subject to any increases in the cost price, including currency fluctuations, of AGRIVEST before the Customer's acceptance of a quotation. In the event, AGRIVEST shall be entitled, but not obliged, to provide a second quotation ("the replacement quotation") to the Customer, which shall have the immediate effect of cancelling the original quotation.

- 4.5 Any Additional Service that AGRIVEST is obliged or entitled to provide that has not been quoted for or referred to in the Instruction shall be charged at AGRIVEST's prevailing rate or, if it has no prevailing rate, at a reasonable rate.
- 4.6 Details of rates and charges agreed with a Customer are confidential and may not be disclosed to any third parties without the prior written consent of AGRIVEST.

## 5 Instructions

- 5.1 The Customer shall timeously provide AGRIVEST with the Instructions, in a form acceptable to AGRIVEST, setting out the details of the Services required of AGRIVEST, including:
- (1) the dates and times of collection and delivery, where applicable;
  - (2) the collection and delivery points;
  - (3) the names and other relevant details of the Consignee and Consignor;
  - (4) any information required in order to comply with clauses 14 (if any);
  - (5) a description of the Goods, including weight, quality, dimensions, quantity and condition;
  - (6) any relevant Container details, including the Container and seal numbers;
  - (7) the details required to complete the Goods Received Note and Delivery Note; and
  - (8) any other information relating to the Goods, which AGRIVEST shall require in order to render the Services in terms of these Terms, the Instructions and all Legal Requirements.
- 5.2 A Contract shall be concluded between AGRIVEST and the Customer, and the Instructions shall be binding on AGRIVEST, only when the Instructions are accepted in writing by AGRIVEST. AGRIVEST shall be entitled to act on any verbal instructions received by AGRIVEST, but not obliged to do so until such instructions have been confirmed in writing.
- 5.3 In all dealings with any Customer, the Customer warrants, and AGRIVEST shall be entitled to rely upon the accuracy and completeness of any Instructions and other information given to it by the Customer, without further investigation.
- 5.4 AGRIVEST shall be entitled at any time, to require the Customer to furnish further information relating to the Goods or to any other subject matter of the business between them and shall be entitled to postpone performance of any obligation or Services in terms hereof, until such information is received in writing.
- 5.5 The Customer warrants the accuracy of all descriptions, values, weights, dimensions and other information given to AGRIVEST for customs, consular, haulage or any other purposes and indemnifies AGRIVEST against any cost, expense, loss, damage, fines, penalties or claims by any person arising out of or in connection with any inaccuracy in and/or non-disclosure of any such description, value, weights, dimensions or other information
- 5.6 The Customer shall have the right to provide Instructions to AGRIVEST concerning the Warehouse to be utilised and its locality, provided, however, that AGRIVEST shall retain total operational control of the Warehouse to be nominated and utilised for the Services, which includes the right to effect operational redeployment of the Warehouse to be utilised.

## 6 Description of Goods

- 6.1 The Customer shall prior to AGRIVEST providing any quotation for services relevant to the Goods provide to AGRIVEST in writing:
- (1) a full description of such Goods; and
  - (2) any other information relevant to their handling, storage or carriage.
- 6.2 The Customer is deemed to have reasonable knowledge of all matters directly or indirectly relating to the Goods, including without limitation any requirements for their safe handling, carriage and routing and any applicable Legal Requirements.
- 6.3 The Customer warrants the accuracy of that description and all other descriptions, weights, condition, quality, marks, numbers and values and other particulars in respect of Goods furnished to AGRIVEST for all purposes, including customs, consular and other purposes.
- 6.4 All Goods in respect of which AGRIVEST does not receive a full accurate written description prior to their delivery to AGRIVEST shall be handled by AGRIVEST, its servants, agents and independent contractors entirely at the Customer's risk.
- 6.5 In all cases where there is a choice of tariff rates or premiums offered by carriers, warehousemen, underwriters, or others depending upon the value declared or the extent of the liability assumed by the carrier, warehousemen, underwriter or other person, it shall be in the entire discretion of AGRIVEST as to what declaration, if any, shall be made and what liability, if any, shall be imposed on the carrier, warehousemen, underwriter or other persons, unless express instructions in writing are timeously given by the Customer.
- 6.6 AGRIVEST shall not be obliged to make any declaration for the purpose of any law, as to the nature of any Goods or the contents of any Container dealt with by AGRIVEST. If AGRIVEST gives such a declaration, it shall be entitled to rely on the Customer's warranties under these Terms.

