



MACDONALD'S
TRANSPORT / WAREHOUSING
SINCE 1933

MacDonald's Transport Upington (Edms) Bpk

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GENERAL TERMS AND CONDITIONS

1. INTERPRETATION
 - 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 unincorporated) 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 Act" The Customs and Excise Act No. 91 of 1964, Regulations made under the said Act and any amendments thereto or replacements thereof;
 - 1.3.2 "Carrier" Any carrier of Goods whether by rail, road, sea or air;
 - 1.3.3 "Conditions" These standard terms and conditions as amended or supplemented from time to time;
 - 1.3.4 "Confidential information" means any information or data which by its nature or content is identifiable as confidential and/or proprietary to either Party and/or any third party, or which is provided or disclosed in confidence; and which one of the Party's or any person acting on its behalf may disclose or provide to the other Party or which may come to the knowledge of either one of the Party's by whatsoever means, including all information relating to either Party's current and existing strategic objectives, information relating to the Services, either Party's business activities, business relationships, and The Goods, either Party's technical, scientific, commercial, financial and market information and trade secrets, either Party's data concerning its architectural information, demonstrations, processes and machinery, all agreements to which either Party or its clients is/are a party; and information relating to either Party's clients and facilities, but specifically excluding information or data which –
 - 1.3.4.1 is lawfully in the public domain at the time of disclosure thereof; or
 - 1.3.4.2 subsequently becomes lawfully part of the public domain by publication or otherwise; or
 - 1.3.4.3 becomes available from a source other than one of the Parties which is lawfully entitled without any restriction on disclosure to disclose such Confidential Information; or
 - 1.3.4.4 is disclosed pursuant to a requirement or request by operation of law, regulation or court order.
 - 1.3.5 "Container" Any container, transportable tank, bolster or flat rack, used to transport goods and constructed to ISO standards or recommendations or those of a similar recognised classification society;
 - 1.3.6 "Container Operator" A Container Operator as defined by the Act, or any person who carries on the business of transporting containerised goods, or any Ship Owner, Charterer, Ship Operator, Carrier, Ship's Agent, Shipbroker, Freight Forwarder, non-Vessel Owning Common Carrier, Clearing and Forwarding Agent, International Transport Operator and Combined Transport Operator, from, on whose behalf, or at whose request or instruction MacDonald's receives and containerises export goods and delivers such containerised goods or from whom or at whose instance or instruction MacDonald's receives containerised import goods. Whenever there is a reference in these Conditions to a Container Operator or to the obligation of a Container Operator, such reference shall be deemed to be a reference to the Container Operator from or on whose behalf MacDonald's receives any Goods or for, or on whose behalf, it performs any service;
 - 1.3.7 "Container Trailer" A trailer constructed for the purpose of carrying containers;
 - 1.3.8 "Customer" Any person or entity at whose request or on whose behalf MacDonald's undertakes any business or provides any advice, information or service and shall be deemed to include the Owner, consignee or consignor of the Goods as hereinafter defined, any agent acting for such Owner, consignee or consignor of the Goods and any other Person claiming any right to or in respect of any such Goods;
 - 1.3.9 "Day" the 24 hour period from midnight to midnight;
 - 1.3.10 "Dangerous Goods" Goods which by reason of their nature, quantity or mode of stowage either singularly or collectively are liable in MacDonald's sole opinion to endanger the lives or the health of persons or any property or the environment including but not restricted to Containers, ships, rolling stock, vehicles, buildings and lifting equipment, as well as all Goods defined as dangerous in the IMO regulations or any statute, statutory instrument or order, any regulations made by any governmental or other public authority or by any local by-law relating to the handling, storage or carriage of Goods or specified as dangerous goods in the special classification of dangerous goods issued by TFR from time to time;

