

## TERMS AND CONDITIONS OF CARRIAGE BETWEEN BROKER AND CARRIER

### 1 Definitions

In these conditions, the following words shall bear the meanings assigned to them below:

- 1.1 **“the Broker”** means Melanie Griffin Industries cc t/a MGI Transport & Logistics and includes the broker’s servants and agents;
- 1.2 **“the Carrier”** means and includes the carriers employees, agents and any person or persons carrying any goods from the subject matter of this contract;
- 1.3 **“the Goods”** forming the subject matter of this agreement howsoever contained including but not limited to container, pallet, package, bulk or loose goods;
- 1.4 **“Dangerous goods”** includes those classified as such by Spoornet, the Marine Division or the Department of Transport, or which are considered by the broker to be dangerous;
- 1.5 **“the handling of the goods”** includes the goods being handled, warehoused, held, controlled, loaded or unloaded, carried or otherwise possessed by the carrier for any purpose whatsoever;
- 1.6 **“Day”** means the period of 24 consecutive hours from one midnight to the next;
- 1.7 **“Delivery”** means the conveyance of goods pursuant to this agreement from the loading points to the off-loading points in vehicles as agreed between the parties;
- 1.8 **“Freight charges”** means the carrier’s standard charges or such other consideration payable to the carrier by the broker in terms of an agreement;
- 1.9 **“Loading point”** means the loading point for the goods as instructed by the broker;
- 1.10 **“Off-loading point”** means the delivery point for the goods as instructed by the broker;
- 1.11 **“Vehicle”** means any vehicle used by the carrier in connection with this agreement upon which or in which the goods are conveyed.

### 2 Introduction

The conditions contained in this contract will apply to all loads agreed between Melanie Griffin Industries CC t/a MGI Transport and Logistics and the carrier.

3 **No authority of servant of broker to vary contract**

No agent of, or person employed by the broker, has any authority to alter or vary in any way these conditions unless he is expressly authorised in writing to do so by the broker.

4 **Servant contracting on behalf of carrier presumed to be duly authorised**

Any servant of the carrier who enters into a contract with the broker will be deemed to do so on behalf of the carrier and with his authority.

5 **Collection and delivery of goods**

The carrier will collect and deliver the goods to be carried within a reasonable time of being so instructed by the broker.

6 **Notice of delay in carriage**

The carrier will inform the broker by telephone or telefax of any unusual delay occasioned by any circumstance whatsoever.

7 **Breakdown of vehicles**

If any vehicle breaks down in the course of a journey the carrier will, unless otherwise instructed by the broker, substitute another vehicle (covered by GIT "Goods In Transit" Insurance as agreed between the parties) at his own expense to carry the goods to their destination. In the event of such breakdowns the broker may himself carry the goods to their destination and the carrier will pay the broker's cost in so doing.

8 **No right to subcontract**

The carrier may not subcontract, delegate, cede, pledge or sign any of its rights and/or obligations in terms of this agreement unless same is reduced to writing and signed by the broker. In such event notwithstanding anything to the contrary contained in such agreement the carrier shall remain liable to the broker as if he himself performed the contract.

9 **Exclusion of broker's liability**

9.1 Neither the broker nor any of its servants or agents will be liable for any loss or damage to the carrier, whether direct or consequential and however caused, arising out of this agreement.

9.2 Nothing in these conditions will be construed so as to make the broker liable for any loss, damage or personal injury, whether occasioned to any third party or to any employee of the broker or the carrier, arising out of any act or omission of the carrier, his servants or agents.

10 **Receipts and payments**

All original documentation for goods carried or to be carried in terms of this contract will be the property of the broker and will be returned by the carrier to the broker, properly signed, within 24 (twenty four) hours of the date of delivery together with the carrier's invoices for the carriage. Payment by the broker will not be made until the all the original documentation properly signed and stamped, is in the possession of the broker.

**11 Statements of account**

A statement of account in respect of work done during the month must be rendered to the broker in the first week of the succeeding month and will identify the work done. Payments must reflect the broker's / MGI's load confirmation number.

**12 Indemnity of broker against claims**

In the event of the broker incurring any liability under the contract in terms of which the broker has undertaken to carry the goods, arising from any act or omission of the carrier, the carrier will:

- 12.1 pay to the broker such amount as the latter may consider sufficient to indemnify him against such liability; and
- 12.2 pay to the broker the amount of all costs, expenses and excesses reasonably incurred by the broker in connection with such claims; provided that the broker will promptly notify the carrier of all claims made or threatened against the broker.

