



WALVIS BAY STEVEDORING COMPANY (PTY) LTD

STANDARD TRADING TERMS AND CONDITIONS and CREDIT APPLICATION

1. DEFINITIONS

- 1.1. For the purposes of these terms and conditions, unless inconsistent with the context the following words shall have the following meaning:
- 1.1.1. "the carg" means any goods of any nature whatsoever
- 1.1.2. "contract of carriage" means any contract for the carriage of goods including without limitation, any bill of lading, through bill of lading, sea waybill, contract of affreightment, charter party, consignment note or other similar document relating to the carriage of goods either wholly or partly by sea
- 1.1.3. "the nominated port" means the port at which the Stevedore Operations are, or will be carried out
- 1.1.4. "the principal" means the party at whose request or on whose behalf or in respect of whom the Stevedore undertakes the Stevedore operations
- 1.1.5. "the quotation" means the quotation or letter from the Stevedore to the principal setting out, inter alia the Stevedore operations, the nominated port and / or the rates or remuneration
- 1.1.6. " the Stevedore" means Walvis Bay Stevedoring Company (Pty) Ltd registration no. 74/03678/07
- 1.1.7. "the Stevedore operations" means the loading, stowage, discharge and other operations and services performed or to be performed by the Stevedore for or on behalf of the principal and any advice given in respect thereof.
- 1.1.8. "the Contractors" means any authorised sub-contractors
- 1.1.9. "Contractors tariff" means the tariff issued by the contractors in respect of the relevant port, as amended from time to time
- 1.1.10. "foreign owner" means an owner which does not have its principal place of business in the Republic of Namibia
- 1.2. The head notes to the clauses of these conditions are inserted for reference purposes only and shall in no way govern or affect the interpretation of these conditions.
- 1.3. Unless inconsistent with the context, an expression which denotes:
- 1.3.1. any gender includes the other genders;
- 1.3.2. a natural person includes an artificial person and vice versa; the singular includes the plural and vice versa.
- 1.4. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the interpretation

clause, effect shall be given to it as if it were a substantive provision of this agreement.

- 1.5. Where any term is defined within the context of any particular clause in this agreement, the terms so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this agreement, notwithstanding that the term has not been defined in this interpretation clause.

2. NORMAL RATES

The rates are for the handling of sound and normal cargoes, in such manner as is customary at the relevant port, under normal circumstances.

3. HOURS OF WORK

Hours of work are as laid down, from time to time by the Port Authorities.

4. NAMPORT CHARGES

The Principals shall pay all Namport charges including crane hire, shore labour, overtime and standby charges.

5. APPLICABILITY AND STATUS OF PRINCIPAL

- 5.1. All and any Stevedore Operations carried out by the Stevedore will be subject to these terms and conditions of contract to the exclusion of any other terms and conditions (including without limitation any other general or standard trading terms and conditions of the Principal and/or the Stevedore), unless specifically agreed in writing in a stevedoring contract.
- 5.2. Every person contracting with the Stevedore to provide Stevedore Operations shall be deemed to do so in every respect not only on its own behalf (as Principal) but also as agent on behalf of every person owning or otherwise interested at any time in any cargo that is the subject of the Stevedore Operations in question.
- 5.3. Every Principal warrants that it has the authority to contract with the Stevedore, either as owner of the cargo or the carrier of the cargo in question, or as the authorised agent of the persons referred to in clause 5.2.
- 5.4. If the Principal is an agent acting on behalf of a third party, the Stevedore may, at its sole discretion, claim performance and/or payment, from both the Principal and the third party, or any one of them.

6. AGENTS AUTHORISED

Any Agent entering into this Contract with the Contractors on behalf of a Principal warrants that it has authority to bind such Principal to these conditions.

7. NOTIFICATION TO THE STEVEDORE

7.1. In the case of each ship in respect of which the Stevedore is required to perform Stevedore Operations, the Principal or its agent must give not less than 72 (SEVENTY-TWO) hours notice to the Stevedore of:

- 7.1.1. the ship's estimated date of arrival of the ship; and
- 7.1.2. a full description of the Cargo to be loaded or discharged; and
- 7.1.3. if the Cargo is to be loaded, then:
 - 7.1.3.1. the estimated date of arrival of the Cargo at the Nominated Port; and
 - 7.1.3.2. the location of the Cargo at the time when the Stevedore Operations will first be required;
 - 7.1.3.3. the Stevedore Operations which the Stevedore will be required to carry out.