- 1.3.11 "Delivery Document" means the document supplied by the Customer or MacDonald's, as the case may Load to be, which document shall set out all relevant data and requirements pertaining to the delivery of a Consignment and which –
- 1.3.11.1 if bearing the signature of a duly authorized representative of MacDonald's shall constitute a POR; and
- 1.3.11.2 if bearing the signature of a duly authorized representative of Customer, will constitute a POD;
- 1.3.12 "DRO" a Delivery Release Order being a document issued by or on behalf of a Container Operator in respect of LCL or FCL Goods, or in respect of a FCL Container, authorising in each case the release of Import Goods (or the Container as the case may be) identified thereon and bearing the name and purporting to be signed by or bearing the stamp of the Container Operator, or, as the case may be, the consignee;
- 1.3.13 "Depot" A Container Depot operated by MacDonald's as a Depot Operator, or as defined in Section 1 of the Act;
- 1.3.14 "Export Goods" Goods delivered to MacDonald's for containerisation;
- 1.3.15 "FCL" Full Container Load;
- 1.3.16 "FCL Goods" Goods contained in an FCL container;
- 1.3.17 "Goods" means any cargo handled, transported or dealt with by or on behalf of or at the instance of MacDonald's or under the control of MacDonald's or its agents, employees, contractors, or subcontractors on the instructions of the Customer and includes any package or any other form of covering, packaging used in connection with or in relation to such goods, and shall also include Containers;
- 1.3.18 "Import Goods" Containerised Goods delivered to a Depot by or on behalf of a Container Operator;
- 1.3.19 "ISO" International Organisation for Standards;
- 1.3.20 "Load" - means the Goods carried on a specific Vehicle for carriage in terms of a Delivery Document;
- 1.3.21 "Loss" means physical loss, whether actual or constructive and includes loss arriving out of damage, theft or any other cause whatsoever;
- 1.3.22 "LCL Container" means any container that is less than a container load and therefore other than a FCL container and excluding an empty container;
- 1.3.23 "LCL Goods" Goods contained in an LCL container;
- 1.3.24 "Logistics Services" means those services referred to in clause 4.2;
- 1.3.25 "MacDonald's" MacDonald's Transport Upington (Pty) Ltd, a private company registered in accordance with the company laws of South Africa including its employees, agents, contractors and sub-contractors acting within the course and scope of their employment by MacDonald's;
- 1.3.26 "Market Value" The market value at the date of the loss of or damage to any items as determined in the case of an item other than Goods, at the place where such loss or damage occurred, or in the case of Goods at the place where MacDonald's handled or packed the Goods in question;
- 1.3.27 "Obnoxious Goods" means any hazardous good or any of the following kinds of Goods which are not included in the definition of Dangerous Goods, namely, goods defined as obnoxious in the IMCO Regulations or any statute, statutory instrument or order, regulation made by any governmental or other public authority or by any local by-law relating to the handling, storage or carriage of Goods, and including any other Goods which in the sole opinion of MacDonald's are possessed of inherent vice, likely to affect other Goods adversely or to cause physical discomfort or injury to personnel handling them or to present any other special difficulties in handling or transport;
- 1.3.28 "Order" the order sent to MacDonald's by the Customer ordering the services to be rendered;
- 1.3.29 "Out of Gauge" Goods which extend beyond the confines of a shipping Container;
- 1.3.30 "Flat Track" consist of a floor structure with a high loading capacity composed of a steel frame and a softwood floor and two end walls, which may either be fixed or collapsible.
- 1.3.31 "Owner" The legal owner of the Goods;
- 1.3.32 "Person" Natural person, statutory body, company incorporated in terms of the law in force at the place at which the company is incorporated, a firm, partnership, close corporation, trust or association;
- 1.3.33 "POD" means a Proof of Delivery document;
- 1.3.34 "SDS" means the Safety Data Sheet;
- 1.3.35 "Services" means those services specified in clause 4.1;
- 1.3.36 "Valuable Goods" Goods of high value or requiring special care including, without limiting the generality of the above, bullion, coins, money, precious metals and stones, electronic equipment, jewellery, antiques, pictures, paintings, works of art, and similar Goods or merchandise;
- 1.3.37 "VAT" - means Value Added Tax in terms of the VAT Act;