## 7 Services

- 7.1 AGRIVEST shall not be obliged to provide any Service not specified in the Contract but it shall be entitled to perform any Additional Services subject to these Terms and clause 8.
- 7.2 In rendering the Services, AGRIVEST shall not be obliged to follow any Instructions unless those Instructions are given in writing and within a reasonable time, in AGRIVEST's opinion, for AGRIVEST to execute the Instructions.
- 7.3 Unless otherwise agreed in writing by AGRIVEST, time is not of the essence. Nevertheless, AGRIVEST shall use all reasonable endeavours to ensure that such times and dates set out in the Instructions are adhered to, but cannot guarantee such performance.
- 7.4 AGRIVEST shall not be obliged to provide any Services under a Contract in respect of any Goods which appear, in AGRIVEST's opinion, to have been damaged or to be unsafe for the provision of the Services.
- 7.5 The Customer shall ensure:
- (1) that the Consignee's and the Consignor's premises are suitable for the handling of Vehicles, Containers and the Goods;
  - (2) that Vehicles are parked on flat, hard surfaces; and
  - (3) that AGRIVEST is given sufficient written notice of any weight or height restrictions at the Consignee's and the Consignor's premises, in order to ensure that AGRIVEST is

able to perform or procure the performance of the Services in terms of the Instructions.

## 8 Additional Services

8.1 AGRIVEST shall, in its sole discretion, be entitled to provide Additional Services, whether or not it has received Instructions to do so, in the following circumstances:

- (1) AGRIVEST believes that it is in the interest of the Customer or any other person to provide such Additional Services and if it is unable to timeously obtain Instructions in that regard; or
- (2) AGRIVEST, in its sole discretion believes it is in the interests of preserving life or property or averting any danger to person or property;
- (3) AGRIVEST is compelled to do so by a competent authority;
- (4) it becomes necessary, pending Instructions from the Customer or in order for AGRIVEST to comply with its obligations under the Contract and these Terms;
- (5) any Services are rendered futile;
- (6) there is any delay in the execution of the Instructions, for any reason, including without limitation as a result of any act or omission of the Customer; or
- (7) without limiting clause 8.1 and clause 9, the Customer, the Consignee or their agents do not take delivery of the Goods at the agreed delivery or collection time and/or place in terms of the Instructions.

8.2 If AGRIVEST is entitled, obliged or compelled to arrange the Additional Services, it shall be entitled to:

- (1) store the Goods to which Additional Services relate at such place and on such terms as AGRIVEST deems fit, without notice to the Customer;
- (2) where possible, deliver the Goods in accordance with the original Instructions, which Goods shall be deemed to be delivered in terms of clause 9.4 and 9.5:
  - (a) in respect of Transport Services, from the time they pass through the entrance of the premises of the Consignee; or
  - (b) in respect of Warehousing Services, from the time that they are made available for collection by AGRIVEST; or
- (3) sell or dispose of the Goods on 14 days' written notice to the Customer that the Goods could not be delivered in terms of the Instructions or immediately without notice to any party should AGRIVEST believe, in its opinion, that the Goods will imminently perish, deteriorate or alter in any manner that may be reasonably expected to cause harm to any person or property;

at the risk and expense of the Customer, which expenses shall include all and every expenses incurred by AGRIVEST in attempting to make delivery or any other costs incurred in the transport, warehousing and the handling of the Goods.

## 9 Delivery and risk

9.1 The Goods shall be deemed to have been received by AGRIVEST for Transport Services where the Goods have been packed, secured and loaded onto the Vehicle of the nominated

sub-contractor at the collection point designated in the Instructions, and the Delivery Notice has been signed by both the Consignor and the nominated sub-contractor.

- 9.2 The Goods shall be deemed to have been received by AGRIVEST for Warehousing Services when the Goods have passed through the entrance of the Warehouse and a Goods Received Note has been signed by the nominated warehouse and the party delivering the Goods on behalf of the Customer.
- 9.3 An acknowledgment of receipt of the Goods by AGRIVEST shall not constitute an acknowledgment or admission of the state, condition or quality of the Goods, nor as to the correctness of any statement on the relevant Goods Received Note or Delivery Note or any information received in respect of the Goods.
- 9.4 In the case of Transport Services, the Goods shall be deemed to have been received by the Customer/Consignee when:
- (1) the Goods pass through the entrance of the premises of the Consignee listed in the Instructions; or
  - (2) a Delivery Note has been signed by a representative of the Customer/Consignee;
- whichever is the earlier.
- 9.5 In the case of Warehousing Services, the Goods shall be deemed to have been received by the Customer/Consignee when:
- (1) the Goods are made available for collection by AGRIVEST, on the date and at the time of collection set out in the Instructions; or
  - (2) a written dispatch note, in a form acceptable to AGRIVEST, has been signed by a representative of the Customer/Consignee;
- whichever is the earlier.

