Ocean Liner Services

MANICA GROUP NAMIBIA

OCEAN LINER SERVICES

STANDARD TRADING TERMS AND CONDITIONS

Preamble: **Ocean Liner Services is a division of Manica Group Namibia offering a diverse portfolio of logistics, freight and marine services.**

In conducting its business and providing its services, the relationship with customers, partners or sub-contractors is governed by a set of Standard Trading Conditions which are attached hereto.

Depending on the type of services provided, a particular section, or all sections, can be applicable to the client relationship.

The following Standard Trading Conditions are attached:

Section1: Warehousing, Clearing and Forwarding and other Logistical Services
(based on the SAAFF Trading Terms and Conditions)

Section 2: Stevedoring (based on the SAAFF Trading Terms and Conditions)

Section 3: Ships Agency (based on the ASABOSA Trading Terms and Conditions)

Proudly Bidvest

SECTION 1

WAREHOUSING, CLEARING AND FORWARDING AND OTHER LOGISTICAL SERVICES

1. INTERPRETATION
In these trading terms and conditions:

1.1 the headings to the clauses are for reference purposes only and shall not aid in the interpretation of the clauses to which they relate;

1.2 unless the context clearly indicates a contrary intention, words importing any one gender include the other two genders, the singular includes the plural and vice versa, and natural persons include created entities (corporate or unincorporate) and vice versa;

1.3 the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning namely –

1.3.1 "the Bidvest Group" means The Bidvest Group Limited and all of its subsidiary and associated companies, together with each of their successors in title, or assigns;

1.3.2 "the Company" means Manica Group Namibia (Proprietary) Limited, or if exercising its right under clause 2, the member of the Group in respect of which it exercises its rights;

1.3.3 "client" means the same as "Customer";

1.3.4 "Customer" ” means any person at whose request or on whose behalf the Company undertakes any business or provides any advice, information or service;

1.3.5 "goods" means any goods handled, transported or dealt with by or on behalf of or at the instance of the Company or which come under the control of the Company or its agents, servants or nominees on the instructions of the Customer, and includes any container, transportable tank, flat pallet, package or any other form of covering, packaging, container or equipment used in connection with or in relation to such goods;

1.3.6 "the Group" means the Company and any company which is a holding company or subsidiary of the Company or a subsidiary of the holding company and any company within the Bidvest Group or any subsidiary of any such company, from time to time, including any company in which any such company has a shareholding of more than 20% of the issued shares, which may render services to the Customer in terms of clause 2. Should at any stage there be a dilution of, or change in, the shareholding of the Company or any of the other companies in the Group, these conditions shall notwithstanding such dilution or change remain of full force and effect as between the Customer and the Company;

1.3.7 "INCOTERMS" means the latest official rules for the interpretation of trade terms published by the International Chamber of Commerce from time to time; and

1.3.8 "the owner" means the owner of the goods and any other person who may have or who acquires any interest, financial or otherwise, therein.

2. MEMBERS OF THE GROUP RENDERING SERVICES TO THE CUSTOMER

2.1 The company may at its election perform all or any business undertaken or provide advice, information or services, whether gratuitous or not, either itself or it may procure that any member of the Group undertakes such business or provides such advice, information
or services as principal upon and subject to the terms and conditions contained herein which shall apply mutatis mutandis to the Customer and any such member of the Group.

2.2 Each member of the Group shall be deemed to have appointed the Company as its agent for procuring on behalf of any such a member of the Group, the benefit of these standard trading terms and conditions and the Company shall further be deemed to accept such benefits at the time of accepting any instruction to perform any function in rendering any services to the Customer.

3. APPLICATION OF TRADING TERMS AND CONDITIONS

Subject to clause 5, all and any business undertaken or advice, information or services provided by the Company, whether gratuitous or not, is undertaken or provided on these trading terms and conditions.

4. OWNER'S RISK

All packing, unpacking, palletising or de-palletising, sorting, storing, (whether in the open or otherwise) loading, unloading, warehousing, transporting or other handling of goods by or on behalf of or at the request of the Customer, owner or the Company, is effected at the sole risk of the Customer and/or the owner, and the Customer indemnifies the Company against any claim which might be brought against the Company, howsoever arising, from such packing, unpacking, palletising or de-palletising, sorting, storing, (whether in the open or otherwise), loading, unloading, warehousing, transporting or other handling of goods.

5. APPLICABLE LEGISLATION

5.1 If the Company is obliged, in the execution of any of its duties and/or responsibilities to comply with any common law or legislative enactment ("the law") of any nature whatsoever, then the Company by complying therewith, shall not be deemed to waive nor abandon any of its rights in terms of these trading terms and conditions.

5.2 In addition thereto, in complying with the law, the Company shall not be deemed to have assumed any onus, obligation, responsibility or liability in favour of the Customer.

5.3 If any of the terms of these trading terms and conditions is repugnant to or in conflict with the law, then and in such event the conflicting term embodied herein shall be deemed to be amended and/or altered to conform therewith, and such amendment and/or alteration shall not in any way affect the remaining provisions of these trading terms and conditions.

6. TRANSPORT DOCUMENTS

The company shall be entitled to issue in respect of the whole or part of any contract for the movement of goods, a combined transport document or bill of lading ("CTBL") in a form that shall be within the Company's discretion, including a FIATA combined transport bill of lading, a warehouse and/or forwarding receipt, an air or sea waybill, a consignment or delivery note, a container movement or transport order, a Groupage or house bill of lading or a received for shipment or despatch bill of lading, (any of which may reflect the Company or another as the carrier in terms thereof) provided that where a CTBL is issued these trading terms and conditions shall continue to apply as between the Company on the one part and the Customer and/or the owner on the other part, (save with regard to the owner, to the extent that they conflict with the terms and conditions applicable to the CTBL, in which event the provisions of the CBTL shall to the extent of such conflict only, have precedence). The issue of the CTBL by the Company shall entitle it to raise an additional charge determined by the Company, to cover any additional obligations arising under the CTBL.

7. EXCLUSION OF OBLIGATIONS OF COMMON OR PUBLIC CARRIER

The company deals with goods only on the basis that it is neither a common carrier nor a public carrier. The transportation of all goods is undertaken at the sole risk and expense of the Customer and subject to these conditions.

8. COMPANY'S DISCRETION IN THE ABSENCE OF INSTRUCTIONS

In the absence of specific instructions given timeously in writing by the Customer to the Company –

8.1 it shall be in the reasonable discretion of the Company to decide at what time to perform or to procure the performance of any or all of the acts which may be necessary or requisite for the discharge of its obligations to the Customer;

8.2 the Company shall have an absolute discretion to determine the means, route and procedure to be followed by it in performing all or any of

the acts or services it has agreed to perform; and

8.3 in all cases where there is a choice of tariff rates or premiums offered by any carrier, warehouseman, underwriter, or other person depending upon the declared value of the relevant goods or the extent of the liability assumed by the carrier, warehouseman, underwriter or other person, it shall be in the discretion of the Company as to what declaration, if any, shall be made, and what liability, if any, shall be imposed on the carrier, warehouseman, underwriter or other person.

9. COMPANY'S GENERAL DISCRETION

9.1 Notwithstanding anything to the contrary herein contained, if at any time the Company should consider it to be in the Customer's interests or for the public good to depart from any of the Customer's instructions, the Company shall be entitled to do so and shall not incur any liability in consequence of doing so.

9.2 If events or circumstances come to the attention of the Company, its agents, servants, or nominees which, in the opinion of the Company, make it in whole or in part, impossible or impracticable for the Company to comply with a Customer's instructions the Company shall take reasonable steps to inform such Customer of such events or circumstances and to seek further instructions. If such further instructions are not timeously received by the Company in writing, the Company shall, at its sole discretion, be entitled to detain, return, store, sell, abandon, or destroy all or part of the goods concerned at the risk and expense of the Customer.