- 1.3.38 "VAT ACT" - means Value Added Tax Act, 89 of 1991 of the Republic of South Africa, as amended;
- 1.3.39 "VGM" the verified gross mass of a container carrying cargo.
- 1.3.40 "VGM method 1" Requires weighing the container after it has been packed;
- 1.3.41 "VGM method 2" Requires weighing all the cargo and contents of the container and adding those weights to the container's tare weight as indicated on the CSS plate which is fixed to the door of the container.
- 1.3.42 "Transport unit" Containers, trailers, Flat tracks, flats, tilts, railway wagons, tanks, ISO tanks, igloos or any other unit load devices specifically constructed for the carriage of goods by land, sea or air;
- 1.3.43 "TFR" Transnet Freight Rail, a division of Transnet Ltd;
- 1.3.44 "Warehouse" means one of MacDonald's buildings, and or properties used for the storing and handling of Goods., where the Services will be rendered;
- 1.3.45 "Warehousing Services" Those services performed by MacDonald's as described in clause 4.1 of the Conditions; and
- 1.3.46 "WMS" means the MacDonald's warehouse management system; and
- 1.3.47 "SOLAS" means the Safety of Life at Sea, an international maritime treaty, also known as SOLAS Convention or International Convention for the Safety of Life at Sea.
2. APPLICATION
- 2.1 These Conditions, as amended from time to time shall apply to, and are incorporated into all agreements for the provision of transport, warehousing and related services by MacDonald's.
- 2.2 In the event that there is any discrepancy between these General Terms and Conditions and the Standard Terms and Conditions, the provisions of these General Terms and Conditions shall apply.
- 2.3 The Customer shall:
- 2.3.1 be deemed to have notice of these Conditions where MacDonald's has advised the Customer in any document of its applicability and of the means by which the Customer may access a copy of these Conditions (including by requesting a physical or electronic copy from MacDonald's, or by following a hyperlink and/or by visiting a particular web address);
- 2.3.2 In the event that the Customer is not the Owner of the Goods, warrant that it is authorised to bind the Owner to these Conditions and shall provide the Owner with a copy of these Conditions and the applicability thereof and that services are undertaken on the conditions contained in these Conditions.
3. CONTRACT
- 3.1 A price given by MacDonald's to the Customer by way of a quotation or otherwise, shall constitute an offer.
- 3.2 A price may be revoked at any time by MacDonald's as all pricing is influenced by certain fixed and fluctuating costs. Any variations occurring subsequent to the date upon which the price is given, shall entitle MacDonald's to adapt the price accordingly.
- 3.3 The Customer may accept the price verbally, in writing, or by allowing MacDonald's to commence the Services for which the price was provided.
4. SERVICES RENDERED BY MACDONALD'S
- 4.1 Subject to these Conditions, MacDonald's provides, inter alia, the following Warehousing and related Services:
- 4.1.1 Warehousing services in respect of Import Goods:
- 4.1.1.1 Vessel tracking
- 4.1.1.2 ANF (Arrival Notification Form)
- 4.1.1.3 Receipt of Goods/Containers (Full or empty).
- 4.1.1.4 Container inspection, checking and recording of seals.
- 4.1.1.5 Container storage.
- 4.1.1.6 Opening of Containers for inspection by the South African Revenue Services/Department of Health and/or any other Governmental Authority, if required.
- 4.1.1.7 Unpacking, loading and handling of Goods and Containers.
- 4.1.1.8 Delivery of Goods at the Depot to the person in physical possession of the original DRO.
- 4.1.1.9 Goods storage.
- 4.1.1.10 Receiving, handling and checking of documents.
- 4.1.1.11 Completion of discrepancy and damage reports.
- 4.1.1.12 Provision of facilities for inspection of Goods.
- 4.1.1.13 Repair of damaged packaging.
- 4.1.1.14 Photographic evidence reporting, when arranged.
- 4.1.1.15 Deviation and breakage reporting
- 4.1.1.16 Container condition inspection
- 4.1.2 Warehousing services in respect of Export Goods:
- 4.1.2.1 Receipt of shipping instructions.
- 4.1.2.2 Receipt, handling and checking of documents.
- 4.1.2.3 Receipt of Goods in compliance with Export Goods delivery instructions.
- 4.1.2.4 Outward examination and reporting of the condition of Goods.