7.2 In addition to clause 7.1, the Principal or its agent must provide the Stevedore with all such information, including without limitation, the time and date of commencement of the Stevedore Operations, stowage plans, engagement lists and/or landing lists together with any special requirements, if applicable, and furthermore to include the Stevedores representatives in all such meetings as may be required in order to enable the Stevedores to properly plan and carry out the Stevedore Operations. The provisions of such information and inclusion at such meetings shall be in accordance with the generally accepted practices of the Nominated Port in question.

8. DUTIES OF THE STEVEDORE

- 8.1. The Stevedore shall, in accordance with the Principals' reasonable instructions:
 - 8.1.1. provide all labour and supervision necessary for the performance of the Stevedore Operations at the load and/or discharge rates agreed from time to time with the Principal.
 - 8.1.2. perform the Stevedore Operations during the shift times applicable from time to time at the Nominated Port in question.
 - 8.1.3. provide such equipment as may be necessary for the performance of the Stevedore Operations.
 - 8.1.4. In the event that non-standard items be required for any purpose, the Principal to re-imburse the Stevedore to the extent that additional expenditure is thereby incurred

included modifications to any standard gear.

8.2. The Principal acknowledges that:

- 8.2.1. the supervision and performance of the Stevedore Operations as contemplated in clause 8.1 will always be subject to the direction and approval of the ship's Master and Cargo Officer and accordingly the Stevedore's ability to fulfil its obligations is subject to such direction;
- 8.2.2. the choice of equipment used by the Stevedore as contemplated in clause 8.1.2 is entirely within the discretion of the Stevedore;
- 8.2.3. the Stevedore is required to comply with the terms of its stevedoring licenses in respect of the Nominated Ports and as such its fulfilment of its obligations in terms of this agreement will be subject to such terms;
- 8.2.4. notwithstanding anything to the contrary, the Stevedore will not be obliged to perform any Stevedore Operations at a Nominated Port if the Stevedore is no longer licensed to do so by the applicable Port authority.

8.3. The Stevedore must:

- 8.3.1. use its reasonable efforts to ensure that in carrying out the Stevedore Operations it complies with all statutory, regulatory or other lawful safety and other requirements;
- 8.3.2. identify its own labour and/or personnel to the Principal or its agent in order to assist the Principal in implementing the Principal's security arrangements and controls over the labour and/or personnel from time to time.

9. AUTHORITY TO SUB-CONTRACT

- 9.1. The Principal acknowledges that the Stevedore may sub-contract all or a part of the Stevedore Operations to another person and the Principal gives its authority to the Stevedore to do so, provided that the Stevedore shall always remain responsible for the performance of its obligations in terms of this agreement.
- 9.2. The exemption and limits of liability and indemnities available to the Stevedore in terms of these standard terms and conditions shall extend and apply to the Stevedore's servants, agents, sub-contractors and any

person for whom the Stevedore may be vicariously liable. To this end the Stevedore contracts on such parties' behalf and for their benefit. To the extent that acceptance by such parties may be necessary, such benefit may be accepted by such parties at any time.

10. CLAIMS / LIMITATION OF LIABILITY

10.1. The Stevedore shall not be liable for:

10.1.1. any consequential loss, special damages, demurrage or loss of profits, howsoever arising; nor

10.1.2. any other loss or damage of any nature whatsoever (including without limitation in relation to the death or injury to any person), unless the Principal proves that the loss or damage arose from the gross negligence of the Stevedore, its servants, agents, sub-contractors or any person for whom the Stevedore is vicariously liable.

10.2. In the event that the Stevedore is liable, then the Stevedore's liability for any loss or damage, howsoever arising, whether in contract or in delict, arising directly or indirectly from the Stevedore Operations shall not exceed the lesser of:

10.2.1. the fair market value of the goods lost or damaged at the time and place of their loss or damage (if applicable); or

10.2.2. an amount of N\$100 000 (HUNDRED THOUSAND NAMIBIAN DOLLAR) ("the Occurrence Limit") in respect of any occurrence giving rise to liability, regardless of the nature, number and amount of claims arising out of such an occurrence.

10.3. Notwithstanding clause 10.2, the Stevedore's liability for any loss or damage, howsoever arising, whether in contract or in delict, arising directly or indirectly from the Stevedore Operations performed for and on behalf of the Principal shall not exceed an amount of N\$500 000 (FIVE HUNDRED THOUSAND NAMIBIAN DOLLAR) ("the Annual Limit") in respect of all occurrences giving rise to liability in any calendar year (being 1 January to 31 December), regardless of the nature, number and amount of claims arising.

