

**AGREEMENT
TERMS AND CONDITIONS OF ACCOUNT**

1 PARTIES

- 1.1 Melanie Griffin Industries CC CK1999/068236/23 trading as MGI Transport and Logistics hereinafter referred to as "the Creditor";
- 1.2 _____ hereinafter referred to as "the Account Holder";

2 SCOPE OF AGREEMENT

- 2.1 The terms and conditions of this Agreement together with addendums hereto shall govern the relationship between the "Creditor" and the "Account Holder" in each and every Contract between them, including Contracts entered into subsequent to the Contract formed by the "Account Holders" acceptance of the "Creditors" quotation and whether or not the "Account Holders" attention has been specifically drawn to these conditions as being applicable to such Contract;
- 2.2 Any additional terms and conditions contained on different "Creditors" invoices, P.O.Ds or other documentation shall, in so far as they are not in conflict with the terms and conditions contained herein, constitute specific terms and conditions as agreed between the "Creditor and the "Account Holder". In the event of any further terms and conditions appearing on the "Creditors" documentation being in conflict with the terms and conditions contained herein, then the terms and conditions contained herein shall prevail;
- 2.3 No warranty or representation other than those herein expressly contained shall be of any force and effect against the "Creditor" unless same is reduced to writing and signed for by a member of the "Creditor";
- 2.4 No amendment, variation or cancellation of any Contract shall be of any force and affect unless such amendment, variation or cancellation is reduced to writing and signed by the "Creditor". No amendment, variation or cancellation of any individual Contract between the "Creditor and the "Account Holder" shall constitute a variation, novation of a Contract or a waiver or estoppel of the "Creditors" rights hereunder unless same is reduced to writing and signed by a member of the "Creditor".

3 RELATIONSHIP BETWEEN THE "CREDITOR" AND THE "ACCOUNT HOLDER"

- 3.1 Notwithstanding anything herein contained to the contrary, the "Creditor" herein contracts with the "Account Holder" in its capacity as agent and nothing herein contained is to be construed as the "Creditor" acting as Principal with the "Account Holder";

- 3.2 Notwithstanding anything to the contrary contained herein, the "Creditor" shall not accept liability for loss or damage to the "Account Holders" goods otherwise than subject to the provisions set out further hereunder.

4 **CONDITIONS**

The "Creditor" shall only be obliged to perform the terms hereof provided:-

- 4.1 The "Creditor" has in its sole opinion received sufficient notice of the "Account Holders" requirements;
- 4.2 The "Account Holder" shall provide to the "Creditor" the following minimum information on the "Account Holders" official documentation and or authority:-
- 4.2.1 The "Account Holders" official order number or authorisation;
 - 4.2.2 Description of goods, quantity and mass;
 - 4.2.3 Relevant release numbers or CTO's for containers or goods;
 - 4.2.4 Address and time where the goods are to be collected;
 - 4.2.5 The address where goods are to be delivered to;
 - 4.2.6 Value of goods;
 - 4.2.7 Freight quoted or rates as agreed between the parties;
- 4.3 In the event that consent or statutory permits are required proof that such consents or statutory permits have been granted and are in force for the duration of the Contract. In the event that any consents or permits required has been refused or withdrawn for any reason the Contract shall be cancelled, no liability shall accrue to the "Creditor" and wasted costs incurred as a result thereof shall be for the account of the "Account Holder"

5 **CREDIT TERMS AND PAYMENT**

- 5.1 Subject to the "Account Holder" signing this Agreement in full the "Creditor" will open an account in the name of the "Account Holder" at its sole and absolute discretion;
- 5.2 The credit available to the "Account Holder" shall be the amount as determined from time to time by the "Creditor" in its sole and absolute discretion;
- 5.3 The "Account Holder" shall pay the "Creditor" in full, free of any commission, brokerage, exchange or deduction of set-off within 30 (THIRTY) days from the date of the "Creditors" statement. The "Account

Holder" hereby agrees to pay the "Creditor" interest at a rate of 2% per month on all amounts unpaid and outstanding on due date;

- 5.4 The "Account Holder" shall pay the "Creditor" the full amount stated on the "Creditors" invoice on due date without any deduction or set-off. Notwithstanding anything contained herein the "Account Holder" shall not be entitled to deduct or set-off any monies which it owes the "Creditor" against any monies it contends are due to it by the "Creditor" and/or the Principal arising from any cause whatsoever;
- 5.5 The "Account Holder" shall make payment to the "Creditor" by way of Electronic Funds Transfer or Cheque Deposit. The "Creditor" will not accept cash payments or deposits and in the event of an "Account Holder" paying by way of cash or direct deposit all costs incidental thereto including but not limited to any bank charges incurred as a result thereof shall be for the "Account Holder".
- 5.6 The "Creditor" reserves the right to cancel any Agreement or Contract in respect of which payments have fallen in arrear and in the event of the "Creditor" exercising his rights, all amounts owing by the "Account Holder" shall immediately become due and payable;
- 5.7 The "Account Holder" shall not be entitled to withhold payment to the "Creditor" against receipt of "original" documents in respect of any Contract concluded with the "Creditor" and the "Creditor" hereby reserves the right to communicate per telefax all documents pertaining to any Contract and proof of transmission of such documents shall constitute sufficient proof to render the "Account Holder" liable to the "Creditor".