## 10 Insurance

- 10.1 No insurance shall be effected by AGRIVEST in respect of Goods for or on behalf of the Customer.
- 10.2 AGRIVEST shall not have any responsibility or liability whatsoever in relation to insurance in respect of the Goods. The Customer is obliged to adequately insure the Goods against all risks and liabilities arising from and/or associated with the Goods and the Services (whichever are applicable).

## 11 Charges and disbursements

- 11.1 AGRIVEST shall not be obliged to disburse any monies on behalf of the Customer unless it has agreed in writing to do so and it is in receipt of funds adequate to cover the disbursements. AGRIVEST shall not be liable for any claim, cost, expense, loss or damages suffered by the Customer or any third party as a result of any failure by AGRIVEST to disburse such monies.
- 11.2 If AGRIVEST accepts, in writing, Instructions from the Customer to recover from a third party any monies due to the Customer against delivery of the Goods, AGRIVEST shall not be liable for any costs, expense, loss or damages suffered by the Customer as a result of a failure by AGRIVEST to recover such monies, unless such loss or damage is attributable entirely to gross negligence on the part of AGRIVEST and the Customer shall be responsible for the



payment of the Services rendered under the Instructions on receipt of evidence of demand and non-payment by such other person when due.

## 12 **Payment**

- 12.1 Regardless of any claim the Customer may have against AGRIVEST, the Customer shall pay all amounts owing to AGRIVEST, under the Contract or otherwise, on or before the last day of the month in which it received an invoice from AGRIVEST, unless otherwise stipulated on the invoice. All amounts shall be paid without demand, deduction or set-off, into a bank account nominated in writing by AGRIVEST.
- 12.2 Credit is granted entirely in the discretion of AGRIVEST, and AGRIVEST shall be entitled to demand payment on a "cash on delivery" basis or payment in advance of its anticipated charges and disbursements.
- 12.3 AGRIVEST may raise further invoices against the Customer in respect of any amount of any nature whatsoever erroneously omitted from earlier invoices or received late from Sub-contractors or third parties.
- 12.4 The Customer shall pay to AGRIVEST upon demand in advance such amounts as AGRIVEST may from time to time request in respect of anticipated disbursements.
- 12.5 AGRIVEST is entitled to retain and be paid all discounts, brokerages, commissions, allowances and other remunerations customarily retained by or paid to shipping and forwarding agents and insurance brokers and shall not be obliged to disclose or account to its Customers or principals for any such remuneration received by it from third parties.
- 12.6 AGRIVEST is entitled to allocate any payments received by it in its discretion.
- 12.7 AGRIVEST is entitled to suspend or refuse to provide the Services while any amount due and payable by the Customer to AGRIVEST remains outstanding.
- 12.8 If AGRIVEST agrees to a written instruction from the Customer, to recover all or any of AGRIVEST's charges or disbursements from a third party, the Customer shall nevertheless remain liable therefor, and shall be obliged to pay such charges to AGRIVEST immediately upon request.

## 13 **Warranties by the Customer**

- 13.1 Without limiting any provision in these Terms the Customer warrants to AGRIVEST that the Goods are:
- (1) the Customer's sole and exclusive property and/or the Customer has the full and absolute authority of the persons owning or interested in the Goods to enter into a Contract on these terms and to bind itself and the owner, Consignee or Consignor of the Goods to these Terms;
  - (2) fully and accurately described in all Instructions supplied by the Customer to AGRIVEST;
  - (3) such that there is no risk that they may contaminate or cause damage to any other property or pose a threat of injury or death to any person;
  - (4) subject to clause 14, are not hazardous, abnormal, valuable, perishable or require any particular treatment including without limitation, temperature control and are otherwise suitable for the Services without further precaution by AGRIVEST;

- (5) packed and labelled properly and adequately, in compliance with all relevant Legal Requirements, so as to withstand handling, storage and transportation without damage to the Goods or damage or injury to any persons or property;
- (6) delivered together with all information, in writing, required to ensure that the Services carried out by AGRIVEST are in compliance with all Legal Requirements from time to time in force in any country in which they are stored or to which or through which the Goods are to be transported; and
- (7) packaging and/or Containers are marked in full compliance with all the Legal Requirements, conventions and practices applicable in any country to which or through which the Goods are to be transported and that such marks enable the Goods to be readily identified.