10. INSURANCE

10.1 The Company shall have no obligation whatsoever to obtain any form of insurance cover on behalf of the Customer in respect of the goods and will only endeavour to do so on the express request of the customer to do so. Subject to the provisions of clauses 10.3 and 10.4, the Company shall however endeavour to place any insurance cover the Customer timeously and in writing instructs it to effect. Such insurance will be subject to such exceptions and conditions as may be imposed by the insurance company or underwriter taking the risk and the Company shall not be obliged to obtain separate cover for any risks so excluded. Unless otherwise agreed in writing the Company shall not be under any obligation to obtain separate insurance in respect of separate consignments but may insure all or any of such consignments under any open or general policy held by the Company from time to time.

10.2 Should any insurer dispute its liability in terms of any insurance policy in respect of any goods, the Customer concerned shall have recourse against such insurer only and the Company shall not have any responsibility or liability whatsoever in relation thereto notwithstanding that the premium paid on such policy may differ from the amount paid by the Customer to the Company in respect thereof. Insofar as the Company agrees to arrange insurance the Company acts solely as agent for and on behalf of the Customer.

10.3 Subject to 10.1, if the goods are transported, or are to be transported, by rail, it shall be the obligation of the Customer to instruct the Company prior to receipt of the goods into its or TransNamib's / Spoornet's custody or control, as to whether the Company is to accept TransNamib's / Spoornet's standard or any offer of insurance of the goods, on behalf of the Customer, or to request the Company to endeavour to place such insurance cover with such other underwriter as directed by the Customer. In any event the Customer acknowledges that it is aware of the terms and conditions under which TransNamib / Spoornet undertakes the rail carriage of containerised goods, the terms and conditions of the insurance cover offered by TransNamib / Spoornet and their limitations of liability in the event of such insurance cover not being accepted and under no circumstances whatsoever shall the Company be liable for any loss suffered by the Customer and howsoever caused, while the goods are in the custody of TransNamib / Spoornet.

10.4 Notwithstanding anything to the contrary herein contained the Company shall in no circumstances be liable for any consequences of any failure to obtain any insurance cover, whether requested to do so by the Customer, or otherwise and the liability of the Company in respect of any claim brought against the Company arising out of or connected with the provisions of this clause 10 shall be regulated and determined in accordance with the provisions of clause 40 and clause 41 of these conditions.

11. COMPANY'S OBLIGATIONS IN THE ABSENCE OF INSTRUCTIONS

Unless specific written instructions are timeously given to and accepted by the Company, the Company shall not be obliged to –

11.1 make any declaration for the purpose of any statute, convention, or contract, as to the nature or value of any goods or as to any special interest in delivery. In particular, the Company shall be under no obligation to make any declaration or to seek any special protection or cover from any carrier in respect of any goods which are, or fall within the definition ascribed thereto by that body of dangerous goods or other goods which require special conditions of handling or storage; and

11.2 arrange for any particular goods to be carried, stored or handled separately from other goods.

12. CUSTOMER'S UNDERTAKINGS

12.1 For all purposes hereunder the Customer shall be deemed to have in relation to the Customer's business, the goods and the services to be rendered by the Company in regard thereto, reasonable knowledge of all matters directly or indirectly relating thereto or arising therefrom including, without limitation, terms of sale and purchase and all matter relating thereto and the Customer undertakes to supply all pertinent information to the Company.

12.2 The Customer warrants that –

12.2.1 it is either the owner or the authorised agent of the owner of any goods in respect of which the Customer instructs the Company and that each such person is bound by these trading terms and conditions;

12.2.2 in authorising the Customer to enter into any contract with the Company and/or in accepting any document issued by the Company in connection with such contract, the owner, sender or consignee is bound by these trading terms and conditions for itself and its agents and for any parties on whose behalf it or its agents may act, and in particular, but without prejudice to the generality of the aforegoing, it accepts that the Company shall have the right to enforce against them jointly and severally any liability of the Customer under these trading terms and conditions or to recover from them any sums to be paid by the Customer which upon proper demand have not been paid;

12.2.3 all information and instructions supplied or to be supplied by it to the Company is and shall be accurate, true and comprehensive, and in particular, without derogating from the generality of the aforegoing, the Customer shall be deemed to be bound by and warrants the accuracy of all descriptions, values and other particulars furnished to the Company for Customs, consular and other purposes, and the Customer warrants that it will not withhold any necessary or pertinent information, and indemnifies the Company against all claims, losses penalties, damages, expenses and fines whatsoever, whensoever and howsoever arising as a result of a breach of the aforegoing whether negligently or otherwise including, without derogating from the generality of the aforegoing, any assessment or reassessment;

12.2.4 the goods will be properly, adequately and appropriately prepared and packed, stowed, labelled and marked, having regard inter alia to the implementation by or on behalf of the Company or at its instance of the contract involved, and the characteristics of the goods involved and are capable of withstanding the normal hazards inherent in the implementation of such contract;

12.2.5 where goods are carried in or on containers, trailers, flats, tilts, railway wagons, tanks, igloos or any other unit load devices specifically constructed for the carriage of goods by land, sea or air, (each such device hereinafter individually referred to as "the transport unit") then save where the Company has been given and has accepted specific written instructions to load the transport unit –

12.2.5.1 that the transport unit has been properly and competently loaded;

12.2.5.2 that the goods involved are suitable for carriage in or on the transport unit; and

12.2.5.3 that the transport unit is itself in a suitable condition to carry the goods loaded therein and complies with the requirements of all relevant transport authorities and carriers.

13. RECOVERY OF DEBTS DUE TO THE COMPANY

13.1 The company shall be entitled to recover any amounts due to it by the Customer in respect of instructions relating to or in terms of any contract in respect of particular goods from the Customer, or if the Customer acts as agent for a disclosed or undisclosed principal from the Customer or the principal, as the Company in its absolute discretion deems fit.

13.2 The Customer agrees that in the event of the Company or any member of the Group instituting legal proceedings against the Customer to recover amounts due in terms of any agreement or for breach of these trading terms and conditions or for enforcement of any other obligations or for the recovery of damages owed by the Customer to the Company or any member of the Group in terms of such agreement, the Customer shall be liable for all legal costs incurred by the Company or member of the Group, on the scale as between attorney and own client, as well as collection commission and tracing agent's fees.

14. COMPANY ENTITLED TO ACT AS AGENT OR PRINCIPAL IN CONTRACTING

14.1 Unless otherwise agreed in writing, the Company in procuring the carriage, storage, packing or handling of goods shall be entitled to act either as an agent for and on behalf of the Customer or as a principal, as it in its absolute discretion deems fit.

14.2 The offer and acceptance of a fixed price for the accomplishment of any task shall not itself determine whether such task is to be arranged by the Company acting as agent for and on behalf of the Customer or as a principal.

14.3 The Customer acknowledges that when the Company, 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.

14.4 Unless otherwise agreed in writing, the Company, when acting as agent for and on behalf of the Customer, shall be entitled to enter into any contract it reasonably deems necessary or requisite for the fulfilment of the Customer's instructions, including, without limitation, contracts for the –

14.4.1 carriage of goods by any route or means or person;
14.4.2 storage, packing, transport, shipping, loading, unloading and/or handling of goods by any person at any place whether on shore or afloat and for any length of time; and

14.4.3 carriage or storage of goods in break-bulk form or in or on transport units as defined in clause 12.2.5 or with or without other goods of whatsoever nature.

15. SUBCONTRACTING

15.1 Any business entrusted by the Customer to the Company may, in the absolute discretion of the Company, be fulfilled by the Company itself, by its own servants performing part or all of the relevant services, or by the Company employing, or entrusting the goods or services to third parties on such conditions as may be stipulated by, or negotiated with, such third parties for the purposes of such services, or such part thereof as they may be employed to carry out.