6 **LOADING AND OFF-LOADING**

- 6.1 The "Account Holder" shall be responsible to deliver the goods onto the vehicle nominated by the "Creditor" and shall take delivery of the goods therefrom. Notwithstanding anything contained herein to the contrary, the "Account Holder" shall be fully responsible for loading and off-loading of all goods;
- 6.2 The "Creditor's" employees may assist with loading and off-loading of goods where such assistance is practical, all such assistance rendered by the employee of the "Creditor" shall be at the sole risk of the "Account Holder" and no liability or any loss or damage arising therefrom shall accrue to the "Creditor";
- 6.3 The "Account Holder" shall be responsible to procure the provision of safe adequate labour and equipment for loading and off-loading together with safe convenient and adequate loading and off-loading points together with suitable access to and from such loading / off-loading points;

- 6.4 The "Account Holder" shall be responsible for ensuring that loading and off-loading will be possible at the agreed loading / off-loading points at the relevant time that the parties have agreed;
- 6.5 In the event of any goods requiring special appliances for the purposes of loading or off-loading, the "Account Holder" shall be responsible for ensuring that such appliances are available at the relevant loading or off-loading points.
- 6.6 Unless agreed between the "Account Holder" and the "Creditor" the maximum time allowed for the "Account Holder" to load or off-load the vehicle will be 3 (THREE) hours. In the event of loading or off-loading exceeding such time the "Account Holder" shall be responsible to the "Creditor" for the standing time rate for the vehicle as determined by the "Creditor" from time to time. The loading and off-loading time will be deemed to have commenced at the time that the vehicle arrives at the loading or off-loading point;
- 6.7 The "Account Holder" shall be responsible for ensuring that the goods loaded are in fact the goods contracted to be loaded or off-loaded and that correct loading and off-loading and delivery instructions are given to the "Creditors" driver.

7 FAILURE OF ACCOUNT HOLDER TO TAKE DELIVERY OR CANCELTION OF REQUEST FOR TRANSPORT

- 7.1 Should the "Account Holder" fail, neglect, be unable or refuse to take delivery of the whole or any part of a load at the agreed off-loading point or time, or, through no fault of the "Creditor" it be impossible or impractical to off-load the goods within 3 (THREE) hours of arrival at such off-loading point and the "Account Holder" not provide the "Creditor" an acceptable alternative delivery instruction, the "Creditor" shall be entitled to store or abandon the goods at its discretion. In such event the "Account Holder" shall be liable to pay any additional charges incurred as a result thereof and shall have no claim whatsoever against the "Creditor" for any act or omission arising from such incident;
- 7.2 The "Account Holder" shall be entitled to cancel an order for a vehicle by way of written notice to the "Creditor" to be received by the "Creditor" not less than the 24 (TWENTY FOUR) hours prior to the scheduled time or arrival of the "Creditor's" vehicle at the agreed loading point. In the event that the "Account Holder" fails to give notice of such cancellation in the manner provided for herein the "Account Holder" shall be liable to pay the "Creditors" usual, alternative, reasonable charges up to a maximum period of 24 (TWENTY FOUR) hours.

8 LIABILITY

- 8.1 The goods shall be carried at the sole risk of the "Account Holder" and the "Account Holder" exempts the "Creditor" from and against all liability

whatsoever, and indemnifies the "Creditor", its members, officers, employees, agents and sub-contractors against all liability whatsoever to any person, arising directly or indirectly from the carriage of such goods. This exemption and indemnity includes but is not restricted to any liability for the loss of the goods or the failure to collect or deliver the goods timeously, adequately or at all or for consequential loss, whether any such loss or damage is caused by or arises from breach of Contract or breach of any legal duties or from negligence of any degree or from any lawful act;