<p>4.1.2.5 Packing, handling and loading of Goods and Containers.</p> <p>4.1.2.6 Closing and sealing of Containers.</p> <p>4.1.2.7 Preparing Load Lists.</p> <p>4.1.2.8 Obtaining receipts from Transnet Port Terminals or other agents of the Container Operator.</p> <p>4.1.2.9 Storage of Containers for export staging.</p> <p>4.1.3 Warehousing Services in respect of Containers:</p> <p>4.1.3.1 The handling, storing, cleaning and inspection of Containers including clearing and forwarding and NAVIS pre-advising.</p> <p>4.1.3.2 Compliance with such provisions and obligations as are imposed on a depot operator in terms of Section 44 (5B) of the Act.</p> <p>4.1.3.3 Tracking and stock monitoring.</p> <p>4.1.3.4 Outward monitoring of container settings if any.</p> <p>4.1.3.5 Pre-trip inspections of refrigerated Containers, if applicable and instructed.</p> <p>4.1.4 Generally: Any other services which by reason of their nature are Warehousing Services.</p> <p>4.1.5 MacDonald's will carry out such Services in respect of the Goods as are requested by the Customer and accepted by MacDonald's, as evidenced in writing or by performance, including sampling, handling, servicing, packing, re-packing, bundling, re-bundling, piling, re-piling, lotting, weighing (including for the purposes of calculating VGM), calculating VGM as well as re-delivery of the Goods at the agreed Charges.</p> <p>4.2 MacDonald's also conducts business as a Logistics Operator and any reference in these Conditions to Logistics Services shall be deemed a reference to any one or more of the services performed by MacDonald's as a Logistics Operator, which shall include any form of carriage and/or transportation undertaken and/or procured by MacDonald's or its sub-contractors.</p>	<p>5.1.2</p> <p>5.1.3</p> <p>5.1.4</p> <p>5.1.5</p> <p>6</p> <p>6.1</p> <p>6.2</p> <p>6.3</p> <p>6.4</p>	<p>these Conditions not only for itself but also as agent for and on behalf of the Owner of the Goods.</p> <p>the Goods are not the subject of any claim, criminal or regulatory investigation or legal proceedings;</p> <p>all rights of ownership and title over the Goods will be established and verified by the Customer and it is acknowledged and understood that MacDonald's has no responsibility or liability with respect to any conflicting claims arising out of a dispute contesting rights of ownership or title to the Goods;</p> <p>it is authorised to accept the terms of and conclude and accept these Conditions not only for itself, but also as agent for and on behalf of the Owner and or all other Persons who are, or may thereafter become, interested in the Goods;</p> <p>it is not contracting or dealing as a consumer when entering into and accepting these Conditions.</p> <p>6 GENERAL INSTRUCTIONS</p> <p>All instructions relating to the Services or the Goods shall be given in writing. Verbal or telephonic communications shall only be binding on MacDonald's if such communication is immediately followed by a written confirmation from MacDonald's.</p> <p>The Customer shall procure that all instructions for storage or Logistics Services of Goods by MacDonald's, and all instructions regarding such storage, custody, handling and Logistics Services of the Goods and all arrangements related thereto, shall be accompanied by instructions and a full description of the type of Goods, content, measurement, nature, quality, properties, quantity, origin, serial numbers, marks, value, number of packages, SDS Of the Goods if applicable, VGM (if applicable) and gross weight of the Goods and all other particulars, terms, documentation and information in respect of the Goods which, had they been known to MacDonald's at the time of quoting or accepting an order, may have influenced MacDonald's decision whether or not to quote or accept the order or influenced the price or manner in which the Services are rendered.</p> <p>Notwithstanding express written instructions from the Customer to the contrary, MacDonald's shall be entitled at its sole and absolute discretion to decide on the means and procedure to be followed in the handling, storing and custody of the Goods.</p> <p>Even if initially accepted and/or acted upon by MacDonald's, MacDonald's shall be at liberty to depart from the Customer's instructions in</p>
<p>GENERAL CONDITIONS APPLICABLE TO WAREHOUSING AND LOGISTICS SERVICES</p>		
<p>5 OWNER OF GOODS, TITLE AND CLAIMS TO GOODS</p>		
<p>5.1 The Customer expressly represents and warrants that:</p>		
<p>5.1.1 it is either the Owner of the Goods or the authorized agent, contractor and/or sub-contractor of the Owner of the Goods and that it is authorized to accept and is accepting</p>		

respect of the handling, storing and custody of the Goods if, in the opinion of MacDonald's, it is at any stage necessary or desirable or in the Customer's interest to do so.

6.5 Notwithstanding any other provisions of these Conditions, MacDonald's shall be entitled, without providing any reasons whatsoever, to refuse to accept any instructions which may be given by the Customer in relation to the provision of the Services.

6.6 The Customer shall give, what in MacDonald's sole discretion, constitutes sufficient and executable instructions.

7 ACCURACY OF DESCRIPTION OF THE GOODS

7.1 The Customer warrants and is bound by the accuracy, correctness, completeness and truth of all descriptions, values, particulars, markings and/or information furnished to MacDonald's in respect of the Goods for any purposes whatsoever.

7.2 The Customer shall be liable for and shall indemnify MacDonald's in respect of any and all fines, penalties, expenses, losses or damages suffered or incurred by MacDonald's, its sub-contractors, employees, agents and any third parties arising from or in connection with: (a) the provision of incorrect and/or inaccurate, and/or misleading and/or incomplete description, particulars, markings and/or information in respect of the Goods, including inaccuracies or omissions in or in respect of the leading marks, numbers, quantity, weight, gauge, measurement, properties, contents, nature, origin, quality or value of the Goods, and/or (b) defects in the Goods and/or its containers or packing which have not been notified to MacDonald's before quoted or accepted the Order. The description, specification, particulars and/or information in respect of the Goods and/or in respect of its containers or packaging as stated on the face of any Warehouse Receipt or Holding Certificate, delivery order and/or release instructions will be treated as conclusive evidence of the description, specifications, particulars and/or information provided by the Customer to MacDonald's. MacDonald's does not, by the issuance of a Warehouse Receipt, Holding Certificate, delivery order, release instruction or any other document, (a) agree that such description, specification, particulars or information are, or ever have been, correct, complete or accurate, or (b) admit the existence, nature, quality, quantity, weight, good order, condition or any other characteristic of the Goods described therein, or of the contents of any package or other

shipping unit. However, MacDonald's will be entitled to rely on such description, specification, particulars and/or information as to the contents, measurements, nature, quality, weight, number, serial numbers, marks, value or other particulars of the Goods, even if the Goods should have been counted, weighed or measured in the presence of any of MacDonald's agents or servants and even if such agents or servants could by any means have discerned the contents, weight, measurement, nature, quality, serial numbers, marks, value or other particulars of the Goods.

7.3 The Customer warrants that the description and particulars, including the weight of the Goods, are complete and correct.