15.2 Where the Company contracts with third parties to perform all or any of the functions which it has agreed to perform, the Customer agrees that the Company shall have no responsibility or liability to the Customer for any act or omission of such third party, even though the Company may be responsible for the payment of such third party's charges. Notwithstanding the aforegoing, the Company undertakes to cede any right of action which it may have against such third parties to the Customer upon demand, the Customer hereby indemnifying the Company against any loss, damage or expense which might arise from the Customer prosecuting such claims or right of action.

16. TERMS AND CONDITIONS OF AGENTS AND SUBCONTRACTORS

16.1 Notwithstanding anything to the contrary contained herein the Customer agrees that all goods shall be dealt with by any third party appointed to perform any function in terms of 15, on the terms and conditions, whether or not inconsistent with these trading terms and conditions, stipulated by any such third party, including the carriers, warehousemen, government departments, and all other parties (whether acting as agents or subcontractors to the Company or otherwise) into whose possession or custody the goods may pass, or subject to whose authority they may at any time be.

16.2 If, notwithstanding the provisions of 15.2, it should be held that the Company in any way retains any obligations or responsibilities with regard to the performance of the obligations by a third party, then to the extent that the terms and conditions stipulated by the third party carrier, warehouseman, government department and any other such party, impose a liability, obligation or responsibility on the Company, more onerous than those imposed by these terms and conditions, then such provision shall not apply as between the Company and the Customer or owner and the provisions of these terms and conditions shall have precedence. In all other instances the third party's terms and conditions shall apply.

17. GOODS REQUIRING SPECIAL ARRANGEMENTS

Except under special arrangements previously made in writing the Company will not accept or deal with bullion, coins, banknotes, securities or other currency, precious stones, jewellery, valuables, antiques, pictures, human remains, livestock, plants, tobacco products, spirits, wine, mobile telephones and their components, or computers and their components or parts. Should the Customer nevertheless deliver such goods to the Company or cause the Company to handle or deal with any such goods otherwise than under special arrangements previously made in writing the Company shall incur no liability whatsoever in respect of such goods, and in particular, shall incur no liability in respect of its negligent acts or omissions in respect of such goods. A claim, if any, against the Company in respect of the goods referred to in this clause 17 shall be governed by the provisions of clauses 40 and 41.

18. GOODS REQUIRING PRIOR CONSENT OF THE COMPANY

18.1 The Customer shall obtain in advance the Company's specific written consent to accept into its possession or control or into the possession or control of any of its servants, sub-contractors, agents or employees any goods, including radio-active materials, which are or may become perishable, dangerous, inflammable or noxious, or which by their nature may injure, damage, taint or contaminate, or in any way whatsoever adversely affect any person, goods or property, including goods likely to harbour or attract vermin or other pests, or any goods defined as hazardous and/or dangerous in the Tariff or rules for carriage of Transnet Limited, or so classified in the IMDG Code or any other code or regulations of, or published by, any other International Organisation. The Customer warrants that such goods, or the case, crate, box, drum canister, tank, flat, pallet, package or other holder or covering of such goods will comply with any applicable laws, regulations or requirement of any authority or carrier and that the nature and characteristics of such goods and all other data required by such laws, regulations or requirements will be prominently and clearly marked on the outside cover of such goods.

18.2 If any such goods are delivered to the Company, whether or not in breach of the provisions of clause 18.1, such goods may for good reason as the Company in its discretion deems fit including, without limitation, the risk to other goods, property, life or health be destroyed, disposed of abandoned or rendered harmless or otherwise dealt with at the risk and expense of the Customer and without the Company being liable for any compensation to the Customer or any other party, and without prejudice to the Company's rights to recover its charges and/or fees including the costs of such destruction, disposal, abandonment or rendering harmless or other dealing with the goods. The Customer indemnifies the Company against all loss, liability or damage caused to the Company as a result of the tender of goods to the Company.

19. PERISHABLE GOODS

19.1 Without limiting or affecting any other terms of these trading terms and conditions, goods (whether perishable or otherwise) in the care, custody or control of the Company may at the Customer's expense be sold by private treaty or public auction or otherwise or otherwise disposed of by the Company, in its sole discretion, without notice to the Customer, sender, owner or consignee, if –

19.1.1 such goods have begun to deteriorate or are likely to deteriorate;

19.1.2 such goods are insufficiently addressed or marked;

19.1.3 the Customer cannot be identified; or

19.1.4 the goods have not been collected or accepted by the Customer or

any other person after the expiration of 21 days from the company notifying the Customer in writing to collect or accept such goods, provided that if the Company has no address for the Customer such notice period shall not be necessary, and payment or tender of the net proceeds, if any, of the sale thereof after deduction of those charges and expenses incurred by the Company in respect thereof shall be equivalent to delivery of such goods.

19.2 Should any amount owing by the Customer to the Company in respect of any matters referred to in clause 19.1 become due and payable and remain unpaid, or in the event that any goods are not accepted for delivery as provided for in 20 below, the Company shall be entitled and the Customer hereby authorises the Company and without first obtaining an order of court, to sell all or any of the goods by public auction or on reasonable notice not exceeding 14 days by private treaty. The net proceeds of any such sale, after deducting therefrom all costs, charges and expenses incurred by the Company, shall be applied in reduction or discharge as the case may be, of the Customer's obligations to the Company in respect of such goods without prejudice to the Company's rights to recover from the Customer any balance which may remain owing to the Company after the exercise of such rights. Should the total amount collected by the Company, after deducting therefrom all costs, charges and expenses incurred by the Company in respect thereof, exceed the full amount of the Customer's obligations to the Company in respect of such goods, the Company shall be obliged to refund such excess to the Customer.

20. THE ACCEPTANCE OF DELIVERY

If delivery of any goods is not accepted by the Customer, consignee or party nominated by the Customer at the appropriate time and place then: -

20.1 the Company shall be entitled to store the goods or any part thereof at no risk to the Company and at the expense of the Customer; and

20.2 the provisions of clause 19.2 shall apply mutatis mutandis.

21. WAREHOUSING

21.1 In providing the services, the goods may be warehoused or otherwise held at any place as determined by the Company in its absolute discretion, at the Customer’s risk and expense.

21.2 Where the Company acts as in the capacity as warehouseman, as a principal, whether in premises owned, leased or operated by it, or in premises operated by a third party, all goods are received, stacked, stored, moved, despatched and otherwise handled, at the risk of the Customer and the owner thereof. All such activities shall be undertaken by the Company in terms of and subject to these conditions and the Company shall not be liable at common law or otherwise, as a bailee or depositee.

21.3 The Customer and the owner warrant that:

21.3.1 all goods delivered to the Company for warehousing shall be properly packed and labelled and in the event of any such goods requiring special storage, packaging or labelling by reason of its nature or properties or in accordance with any regulation, convention or statute, that all such requirements shall be complied with; and

21.3.2 notice of any special storage requirements of any such goods shall be given to the Company in writing prior to the delivery of the goods into the custody of the Company or its agents, provided that the Company shall not be obliged to take delivery of any such goods in the event of it being of the view that such goods or the handling and storage thereof are for any reason whatsoever undesirable.

21.4 In the event that the Company agrees to undertake the packing of the goods into any container or the packaging or unitisation of the goods for any purpose, such packing shall be undertaken at the sole risk and expense of the Customer and it shall be the obligation of the Customer to provide the Company with full packing and labelling instructions in writing, including but not limited to any requirements as to internal or other securing, mass distribution, maximum aggregate mass restrictions, labelling, temperature control or other restrictions, information as to the properties of the goods and any noxious or other possible hazardous or dangerous properties they might possess.