10.4. The Principal must give the Stevedore immediate notice of any occurrence giving rise to any loss, damage, injury or death and the Stevedore shall be discharged from all liability unless legal proceedings are commenced against it within 1 (one) year of the date of the occurrence.

10.5. The Principal indemnifies and holds the Stevedore harmless against any claim or liability (and any expense arising there from) insofar as such claim or liability exceeds the Stevedore's liability under these Contractual Terms.

11. CONTRACTORS LIABILITY

Contractors shall only be liable for loss of or damage to the vessel or cargo or death of personal injury if such loss, damage, death or personal injury is caused by their negligence.

12. BENEFITS UNDER CONTRACTS OF CARRIAGE

12.1. Where the Principal is a carrier under a contract of carriage applicable to the cargo in respect of which the Stevedore provides Stevedore Operations, the Principal is hereby expressly authorised and required by the Stevedore (and shall have a clause in its Contract of Carriage to such effect) to:

12.1.1. act on the Stevedore's behalf to obtain for the Stevedore, its servants, agents, sub-contractors and such parties for whom the Stevedore may be vicariously liable, whatever benefits, exclusions and limitations of liability accrue to the Principal in terms of any Contract of Carriage;

12.1.2. accept the benefits referred to in clause 12.1.1 on behalf of the Stevedore and the other parties referred to therein.

12.2. The Principal, indemnifies and holds the Stevedore harmless against any claim or liability to the extent that such claim or liability exceeds the lesser of:

12.2.1. the amount referred to in clause 10; or

12.2.2. the liability that the Stevedore would have incurred if the Stevedore had been able to rely on the provisions in the Contract of Carriage excluding and/or limiting the Principal's liability and which would have applied had the scope of such exclusions and/or limitations applied to or included the Stevedore's services.

12.3. If the Principal is not a party to the Contract of Carriage applicable to the Cargo in respect of which the Stevedore provides Stevedore Operations, the Principal shall procure that the carrier in terms of such Contract of Carriage or the issuer of any bill of lading in terms thereof shall fulfil the Principal's

obligation in clause 12.1 and such persons are expressly authorised by the Stevedore to act for, accept and contract for, such benefits on the Stevedore's behalf and that of the other parties referred to in paragraph 12.1.

12.4. The Stevedore hereby ratifies any contract that the Principal or carrier or issuer of a bill of lading may have concluded in terms of clause 12.1 or 12.3 on behalf of the Stevedore and the other parties referred to in clause 12.1 and accepts any benefit which may have been stipulated for the Stevedore and such other parties.

13. OBLIGATIONS OF THE PRINCIPAL

13.1. The Principal must:

13.1.1. ensure that the Cargo bears all proper marks and labels to facilitate easy identification and so as to enable the Stevedore to perform the Stevedore Operations;

13.1.2. before Stevedore operations commence or can commence, ensure that any Cargo to be loaded, or discharged, is suitably positioned and ready in every respect so as to enable the Stevedore to perform the Stevedore Operations;

13.1.3. where Cargo is to be discharged, to arrange for the Stevedore (at no cost to the Stevedore) to have access to and the use of the Ship's equipment, including but not limited to derricks, cranes, winches, attachments and lighting necessary for the Stevedore to perform the Stevedore Operations;

13.1.4. for and during the performance or rendering of the Stevedore Operations, ensure that all of the Ship's equipment is maintained in safe and proper working order and in compliance with all the relevant Maritime Organisation and Ships Classification provisions, as well as any Namibian statutory provisions; and

13.1.5. where the Cargo has been packed, prepared, palletized or containerized by someone other than the Stevedore, ensure that the Cargo is fit for the safe and proper execution of the stevedoring operations.

13.1.6. The Principal is to give the Contractor adequate warning when abnormal cargo is to be loaded or discharged necessitating the acquisition of such specialised gear.

13.1.7. The rigging of ship's appliances shall be the responsibility of the Principal, unless otherwise agreed in writing.

14. ADDITIONAL SERVICES

Opening and closing of hatches, rigging and unrigging of gear, cleaning holds, supply of a winch man, shifting dunnage and in general, all work ordered by the Master and not mentioned in the Contractors' Tariff shall be payable by the Principal at Extra Labour rates as agreed upon.

15. SHIFTING AND RE-STOWING

When cargo is shifted or re-stowed, the Contractors shall charge at their option, either tonnage rates in respect of both the shifting and the re-stowing as per rates quoted or the rates for Extra Labour as agreed upon.