## 14 **Dangerous Goods**

- 14.1 AGRIVEST shall not be obliged to render any Services in respect of any Dangerous Goods.

## 15 **AGRIVEST entitled to act as agent or principal in contracting**

- 15.1 AGRIVEST shall be entitled in procuring the Services or Additional Services to act either as an agent for and on behalf of the Customer or as a principal, as AGRIVEST in its absolute discretion deems fit.
- 15.2 Any quotations given by AGRIVEST for the performance of any Services shall not itself determine whether such Service is to be arranged by AGRIVEST acting as agent for and on behalf of the Customer or as a principal.
- 15.3 The Customer acknowledges that when AGRIVEST, as agent for and on behalf of the Customer, concludes any contract with a third party, such agreement is concluded between the Customer and the third party.
- 15.4 Unless otherwise agreed in writing, AGRIVEST, when acting as agent for and on behalf of the Customer, shall be entitled to enter into a contract on terms similar to these Terms, with the necessary changes.

## 16 **Sub-contracting by AGRIVEST**

- 16.1 AGRIVEST shall be entitled to sub-contract all or any part of the Services or Additional Services on any terms whatsoever.
- 16.2 Without limiting clauses 21 and 23, every such sub-contractor or other person shall have the benefit of every right, defence and limitation of whatsoever nature provided for in these Terms or otherwise available to AGRIVEST, as if such provisions were expressly for its benefit, and in entering into these Terms, AGRIVEST, to the extent of this clause 16, does so not only on its behalf but also as an agent or trustee for such persons.
- 16.3 The Customer undertakes that no claim in respect of the Goods, the Services or Additional Services shall be made against AGRIVEST, other than in accordance with these Terms, whether or not arising out of the negligence on the part of AGRIVEST and, if such claim should nevertheless be made, to indemnify AGRIVEST against all consequences thereof.

## 17 **No warranties by AGRIVEST**

- 17.1 AGRIVEST makes no representations and gives no warranties or guarantees (including any common law warranties) whatsoever arising out of or in connection with the Services, including without limitation:

- (1) as to the nature and or suitability of the Services; or
- (2) against any loss, defect, hazard or damage to the Goods;

17.2 The Services are supplied *voetstoots*. The Customer acknowledges that it is fully acquainted with and understands the meaning of the term *voetstoots*.

## 18 Indemnity

18.1 The Customer shall defend, indemnify and hold AGRIVEST harmless against all loss, damage, liability, costs (including but not limited to all legal costs on an attorney and client scale) and expense whatsoever arising from:

- (1) any breach of warranty or obligation by the Customer;
- (2) any negligence on the part of the Customer or any person acting on its behalf;
- (3) any act or omission of the Customer or any person acting on its behalf;
- (4) AGRIVEST complying with the Instructions;
- (5) the handling, storage or transportation of Goods by the Customer or any person acting on its behalf;
- (6) the nature of Goods;
- (7) the defective condition of, or overweight, Containers or Vehicles, save for those belonging to AGRIVEST; and
- (8) any advice or information given by AGRIVEST and passed on to any third party without AGRIVEST's prior written consent.

18.2 The Customer furthermore indemnifies AGRIVEST against any claim for customs, duties, value-added tax, sales tax, penalties, amounts raised in forfeiture, and any other fines, levies or charges whatsoever in respect of Goods, unless such claim arises as a result of a negligent act or omission on the part of AGRIVEST.

18.3 The Customer shall defend, indemnify and hold AGRIVEST harmless from and against all claims, costs and demands whatsoever and by whomsoever made or preferred in excess of the liability of AGRIVEST under these Terms 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 AGRIVEST, its servants, agents and independent contractors.

18.4 In this clause, "independent contractor" includes a direct and indirect sub-contractor and its respective servants and agents.