- 8.2 Notwithstanding the provisions contained in clause 8.1 above the "Creditor" shall not be liable for any loss or damage caused unless the "Account Holder" can establish that such loss or damage was caused by the gross negligence of the "Creditor";
- 8.3 In respect of any claim arising from any cause whatsoever the "Account Holder" shall be liable for the first R5,000.00 (FIVE THOUSAND RAND) in respect thereof;
- 8.4 In any event of loss to the "Account Holder" such loss shall be determined according to the cost price of the "Account Holder" and the "Creditor" shall have the right to replace or repair any article lost or damaged for which it might be liable. Any compensation for loss or damage shall be limited to the valuation established by assessors acting on behalf of the "Creditor";
- 8.5 No liability shall accrue to the "Creditor" for consequential loss resulting from any loss or damage or delay in making delivery of any goods and any liability incurred by the "Creditor" shall be limited to the actual loss of or damage to the goods;
- 8.6 Notwithstanding any description relating to the number of packages or condition of goods or packages or condition of goods contained in any receipt, the "Creditor" shall not be bound thereby if it is shown that such description was incorrect.
- 8.7 The "Creditor" shall not be responsible for any demurrage charges incurred in any manner whatsoever including but not limited to such charges incurred on any vehicle directly controlled by the "Creditor", any of the "Account Holder's" vehicles, any ships, aircraft, containers, cranes or railway trucks or wagons of any description;
- 8.8 The "Creditor" shall not be responsible for any loss or damage occasioned by loading or off-loading of the vehicle of any nature whatsoever, including but not limited to, overloading or unsafe loading of vehicles. The loading and off-loading of vehicles are performed by and are the responsibility of the "Account Holder", the consignor or their respective agents excluding the "Creditor";
- 8.9 In the event of a claim the "Account Holder" shall notify the "Creditor" in writing thereof within 12 (TWELVE) hours of the time of off-loading or in

the case of the goods not being delivered, within 12 (TWELVE) hours from the scheduled time of off-loading failing which any claim that the "Account Holder" might have as against the "Creditor" shall ipso facto lapse and be unenforceable;

- 8.10 Unless specifically agreed to, the "Creditor" shall not handle any articles of a hazardous or dangerous nature and the "Account Holder" hereby indemnifies the "Creditor" against any claims arising out of the presence of any articles of a hazardous or dangerous nature.

9 **RATES AND ADDITIONAL CHARGES**

- 9.1 The rate payable to the "Creditor" by the "Account Holder" for the transportation of goods as arranged with the "Creditor" in writing shall be the rate agreed between the "Creditor" and the "Account Holder" or shall be calculated on a rate agreed as between them subject to any variation provided for herein;
- 9.2 The "Creditor" shall be entitled to levy an additional charge at its usual or at a reasonable rate in the event that the "Account Holder" reroutes the "Creditor's" vehicle to additional loading or off-loading localities other than as stated on the order from the "Account Holder" to the "Creditor";
- 9.3 All fines, penalties, demurrage charges and any consequential losses claims or expenses resulting from unsafe loading, or overloading of the vehicle by the "Account Holder" shall be for the account of the "Account Holder" and the "Creditor" shall be entitled to exercise a lien over the goods until any such amounts are paid or guarantees for payment thereof, to the satisfaction of the "Creditor", is provided by the "Account Holder";
- 9.4 What is set out in this clause shall not detract from any provision in this Agreement for the levying of additional charges including but not limited to charges relating to loading and off-loading times, failure by the "Account Holder" to take delivery, or cancellation of orders by the "Account Holder".

10 **ACCOUNT HOLDERS WARRANTIES AND INDEMNITIES**

- 10.1 The "Account Holder" warrants that the goods are the "Account Holders" sole and exclusive property or that the "Account Holder" has the full and absolute authority of the owner to enter into a Contract with the "Creditor";
- 10.2 The "Account Holder" warrants that the carriage of the goods contracted for with the "Creditor" does not contravene any law whatsoever and indemnifies the "Creditor" of an liability whatsoever both criminal and civil arising therefrom;
- 10.3 The "Account Holder" shall provide a full description of the goods to be transported to the "Creditors" driver at or before the time of loading. The

“Account Holder” shall be responsible for ensuring that nothing required to be transported is omitted at loading and to verify the accuracy of all information contained in the “Account Holder’s” delivery documents.

11 **GENERAL**

- 11.1 The “Creditor” shall be entitled to cede, delegate, assign or transfer any or all of its rights and/or obligations in terms of any Contract or order. The “Creditor” shall be entitled to sub-contract without notice and in the event thereof the terms and conditions set out herein shall apply equally in respect of any service rendered by a sub-contractor;
- 11.2 The “Account Holder” and the “Creditor” hereby consent to the jurisdiction of the Magistrates Court notwithstanding that any claim may exceed the ordinary jurisdiction of that Court;
- 11.3 The “Account Holder” selects as its *domicilium citandi et executandi* for all purposes hereof, its principal place of business or any address reflected on any of its documentation.