16. OWNERS AND MASTER'S RESPONSIBILITY

If stowage plans are prepared by the Contractors such plans shall be deemed to have been prepared by the Contractors acting as the servant of and subject to the supervision and the responsibility of the Master of the relevant vessel and the Contractors shall not under any circumstance whatsoever incur any liability whatsoever arising out of the preparation of such plans.

17. ADVERSE WEATHER, WORKING CONDITIONS

The Contractors shall not be liable for any damage caused to a vessel or cargo when required by the Principal or Master to work in adverse weather conditions or under bad working conditions and the Principal shall indemnify the Contractors against any liability whatsoever that the Contractors may incur in these circumstances.

18. REMUNERATION

The Stevedore shall be remunerated by the Principal or its agents (on behalf of the Principal) in accordance with the rates of remuneration set out in the Quotation.

19. ADDITIONAL COSTS

If Contractors supply labour to work aboard a vessel and no cargo is worked on a tonnage basis, charges are to be raised as per Section "B" of the 1987 Standard Stevedoring Contract.

20. INCREASE IN COSTS

In the event of any general increase in the wages payable by the Contractors to their labour, whether such increase shall be in terms of an agreement between the Contractors or any trade union or not, during the currency of this contract, or any other increase in the Contractors costs brought about by factors beyond the Contractors control, which

without limiting the generality of which shall include alternations in port working hours or statutory cost increases, the rates in this agreement will be adjusted, if necessary retrospectively, to the date such increase in wages or costs came into effect, by applying a surcharge based on the ratio which such increased costs bear to the Contractors total cost and a certificate signed by the Contractors auditors specifying only the reason for the increase in general terms and the amount of the surcharge, with a statement that it has been arrived on a basis equitable to both Owners and Contractors, shall be conclusive evidence as to the amount of such surcharge.

21. ACCOUNTING PROCEDURES AND PAYMENT

The Stevedore shall invoice the Principal after completion of the Stevedore Operations in question and the Principal, unless otherwise agreed in writing, shall pay such invoices within 30 (THIRTY) days of the date of such invoice.

22. PAYMENT (FOREIGN):

- 22.1. Any Agent which contracts with the Contractors on behalf of a Foreign Owner shall advise the Contractors in writing or by telex, prior to the rendering of any services by the Contractors, if it does not hold sufficient funds from its principal in trust not being executable as part of its estate, designated to pay the Contractors reasonably expected charges.
- 22.2. If such Agent does not so advise the Contractors it shall be jointly and severally liable with such foreign Owner, to the Contractors, for the payment of the amount due by such Owner.
- 22.3. Contractors may require any agent giving notice that it holds funds on behalf of a principal as detailed above to furnish reasonably acceptable evidence in the form of statements by Bankers, Auditors, etc. as to the amount of funds held, the manner in which such funds are held and the basis on which they are held.
- 22.4. Payment shall be made by Agents placed in funds by Foreign Owners, by Agents jointly and severally liable with such Owners and Owners having their principal places of business in Namibia within seven (7) days of presentation of Invoice. Payment shall be made by Foreign Owners, who have not placed local Agent in funds as envisaged above, prior to the sailing of any vessel in respect of which services have been rendered by the Contractors.
- 22.5. The Principal must notify the Stevedore of any dispute relating to any invoice within 7 (SEVEN) days after the date of invoice setting out clearly the areas and issues of dispute. The parties undertake to use their best endeavours to resolve any such disputes within 30 (THIRTY) working days after the date of the invoice in question.

22.6. Any amount not paid on due date shall, at the discretion of the Stevedore, bear interest from the date until it is paid, at a rate not exceeding two percentage points above the published prime overdraft rate from time to time of the Stevedores principal bankers.

22.7. A letter purporting to be signed by a general, branch or other manager of the Bank, setting out the published prime overdraft from time to time shall be proof of the rate until the contrary is proved.

23. FORCE MAJEURE

The Stevedore shall not be responsible or liable to the Principal or any other party for any delays, losses, damages, costs or failure to perform any of the Stevedore Operations by reason, directly or indirectly, of acts of God, governmental orders, political disturbances, war, hostile actions, perils, dangers and accidents of the sea or other navigable waters or other events beyond the reasonable control of the Stevedore.

24. MACHINERY AND OCCUPATIONAL SAFETY

Owners/Master to ensure that their vessels/cargoes comply with the requirements of the relevant Act applicable in Namibia. In the event that the above requirements are not complied with, Owners to indemnify Contractors against any liability whatsoever arising whilst working under resulting conditions provided that any such liabilities do not arise out of the negligence of the Contractors, their servants or Agents. Any additional costs to the Contractors working under these circumstances to be raised as per Extra Labour Rates.