7.4 The Customer warrants that the Goods are properly packed, packaged and labelled, except where MacDonald's has accepted instructions to pack, package and label the Goods itself. In which instance, the Customer shall provide MacDonald's with clear instructions as to how the Goods are to be packed or labelled and or secured when rendering Logistics Services.

8 WEIGHING / MEASURING OF THE GOODS

8.1 MacDonald's shall not be obliged to weigh or measure the Goods unless specific instructions to that effect was given to MacDonald's in this regard. Notwithstanding the foregoing, MacDonald's shall be at liberty to effect weighing and/or measurement of the Goods in order to ascertain whether the weight and/or measurement of the Goods comply with the information provided by the Customer, or to ensure the legal handling and storage thereof. In the event that the weight and/or measurement of the Goods determined by MacDonald's differs from the information provided by the Customer, or the Customer instructs MacDonald's to weigh the Goods, the cost of carrying out the weighing and/or measurement of the Goods by MacDonald's will be borne by the Customer. Packages may be opened for examination of the contents thereof at the Customer's request, but MacDonald's shall at all times be entitled, but not obliged, to do so if it suspects that the contents have been wrongly described by the Customer. Should the examination reveal that the contents differ in any way whatsoever from those described, the cost of the examination will be borne by the Customer.

8.2 MacDonald's shall not be held liable for any loss to a load that was not loaded and or counted by MacDonald's, specifically if

MacDonald's has marked the Delivery note in respect of such load as unchecked.

9 WAREHOUSE RECEIPT AND HOLDING CERTIFICATE

9.1 Any transfer by the Customer to a third party of title to or any interest in Goods, or any part thereof, in respect of which a Warehouse Receipt or Holding Certificate has been issued, will not be recognized or acted upon by MacDonald's unless and until:

9.1.1 all moneys owing by the Customer to MacDonald's, and all claims which MacDonald's may have against the Customer, have been paid and/or finally settled;

9.1.2 MacDonald's has acknowledged the transfer in writing to the third party to whom transfer of title or rights to possession of the Goods is being made;

9.1.3 a new binding Agreement has been concluded between MacDonald's and such third party in respect of the relevant part of the Goods; and

9.1.4 the original Warehouse Receipt or Holding Certificate has been delivered back to MacDonald's by the Customer with written instructions from the Customer for cancellation, at which point the Agreement with the original Customer in respect of the Goods will be deemed to be terminated in respect of the relevant part of the Goods. This will be managed through the WMS.

9.2 MacDonald's shall have no liability whatsoever to the Customer or any third party as a consequence of MacDonald's refusal to acknowledge or act upon a transfer of the Goods before all of the conditions in clause 9.1 above, have been satisfied.

9.3 The Customer agrees that Warehouse Receipts and Holding Certificates issued through the WMS are not and will not be construed to be a document of title nor is a Warehouse Receipt or Holding Certificate negotiable. Subject to clause 9.5 below, MacDonald's will not recognize any third party as a party entitled to the Goods (or any part thereof) by reason of any transfer and/or endorsement of or on a Warehouse Receipt or Holding Certificate relating to such Goods.

9.4 The Customer may not transfer, assign or otherwise dispose of the Warehouse Receipt or the Holding Certificate or any right or obligation in connection therewith without the prior written consent of MacDonald's, and without following the steps in clauses 9.2.1 - 9.2.4 above.

9.5 MacDonald's will not proceed with any partial, full or final release of Goods under any Warehouse Receipts or Holding Certificates

unless and until any original Warehouse Receipts or Holding Certificates issued in respect of such Goods are delivered to MacDonald's.

10 DANGEROUS AND/OR OBNOXIOUS GOODS

10.1 Unless otherwise previously agreed in writing by MacDonald's, the Customer shall not deliver to MacDonald's or cause MacDonald's to deal in any way with, or handle Dangerous and/or Obnoxious Goods, and MacDonald's shall be entitled to refuse to deal with any such Goods, which may be refused entry to and/or removed from the Warehouse at the Customer's sole risk and expense.

10.2 The Customer shall ensure that any Dangerous and/or Obnoxious Goods which MacDonald's agrees to handle in terms of clause 10.1 comply in every respect with any and all applicable legislation and/or international conventions, including any regulations and/or rules promulgated and/or applicable pursuant thereto.

10.3 The Customer shall provide MacDonald's with the SDS of any Dangerous and/or Obnoxious Goods that the Customer wishes MacDonald's to handle or deal within any way before MacDonald's is requested to provide a quotation to the Customer.

10.4 If the Customer is in breach of clause 10.1 and/or 10.2 and/or 10.3 above, it shall be liable for all loss or damage whatsoever caused by or to or in connection with the Goods, howsoever arising, whether or not caused by the negligence or otherwise of MacDonald's or its employees, agents, contractors and/or sub-contractors, and shall defend, indemnify and hold MacDonald's harmless against all penalties, claims, loss, damages, costs (including but not limited to legal costs on the attorney and own client scale) and expenses whatsoever arising in connection therewith and the Goods may without notice be destroyed or otherwise dealt with at the sole discretion of MacDonald's or any other Person in whose custody they may be at the relevant time.