18.5 Advice and information in any form is provided by AGRIVEST for the Customer only and the Customer shall defend, indemnify and hold AGRIVEST harmless from all liability, loss, damage, costs and expenses arising out of any other person relying on such advice or information. The Customer shall not disclose such advice or information to any third party without AGRIVEST's prior written consent.

## 19 Limitation of liability

19.1 AGRIVEST shall not be liable for any loss or damage whatsoever and howsoever arising unless:

- (1) such loss or damage was caused by the gross negligence of AGRIVEST or any person for whose acts or omissions AGRIVEST is in law responsible.

19.2 AGRIVEST shall not be liable:

- (1) for any penalties or special damages resulting from loss of or damage to or delay in making delivery of any Goods;
- (2) for any consequential or indirect damages or loss of profits of the Customer; or
- (3) under any circumstances for claims arising from or in any way connected with:
  - (a) an act or omission of the Customer or any person acting on its behalf,
  - (b) AGRIVEST complying with the Instructions;
  - (c) an act, omission or order of any Authority,
  - (d) the handling, storage or transporting of Goods by the Customer itself or any person other than AGRIVEST, its servants, sub-contractors or agents;
  - (e) the insufficiency of the packing or labelling of Goods;
  - (f) the inaccuracy of marks, weights, measurements, numbers, brands, contents, quality or description of Goods, unless due to AGRIVEST's negligence;
  - (g) any deficiency in the weight of Goods existing at the time of delivery of the Goods by or on behalf of AGRIVEST to the Customer or its agent, which totals less than 1.5% of the weight of the Goods received by AGRIVEST in bulk or liquid, it being acknowledged by the Customer that there may be losses and wastages in the handling process of such Goods;
  - (h) the nature of Goods;
  - (i) the defective or overweight condition of Containers or Vehicles, unless due to AGRIVEST's negligence;
  - (j) riots, civil commotions, strikes, lockouts, stoppage or restraint of labour;
  - (k) explosion, fire, flood or storm;
  - (l) *force majeure*.

19.3 AGRIVEST shall not be bound by any receipt (Goods received Note or Delivery Note) given in good faith to a Customer relating to the number of packages or the condition of Goods if it should subsequently be shown that such number or condition was wrongly described in the receipt.

19.4 AGRIVEST shall not be liable for any loss suffered as a consequence of a fact or state of affairs not ascertained by it on a reasonable inspection of Goods.

19.5 AGRIVEST shall have no liability or responsibility by virtue of the fact that there may be a change in the rates of duty, wharfage, freight, railage or cartage, or any other tariff, before or after the performance by AGRIVEST of any act involving a less favourable rate of tariff, or by virtue of the fact that a saving may have been effected in some other way had any act been performed at a different time. AGRIVEST shall not be liable for demurrage charges however incurred unless such charges arose as a result of negligence on the part of AGRIVEST.

- 19.6 In the event of an unqualified acceptance of Goods being signified by signature, no claim for loss and/or damage shall thereafter be entertained by AGRIVEST.
- 19.7 Without limiting the provisions of this clause 19 and subject always to the maximum limits in clause 19.9, the liability of AGRIVEST in respect of:
- (1) Containers (excluding contents, if any), shall be limited to USD 2,500 (two thousand five hundred US Dollars) per Container;
  - (2) physical loss of or damage to the Goods, shall be limited to the cost to the Customer of the Goods concerned;
  - (3) loss or damage to any other goods, shall be limited to the "actual value" of the affected goods.
- 19.8 The "actual value" of the Goods as contemplated in clause 19.7(4) shall be the invoice value, plus freight and insurance if paid, plus customs duty or tax if incurred in respect of the Goods in respect of their carriage and not recoverable from any Authority, or, in the absence of such value, the market value at the place where AGRIVEST handled the Goods, provided that AGRIVEST shall have the option of replacing or repairing any article lost or damaged for which it might be liable. In the case of second hand plant or machinery, compensation for loss or damage shall be limited to the value established by assessors acting on behalf of AGRIVEST.
- 19.9 In no event shall AGRIVEST's liability exceed USD 62,500 (sixty two thousand five hundred US Dollars) per event or events arising from a common cause, subject to an overall limit of USD 250,000 (two hundred and fifty thousand US dollars) in aggregate in any one year. If Goods of more than one Customer are affected by such a cause and the aggregate of the proven claims of such Customers exceeds the said sum of USD 250,000 (two hundred and fifty thousand US dollars), notwithstanding the application of the limitation provisions contained elsewhere in this clause 19, such claims shall be pro-rated according to their respective (limited) values and the liability of AGRIVEST in respect of each claim shall be limited accordingly.
- 19.10 If, notwithstanding the exclusions of liability in this clause or elsewhere in these Terms, AGRIVEST is held to be liable in respect of any claim and such liability is not limited by the provisions of this clause 19 AGRIVEST's liability shall be limited to twice its charges to the Customer in respect of the services to which the claim is most closely connected..