25. BREACH

25.1. The Stevedore may immediately cease performing Stevedore Operations if:

- 25.1.1. the Principal is, other than for the purposes of reconstruction or amalgamation, placed under voluntary or compulsory liquidation or under judicial management or under receivership or under any of the equivalent of any of the foregoing;
- 25.1.2. the Principal makes any arrangement or composition with its creditors generally or ceases or threatens to cease to carry on business;
- 25.1.3. the Principal commits a breach of any of the terms hereof;
- 25.1.4. the Principal fails to pay any amount owing to the Stevedore on due date.

25.2. Any termination pursuant to the provisions clause 24.1 shall be without prejudice to any claim the Stevedore may have in respect of any prior breach of the terms of this agreement by the Principal.

26. ARBITRATION

26.1. Any dispute between the parties in regard to:

- 26.1.1. the interpretation of;
- 26.1.2. the effect of;
- 26.1.3. the parties' respective rights and obligations under;
- 26.1.4. a breach of; or
- 26.1.5. any matter arising out of these Standard Terms and Conditions shall be decided by arbitration in the manner set out in this clause 25.

26.2. The said arbitration shall be held subject to the provisions of this clause:

- 26.2.1. at Walvis Bay;
- 26.2.2. informally;
- 26.2.3. otherwise in accordance with the laws of the Republic of Namibia in so far as Arbitration is concerned;
- 26.2.4. it being the intention that if possible it shall be held and concluded within 25 business days after it has been demanded.

26.3. The arbitrator shall be if the question in issue is:

- 26.3.1. primarily an accounting matter an independent chartered accountant of not less than 10 (TEN) years standing agreed upon between the parties;
- 26.3.2. primarily a legal matter, a practicing advocate or attorney of not less than 10 (TEN) years standing agreed upon between the parties;
- 26.3.3. any other matter an independent person agreed upon between the parties.

26.4. If the parties cannot agree upon a particular arbitrator in terms of 25.3 above within 7 (SEVEN) business days after the arbitration has been demanded, the nomination in terms of 25.3.1, 25.2 and 25.3.3, as the case may be, shall be made by the President of the Namibian Law Society within 7 (SEVEN) days after the parties have so failed to agree.

26.5. The parties irrevocably agree that the decision in these arbitration proceedings:

- 26.5.1. shall be binding on them;
- 26.5.2. shall be carried into effect;
- 26.5.3. may be made an order of any Court of competent jurisdiction.

27. CONFIDENTIALITY

Both the Stevedore and the Principal will keep confidential and not disclose to any other party any information arising in connection with the Stevedore Operations or their business dealings at any time during or after the term of this agreement, unless it has the other parties' written consent to do so.

28. NOTICES ADDRESS AND DOMICILIUM

28.1. The Principal chooses at the address at which all notices and legal process may be sent (i.e. its domicilium citandi et executandi) as the address set out in the Quotation, if any, failing which any place of business of the Principal that is within any jurisdiction of a Namibian court, as elected by the Stevedore.

28.2. All notices, demands, communications or payments intended for the Principal may be made or given at the Principal's domicilium for the time being.

28.3. A notice sent by the Stevedore to the Principal's domicilium shall be deemed to be received:

- 28.3.1. on the same day, if delivered by hand;
- 28.3.2. on the tenth day after posting, if sent by prepaid registered mail.

28.4. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by the Principal shall be an adequate written notice or communication to it notwithstanding that it was not sent or delivered at its chosen domicilium citandi et executandi.

29. GENERAL

29.1. This agreement constitutes the sole record of the agreement between the parties in regard to the subject matter thereof.

29.2. No party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded herein.

29.3. No addition to, variation or consensual cancellation of this agreement shall be of any force or effect unless in writing and signed by or on behalf of all the parties.

- 29.4. No indulgence which the Stevedore may grant to the Principal shall constitute a waiver of any of the rights of the Stevedore, who shall not thereby be precluded from exercising any rights against the Principal which might have arisen in the past or which might arise in the future.
- 29.5. The parties undertake at all times to do all such things, to perform all such acts and take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and import of this agreement.
- 29.6. The Principal may not be entitled to cede, assign or otherwise transfer all or any of its rights, interest or obligations under and in terms of these Standard Terms and Conditions except with the prior written consent of the Stevedore. The Stevedore may cede, assign or otherwise transfer all of its rights, interest or obligations under and in terms of these Standard Terms and Conditions without the prior written consent of the Principal.
- 29.7. This agreement shall be interpreted and implemented in accordance with the law of the Republic of Namibia.

