



KENYA INTERNATIONAL FREIGHT & WAREHOUSING ASSOCIATION

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DATE: 27th Sept 2005

TRADING CONDITIONS

The Customer's attention is drawn to the Clauses hereof which exclude or limit the Company's liability and those which require the Customer to indemnify the Company in certain circumstances.

1. Definitions and application

In these Conditions:-

“Company” Is the {KIFWA} Member trading under these Conditions

“Person” Includes persons or any Body or Bodies Corporate.

“The Owner” Means the Owner of the goods (including any packaging, containers or equipment) to which any business concluded under these Conditions relates and any other person who is or may become interested in them.

“Customer” Means any person at whose request or on whose behalf the Company undertakes any business or provides advice, information or services.

2(A) Subject to Sub-Paragraph (B) below, all and any activities of the Company in the course of business whether gratuitous or not are undertaken subject to these Conditions.

(B) If any legislation is compulsorily applicable to any business undertaken, these Conditions shall, as regards such business, be read as subject to such legislation and nothing in these Conditions shall be construed as a surrender by the Company of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation and if any part of these Conditions be repugnant to such legislation to any extent such part shall as regards such business be overridden to that extent and no further.

3(A) The Customer warrants that he is either the Owner or the authorised Agent of the Owner and also that he is accepting these Conditions not only for himself but also as Agent for and on behalf of the Owner.

(B) 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 and



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Consignee accept these Conditions for themselves and their Agents and for any parties on whose behalf they or their Agents may act, and in particular, but without prejudice to the generality of this Clause, they accept that the Company shall have the right to enforce against them jointly and severally any liability of the Customer under these Conditions or to recover from them any sums to be paid by the Customers which upon proper demand have not been paid.

THE COMPANY

- 4(A) Subject to Clauses 13 and 14 below, the Company shall be entitled to procure any or all of its services as an Agent or to provide those services as a Principal.
- (B) The Company shall on demand by the Customer provide evidence of any Contract entered into as Agent for the Customer. Insofar as the Company may be in default of this obligation, it shall be deemed to have contracted with the Customer as a Principal for the performance of the Customer's instructions.
5. When the Company contracts as a Principal for any services, it shall have full liberty
- (a) to perform such services itself or to subcontract the whole or any part of such services to third parties (including the Company's own parent, subsidiary, or associated companies).
 - (b) The offer and acceptance of an inclusive price for the accomplishment of any service or services shall not itself determine whether any such service is or services are to be arranged by the Company acting as Agent or to be provided by the Company acting as Agent or as a Contracting Principal.
 - (c) When acting as an Agent, the Company does not make or purport to make any Contract with the Customer for the carriage, storage, packing or handling of any goods nor for any other physical service in relation to them and acts solely on behalf of the Customer in securing services by establishing Contracts with Third Parties so that direct contractual relationships are established between the Customer and such Third Parties.
- 6) When and to the extent that the Company has contracted as Principal for the performance of any of its services, it undertakes to perform and/or in its own name to procure the performance of those services, and subject always to the totality of these conditions and in particular to Clause 28-29 hereof accepts liability for loss of or damage to goods taken into its charge occurring between the time when it takes the goods into its charge and the time when the Company is entitled to call upon the Customer, Consignee or Owner to take delivery of the goods.

When and to the extent that the Company in accordance with these conditions is acting as an Agent on behalf of the Customer, the Company shall be entitled and the Customer hereby expressly authorises the Company to enter into Contracts on behalf of the customer:-

- a) for the carriage of goods by any route or means or persons,
- b) for the storage, packing, trans-shipment, loading, unloading or handling of the goods by any person at any place and for any length of time;
- c) for the carriage or storage of goods in or on transport units as defined in Clause 21 and with other goods of whatever nature, and