## 20 **Notice and time bar**

- 20.1 In the case of loss or damage to Goods, however caused, notice in writing detailing the loss as completely as possible must be received by AGRIVEST within 14 days after the date of delivery of the Goods or the date the Goods should have been delivered, as the case may be, failing which all the Goods shall be deemed to be received in good or order and condition and in accordance with the Instructions.
- 20.2 Notwithstanding anything to the contrary in these Terms limiting or excluding liability on the part of AGRIVEST, any claim and all rights relating thereto which the Customer has against AGRIVEST, in connection with or arising out of the Goods, Services and or Additional Services shall lapse and become extinguished and unenforceable unless the Customer:
- (1) within three months of such claim arising, gives written notice thereof to AGRIVEST and at the same time discloses to AGRIVEST in writing, the material facts on which the claim is based; and
  - (2) within 12 months of such claim arising, institutes legal proceedings against AGRIVEST in respect of the claim, out of a Court of competent jurisdiction.

## 21 **Claims against the servants and agents of AGRIVEST by the Customer**

- 21.1 The Customer undertakes that it shall not have any claim against any servant, agent or independent contractor of AGRIVEST in connection with its dealings with Goods or Services or Additional Services.
- 21.2 The undertaking in clause 21.1 is also hereby given by the Customer to each servant, agent and independent contractor of AGRIVEST and is hereby accepted by AGRIVEST acting on their behalf as their agent.
- 21.3 AGRIVEST hereby stipulates in favour of each of its servants, agents and independent contractors that the Customer shall have no right of action whatsoever against any such servant, agent and independent contractor in connection with its dealings with Goods, which stipulation is hereby accepted by the Customer and is open for acceptance by the said servants, agents and independent contractors for an indefinite period of time.
- 21.4 The Customer indemnifies AGRIVEST against any cost, expense, loss, liability or claim suffered on incurred by AGRIVEST arising out of or in connection with any breach by the Customer of its undertakings in this clause 21.

## 22 **Claims against AGRIVEST by third parties**

- 22.1 The Customer shall procure that any contracts relating to Goods concluded by the Customer with third parties shall include a provision prohibiting the making of any claim against AGRIVEST, its servants, agents and independent contractors, and a provision that AGRIVEST, its servants, agents and independent contractors shall have the benefit of any rights, defences or liberties in such contracts excluding or limiting the liability of the Customer in respect of Goods as if such provisions were expressly for their benefit.
- 22.2 The Customer warrants that no claim shall be made against AGRIVEST by any third party in connection with Goods or dealings with them by any third party, and shall indemnify AGRIVEST for any loss suffered by the latter in respect of any such claim.

## 23 **Claims against the servants and agents of AGRIVEST by third parties**

- 23.1 The Customer warrants that no claim shall be made against any servant, agent or independent contractor of AGRIVEST in connection with Goods by any third party, and indemnifies any servant, agent or independent contractor of AGRIVEST for any loss suffered in that respect.
- 23.2 That indemnity is hereby given by the Customer to each servant, agent and independent contractor of AGRIVEST and is hereby accepted by AGRIVEST acting on their behalf.
- 23.3 AGRIVEST hereby stipulates in favour of each and every one of its servants, agents and independent contractors that the Customer shall indemnify each and every servant, agent and independent contractor of AGRIVEST in connection with its dealings with Goods against claims by third parties, which stipulation is hereby accepted by the Customer and is open for acceptance by the said servants, agents and independent contractors for an indefinite period of time.

## 24 **Lien**

- 24.1 AGRIVEST shall have a lien on all Goods and documents (including any Contracts of Carriage, import permits or other refunds, payments or recoveries relating to the Goods) in its possession or under its control for any sum due to it by the Customer which is unpaid. If the Customer is in breach of these Terms, or any other agreement with AGRIVEST, and the Customer fails to remedy that breach within fourteen (14) days of receiving written notice

requiring it to do so, AGRIVEST shall have the right to sell the whole or any part of the Goods, either by public auction or by private treaty and to apply the proceeds of such sale, after deducting all costs and expenses thereof, in payment towards any sum due by the Customer to AGRIVEST.