21.5 Notwithstanding anything else to the contrary herein contained, the Customer and the owner of the goods indemnify the Company against any consequences (including all damages and consequential losses) howsoever resulting from the storage of any goods tendered for transport or warehousing. A failure to provide all relevant information to the Company shall render the Customer liable in damages to the Company.

22. COLLECTION OF EXPENSES AND C.O.D

22.1 When goods are accepted or dealt with by the Company upon instructions to collect freight, duties, charges or other expenses from the consignee or any other person, the Customer shall remain responsible therefor if they are not paid by such consignee or any other person immediately when due.

22.2 If accepted by the Company, instructions to collect payment on delivery shall be subject to the condition that the Company will be entitled to assume that the recipient will effect payment and in regard to the collection will not be liable for any negotiable instrument which is not met on due date for payment. Such payment is collected by the Company at the Customer's risk.

23. SUNDRY GOODS RECOGNISABLE AS THE CUSTOMER'S

The company shall have no obligation to take any action in respect of any goods which may be recognisable as belonging to the Customer unless and until it receives suitable instructions relating to those goods together with all necessary documents.

24. EXAMINATION OF LANDED GOODS

24.1 Where it is necessary for an examination to be held or other action to be taken by the Company in respect of any discrepancy in the goods which are landed or discharged from any vessel, aircraft, vehicle, or transport unit, no responsibility or liability shall attach to the Company for any failure to hold such examination or to take any other action unless the Company has been timeously advised by the landing or discharge agent that such goods have been landed and that such a discrepancy exists.

24.2 The company will not be responsible for examining or counting any goods received by it where such goods are bundled, palletised or packed in any manner such that their number cannot be quickly and easily counted. Should the Company undertake to examine or count goods so received, it shall incur no liability in respect of any error or inaccuracy in such counting, whether such error or inaccuracy is the result of negligence on the part of the Company or otherwise. The company shall be entitled to levy a charge on the Customer for the counting of goods in such circumstances.

25. DUTIES, TAXES, IMPOSTS, LEVIES AND DEPOSITS

25.1 The Customer, whether or not the cause of payment was due to an act, instruction or omission of the sender, owner and/or consignee and their agents, if any, shall be liable for any duties, taxes, imposts, levies, deposits or out-lays of whatsoever nature levied by or payable to the authorities, intermediaries or other parties at any port or place for or in connection with the goods and whether at the time of entry and/or at any subsequent time and for any payments, fines, penalties, expenses, loss or damage or whatsoever incurred or sustained by the Company in connection therewith or arising thereout.

25.2 The company shall bear no liability in consequence of the fact that there may be a change in the rate of duty, wharfage, cargo dues, freight, railage or cartage or any other tariff, before or after the performance by the Company of any act involving a less favourable rate or tariff or by virtue of the fact that a saving might have been effected in some other way had any act been performed at a different time.

26. RECOVERY OF DUTIES INCORRECTLY PAID

Where as a result of any act or omission by or on behalf or at the instance of the Company and whether or not such act or omission was negligent, any duty, tax, levy, railage, wharfage, cargo dues, freight, cartage or any other impost or charge has been paid or levied in an incorrect amount, then any responsibility or liability to the Customer which the Company may otherwise have will cease and fall away if the Customer does not –

26.1 within a reasonable time having regard to all the circumstances, and in particular to the time allowed for the recovery from the payee of the amount overpaid, advise the Company that an incorrect amount has been paid or levied; and

26.2 do all such acts as are necessary to enable the Company to effect recovery of the amount incorrectly paid or levied. The fact that the Customer may not be aware that any such incorrect payment has been made shall not constitute a circumstance to be taken into account in calculating what is a reasonable time for the purpose of clause 26.1. Should any act or omission by the Customer, whether or not such act or omission was due to ignorance on the part of the Customer, and whether or not such ignorance was reasonable or justified in the circumstances, prejudice the Company's right of recovery, the Customer shall be deemed not to have complied with the provisions of clauses 26.1 and 26.2.

27. PAYMENT BY THE CUSTOMER

27.1 Unless otherwise specifically agreed by the Company in writing the Customer shall pay to the Company in cash immediately upon presentation of account all sums due to the Company without deduction or set-off and payments shall not be withheld or deferred on account of any claim or counterclaim which the Customer may allege.

27.2 Payment of all amounts due to the company shall be made :

27.2.1 Free of exchange and any other charges at such address as the company may require.

27.2.2 In such currency as the Company may direct.

27.2.3 Without demand and free of any deduction or set off on the due date of payment.

27.3 Any amount not paid on due date for payment shall bear interest at the maximum permissible rate allowed by law on accounts not settled within the agreed terms of credit and calculated on daily balance and compounded monthly in arrears.

27.4 All and any moneys received by the Company from the Customer shall be appropriated by the Company in its sole and absolute discretion in respect of any undisputed indebtedness owing by the Customer to the Company, notwithstanding that the Customer might, when making payment, seek to appropriate the payment so made to any particular debt or portion of a debt.

27.5 The Customer undertakes to pay the Company Value Added Tax at the then prescribed rate, payable in respect of the exclusive amount reflected in any invoice.

27.6 In the event of the Company having granted any credit terms or facilities to the Customer in writing, which provide the Customer a deferred period of time to effect payment of any amount due to the Company, and in the event of the Customer being in default of payment of any one or more amount due and payable, or being in default of any other term or condition on which such credit facility was granted, then notwithstanding any other term to the contrary where-so-ever contained, the Company shall be entitled to forthwith revoke such credit facilities and declare all amounts immediately due and payable and proceed for recovery of all amounts which would be due and payable to the Company, were it not for the credit terms or facilities granted to the Customer.

28. DEBITING FEES AND DISBURSEMENTS

The company shall under no circumstances be precluded from raising a debit and obtaining payment in respect of any fee or disbursements due to it notwithstanding the fact that a previous debit or debits, whether excluding or partly excluding the items subsequently requiring to be charged or recovered, had been raised and whether or not any notice had been given that further debits were to follow.

29. RISK OF ITEMS POSTED OR ELECTRONICALLY TRANSMITTED

29.1 Subject to the provisions of clause 51, and notwithstanding any prior dealings between the Company and the Customer all documents, cash, cheques, bank drafts or other remittances, sent to the Company through the post or electronically transmitted shall be deemed not to have been received by the Company unless and until they are actually received by the Company.

29.2 In the event that any payment to the Company is effected electronically, then the Customer bears the risk in respect of such payment until such time as the payment is received and cleared into the Company's bank account.

30. QUOTATIONS & ESTIMATES

30.1 The company shall be entitled at any time by notice to the Customer to cancel, amend or resile from any quotation, estimate or executory agreement in circumstances where it becomes impracticable or uneconomical for the Company to carry out the contract at the quoted or estimated rate and the Customer shall have no claim whatsoever against the Company for any loss that the Customer might incur as a result of the Company cancelling, amending or resiling from the quotation, estimate or executory agreement.

30.2 Without in any way limiting the provisions of clause 30.1 all quotations, estimates and agreements are subject to revision without notice, having regard to changes in currency exchange rates and upward movements in amounts payable by or on behalf of, or at the instance of the Company to third parties, including, without limitation, freight, surcharges, insurance premiums, equipment rental and labour which charges and upward movements take place after quotation. Any revision of rates as aforesaid will be commensurate with the change in the currency exchange rate or the increase in such amounts payable. Any such increase shall, failing agreement between the parties, be determined by the then auditors of the Company or any other auditors nominated by the Company, who in such determination shall act as experts and not as arbitrators and whose decision shall be final and binding on the parties.

31. NO CLAIMS AGAINST COMPANY DIRECTORS AND EMPLOYEES

The Customer undertakes that no claim shall be made against any director, servant or employee of the Company which imposes or attempts to impose upon him any liability in connection with the rendering of any services which are the subject of these trading terms and conditions and the Customer hereby waives all and any such claims.