10.5 If, at any time after MacDonald's agrees to accept Dangerous and/or Obnoxious Goods, and in the sole opinion of MacDonald's they constitute a risk to other Goods, property, life or health they may without notice to the Customer, be destroyed or otherwise dealt with so as to remove such risk, at the sole risk and expense of the Customer.

11 PLACE OF STORAGE OF THE GOODS

11.1 Unless otherwise agreed upon in writing by MacDonald's, MacDonald's will be at liberty to

decide the place at which where the Goods are stored. MacDonald's will at any time be entitled to transfer the Goods to any one of its Warehouses or properties. The cost of any transfer and the risk of such transfer shall be borne by MacDonald's, unless the transfer has been effected by MacDonald's in its sole and absolute discretion in the interest of protecting the Goods, or by reason of circumstances beyond MacDonald's control in which case such transfer will be effected at the sole and absolute discretion of MacDonald's and at the sole risk and expense of the Customer. MacDonald's shall notify the Customer of any transfer of the Goods to any other Warehouse, but failure to give such notification will not give the latter any right of claim against MacDonald's.

12 ADMITTANCE TO PLACE OF STORAGE

- 12.1 Upon reasonable prior notice and subject to clause 12.2 below, MacDonald's shall at all times while Goods belonging to the Customer is stored at a warehouse allow the Customer and/or any authorized representative of the Customer access to the relevant Warehouse for inspection.
- 12.2 The following conditions shall be applicable to Persons granted admittance to the Warehouse by MacDonald's in accordance with clause 12.1 above:
 - 12.2.1 all such Persons visiting the Warehouse, will observe and fully comply with MacDonald's instructions, regulations and procedures;
 - 12.2.2 admittance of such Persons will be granted only during Working Hours and with the attendance of MacDonald's employees, and or a nominated representative assigned by authorized personal;
 - 12.2.3 all expenses (if any) incurred in relation to such admittance will be paid to MacDonald's by the Customer;
 - 12.2.4 the Customer will be liable for, and will indemnify MacDonald's in respect of, any damage caused directly or indirectly by any such Persons who are granted admittance to the Warehouse including but not limited to any damage caused to the Warehouse, the Goods and/or other goods stored at the Warehouse;
 - 12.2.5 the Customer will indemnify MacDonald's in respect of any and all fines, penalties, expenses, losses or damages suffered or incurred by MacDonald's by reason of any death, injury or illness of any Person as a consequence of their admittance to the Warehouse, even where caused or contributed to by MacDonald's negligence.

13 SUB-CONTRACTING

MacDonald's will be entitled to sub-contract its obligations to perform the Services, in whole or in part, to any third party on such terms and conditions as MacDonald's deems appropriate, in its sole and absolute discretion and without notice to the Customer.

14 RIGHTS AND OBLIGATIONS OF MACDONALD'S

- 14.1 MacDonald's shall be entitled, without notice to the Customer, and except insofar as has been otherwise agreed in writing, to enter into any contracts on behalf of itself or the Customer for the purpose of performing the services, which shall include but not be limited to contracts:
 - 14.1.1 for the carriage of Goods by any route, means or Person;
 - 14.1.2 for the carriage of Goods of any description on or under the deck of any vessel;
 - 14.1.3 for the storage, packing, transshipment, loading, unloading or handling of Goods by any Person at any place whether on shore or afloat and for any length of time;
 - 14.1.4 for the carriage or storage of Goods in Containers or with other Goods of whatever nature;
 - 14.1.5 for the performance of its own obligations; and to do such acts as in the opinion of MacDonald's may be necessary or incidental to the performance of MacDonald's obligations.
- 14.2 MacDonald's shall in rendering any of the Services, be entitled but under no obligation, to depart from the Customer's instructions in any respect if in the opinion of MacDonald's there is good reason to do so in the Customer's interest and it shall not incur any additional liability thereby.
- 14.3 MacDonald's may at any time comply with the orders or recommendations given by any authority. The responsibility of MacDonald's in respect of the Goods shall cease on the delivery or other disposition of the Goods in accordance with such orders or recommendations.
- 14.4 If delivery of the Goods or any part thereof is not taken by the Customer at the time and place when and where MacDonald's, or any Person whose services MacDonald's makes use of, is entitled to call upon the Customer to take delivery thereof, MacDonald's or such other Person shall be entitled to store the Goods in the open or under cover at the sole risk and expense of the Customer.
- 14.5 MacDonald's shall manage all Goods received, bill, track and handle claims ect through the WMS.
- 14.6 MacDonald's shall have the right to enforce against the Owner and the Customer jointly