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- d) to do such acts as may in the opinion of the Company be reasonably necessary in the performance of its obligations in the interests of the Customer.
7. When the Company acts as an Agent on behalf of the Customer, the Company shall be entitled (and the Customer hereby expressly authorizes the Company) to enter into all such Contracts on behalf of the Customer as may be necessary or desirable to fulfill the Customer's instructions and subject to the trading conditions of the parties with whom such contracts are made.
8. The Company reserves to itself a reasonable liberty as to the means, route and procedure to be followed in the handling, storage and transportation of goods.
9. The Company shall be entitled to perform any of its obligations herein by itself or by its parent, subsidiary or associated Companies. In the absence of agreement to the contrary any contract to which these Conditions apply is made by the Company on its own behalf and also as Agent for and on behalf of any such parent, subsidiary or associated Company, and any such Company shall be entitled to the benefit of these Conditions.
- 10(A) Subject to Sub-Clause (B) hereof, the Company shall have a general lien on all goods and documents relating to goods in its possession, custody or control for all sums due at any time from the Customer or Owner, and shall be entitled to sell or dispose of such goods or documents as Agent for and at the expense of the Customer and apply the proceeds in or towards the payment of such sums on 30 days notice in writing to the Customer. Upon accounting to the Customer for any balance remaining after payment of any sum due to the Company and the costs of sale or disposal the Company shall be discharged of any liability whatsoever in respect of the goods or documents.
- (B) When the goods are liable to perish or deteriorate, the Company's right to sell or dispose of the goods shall arise immediately upon any sum becoming due to the Company subject only to the Company taking reasonable steps to bring to the Customer's attention its intention of selling or disposing of the goods before doing so.
11. The Company shall be entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by or paid to Freight Forwarders.
- 12(A) If delivery of the goods or any part thereof is not taken by the Customer, Consignee or Owner, at the time and place when and where the Company is entitled to call upon such person to take delivery thereof, the company shall be entitled to store goods or any part thereof at the sole risk of the Customer, whereupon the liability of the Company in respect of the goods or that part thereof stored as aforesaid shall wholly cease and the cost of such storage if paid for or payable by the Company or any Agent or Sub-Contractor of the Company shall forthwith upon demand be paid by the Customer to the Company.
- (B) The Company shall be entitled at the expense of the Customer to dispose of (by sale or otherwise as may be reasonable in all the circumstances):-
- (i) On 30 days notice in writing to the Customer, or (where the Customer cannot be traced and reasonable efforts have been made to contact any parties who may reasonably be supposed by the Company to have any interest in the goods) without notice, any goods



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which have been held by the Company for 90 days and which cannot be delivered as instructed; and

- (ii) without prior notice, goods which have perished, deteriorated or altered or are in immediate prospect of doing so in a manner which has caused or may reasonably be expected to cause loss or damage to the Company of Third Parties or to contravene any applicable laws or regulations.

13(A) No Insurance will be effected except upon express instructions given in writing by the Customer and all Insurance effected by the Company are subject to the usual exceptions and conditions of the Policies of the Insurance Company or Underwriters taking the risk. Unless otherwise agreed in writing the Company shall not be under any obligation to effect a separate Insurance on each consignment but may declare it on any open or general Policy held by the Company.

(B) Insofar as the Company agrees to effect Insurance, the Company acts solely as Agent for the Customer. The limits of liability under Clause 29 (A)(ii) of these Conditions shall not apply to the Company's obligations under Clauses 13 (A) and (B).

14(A) Except under special arrangements previously made in writing or under the terms of a printed document signed by the Company, any instructions relating to the delivery or release of goods in specified circumstances only, such as (but without prejudice to the generality of this Clause) against payment or against surrender of a particular document, are accepted by the Company where the Company has to engage third parties to effect compliance with the instructions, only as Agents for the Customer.

(B) The Company shall not be under any liability in respect of such arrangements as are referred to under Sub-Clause (A) hereof save where such arrangements are made in writing.

(C) In any event, the Company's liability in respect of the performance or arranging the performance of such instructions shall not exceed the limits set out in Clause 29(A) (ii) of these Conditions.