32. CUSTOMER'S ORAL INSTRUCTIONS

The Customer's instructions to the Company shall be precise, clear and comprehensive and in particular, but without limitation, shall cover any valuation or determination issued by the Customs in respect of any goods to be dealt with by or on behalf of or at the request of the Company. Instructions given by the Customer shall be recognised by the Company as valid only if timeously given specifically in relation to a particular matter in question. Oral instructions, standing or general instructions or instructions given late, even if received by the Company without comment, shall not in any way be binding upon the Company, but the Company may act thereupon in the exercise of its absolute discretion.

33. VARIATION OF THESE TRADING TERMS AND CONDITIONS

No variation of these trading terms and conditions shall be binding on the Company unless embodied in a written document signed by the managing director personally, or alternatively by two other duly authorised directors of the Company. Any purported variation or alteration of these trading terms and conditions otherwise than as set out above shall be of no force and effect, whether such purported variation or alteration is written or oral, or takes place before or after receipt of these standard trading terms and conditions by the Customer.

34. NON WAIVER

No waiver of any of these terms and conditions shall be binding or effectual for any purpose unless in writing and signed by or on behalf of the party giving the same. Any such waiver will be effective in a specific instance and for the purpose given. No failure or delay on the part of either party hereto in exercising any right, power or privilege hereunder will constitute or be deemed to be waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

35. GOVERNING LAW

These trading terms and conditions and all agreements entered into between the Company and the Customer pursuant thereto and on the terms thereof shall be governed by and construed in accordance with the law of the country where the Company has its registered office.

36. SUBMISSION TO JURISDICTION

The parties agree that any legal action or proceedings arising out of or in connection with these trading terms and conditions, or the granting of any credit, may at the Company's sole discretion, be brought in the relevant court in the country having territorial and civil jurisdiction, where the company's registered office is situated at the commencement of the proceedings, and the Customer irrevocably submits to the non-exclusive jurisdiction of such court. The Company shall have the option within that jurisdiction, or any other competent jurisdiction, of proceeding either in the superior court or in an inferior court, notwithstanding that the amount of the claim may exceed the jurisdiction of that inferior court, to which jurisdiction the Customer hereby consents.

37. BENEFIT OF DISCOUNTS

The Company is entitled to the benefits of any discounts obtained and to retain and be paid all brokerages, commissions, allowances and other remunerations of whatsoever nature and kind whether or not they are customarily retained by or paid to freight forwarders, warehousemen or transporters and shall not be obliged to disclose or account to the Customer, or principal for any such amounts received or receivable by it.

38. LIEN

38.1 All goods and documents relating to goods including bills of lading and import permits, as well as all refunds, repayments, claims and other recoveries, shall be subject to a special and general lien or pledge either for moneys due in respect of such goods or for other moneys due to the Company from the Customer, sender, owner, consignee, importer or the holder of the bill of lading or their agents, if any.

38.2 In delivering the goods into the custody of the Company or its agents for any purpose whatsoever, such delivery shall for the purposes hereof be deemed to be delivery of the same in pledge and as security for all amounts owed to the Company at that time or which become payable in the future. In the event of the Company utilising the services or premises of any third party for any purposes including the transportation or storage of any goods, such third party shall be the agent of the Company for purposes of exercising the Company's right to retention under lien and/or pledge.

38.3 If any moneys due to the Company are not paid within 14 days after notice has been given to the person from whom the moneys are due that such goods or documents are being detained, they may be sold by public auction or by private treaty or in some other way disposed of for value at the sole discretion of the Company and at the expense of such person, and the nett proceeds (if any) applied in or towards satisfaction of such indebtedness.

38.4 The Customer shall not be entitled to effect or allow to be effected any security in respect of the goods or the documents relating to the goods, including without limitation, any general or special notarial bond, pledge, hypothec, right of retention, or lien and pledge, without the prior written consent of the Company. The lien and pledge and right of retention in favour of the Company referred to above in 38.1 and 38.2, shall operate as a first and prior change against the goods and the documents relating to the goods and no other security shall rank prior to the Company's lien, pledge or right of retention.

39. INDEMNITY BY THE CUSTOMER

Without prejudice to any of the Company's rights and securities under these trading terms and conditions, the Customer indemnifies and holds harmless the Company against all liabilities, damages, costs and expenses whatsoever incurred or suffered by the Company arising directly or indirectly from or in connection with the Customer's express or implied instructions or their implementation by or on behalf of or at the instance of the Company in relation to any goods and in particular, but without limitation of the aforegoing, in respect of any liability whatsoever which may be incurred-

39.1 arising from the failure of any warranty given to the Company in respect of the goods being true and correct; and/or

39.2 to any haulier, carrier, warehouseman or other person whatsoever at any time involved with such goods arising out of any claim made directly or indirectly against any such person by the Customer or by any consignor, consignee or owner of such goods or by any person having an interest in such goods or by any other person whatsoever; and/or

39.3 to any owner or consignee of such goods who is not the Customer of the Company where the Company performs the service of a de-consolidation agent, or any other service; and/or

39.4 to any carrier of the goods if the Company is the consignor or consignee of the goods; and/or

39.5 in respect of any goods referred to in clause 18.

Notwithstanding that the Company may seek recovery of any amount due to it, from any person other than the Customer, the Customer shall remain liable to make payment of the said amount to the Company upon demand, at any stage.

40. LIMITATION OF COMPANY'S LIABILITY

40.1 Subject to the provisions of clause 40.2 and clause 41, the Company shall not be liable for any claim of whatsoever nature (whether in contract or in delict) and whether for damages or otherwise, howsoever arising including but without limiting the generality of the aforesaid claims arising from –

40.1.1 any negligent act or omission or statement by the Company or its servants, agents, sub-contractors or nominees; and/or

40.1.2 any act or omission of the Customer or agent of the Customer with whom the Company deals; and/or

40.1.3 any loss, damage or expense arising from or in any way connected with the marking, labelling, numbering, non-delivery or mis-delivery of any goods; and/or

40.1.4 any loss, damage or expense arising from or in any way connected with the weight, measurements, contents, quality, inherent vice, defect or description of any goods; and/or

40.1.5 any loss, damage or expense arising from or in any way connected with any circumstance, cause or event beyond the reasonable control of the Company, including but without limiting the generality of the aforesaid, any act of God, any act of Government or other authority, strike, lock-out, stoppage or restraint of labour; and/or

40.1.6 damages arising from loss of market or attributable to delay in forwarding or in transit or failure to carry out any instructions given to the Company; and/or

40.1.7 loss or non-delivery of any separate package forming part of a consignment or for loss from a package or an unpacked consignment or for damage or mis-delivery; and/or

40.1.8 damage or injury suffered by the Customer or any person whatsoever arising out of any cause whatsoever as a result of the Company's execution or attempted execution of its obligations to the Customer and/or the Customer's requirements or mandate;

unless –
(a) such claim arises from a grossly negligent act or omission on the part of the Company or its servants; and
(b) such claim arises at a time when the goods in question are in the actual custody of the Company and under its actual control; and
(c) the claim is not time barred by virtue of the provisions of clause 48 hereof or otherwise.

40.2 Notwithstanding anything to the contrary contained in these trading terms and conditions, the Company shall not be liable for any indirect and consequential loss arising from any act or omission or statement by the Company, its agents, servants or nominees, whether negligent or otherwise.