- and severally any liability of the Customer under these Conditions or to recover from them any sums to be paid by the Customer which upon demand have not been paid.
- 14.7 The Customer shall be liable for payment of standing time. the Customer shall ensure that loading is completed within 2 (two) hours from a Vehicle arriving at the Collection Point, and ensure and procure that off-loading at the Off-Loading Point is not delayed beyond 2 (two) hours from time of a Vehicle arriving at the Off-Loading Point, failing which the Customer shall be liable for payment of standing time charges of R650 per hour. All standing time charges shall fall due for payment in accordance with the provisions of clause 20.
- 14.8 Without prejudice to its other legal rights and entitlements, MacDonald's shall be entitled to increase its price should incorrect, inaccurate, incomplete or misleading information be provided by or on behalf of the Customer in respect of the Goods.
- 14.9 Where MacDonald's agrees to undertake weighing for the purposes of calculating VGM, give a weight for the purposes of calculating VGM or give a VGM declaration in relation to containerised Goods as contemplated in SOLAS, the Customer must instruct MacDonald's in writing whether VGM method 1 or 2 has to be used, and MacDonald's shall render such services at the sole risk and expense of the Customer, and the Customer will fully indemnify MacDonald's against any and all consequences of the same.
- 14.10 Any work which MacDonald's does not wish to undertake may, after the prior approval of MacDonald's, be executed by or on behalf of the Customer, subject to any conditions which may be laid down by MacDonald's, under the supervision of MacDonald's, and the Customer shall pay any and all costs and expenses incurred by MacDonald's in connection with such work, and indemnify MacDonald's in respect of any and all fines, penalties, claims, losses, damages, costs (including all legal costs on a full indemnity basis), and expenses suffered or incurred by MacDonald's in connection with such work. MacDonald's will not be liable for any loss, damage or expenses incurred or suffered by the Customer or any third party in connection with carrying out such work.
- 14.11 MacDonald's will not be considered to be and will not act as an expert in relation to the nature, quality or other particulars of the Goods and will not be required or be obliged to provide any notification to any party whatsoever in relation to the same.
- 14.12 Where applicable, stock loss tolerance of 0.25% over the total order volume transported by MacDonald's for the Customer will be granted between the Customer and MacDonald's. Any over and under weights will be set-off over the total order volume.
- 14.13 Notwithstanding the provisions of the Electronic Communications and Transactions Act, No. 25 of 2002, as amended from time to time, MacDonald's 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.
- 15 PERIOD OF MACDONALD'S LIABILITY
- 15.1 The Goods in respect of which MacDonald's provides any Services in terms of clause 4.1 above:
- 15.1.1 shall only be regarded as being in the actual custody and control of MacDonald's from the time the Goods are received by MacDonald's at the Warehouse and MacDonald's shall bear the risk in and to the Goods subject to these Conditions;
- 15.1.2 Goods shall be deemed to have been received by MacDonald's from the time when the Goods have been off-loaded from the delivery vehicle at the Warehouse;
- 15.1.3 An acknowledgement of receipt of any Goods by MacDonald's shall not constitute an acknowledgement or admission in regard to the state or condition or quantity of such Goods, nor as to the correctness of any statement on the relevant Container Terminal Order form or other transport. In this regard, should MacDonald's not have delivered the Logistics Services in respect of Goods delivered to a Warehouse, MacDonald's shall not be liable for any damages to such Goods that may only become visible or evident sometime after the Goods were delivered.
- 15.1.4 Goods shall be deemed to have been delivered by MacDonald's at the earlier of the time when:
- 15.1.4.1 they are placed at the disposal of the person in possession of a DRO or any other document which in MacDonald's sole opinion entitles that person to be in possession of the Goods, at a Warehouse; or
- 15.1.4.2 the Goods exit through the Warehouse gate and or facility.
- 15.1.5 The Customer shall appoint a surveyor to monitor and give instructions regarding the loading and offloading of Goods at the Warehouse.
- 15.1.6 MacDonald's shall in no circumstances be responsible and accepts no liability for the loading, unloading, securing and/or lashing of

