

TERMS AND CONDITIONS

In these conditions:

- 1.1 "the Company" means F.H. Bertling Logistics (Pty) Ltd. Its successors in title and assigns:
- 1.2 "the Customer" means any person, firm, close corporation or any other legal entity on whose request or on whose behalf the Company undertakes any business or provides any advice, information or services and includes the signatory of these terms and conditions.
- 1.3 These terms and conditions represent the entire agreement between the Company and the Customer and shall govern all future contractual relationships between the Company and the Customer and shall be applicable to all debts which the Customer may owe to the Company prior to the Customer's signature hereto (irrespective of whether or not credit facilities are granted). All trading terms and conditions of the S.A. Association of Freight Forwarders are incorporated into this agreement as additional terms and conditions of this agreement and the Customer acknowledges that he has read and consents to all such terms and conditions and has received a copy of the trading terms and conditions of the S.A. Association of Freight Forwarders.
- 1.4 No amendment and/or alteration variation and/or deletion and/or addition and/or cancellation of these terms and conditions whether consensual or unilateral or bilateral shall be of any force and effect unless reduced to writing and signed by a director of the Company. No agreement whether consensual or unilateral or bilateral purporting to obligate the Company to sign a written agreement to amend, alter, vary, delete, add or cancel these terms and conditions shall be of any force and effect unless reduced to writing and signed by a director of the Company. No warranties, representations or guarantees have been made by the Company or on its behalf which may have induced the Customer to sign this document.
- 1.5 Should the additional terms and conditions of the South African Association of Freight Forwarders trading terms and conditions conflict with these trading terms and conditions, then these terms and conditions shall apply.
2. The Customer acknowledges that the credit facilities granted are payable 30 days from date of month end statements, unless otherwise agreed in writing.
3. Should any amount not be paid by the Customer on due date then the whole amount in respect of all services rendered by the Company to the Customer and monies disbursed by the Company on behalf of the Customer, shall become due, owing and payable and the Customers shall be liable to pay interest in respect of amounts unpaid as at the due date at the compound rate of 5% above the prime overdraft lending rate quoted by F.H. Bertling Logistics Bankers on all overdue amounts from due date until date of payment, calculated and payable monthly in advance and should the said interest not be paid in full as aforesaid the same shall be added to the principle sum, and the total shall form the principal debt which shall then bear interest in the manner as set out above.
4. The Customer shall not be entitled to claim set off or deduction in respect of any payment due by the Customer to the Company for services rendered and/or monies disbursed.
5. The Company may appropriate all payments made by the Customer to such accounts as it will in its sole and absolute discretion decide.
6. Regardless of the place of execution hereof or performance pursuant hereto or domicile of the Customer, this agreement and all modifications and amendments hereof, shall be governed by and decided upon and construed under and in accordance with the laws of the Republic of South Africa.
7. The Company shall, at its option and notwithstanding that the amount of its claim or the nature of the relief sought by it exceeds the jurisdiction of the Magistrate's Court, be entitled to the institute action of such court.
8. A certificate under the hand of any director or manager of the Company in respect of any indebtedness of the Customer to the Company or in respect of any other fact, including but without limiting the generality of the afore going, the fact that services were rendered and/or monies disbursed and/or goods delivered, shall be prima facie evidence of the Customer's indebtedness to the Company and prime facie evidence of the rendering of such services, disbursements of such monies or delivery of such goods.
9. The Customer's physical address as set out in the credit application form in which these terms and conditions are contained shall constitute the Customer's domicilium citandi et executandi (domicilium) for all purposes in terms of this agreement, whether in respect of the serving of any court process, notices, the payment of any amount or communications of whatever nature.
10. The Company has the sole option to refer any dispute arising from or in connection with this agreement to arbitration, which arbitration shall bind both the Company and the Customer.
11. The arbitrator must be a person agreed upon by the parties or failing agreement, an arbitrator must be appointed by the Arbitration Foundation of Southern Africa, who shall then finally resolve the dispute or issue in accordance with the Rules of the Arbitration Foundation of S.A.
12. The arbitration must be held at the place and in accordance with whatever procedures the arbitrator considers appropriate.
13. In the event of the Customer breaching any of its obligations and/or failing to timeously make payment of any amount to the Company, the Customer agrees to pay, and shall be liable to pay, all legal costs incurred by the Company on the attorney /own client scale including collection charges and tracing agent's fee.
14. No relaxation or indulgence which the Company may give at any time in regard to the carrying out of the Customer's obligations in terms of any contract shall prejudice or be deemed to be a waiver of any of the Company's rights in terms of any contract.
15. The Company reserves the right to withdraw any credit facilities at any time without prior notice and the nature and extent of such facilities shall at all times be at the Company's sole discretion.
16. In this credit application the Customer understands that the personal information given is to be used by the Company for the purposes of assessing his credit worthiness. The Customer confirms that the information given by him in his credit application form is accurate and complete. The Customer further agrees to update the information supplied, as and when necessary, in order to ensure the accuracy of the above information, failing which the Company will not be liable for any inaccuracies.
17. The Company has the Customer's consent at all times to contact and request information from any persons, credit bureaus or businesses, including those mentioned in the credit application form in which these terms and conditions are contained and to obtain any information relevant to the Customer's credit assessment, including but not limited to information regarding the amounts purchased from suppliers per month, length of the Customer has dealt with such supplier, type of goods or services purchased and manner and time of payment.
18. The Customer agrees and understands that information given in confidence to the Company by a third party on the Customer will not be disclosed to the Customer.
19. The Customer hereby consents to and authorises the Company at all times to furnish and remit information concerning the Customer's dealings with the Company to a credit bureau and to any third party seeking a trade reference regarding the Customer in his dealings with the Company.
20. To the maximum extent permitted by underlying laws, Bertling's liability for damages, losses and other claims arising out of or related to the incorrect Verified Gross Mass (VGM) information declaration or transmission, as may be applicable, shall be limited to the maximum amount of a freight rate for transportation of the container in question.