41. MONETARY LIMITATION OF LIABILITY OF THE COMPANY

41.1 In the event that the Company is liable to the Customer in terms of clause 40.1, or otherwise, in no such case whatsoever shall any liability of the Company, howsoever arising, exceed whichever is the least of the following respective amounts –

41.1.1 the value of the goods evidenced by the relevant documentation or declared by the Customer for customs purposes or for any purpose

connected with their transportation;

41.1.2 the value of the goods declared for insurance purposes;

41.1.3 double the amount of the fees raised by the Company for its services in connection with the goods, but excluding any amount payable to sub-contractors, agents and third parties.

41.2 If it is desired that the liability of the Company in those cases where it is liable to the Customer in terms of clause 40.1 should not be governed by the limits referred to in clause 41.1, written notice thereof must be received by the Company before any goods or documents are entrusted to or delivered to or into the control of the Company (or its agents or sub-contractors), together with a statement of the value of the goods. Upon receipt of such notice the Company may in the exercise of its absolute discretion agree in writing to its liability being increased to a maximum amount equivalent to the amount stated in the notice, in which case it will be entitled to effect special insurance to cover its maximum liability and the party giving the notice shall be deemed, by so doing, to have agreed and undertaken to pay the Company the amount of the premium payable by the Company for such insurance. If the Company does not so agree the limits referred to in clause 41.1 shall apply.

42. GENERAL AVERAGE

The Customer indemnifies and holds harmless the Company in respect of any claims of a general average nature which may be made against the Company and the Customer shall provide such security as may be required by the Company in this connection.

43. BREACH

43.1 If the Company breaches any of these trading terms and conditions or any agreement between it and the Customer and fails to remedy such breach within 30 days of the date of receipt of written notice requiring it to do so then the Customer shall be entitled to compel performance by the Company of the obligations it has defaulted in, but shall not be entitled to cancel these trading terms and conditions or any agreement between the Customer and the Company.

43.2 No provision in these trading terms and conditions shall derogate from the Company's common law rights in the event that the Customer breaches any term or condition of the agreement.

43.3 The Company shall be entitled to cancel any agreement between it and the Customer by written notice if –

43.3.1 The Customer commits any breach of its obligations under the agreement and fails to remedy that breach within 7 (seven) days of its being given written notice to do so;

43.3.2 The Customer commits any act of insolvency in terms of any applicable Insolvency Legislation;

43.3.3 The Customer is deemed to be unable to pay its debts in terms of any deeming provision of any applicable legislation relating to Companies or Insolvency;

43.3.4 The Customer compromises or attempts to compromise with its creditors ;

43.3.5 Any provisional or final order is granted for the sequestration, winding up, bankruptcy or judicial management, of the customer, or any equivalent order is made in terms of any applicable law with regard to the status of the Customer;

43.3.6 The Customer fails to satisfy any default or other judgement granted against it, within 10 (ten) days.

44. WARRANTIES AND REPRESENTATIONS BY THE COMPANY

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

45. DISPUTES

45.1 Should there be any dispute of any nature whatsoever between the parties in regard to any aspect, matter or thing relating to these trading terms and conditions and whether or not the Company has executed its obligations in terms of any agreement it has with the Customer, then and in such event the Customer shall nevertheless be obliged to perform its obligations in terms of any such agreement as though the Company had performed properly and to the Customer's satisfaction.

45.2 The Customer's remedy, having performed its obligations as provided in clause 45.1, shall be limited to an action against the Company for repayment of either the whole or portion of the amount which the Customer alleges, constitutes an overpayment.
45.3 Without affecting the generality of clauses 45.1 and 45.2 the Customer shall not be entitled to withhold payment of any amounts, by reason of any dispute with the Company, whether in relation to the Company's performance in terms of any agreement, or lack of performance or otherwise, after which payment the Customer's rights of action against the Company in terms of this clause can be enforced. Until such payment is made, any rights that the Customer may have, shall be deemed not yet to have arisen and it is only the payment to the Company which releases such rights and makes them available to the Customer in respect of any claim that he may have against the Company.

45.4 In any dispute between the Company and the Customer the Company shall be deemed to have performed its obligations in a proper and workmanlike manner and strictly in accordance with any agreement between it and the Customer, until such time as the Customer proves the contrary.

46. TIME FOR PERFORMANCE BY THE CUSTOMER

Time is of the essence for the performance by the Customer of all obligations owed to the Company in terms of any agreement with it governed by these terms and conditions.

47. SEVERABILITY

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

48. TIME BAR

48.1 No claim of any nature whatsoever and howsoever arising in respect of any loss or damage to goods, mis-delivery of goods, delay in the delivery of any goods or in respect of any other damages, loss or cause of action whatsoever (whether or not similar to, or in the nature of, the aforegoing), may be brought against the Company or (subject in any event to the provisions of clause 31) any of its Directors or Employees, unless it/they have received written notice of the claim from the Customer specifying full details of the claim, within 5 days of the end of any transit or of the cause of the claim coming to the Customers knowledge, or the date when such cause should reasonably have come to their knowledge (whichever shall, as applicable, be the sooner), nor may any such claim be brought after the expiry of a period of nine months calculated from the date of the cause of the claim coming to the Customers knowledge, or the date when such cause should reasonably have come to their knowledge, or the date of delivery of the goods or, in the event that goods have not been delivered, the date upon which the goods should have been delivered in the ordinary course of business (whichever shall, as applicable, be the sooner),

48.2 In addition to clause 48.1 hereof, it is recorded that the Company shall in any event be discharged from all liability whatsoever and howsoever arising in respect of any service provided to the Customer or which the Company has undertaken to provide, unless summons or other process initiating legal proceedings is issued and served on the Company

within nine months after the cause of action in respect of any such alleged liability arose and immediate notice is given in writing to the Company of such a suit having been brought.

49. INCOTERMS

Any INCOTERM which might be made applicable to any contract between the Company and the Customer or between the Company acting on behalf of the Customer and any third party, shall be interpreted in accordance with the published guidelines issued from time to time by the International Chamber of Commerce and particularly the Introduction to the official publication containing the latest INCOTERMS published and in force as at the time of the incorporation of INCOTERMS into such contract. In the event that any specific Incoterm as published, is in the view of the Company inappropriate for the transaction to be undertaken, or is unclear, then the Company shall, within its sole discretion, have the right to amend
or vary that term, or add rules or provisions for the interpretation thereof.

50. NOTICES

All notices in terms of these trading terms and conditions shall be given in writing and delivered by hand or sent by telefax. The Customer appoints as his/her/its domicilium citandi et executandi for all purposes under these standard terms and conditions its physical address and telefax number provided by the Customer to the Company on any letterhead, order or other document generated or completed by the Customer.

51. SPECIAL CONDITIONS RELATED TO ELECTRONIC DATA

51.1 Notwithstanding the provisions of any legislation or other law regulating electronic communications and transactions, the Company shall only be deemed to have received electronic data and/or messages when such electronic data and/or messages have been retrieved, processed and read by the addressee.

51.2 Under no circumstances whatsoever and howsoever arising (including negligence on the part of the Company or its employees) shall the Company be liable for any loss or damage arising from or consequent upon the provision by the Company to the Customer in whatever manner and/or form, of incorrect information, including electronically communicated information or data, where such incorrect information or data has been generated by and provided to the Company by any person with whom the Company conducts business, and/or any other third party.

51.3 The Company shall furthermore under no circumstances whatsoever be liable for any loss or damage arising from or consequent upon any failure and/or malfunction, for whatever reason, and regardless of negligence in whatever degree on the part of the Company, of the Company's computer systems and/or software programmes, provided and/or operated by the Company and/or by any person with whom the Company conducts business, and/or any third party, and which systems shall include the Company's electronic automated information service provided to its Customers.

Manica Group Namibia (Pty) Ltd
Reg No: 06/00306/07
10/2002

SECTION 2

STEVEDORING

1. DEFINITIONS

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 Cargo"	:	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"	:	Walvis Bay Stevedoring Company (Pty) Ltd, or any authorised sub-contractors
1.1.9	"Contractors Tariff"	:	The tariff issued by the Contractors in respect of the relevant port, as amended from time to time.
1.1.10	"Foreign Owner"	:	An owner which does not have its principal place of business in the Republic of Namibia

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.