Walvis Bay Stevedoring Company (Pty) Ltd
Reg No 74/03678/07



CREDIT APPLICATION	FI-F-001
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For Account With

Registered Name

Trading Name

Registered Number

Type of Business **Date Commenced**

Holding Company

Subsidiaries/Associates

Registered Address

Postal Address

City **Country**

State/Prov **Telephone**

Zip/Postal Code **Fax**

E-mail

Web Site

Credit Required **N\$** **Payment Terms** **days**

Directors/Partners/Members

Name	<input type="text"/>	ID	<input type="text"/>
Name	<input type="text"/>	ID	<input type="text"/>
Name	<input type="text"/>	ID	<input type="text"/>
Name	<input type="text"/>	ID	<input type="text"/>

Bank Account Details

Account Name	<input type="text"/>		
Bank	<input type="text"/>	Account Number	<input type="text"/>
Branch	<input type="text"/>	Branch Number	<input type="text"/>

Trade References

Company	<input type="text"/>	Contact	<input type="text"/>
Telephone	<input type="text"/>	Cr Limit	<input type="text"/>
Bank Code	<input type="text"/>	Terms	<input type="text"/>
Comment	<input type="text"/>		
Company	<input type="text"/>	Contact	<input type="text"/>
Telephone	<input type="text"/>	Cr Limit	<input type="text"/>
Bank Code	<input type="text"/>	Terms	<input type="text"/>
Comment	<input type="text"/>		

BEE Status

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Percentage	<input type="checkbox"/>	%
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Conditions of Credit

1. The Company reserves the right to discontinue any account and summarily to cancel any agreement in respect of which payments have fallen in arrear, and in the event of these rights being exercised, all amounts owing shall immediately become due and payable on demand.
2. It is mutually agreed that any action arising between parties may be instituted in the Magistrate's Court even though the cause of action may exceed the jurisdiction of that court.
3. I acknowledge that the information provided will be relied upon by you to determine whether or not to open an account for me.
4. I confirm that every item of information given is material to the aforesaid purpose and I warrant that all answers are true and correct.
5. I acknowledge that should payments not conform to the terms agreed I shall be liable for interest on any overdue amount at the maximum rate interest allowed.
6. I acknowledge that should my Entity be registered as a "Closed Corporation" I will duly complete and sign the attached Deed of Suretyship form and warrant that all information therein is true and correct.
7. The Company reserves the right to perform credit worthiness checks (bank code, ITC enquiry, trade reference checks etc) as and when deemed necessary.
8. I, _____ hereby certify that I am duly authorised to sign this application for credit facilities and record that I agree to the terms and conditions stated herein. All business is undertaken strictly in accordance with the standard trading conditions of **WALVIS BAY STEVEDORING COMPANY**, a copy of which is attached.

Name

Signature

Date

For office use only

- | | |
|---|--|
| <ul style="list-style-type: none"> • Related Party <input type="checkbox"/> Yes <input type="checkbox"/> No • Foreign <input type="checkbox"/> Local <input type="checkbox"/> • Industry _____

_____ • Market <input type="checkbox"/> Nam <input type="checkbox"/> SA <input type="checkbox"/> Ang <input type="checkbox"/> Zam <input type="checkbox"/> Bot <input type="checkbox"/> DRC Other _____
Please specify • Credit Granted <input style="width: 200px;" type="text"/> • Approved By: _____ | <ul style="list-style-type: none"> • Sector <input type="checkbox"/> GRN <input type="checkbox"/> Non-Profit <input type="checkbox"/> Prv <input type="checkbox"/> Pub <input type="checkbox"/> T/a <input type="checkbox"/> CC • Debtor No <input style="width: 200px;" type="text"/> |
| Operation Manager | MD / FD |