15. Advice and information, in whatever form it may be given, is provided by the Company for the Customer only and the Customer shall indemnify the Company against any liability, claims loss damage, costs or expenses arising out of any other persons relying upon such advice of information. Except under special arrangements previously made in writing, advice and instructions accepted by the Company is provided gratuitously and without liability.

16(A) Except under special arrangement previously made in writing the Company will not accept or deal with bullion, coin, precious stones, jewellery, valuables, antiques, pictures, human remains, livestock, pets or plants. Should any Customer nevertheless deliver any 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 be under no liability whatsoever for or in connection with such goods howsoever arising.



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- (B) The Company may at any time waive its rights and exemptions from liability under Sub-Clause (A) above in respect of any one or more of the categories of goods mentioned herein or of any part of any category. If such waiver is not in writing the onus of proving such waiver shall be on the Customer.
17. Except following instructions previously received in writing and accepted by the Company, the Company will not accept or deal with goods of a dangerous or damaging nature, nor with goods likely to harbour or encourage vermin or other pests, nor with goods liable to taint or affect other goods. If such goods are accepted pursuant to a special arrangement and then in the opinion of the Company they constitute a risk to other goods, property, life or health, the Company shall where reasonably practicable contact the Customer, but reserves the right at the expense of the Customer to remove or otherwise deal with the goods.
18. Where there is a choice of rates according to the extent or degree of the liability assumed by carriers, warehousemen or others, no declaration of value where optional will be made except under special arrangements previously made in writing.

THE CUSTOMER

19. The Customer warrants:
- (A) that the description and particulars of any goods furnished by or on behalf of the Customer are full and accurate.
- (B) that all goods have been properly and sufficiently prepared, packed, stowed, labeled and/or marked, and that the preparation, packing, stowage, labeling and marking are appropriate to any operations or transactions affecting the goods and the characteristics of the goods.
- (C) that where the Company receives the goods from the Customer already stowed in or on a container, trailer, tanker, or any other device specifically constructed for the carriage of goods by land, sea or air (each hereafter individually referred to as “the transport unit”), the transport unit is in good condition, and is suitable for the carriage to the intended destination of the goods loaded therein or thereon.
20. Should the Customer otherwise than under special arrangements previously made in writing as set out in Clause 15 above deliver to the Company or cause the Company to deal with or handle goods of a dangerous or damaging nature, or goods likely to harbour or encourage vermin or other pests or goods liable to taint or affect other goods, he shall be liable for all loss or damage arising in connection with such goods and shall indemnify the Company against all penalties, claims, damages, costs and expenses whatsoever arising in connection therewith, and the goods may be dealt with in such manner as the Company or any other person in whose custody they may be at any relevant time shall think fit.
21. 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 them any liability in connection with any services which are the subject of these Conditions and if any such



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claim should nevertheless be made, to indemnify the Company against all consequences thereof.

22. The Customer shall save harmless and keep the Company indemnified from and against:-
- (A) All liability, loss, damage, costs and expenses whatsoever (including without prejudice to the generality of the foregoing, all duties, taxes, imposts, levies, deposits and outlays of whatsoever nature levied by any authority in relation to the goods) arising out of the Company acting in accordance with the Customer's instructions or arising from any breach by the Customer of any Warranty contained in these Conditions or from the negligence of the Customer, and
 - (B) Without derogation from Sub-Clause (A) above, any liability assumed or incurred by the Company when by reason of carrying out the Customer's instructions the Company has reasonably become liable or may become liable to any other party, and
 - (C) All claims, costs and demands whatsoever and by whomsoever made or preferred in excess of the liability of the Company under the terms of these Conditions regardless whether such claims, costs and demands arise from or in connection with the negligence or breach of duty of the Company, its Servants, Sub-Contractors or Agents, and
 - (D) Any claims of a General Average nature, which may be made on the Company.
- 23(A) The Customer shall pay to the Company in cash or as otherwise agreed all sums immediately when due without reduction or deferment on account of any claim, counterclaim or set-off.
- (B) In respect of all sums, which are overdue, the Customer shall be liable to pay to the Company interest calculated at 8% above the prevailing Base Rate of the commercial clearing banks.
24. Despite acceptance by the Company of instructions to collect freight, duties, charges or other expenses from the Consignee or any other person the Customer shall remain responsible for such freight, duties, charges or expenses on receipt of evidence of proper demand and in the absence of evidence of payment (for whatever reason) by such Consignee or other person when due.
25. Where liability for General Average arises in connection with the goods, the Customer shall promptly provide security to the Company or to any other party designated by the Company in a form acceptable to the Company.
26. The Company shall perform its duties with a reasonable degree of care, diligence, skill and judgment.
27. The Company shall be relieved of liability for any loss or damage if and to the extent that such loss or damage is caused by:-
- (A) strike, lockout, stoppage or restraint of labour, the consequences of which the Company is unable to avoid by the exercise of reasonable diligence;