Unless inconsistent with the context, an expression which denotes:

any gender includes the other genders;

a natural person includes an artificial person and vice versa;

the singular includes the plural and vice versa.

If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, not withstanding that it is only in the interpretation clause, effect shall be given to it as if it were a substantive provision of this agreement.

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

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.

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.

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.

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

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:

the ship's estimated date of arrival of the ship; and

a full description of the Cargo to be loaded or discharged; and

if the Cargo is to be loaded, then:

the estimated date of arrival of the Cargo at the Nominated Port; and

the location of the Cargo at the time when the Stevedore Operations will first be required;

the Stevedore Operations which the Stevedore will be required to carry out.

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

The Stevedore shall, in accordance with the Principals' reasonable instructions:

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.

perform the Stevedore Operations during the shift times applicable from time to time at the Nominated Port in question.

provide such equipment as may be necessary for the performance of the Stevedore Operations.

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.

The Principal acknowledges that:

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;

the choice of equipment used by the Stevedore as contemplated in clause 8.1.2 is entirely within the discretion of the Stevedore;

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;

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.

The Stevedore must:

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;

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

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.

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

The Stevedore shall not be liable for:

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

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.

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:

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

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.

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.

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.

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

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:

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;

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

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:

the amount referred to in clause 10; or

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.

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.

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

The Principal must:

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;

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;

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;

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

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.

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.

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.

PAYMENT (FOREIGN):

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.
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.
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.
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.

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.

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.

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.

22. 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.

23. 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.

24. BREACH

The Stevedore may immediately cease performing Stevedore Operations if:

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 aforegoing;

the Principal makes any arrangement or composition with its creditors generally or ceases or threatens to cease to carry on business;

the Principal commits a breach of any of the terms hereof;

the Principal fails to pay any amount owing to the Stevedore on due date.

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.

25. ARBITRATION

Any dispute between the parties in regard to:

the interpretation of;

the effect of;

the parties' respective rights and obligations under;

a breach of; or

any matter arising out of these Standard Terms and Conditions shall be decided by arbitration in the manner set out in this clause 25.

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

at Walvis Bay;

informally;

otherwise in accordance with the laws of the Republic of Namibia in so far as Arbitration is concerned;

it being the intention that if possible it shall be held and concluded within 25 business days after it has been demanded.

The arbitrator shall be if the question in issue is:

primarily an accounting matter an independent chartered accountant of not less than 10 (TEN) years standing agreed upon between the parties;

primarily a legal matter, a practicing advocate or attorney of not less than 10 (TEN) years standing agreed upon between the parties;

any other matter an independent person agreed upon between the parties.

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.

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

shall be binding on them;

shall be carried into effect;

may be made an order of any Court of competent jurisdiction.

26. 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.

27. NOTICES ADDRESS AND DOMICILIUM

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.

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

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

on the same day, if delivered by hand;

on the tenth day after posting, if sent by prepaid registered mail.

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.

28. GENERAL

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

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

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.

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.

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.

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.

This agreement shall be interpreted and implemented in accordance with the law of the Republic of Namibia.

Manica Group Namibia
Reg No 06/00306/07

SECTION 3

SHIPS AGENCY

1. DEFINITIONS

For the purpose of these conditions –

"Agent" shall mean Ocean Liner Services, a division of Manica Group Namibia (Pty) Ltd / MACS or any other Manica Ships Agency.

"Agency Services" shall mean such services as may from time to time be provided by the Agent in the course of its business including services rendered in its capacity as a Liner Agent, Port Agent, Charterers Agent, Cargo Agent or otherwise including any landside services as may be rendered on behalf of a Principal and further including services required by a Principal in respect of a Vessel owned, operated, managed or chartered by a Principal and, in particular but without limiting the generality of such services, to –

Arrange berths for a Vessel;

Provide for the entry and clearance of a Vessel;

Provide for the payment of port charges and any dues payable in respect of a Vessel;

Arrange for the supply of fuel, water, provisions and deck and engine room stores;

Arrange for any repairs required to be done to a Vessel;

Take charge of and arrange solicitation of and booking of cargo and mail for a Vessel;

Issue bills of lading and other similar documents to shippers in the form prescribed by the Principal;

Arrange for stevedoring and other cargo handling operations;

Arrange for the delivery of cargo in accordance with the bills of lading issued by or on behalf of a Principal;

Take charge of and arrange solicitation of passengers for a Vessel;

Arrange the embarkation and disembarkation of passengers and their baggage;

Issue passenger tickets;

Attend to all matters appertaining to the crew of a Vessel, including in particular, engaging, the signing on, signing off and repatriation of crew;

Perform such other activities and duties in connection with the aforegoing functions as may be requisite thereto;

Attend to the vessels cargo load and / or discharge operations in accordance with principals instructions and in conjunction with policies of the port authorities and terminals.

"Principal" shall mean a shipowner, an operator, a manager, exporter, importer, cargo owner, a managing agent or a charterer of a Vessel or any other person who has appointed an Agent to provide Agency Services in Southern Africa.

"Supplier" shall mean any person with whom an Agent transacts any business on behalf of a Principal and shall include ships chandlers, vendors of all types of goods, repairers, road, rail, air or sea transporters, suppliers of services of whatever nature, other ships agents or brokers, importers and exporters, stevedores and port and other authorities in Southern Africa.

"Vessel" shall mean a ship, owned, operated, managed or chartered by a Principal.

2. SCOPE OF AGENT'S AUTHORITY

2.1 An Agent shall provide such Agency Services as are required by a Principal and in the absence of any specific instructions from a Principal an Agent shall provide such Agency Services as the Agent in his discretion deems necessary and expedient in the interests of the Principal. The Agency Services provided at the Agent's discretion as aforesaid and the terms and conditions upon which they are provided shall be deemed to have been specifically authorised and approved by the Principal.

2.2. An Agent shall be entitled to engage the services of a Supplier to perform all or any of the services as may be required by the Agent on behalf of its Principal and any such Supplier shall be deemed to be an independent contractor employed by the Principal and not a servant of the Agent and the Agent shall not incur any liability or obligation arising from or connected to any contact entered into with any such supplier on behalf of the Principal.

3. REMUNERATION OF AGENT

3.1 A Principal shall be liable for and shall pay to the Agent all costs and expenses incurred by an Agent, including the charges referred to in 3.2. in providing Agency Services at the request or on the instructions of the Principal himself, the Master of the Vessel, the office of the Principal or his nominees, representatives or agents, howsoever communicated to the Agent and notwithstanding the fact that any such persons may have exceeded their authority in requesting or instructing the provision of the particular Agency Services.

3.2 A Principal shall pay to an Agent for the Agency Services rendered by the Agent the charges agreed or, in the event of there being no agreement as to charge or in the event of a particular service not being provided for in the scale of agreed charges, the Principal shall pay the Agent a reasonable charge for the services in respect of which no charge has been agreed and for the purposes hereof and in the absence of any agreement to the contrary the charges set out in the Associations scale of recommended charges shall be deemed to be reasonable and customary charges.

3.3 A Principal shall reimburse an Agent for all the costs and expenses incurred by the Agent arising out of the receipt of currency from a Principal or the remittance of currency to or on behalf of the Principal.

3.4 An Agent shall not be obliged to make any disbursement whatsoever on behalf of a Principal until such time as the Agent shall have been paid all amounts due by the Principal to the Agent for Agency Services provided by the Agent and have received sufficient funds for the purpose of making the particular disbursement. An Agent may either before, during or after providing the relevant Agency Services require a Principal to furnish security for the payment of such amounts as are or will become due to the Agent by the Principal for providing the Agency Services and for the due reimbursement of disbursements made or to be made by the Agent. Not withstanding anything to the contrary herein contained, all disbursements made by the Agent on behalf of a Principal shall be immediately due and repayable by the Principal to the Agent.