**13 Insurance by carrier**

- 13.1 The carrier will effect in his own name policies of insurance to the satisfaction of the broker to cover any claim for loss of, or damage to, hijacking of the goods or in respect of delay in the carriage thereof, or in respect of any other risk nominated by the broker and will produce to the broker on demand the said policies and receipts for the current premiums, and in default of the production on demand of such policies and receipts, the broker may effect such insurance and the carrier will be liable to pay the broker the cost of so doing;
- 13.2 In the event of the broker having to claim from its insurance in respect of any claim for loss of or damage to, hijacking of the goods or delay in the carriage thereof and its insurers paying such claim, the broker shall be entitled to recover such amount including any excess paid by the broker in terms of such claim from the carrier;
- 13.3 In the event of a claim being lodged with its insurers by the carrier, the carrier shall cede such claim to the broker and shall instruct its insurers to make payment in respect of the claim directly to the broker.

**14 Remuneration**

- 14.1 In the absence of any written agreement to the contrary, the remuneration payable to the carrier by the broker will be in accordance with the negotiated rate in respect of each load;

**15 Payment of remuneration**

- 15.1 In the absence of any special provisions to the contrary, payment shall be effected by the broker, subject to all documentation in the form of invoices, proof of deliveries and any other documentation in accordance with clause 10 above being lodged with the broker on or before the 20<sup>th</sup> of the month, then payment shall be effected by the broker at the end of the succeeding month;
- 15.2 The broker shall in its absolute discretion be entitled to appropriate all payments due to the carrier towards the payment of any debt or obligation of whatsoever nature owing by the carrier to the broker, irrespective of when such debt or obligation arose;

**16 No lien in favour of the carrier**

- 16.1 The carrier shall not be entitled to a lien over any goods, documents, bills of loading, input permits, repayments, refunds, claims or recoveries in its possession or under its control and shall not be entitled to hold any goods as security for any other monies which may be owing to it by the broker in respect of any cause whatsoever;
- 16.2 Notwithstanding any monies that may be due and owing by the broker to the carrier the carrier shall not be entitled to open and examine the goods, to sell the whole or any part of the goods. The broker should not be under any obligation to provide any plant, power or labour which may be required for the loading or unloading of any goods;

**17. Warrantees by the carrier**

The carrier warrants:

- 17.1 That its employees, are capable and qualified to fulfill its obligations in terms of this agreement;
- 17.2 That its drivers are in possession of valid and appropriate driver's licenses, free of endorsements, professional drivers permits and are registered as operators in terms of the RTA;
- 17.3 That its drivers will comply with all requirements of licenses, certificates, permits or exemptions which may be required for or in connection with the use of the vehicle conveying the goods;
- 17.4 Ensure that the vehicle is at all times fit for the purpose for which it is used in the performance of the carrier's obligations in terms of this agreement including but not limited to ensuring that the vehicle is in terms of all relevant statutory provisions, such, road worthy and certified as such;
- 17.5 The carrier shall at all times comply with all laws and regulations;
- 17.6 Notwithstanding anything contained to the contrary herein before, the carrier warrants that it shall be responsible for the weight distribution on the vehicle during loading and for ascertaining the weight of the load. In the event of the driver or carrier being fined in regard to overloading either in respect of the gross weight of the load or the distribution of the load per axle weight and all fines of whatsoever nature in respect of overloading or incorrect distribution of the load per axle shall be for the account of the carrier. The carrier hereby specifically indemnifies the broker in respect of any fines levied with regard to the load transported.

**18 Variation**

No addition to, variation of or agreed cancellation of this agreement shall be of any force or effect unless recorded in writing and accepted by the broker in writing.

**19 Indulgence and Waiver**

No relaxation or indulgence which the broker may grant to the carrier shall constitute a waiver of the rights of the broker and shall not preclude the broker from exercising any of its rights which may have arisen in the past or which might arise in the future.

**20 Applicable law**

The proper law of this agreement is the law of the Republic of South Africa, and accordingly any dispute about this agreement, including any dispute about its validity,

existence, interpretation, rectification, breach or termination or any dispute about any matter arising out of this agreement, its avoidance, interpretation, rectification, breach or termination shall be determined according to the laws of the Republic of South Africa.

**21 Domicilium and notices**

The carrier chooses its street address set out in this agreement as its *domicilium citandi et executandi* for all purposes under this agreement, whether for serving any court process or documents, giving any notice, or making any other communications of whatsoever nature and for any other purpose arising from this agreement.

**22 Presumptions as to notices**

Any notice required to be given by the broker to the carrier will be deemed to have been validly given if posted by registered post to the *domicilium* of the customer and will be deemed to have been received by the carrier within 7 (seven) days of the date of posting.