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- (B) any cause or event which the Company is unable to avoid and the consequences whereof the Company is unable to prevent by the exercise of reasonable diligence.
28. Except under special arrangements previously made in writing the Company accepts no responsibility for departure or arrival dates of goods.
- 29(A) Subject to clause 2(B) and 13(B) above and sub-clause (D) below the Company's liability howsoever arising and notwithstanding that the cause of loss or damage be unexplained shall not exceed:-
- (i) In the case of claims for loss or damage to goods:
- (a) the value of any goods lost or damaged,
- (b) a sum at the rate of two Special Drawing Rights as defined by the International Monetary Fund (hereinafter referred to as SDR's), per kilo of the gross weight of any goods lost or damaged whichever shall be the least.
- (ii) in the case of all other claims:
- a) the value of the goods the subject of the relevant transaction between the Company and its Customer, or
- b) a sum at the rate of two SDR'S per kilo of the gross weight of the goods the subject of the said transaction, or
- c) 75,000 SDR's in respect of any one transaction whichever shall be the least.
- For the purposes of Clause 29(A) the value of the goods shall be their value when they were or should have been shipped. The value of SDR's shall be calculated as at the date when the claim is received by the Company in writing.
- (B) Subject to Clause 2(B) above, and Sub-Clause (D) below, the Company's liability for loss or damage as a result of failure to deliver or arrange delivery of goods in a reasonable time or (where there is a special arrangement under Clause 28) to adhere to agreed departure or arrival dates shall not in any circumstances whatever exceed a sum equal to twice the amount of the Company's charges in respect of the relevant transaction.
- (C) Save in respect of such loss or damage as is referred to at Sub-Clause (B) and subject to Clause 2(B) above and Sub-Clause (D) below, the Company shall not in any circumstances whatsoever be liable for indirect or consequential loss such as (but not limited to) loss of profit, loss of market or the consequences of delay or deviation however caused.
- (D) By special arrangement agreed in writing, the Company may accept liability in excess of the limits set out in Sub-Clauses (A) to (C) above upon the Customer agreeing to pay the Company additional charges for accepting such increased liability. Details of the Company's additional charges will be provided upon request.
- 30(A) Any claim by the Customer against the Company arising in respect of any service provided for the Customer or which the Company has undertaken to provide shall be



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made in writing and notified to the Company within 14 days of the date upon which the Customer became or should have become aware of any event or occurrence alleged to give rise to such claim and any claim not made and notified as aforesaid shall be deemed to be waived and absolutely barred except where the Customer can show that it was impossible for him to comply with this Time limit and that he has made the claim as soon as it was reasonably possible for him to do so.

- (B) Notwithstanding the provisions of Sub-Paragraph (A) above the Company shall in any event be discharged of all liability whatsoever howsoever arising in respect of any service provided for the Customer or which the Company has undertaken to provide unless suit be brought and written notice thereof given to Company within nine months from the date of the event or occurrence alleged to give rise to a cause of action against the Company.

JURISDICTION AND LAW

31. These Conditions and any act or contract to which they apply shall be governed by Kenyan Law and any dispute arising out of any act or contract to which these Conditions apply shall be subject to the exclusive jurisdiction of the Kenyan Courts.



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