3.5 Information furnished to a Principal by an Agent as to the costs and expenses of providing Agency Services in the Republic of South Africa or any matter relating thereto, whether in the form of an estimate, offer, quotation or tender, shall be deemed to be information furnished for the guidance of the Principal only and shall not be binding on the Agent unless the contrary has been expressly stated in such estimate, offer, quotation or tender.

3.6 In the event of an Agent providing Agency Services at the request of both an owner and the charterer of a Vessel, the owner and charterer shall respectively be obliged to remunerate the Agent on the basis set out in clause 3.2.

3.7 In the case of any charter party providing that the Agent nominated by the charterer shall be the Vessel's Agent, the charterer and owner of the Vessel shall be jointly and severally liable to the Agent for the payment of the Agent's charges and any costs and expenses incurred by the Agent on their behalf, as if each of them were a Principal under these conditions.

4. GUARANTEES BY AGENT

4.1 A Principal shall under no circumstances require an Agent to furnish a guarantee or to provide security for the performance of any obligations by the Principal or the Agent on behalf of the Principal. In the event of an Agent, by reason of legislation or the requirement of a competent authority, being obliged to guarantee the obligations of a Principal or secure the fulfilment of the Agent's obligations on behalf of the Principal, the Principal shall prior to the furnishing of such guarantee or security by the Agent indemnify the Agent as is provided for in Clause 6 and in addition pay to the Agent the applicable commission calculated on the maximum amount of any loss the Agent may sustain were any such guarantee or security to be acted upon.

5. LIABILITY OF AGENT TO PRINCIPAL

5.1. An Agent shall not be liable for any loss or damage unless such loss or damage is directly attributable to the wilful default or gross negligence of the Agent arising from or connected to the services rendered by the Agent in terms hereof.

5.2. Notwithstanding anything to the contrary contained herein the Agent shall not be liable for any indirect and/or consequential loss arising from any act or omission by the Agent, its agents, servants or nominees, whether negligent, intentional or otherwise

5.3. The Agent shall be discharged from all liability whatsoever and howsoever arising in respect of or connected with any service rendered to the Principal or which the Agent has undertaken to provide unless summons or other process initiating legal proceedings is issued and served on the Agent within nine months of the date upon which the incident giving rise to any such liability occurred or upon which the Agency services were or should have been rendered whichever is the earlier and immediate notice is given to the Agent in writing of such legal proceedings having been brought.

5.4. In the event that notwithstanding the terms and conditions herein contained the Agent is liable to the Principal for any loss or damage, such liability shall not exceed and shall be limited to a maximum of R20000,00.

5.5. An Agent shall under no circumstances be liable for damage or to loss of goods delivered to him for forwarding or clearing or for safekeeping.

5.6. An Agent shall not be liable for the default or negligent act howsoever arising whether wilful or otherwise on the part of any Supplier providing goods or services to a Principal at the Agent's instance and request, such Supplier being deemed to be an independent contractor employed by the Principal.

5.7. An Agent shall not be responsible for any money paid or remitted by him on behalf of a Principal to any person pursuant to any request or instruction given the Agent by a Principal.

5.8. An Agent shall not be liable for any loss or damage of whatsoever nature sustained by a Principal directly or indirectly attributable to war, danger of war, riots, labour strikes, slowdown strikes, lock outs, boycotts, sabotage, overburdening of any port, any circumstance beyond the control of the Agent and the like, which may affect or interrupt the regular and normal conduct of trade. In the event of the Agent being precluded from providing Agency Services due to any such circumstances beyond his control or to any other circumstances constituting force majeure the Agent shall nevertheless be entitled to be reimbursed by the Principal for costs and expenses incurred by him in taking all such steps as may be necessary to protect the interests of the Principal, in particular shed hire and / or storage charges paid by the Agent at the applicable tariff rates.

6. INDEMNITIES BY PRINCIPAL

6.1. The Principal indemnifies and holds the Agent harmless against any loss or damage the Agent may sustain by reason of –

6.1.1. claims by Suppliers for the cost and expenses of goods or services provided to the Principal at the Agent's special instance and request;

6.1.2. payment of any taxation which may be levied on passenger earnings or freight earned on cargo loaded in the absence of reciprocal Intergovernmental taxation agreements;

6.1.3. any claims arising out of guarantee furnished by the Agent pursuant to the provisions of Clause 4.

6.2. The Principal undertakes to place the Agent in sufficient funds or to furnish the Agent with security to the satisfaction of the Agent to ensure the due fulfilment by the Principal of his obligations under the aforesaid indemnity, either prior to the commencement of, during or after the performance of the aforesaid Agency Services, as may be required by the Agent.

7. AGENT'S LIEN

7.1. All goods or currency received by an Agent from or on behalf of a Principal shall be held by an Agent, subject to a general lien and right of retention, for money due to the Agent by the Principal for any reason whatsoever and should the general lien be not satisfied within a reasonable time from the day when the goods or currency are first received or should the contract of agency between the Principal and Agent be terminated without the Agent having been paid all amounts owing to him by the Principal –

7.1.1. the goods may be sold by auction or otherwise and the proceeds of the sale applied to the satisfaction of the lien and expenses incurred by and about the sale; and

7.1.2. the Agent shall be entitled to set off and to deduct from the proceeds of such sale and/or the currency held by him as aforesaid any amount owing to him by the Principal.

8. TERMINATION OF AGENCY

8.1. Without prejudice to any other remedies a Principal or an Agent may have against each other, either party shall have the right at any time by giving notice in writing or by means of a telex message or facsimile to the other to terminate the contract of agency between the Principal and the Agent forthwith in any of the following events –

8.1.1. if either party commits a breach of any of the terms of these conditions or of the appointment by a Principal of an Agent;

8.1.2. if for any material reason an Agent is precluded from performing the Agency Services;

8.1.3. should a Principal or an Agent enter into liquidation whether compulsory or voluntary (otherwise than for the purpose of amalgamation or reconstruction) or compound with his creditors or take or suffer any similar action in consequence of debt.

8.2. Either Party may terminate a contract pursuant to which agency services are rendered to a Principal on not less than 14 days written notice of termination to the other.

9. DOMICILIUM

9.1. The Principal shall when appointing an Agent as his Agent give written notice to the Agent of the Principal's domicilium citandi et executandi in the Republic of South Africa. In the absence of such notice the Principal hereby chooses the Vessel as his domicilium citandi et executandi.

10. ARBITRATION

10.1. All disputes of whatsoever nature which shall at any time arise between the Agent and a Principal or an Agent and

a Supplier concerning any matter or thing governed by these conditions or their construction or effect or as to the rights, duties or their liabilities of an Agent, a Principal, or a Supplier under these conditions shall at the election of the Agent be referred to arbitration. Should the Agent decide that the dispute be referred to arbitration such dispute shall be referred to a single arbitrator to be agreed upon by the parties to the dispute or, failing such agreement, to be nominated by the president for the time being of The Maritime Law Association of South Africa in accordance with and subject to the provisions of the Arbitration Act, 1965, or any statutory modification or re-enactment thereof for the time being in force.

11. APPLICABLE LAW

11.1. Any question regarding the efficacy or interpretation of these conditions or any part thereof shall be determined in South Africa at the port or in the city in which or nearest to the place where the circumstances giving rise to the dispute occurred, in accordance with the laws in force in South Africa.

12. HEADINGS

12.1. The above headings are for the ease of reference only and have no bearing on the interpretation or meaning of the Clauses themselves.