- 24.2 Any surplus shall be paid over to the Customer, within 90 days after such sale or, in the event of AGRIVEST being unaware of the whereabouts or address of the Customer, on application of the Customer.
- 24.3 If AGRIVEST has, in accordance with the provisions of clause 24.1, sold only part of the Goods stored and the proceeds of such sale are sufficient to pay to AGRIVEST all monies due by the Customer to it up to the date of the sale, the Customer shall be entitled to take delivery of the remaining part of the Goods. AGRIVEST shall have the right to charge for the storage of any the Goods forming part of such remainder of which delivery is not taken by the Customer, in accordance with the provisions of these Terms and, without notice to the Customer, to recover any such remuneration in accordance with the provisions of this clause 24, which shall apply, with the necessary changes.
- 24.4 The exercise by AGRIVEST, of any of its rights under this clause 24 shall be without prejudice to any other rights that it may have under these Terms or at common law, in respect of the non-payment by the Customer of any amount owing to AGRIVEST.

## 25 Legal charges

In the event of AGRIVEST instructing its attorney to recover money or goods from the Customer, the Customer shall be liable for and shall pay all legal costs incurred by AGRIVEST on an attorney and client basis, including collection commission.

## 26 Force majeure

- 26.1 To the extent that it becomes impossible for AGRIVEST to perform any obligations because of an event or circumstance that was neither foreseen nor reasonably foreseeable when the Instruction was accepted in terms of clause 5.2 or during the performance of the Services or Additional Services, which, if the event could have been foreseen at that time, cannot be guarded against or avoided by reasonable care or the reasonable acts of AGRIVEST, AGRIVEST may:
- (1) notify the Customer within five Business Days of the nature, extent, effect and likely duration of the event or circumstance; and keep the Customer updated as may be reasonably required by the Customer;
  - (2) take all commercially reasonable action to remedy or minimise the consequences (and report to the Customer); and
  - (3) immediately resume performance of its obligations under the Contract and notify the Customer when performance of the obligation again becomes possible.
- 26.2 Performance of any such obligation is suspended for as long as the event or circumstance continues to make the performance impossible.
- 26.3 If the event or circumstance continues for a period exceeding fifteen Business Days AGRIVEST may cancel the relevant Contract and/or Service on written notice to the Customer, without incurring any liability whatsoever.

## 27 Breach

27.1 If the Customer breaches any provision of these Terms or Contract then AGRIVEST may give the Customer 15 days' written notice or such longer period of time as AGRIVEST may specify in the notice, to remedy the breach. If the Customer fails to comply with the notice, AGRIVEST may:

- (1) claim immediate payment and/or performance by the Customer of all of the Customer's obligations that are due for performance; or
- (2) cancel the Contract upon written notice to the Customer where the breach constitutes a material breach,

in either event without prejudice to AGRIVEST's right to claim damages or to exercise any other rights that AGRIVEST may have under these Terms or in law.

27.2 Without detracting from the provisions of clause 27.1, AGRIVEST may summarily cancel the Contract at any time by giving to the Customer immediate notice of the cancellation if:

- (1) the Customer commits a material breach of these Terms or the Contract which cannot be remedied;
- (2) the Customer is, other than for the purposes of reconstruction or amalgamation, placed under voluntary or compulsory sequestration, winding-up, judicial management, business rescue or the equivalent of any of these in any jurisdiction;
- (3) a judgment against the Customer in respect of which no appeal lies or in respect of which the period for lodging an appeal (excluding any period to seek condonation) has expired and remains unsatisfied for a period of at least 15 days; or
- (4) the Customer makes or offers to make a general assignment or any arrangement or composition with or for the benefit of its creditors generally (or any class of its creditors) for releasing it wholly or partially from its debts.

27.3 Any cancellation of the Contract by AGRIVEST is effective on receipt of a notice of cancellation by the Customer (in the case of an irreversible material breach) or the date of the breach (in circumstances mentioned in clauses 27.1(2), 27.2(3) or 27.2(4)).

27.4 Any cancellation is without prejudice to any claim that AGRIVEST may have in respect of any breach of these Terms or the Contract by the Customer arising prior to the date of cancellation.

## 28 General

28.1 No addition to or variation or consensual cancellation of this Terms or the Contract, including this clause, has effect unless in writing and signed by the Parties.

