



## STANDARD CONDITIONS OF CARRIAGE OF TRITON EXPRESS (PTY) LTD

### 1. Definitions & Introduction

In these conditions the following expressions shall have the meanings set forth against them, namely:

- a) "Carrier" means TRITON EXPRESS (PTY) LTD (Reg. No. 1999/008122/07).
- b) "Customer" means the party who contracts with the Carrier for the carriage of goods.
- c) "Consignment" means the goods, whether in bulk or contained, in one or more packages as described in each waybill issued by the Carrier or dispatch on one load for the Customer from one address to another.
- d) "Contract" means each contract of carriage entered into between the Carrier and the Customer.
- e) "Dangerous Goods" means any goods or substances which are identified and/or classified as dangerous in accordance with SABS Codes of Practice 0228 or 0229, as amended from time to time, and including, without limitations, any goods or substances which are, in the opinion of the Carrier, of a dangerous or hazardous nature
- f) "Load" means all the Consignments being carried for Customer at any one time with any mode of conveyance.

### 2. Application

- a) These terms and conditions shall apply to all Contracts relating to the carriage of goods by the Carrier.
- b) No alteration or variation of these terms and conditions shall be binding, either at the time any Contract is concluded or at any time thereafter, unless the alteration or variation in question is expressly agreed to in writing and signed by an authorised representative of the Carrier.
- c) The person/s acting on behalf of the parties in entering into the Contract warrants that he/she is the agent of the party or that he/she has authority to contract on behalf of the party on the terms and conditions set out herein.

### 3. Limitations of liability

- a) The liability of the Carrier to the Customer for any damages sustained by the Customer from any cause whatever, including any damages arising out of the Carrier's negligence or that of its servants, agents or subcontractors shall be limited to the sum of R500.00 per Consignment.
- b) The Carrier shall be exempt from and shall not be liable under any circumstances for any loss of profit or any indirect or consequential damages of any nature or other special damages of any nature which the Customer may suffer as a result of any breach by the Carrier of any of its obligations under the Contract whether or not arising out of any negligence on the part of the Carrier, its servants, agents or subcontractors.
- c) Save as provided in this clause the Carrier shall be exempt from and shall not be liable under any circumstances for any loss or damage to any property of the Customer delivered to or by the Carrier for the purposes of the Contract, even if the loss or damage arises out of any negligence on the part of the Carrier, its servants, agents or subcontractors.
- d) In so far as any of the services rendered by the Carrier in terms of the Contract are carried out by any of its servants, agents or subcontractors, the provisions of this clause are stipulated for their benefit as well as that of the Carrier and they shall each be exempted accordingly.
- e) The Carrier shall not be liable to the Customer for any claim of any nature whatever made by the Customer unless the claim is made in writing within ten days after delivery of the Consignment or the date upon which the Consignment should have been delivered in terms of the Contract.
- f) Subject to any express warranty or guarantee given by the Carrier in writing and which is intended by the Carrier to form part of the Contract, the Carrier does not give any warranty or guarantee or make any representations whatsoever in respect of any services to be rendered by it in terms of the Contract and the Carrier shall be deemed not to be a public Carrier.
- g) The Customer shall not have any claim of any nature whatsoever against the Carrier for any failure by the Carrier to carry out any of its obligations under the Contract as a result of force majeure, which shall be deemed to include any circumstance or event which is beyond the reasonable control of the Carrier.



#### **4. Payment**

- a) All amounts payable by the Customer to the Carrier shall be made without any deductions or set-off and no payment may be withheld by reason of any alleged claim by the Customer against the Carrier.
- b) Unless otherwise agreed in writing by the Carrier, all amounts payable by the Customer shall be paid upon presentation of the Carrier's statement. If posted, the Carrier's statement shall be deemed to have been presented seven days after the date appearing on the statement unless the Customer proves to the contrary.
- c) Any amount not paid by the Customer on the due date shall bear interest at the rate of 2% above the prime overdraft rate of Nedbank from time to time calculated from the date on which it falls due until the date on which it is paid.
- d) Should the Carrier elect to suspend the credit facility of the Customer due to non or late payment, a re-instatement fee of R100.00 shall be debited to the Customer's account in order to re-instate the credit facility.
- e) The Receiver described on the face of the Carrier's waybill is designated as the party responsible for payment and if the Receiver fails to make payment, the Sender described on the face of the Carrier's waybill shall be liable for all the Carrier's charges.
- f) If the Customer fails to adhere to the applicable credit terms, the Carrier can call for the immediate payment of all amounts payable by the Customer, whether due or not, and shall be entitled to suspend performance under all Contracts.

#### **5. Pledge and Lien**

- a) The Carrier shall have a lien over all goods handed to it by or on behalf of the Customer, as security for the payment of all amounts payable to it by the Customer howsoever arising and the Customer hereby pledges such goods to the Carrier as security for payment as aforesaid.
- b) The Carrier may in its discretion, retain possession of any goods handed to it by or on behalf of the Customer pending the payment of all amounts payable by the Customer to the Carrier, whether or not payment is due in accordance with the credit terms agreed by the parties and whether or not the Customer's indebtedness arises out of the Contract.
- c) If any amount is not paid by the Customer within seven days after due date, the Carrier shall be entitled, without prejudice to any other rights it has and without further notice to the Customer:
  - i. To open and examine the Consignment;
  - ii. To sell the whole or any part of the Consignment in such manner and on such terms and conditions as it deems fit;
  - iii. To apply the net proceeds of any such sale after deducting all expenses incurred in connection with such sale to the Customer's indebtedness, provided that any surplus shall be paid to the Customer at its last known address, failing which within fourteen days of receipt of a written demand by the Customer;
  - iv. Upon the sale of goods in terms of this clause the Carrier shall have no further liability to the Customer in respect of the goods save for the obligation to pay the surplus proceeds derived from the sale to the Customer.