TERMS AND CONDITIONS OF SURETYSHIP

FI-F-003

1. The SURETY/IES is bound by the provisions of this Deed upon signature notwithstanding failure of any other person to enter into similar undertakings.
2. Any leniency or extension of the time granted to the PRINCIPAL DEBTOR/S by the CREDITOR/S, or any variation or alteration by the PRINCIPAL DEBTOR/S/S' obligations to the CREDITOR/S shall not be construed as a waiver of any of the CREDITOR/S/S' rights or claims against the SURETY/IES or as a novation of any obligation and shall not release the SURETY/IES from liability under this Deed.
3. The CREDITOR/S may without reference to the SURETY/IES and without discharging, nullifying or affecting the SURETY'S/IES' liability hereunder in any way:
 - 3.1 take action against the PRINCIPAL DEBTOR/S;
 - 3.2 grant time or other indulgence to the PRINCIPAL DEBTOR/S;
 - 3.3 come to terms, enter into such arrangements or conclude any agreement, novation or compromise with the PRINCIPAL DEBTOR/S;
 - 3.4 from time to time alter, vary and revise any or all of the terms of the arrangements which it may have with the PRINCIPAL DEBTOR/S;
 - 3.5 at its discretion, release, abandon or otherwise deal with any security including any other guarantees held by it for the obligations of the PRINCIPAL DEBTOR/S;
 - 3.6 obtain any other security for the fulfillment of the obligation of the PRINCIPAL DEBTOR/S including additional suretyship, guarantees or securities, whether real or personal.
4. In the event of the insolvency of the PRINCIPAL DEBTOR/S or the liquidation, judicial management or sequestration (whether provisional, final compulsory or voluntary) of the PRINCIPAL DEBTOR/S, or a compromise between the PRINCIPAL DEBTOR/S and the PRINCIPAL DEBTOR'S/S' creditors, whether under the company law, the insolvency law at common law or any other law:
 - 4.1 the CREDITOR/S may accept any dividend or other payment which may be received from any other person in respect of the claims of the CREDITOR/S against the PRINCIPAL DEBTOR/S on account and in reduction of the PRINCIPAL DEBTOR'S/S' indebtedness without prejudice to its rights against the SURETY/IES and such dividend or other payment shall be appropriated first to the payment of that part, if any, of the PRINCIPAL DEBTOR'S/S' indebtedness to the CREDITOR/S which is not covered by this suretyship;
 - 4.2 the CREDITOR/S may accept any other securities, guarantees or suretyships arising out of such liquidation or judicial management or sequestration without prejudice to its rights against the SURETY/IES;
 - 4.3 the CREDITOR/S shall be entitled to accept any offer of compromise made by or on behalf of the PRINCIPAL DEBTOR/S without prejudice to its rights against the SURETY/IES;
 - 4.4 SURETY/IES binds himself not to lodge or prove any claims against the PRINCIPAL DEBTOR/S except with the prior consent of the CREDITOR/S;
 - 4.5 the CREDITOR/S shall be entitled, notwithstanding any payment received from the SURETY/IES, to prove a claim against the estate of the PRINCIPAL DEBTOR/S for the full amount of the indebtedness of the PRINCIPAL DEBTOR/S at the date of insolvency, liquidation, compromise, sequestration or judicial management, as the case may be;
 - 4.6 the CREDITOR/S shall be entitled to recover the full amount of the PRINCIPAL DEBTOR'S/S' indebtedness from the SURETY/IES notwithstanding the fact that the CREDITOR/S is likely to be awarded a dividend from the PRINCIPAL DEBTOR/S or may receive any other payment in

respect of its claims against the PRINCIPAL DEBTOR/S. If the full amount of the PRINCIPAL DEBTOR'S/S' indebtedness to the CREDITOR/S has been paid, the SURETY/IES shall be entitled to a refund of such dividend or other payment upon its receipt by the CREDITOR/S.