28.2 No indulgence by AGRIVEST to the Customer, or failure strictly to enforce these Terms or the Contract, is to be construed as a waiver or be capable of founding an estoppel.

28.3 The rule of construction that a document shall be interpreted against the Party responsible for drafting or preparing it shall not apply.

28.4 Any illegal or unenforceable provision of these Terms may be severed and the remaining provisions of these Terms continue in force.

28.5 Save as is specifically provided in these Terms, the Customer is entitled to cede any of its rights or delegate any of its obligations under these Terms without the prior written consent of AGRIVEST.



29 **Applicable law**

These Terms are governed by South African law.

30 **Jurisdiction**

The Customer unconditionally consents and submits to the non-exclusive jurisdiction of the Gauteng Local Division of the High Court of South Africa, Johannesburg, in regard to all matters arising from the Contract or these Terms.

31 **Arbitration**

31.1 AGRIVEST may at its election refer any dispute or difference between the Parties to arbitration in terms of this clause 31.

31.2 The arbitration shall be held under the provisions of the arbitration laws for the time being in force in the Republic of South Africa.

31.3 The arbitrator shall be, if the question in issue is:

- (1) primarily an accounting matter, an independent practising accountant of not less than fifteen years standing;
- (2) primarily a legal matter, a practising advocate or attorney of not less than fifteen years standing;
- (3) any other matter, a suitably qualified and experienced independent person;

agreed upon by the Parties, and failing agreement within 14 (fourteen) days after the date on which the arbitration is demanded, shall be appointed by the chairman for the time being of the Law Society of South Africa who may be instructed by either Party to make that nomination at any time after the expiry of the 14 (fourteen) day period.

31.4 Unless otherwise determined by AGRIVEST, the arbitration shall be held in English, in Johannesburg, South Africa in accordance with the formalities and/or procedures determined by the Arbitration Foundation South Africa unless the arbitrator decides otherwise, in which event it shall be in accordance with the formalities and/or procedures determined by the arbitrator.

31.5 The arbitrator shall be entitled:

- (1) to investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with the dispute and for that purpose shall have the widest powers of investigating all the books and records of any Party, and the right to take copies or make extracts therefrom and the right to have them produced and/or delivered at any reasonable place required by him for the aforesaid purposes;
- (2) to interview and question under oath any of the Parties, and/or any director or officer of the Parties;
- (3) to decide the dispute according to what he considers just and equitable in the circumstances;
- (4) to make such determination or award including an award for specific performance, an interdict, damages or a penalty or otherwise as he in his discretion may deem fit, provided that upon giving his determination or award, the arbitrator shall deliver to the Parties to the dispute a written statement setting out the findings of fact determined by

him and forming the basis of his award; and full reasons justifying the determination or award.

31.6 The arbitration shall be held as quickly as possible after it is demanded with a view to its being completed within thirty (30) days after it has been so demanded

31.7 Immediately after the arbitrator has been agreed upon or nominated in terms of sub-clause 31.3, either Party shall be entitled to call upon the arbitrator to fix a date and place when and where the arbitration proceedings shall be held and to settle the procedure and manner in which the arbitration proceedings shall be held

31.8 Any award that may be made by the arbitrator shall be final and binding, shall be carried into effect and may be made an order of any court to whose jurisdiction the Parties to the dispute are subject, provided that neither Party is prevented from taking such award on review.

### 32 **No representations**

The Customer may not rely on any representation, which allegedly induced the Customer to enter into a Contract or these Terms, unless the representation is recorded in the Contract or these Terms.

### 33 **Previous agreements**

These Terms supersede all prior agreements between the parties relating to the provision of the Services or Additional Services, whether such agreements are oral or in writing, express or implied. All rights and obligations under and arising out of such prior agreements shall lapse and shall have no further force or effect.

### 34 **Severability**

If any provision of this Agreement is found by a court of law to be invalid or void, such provision shall be severed from the remaining provisions, which shall continue to be of force and effect.

### 35 **Variation, cancellation and waiver**

No contract varying, adding to, deleting from or cancelling these Terms, and no waiver of any right under these terms, shall be effective unless reduced to writing and signed by or on behalf of the parties.

### 36 **Whole agreement**

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and contains all of the representations, warranties, covenants and agreements of the Parties in relation to the subject matter of this Agreement as at the date of this Agreement.