#### **6. Acceptance of liability**

- a) Notwithstanding the provisions of Paragraph 3 above, the Carrier shall, if so requested by the Customer in writing and subject to the provisos expressed below, accept liability for loss of or damage to a Consignment up to the value or limit nominated by the Customer provided that:
  - i. The Carrier shall in its sole discretion have the right to refuse to accept such liability or to restrict its liability to a stipulated maximum;
  - ii. The Customer pays an additional freight charge stipulated by the Carrier; and
  - iii. The actual extent of the Carrier's liability shall in no case exceed the indemnity and/or cover actually afforded to the Carrier in terms of the insurance policy it has in place to cover its liability in such cases. (A full copy of the exclusions which apply to the insurance policy effected by the Carrier is available on request).



- b) The Customer shall notify the Carrier as soon as reasonably possible of any incident giving rise or possibly giving rise to a claim for loss of or damage to the Consignment. The Carrier reserves the right to reject any claim which is not notified to it within ten days after delivery of the Consignment or the date on which the Consignment should have been delivered in terms of the Contract.
- c) Notwithstanding anything contained in this clause no liability will be accepted for Consignments dispatched on a CASH basis.
- d) If the Carrier's insurer disputes liability for a claim for any reason the Customer shall have no recourse against the Carrier.
- e) The Customer acknowledges that the Carrier has not given any financial advice or rendered any intermediary service to the Customer in relation to insuring the Consignment.

#### **7. General Indemnity**

The Customer hereby indemnifies and holds the Carrier harmless against all claims and demands made by any third party against the Carrier and against all liability incurred by the Carrier to any third party arising out of the loss or damage to any Consignment, howsoever arising. The Customer further indemnifies and holds the Carrier harmless against all claims and losses arising out of the failure on the part of the Carrier to timeously or properly lodge any claim against the insurer with whom insurance has been effected in terms of these conditions.

#### **8. Dangerous Goods**

- a) The Customer warrants and undertakes that the Consignment is fit to be carried in the ordinary course and does not include Dangerous Goods.
- b) The Customer indemnifies and holds the Carrier harmless against all claims, loss, damage, injury and costs arising out of the carriage of Dangerous Goods.
- c) If the Carrier ascertains that any goods in a Consignment are Dangerous Goods or if any goods or in a Consignment become a danger to any person or property, the Carrier shall immediately notify the customer and dispose of the said goods or take such other steps at the Customer's expense as the Carrier in its discretion deems appropriate to avert any such harm being caused by the said goods.

#### **9. Subcontractors**

The Carrier shall be entitled to employ the services of any other Carrier on the same terms and conditions for the purposes of performing the whole or any part of the Contract, and such other Carrier shall have the same rights and protection mutatis mutandis provided in these conditions.

#### **10. Onus**

The onus of proving the condition, state or nature of any Consignment at the time that it is delivered to the Carrier shall at all times rest with the Customer. Any receipt given by the Carrier to the Customer in respect of a Consignment shall only constitute prima facie proof of the condition of the Consignment

#### **11. General**

- a) No relaxation or indulgence which either party may show to the other shall in any way prejudice the parties rights hereunder or be construed as a waiver by the party of its right to insist upon strict compliance with these conditions.
- b) The parties shall be entitled to institute any proceedings against the other arising out of the Contract in any Magistrate's Court having jurisdiction over the parties even if the cause of action in question exceeds the jurisdiction of the Court provided that this condition shall not preclude the parties from instituting any proceedings against the other in any competent division of the Supreme Court of South Africa.
- c) In relation to any legal proceedings between the parties, arising out of the Contract, the parties shall bear their own costs pursuant to such proceedings.



- d) The determination of the route to be taken in connection with the carriage of any Consignment shall be at the sole discretion of the Carrier.
- e) Notwithstanding that the Carrier may have expressly or impliedly authorised payment to it in connection with the Contract by post, the Carrier shall be deemed not to have received payment until the payment is actually received by the Carrier and cleared into the Carrier's account.
- f) Unless otherwise agreed in writing, the Customer will be responsible for ensuring safe and free access to loading and unloading points and for loading and unloading the Consignment.
- g) The Customer warrants the accuracy of all descriptions, values, marks, weights, numbers, brands, contents, quality or description of any goods and other particulars furnished to the Carrier in respect of the Consignment and the Customer indemnifies the Carrier against all losses, damages, expenses, fines and the like arising from any inaccuracy or omission with respect thereto.
- h) Unless otherwise agreed in writing by the Carrier, all payments in respect of goods carried are calculated with reference to the actual or volumetric mass, whichever is the greater, of the Consignment.
- i) The Contract shall be governed by the law of the Republic of South Africa.
- j) The Customer consents and submits to the non-exclusive jurisdiction of the KwaZulu Natal High Court, Durban, or the South Gauteng High Court, Johannesburg, at the election of the Carrier in relation to any proceedings instituted which involve either party

## **12. Consent**

- a) The Customer hereby acknowledges and agrees that the Carrier may:
  - i. Perform a credit search on the Customer's records with one or more of the registered Credit Bureaus when assessing the Customer's application form;
  - ii. Monitor the Customer's payment behaviour by researching his/her record at one or more of the registered Credit Bureaus;
  - iii. Use new information and data obtained from other Credit Bureaus in respect of the Customer's future applications;
  - iv. Record the existence of the Customer's account with any Credit Bureau;
  - v. Record and transmit details of how the Customer has performed, and how the account is conducted by the Customer in meeting his/her obligations on the account.
- b) The Carrier undertakes to give the Customer 21 days written notice prior to the forwarding of the details to the Credit Bureau database.