- 4.7 All acknowledgement of indebtedness and admissions by the PRINCIPAL DEBTOR/S to the CREDITOR/S shall be binding on the SURETY/IES;
- 4.8 a Certificate under the hand of the CREDITOR/S for where the CREDITOR/S is a company, any director of the CREDITOR/S whose appointment and authority need to be proved) as to any amount due and owing by the SURETY/IES in terms of this Deed and that such amount is due and payable, shall constitute *prima facie* proof of the matters therein stated for all purposes including, without limitation, summary judgement and provisional sentence proceedings.
5. Should the CREDITOR/S cede its claim against the PRINCIPAL DEBTOR/S to any third party, the CREDITOR/S may cede its rights against the SURETY/IES under this Deed to such third party. This Deed shall then, at the opting of the CREDITOR/S, be deemed to have been given by the SURETY/IES to the Cessionary, who shall thereupon be entitled to exercise all rights in terms of this Deed as if such cessionary were the CREDITOR/S. This Deed shall apply to, cover and secure the CREDITOR'S/S' successors in title, orders and assigns and any other security held by the CREDITOR/S for the due fulfillment by the SURETY/IES of his obligations under this Deed.
6. The SURETY/IES hereby renounces the benefits of the defences of order, excussion, division and cession of action. The SURETY/IES acknowledges that he is acquainted with the full force and effect of these exceptions.
7. 7.1 The SURETY/IES chooses as *domicilium citandi et executandi* for all purposes arising out of this Deed the SURETY'S/IES' address.
- 7.2 The SURETY/IES shall give the CREDITOR/S two weeks notice in writing prior to any change in the SURETY'S/IES' ADDRESS and shall in such notice specify its new address which address shall not be a post office box or post restante. Such change shall be applicable upon the CREDITOR'S/S' written acknowledgement of receipt of such notice. Should the SURETY/IES fail to give valid notice, the CREDITOR/S shall be entitled forthwith to employ tracing agents to ascertain the SURETY'S/IES' new address. The charges of such tracing agents shall be paid by the SURETY/IES.
- 8 The SURETY/IES consents to the jurisdiction of the Magistrates Court or any other competent court of the Republic of Namibia and agrees that the laws of the Republic of Namibia apply in respect of any action from this Deed.
- 9 The SURETY/IES agrees to pay all costs incurred by the CREDITOR/S as a result of having to enforce this Deed including, without limitation, collection charges and legal costs on the scale as between attorney and client. The SURETY/IES undertakes to pay the costs of and incidental to the drawing and stamping of this Deed.
- 10 This Deed constitutes the entire undertaking by the SURETY/IES and no oral or collateral agreements, additions, variations, alterations, waivers, abandonments or cancellations shall be of any force of effect unless reduced to writing and signed by both the SURETY/IES and the CREDITOR/S. No relaxation or indulgence granted by the CREDITOR to the SURETY shall in any way prejudice the CREDITOR'S/S' rights nor be construed as a waiver thereof.
- 11 As collateral security for the discharge of the obligations assumed by the SURETY/IES hereunder, the SURETY/IES hereby cedes, assigns and makes over to the CREDITOR/S all its rights, title and interest and to any amounts which may now or hereafter become owing by the PRINCIPAL DEBTOR/S to the SURETY from any cause of indebtedness whatsoever, including, without limitation, any claim made by the SURETY/IES in breach of its obligations under this agreement under 4.4 above.
- 12 Any reference to a particular gender of the personal pronoun in this Deed shall be taken to be a reference to one of the other genders of the personal pronoun in appropriate circumstances and any reference to the singular shall include a reference to the plural unless the context clearly otherwise indicates.

"The SURETY"/"The SURETIES"

AS WITNESSES:

1. _____

2. _____

**DEED OF SURETYSHIP
(PERSONAL SURETY)**

[“the SURETY/IES”]

BY: Full Names: _____
I.D. Number: _____
Physical Address: _____

Telephone No: _____
Fax No: _____
E-mail address: _____

[“the CREDITOR/S”]

IN FAVOUR OF: _____

[“the PRINCIPAL DEBTOR”]

IN RESPECT OF: _____

Subject to the terms and conditions annexed to this Deed:

- A. the SURETY/IES hereby irrevocably bind/s himself/themselves jointly and severally, as SURETY/IES and co-principal debtor/s in solidum in favour of the CREDITOR/S for the due fulfillment by the PRINCIPAL DEBTOR/S of all its obligations to the CREDITOR/S of whatsoever nature and howsoever arising, whether already incurred or which may from time to time hereafter be incurred, as a continuing guarantee, and notwithstanding any change in or temporary extinction of such obligations:
- B. without limiting the foregoing, the SURETY/IES bind/s himself/themselves for:
- (a) the payment of all monies which are due or which may become due and owing from time to time, from whatever cause and howsoever arising and whether any claim is acquired by the CREDITOR/S by way of cession or otherwise, and whether as damages or otherwise, by the PRINCIPAL DEBTOR/S to the CREDITOR/S in terms of or arising out of the enforcement, breach or cancellation of any agreement between the CREDITOR/S and the PRINCIPAL DEBTOR/S, or the cancellation by the PRINCIPAL DEBTOR/S trustee or liquidator, whether provision or final, pursuant to any power conferred by statute or order of court.
 - (b) the payment of all charges and expenses of whatsoever nature including, without limitation, attorney and client legal costs and collection commission incurred by the CREDITOR/S in securing or endeavouring to secure the fulfillment by the PRINCIPAL DEBTOR/S to its obligations to the CREDITOR/S, whether or not the SURETY/IES has knowledge of notice of any steps taken by the CREDITOR/S.

By his signature the SURETY/IES acknowledge/s that this Deed is complete in all respects and that the witnesses are present.

SIGNED _____ on this _____ day of _____ 2009.

“THE SURETY/IES

AS WITNESSES:

1. _____

Name: _____
Address: _____

2. _____

Name: _____
Address: _____