- Goods on Container Trailers and/or any other vehicles.
- 15.1.7 The Customer hereby waives any and all claims which it may have and indemnifies MacDonald's against any claims which may arise against MacDonald's arising out of or in connection with the loading, unloading, securing and/or lashing of Goods, whether or not such claim arose as a result of breach of contract, and/or negligence in whatever degree on the part of MacDonald's.
- 15.2 The Goods in respect of which MacDonald's provides any Services in terms of clause 4.2 above:
- 15.2.1 shall only be deemed to be in the actual custody and control of MacDonald's from the moment that the loading of the Goods onto the vehicle has been completed and for the duration of the transportation thereof terminating immediately prior to off-loading the Goods;
- 15.3 MacDonald's shall (subject to clause 16.2) bear the risk of losses/damages to the Goods whilst in its possession, save for such damages and/or losses, which:
- 15.3.1 are attributable to the Customer or any of its Customers, agents, servants and/or any third party acting on behalf of or for the benefit of the Customer;
- 15.3.2 exceeds the load value limitation of such Consignments (as advised by the Customer in writing from time to time) per any one conveyance or event or any series of events arising from the same cause;
- 15.3.3 are not recorded (by way of endorsement) on the POD and other relevant Delivery Documents;
- 15.3.4 are in respect of a Load with a Delivery Document marked as unchecked;
- 15.3.5 which are not claimed in writing and in the time frames set out in of clause 26.
- 15.4 Any claim by the Customer against MacDonald's in respect of losses or damages to the Goods which have finally been settled by MacDonald's, shall by way of subrogation be ceded, transferred and assigned to MacDonald's (or its insurers, as the case may be) who shall have the right to recover such damages from any third pursuant to whose unlawful conduct the loss and/or damages occurred in the first instance. Under such circumstances, the Customer undertakes to assist and co-operate with MacDonald's and/or its insurers in enforcing its claim against such third party, which assistance will include but not be limited to the provision of relevant documentation pertaining to the Consignments and/or the damages thereto and the deposition to such affidavits and/or
- the giving of such viva voce evidence as reasonably required by MacDonald's or its insurer's appointed attorneys (whose appointment need not be proved). Inasmuch as MacDonald's insurers are not party hereto, any undertaking given by the Customer in favour of such insurers, shall be deemed to constitute a *stipulation alteri* in favour of them, open for acceptance at any time without the obligation to notify the Customer of such acceptance.
- 15.5 Any damages and/or losses which the Customer may suffer and which MacDonald's is liable for in terms hereof and/or in law, shall be limited to actual and direct damages and/or losses and shall under all circumstances exclude indirect-, consequential-, special- and punitive damages and/or losses and shall furthermore be subject to a "first loss" liability as hereunder enunciated. Nothing in this clause 14 shall be construed as to impose any liability on MacDonald's for any risk, not specifically assumed by it in terms hereof, or any risk in excess of the insurance cover as set in clause 16.2.
- 15.6 The Customer acknowledges and accepts that MacDonald's, in protection against the risks as set out in this clause 15, will procure insurance cover as set out in clause 16.2.
- 15.7 Such insurance will comprise of Goods in Transit Insurance;
- 15.8 Such insurance will be a "first loss" policy;
- 15.9 The "first loss" policy only covers the Consignment to the value limit as advised by the Service Provider, any excess value being at the risk of the Customer.
- 15.10 If the Customer fails to notify MacDonald's of the value of the Goods exceeding the limits for which MacDonald's will procure insurance, as set out in clause 16.2.3, MacDonald's risk in respect of such Goods (irrespective of the nature and extent of any claim) for losses and/or damages to the Goods shall remain limited to advised value limit;
- 15.11 In the event that the Customer fails to notify MacDonald's of the value of the Goods exceeding the limits for which MacDonald's will procure insurance, as set out in clause 16.2.3, and as a result of the Customer's failure, MacDonald's insurer elects not to pay out the full amount as set out in clause 16.2.3, the Customer's claim against MacDonald's shall be limited to such lesser amount;
- 15.12 In as much as the Customer has suffered damages and/or losses in the Goods outside the value limit or cover provided for in clause 16.2 and/or the exclusion mentioned in clause 15.3, 16.2.7 and 16.2.8, it hereby:

- 15.12.1 waives and abandons all and any claims for such damages against the MacDonald's;
- 15.12.2 Indemnifies and undertakes to hold MacDonald's harmless against all and any claims by any third party against MacDonald's pursuant to such damages and/or losses including but not limited to any subrogation claim by the Customer's insurers with whom the Customer may have insured such risk.
- 16 INSURANCE
- 16.1 In respect of any Services rendered under clause 4.1 of these Conditions:
- 16.1.1 unless specifically agreed otherwise, MacDonald's shall not be responsible for and shall not bear the cost of arranging any insurance for loss of, or damage to the Goods. The Customer shall, in the circumstances, be obliged to take out and maintain adequate insurance covering any and all damage, loss and/or diminution in value to the Goods while in storage. The Customer shall, in the circumstances, be obliged to take out and maintain adequate insurance covering any and all damage, loss and/or diminution in value to the Goods while in storage. Upon request, the Customer shall make the insurance policy(ies) available to MacDonald's for inspection and provide copies thereof to MacDonald's. If any insurance is taken out by MacDonald's, such insurances are subject to the usual exceptions and conditions of the policies of the insurance company or underwriters taking the risk. It is specifically recorded that second hand implements, equipment, vehicles and/or forklifts, are excluded and the Customer shall in all instances be arrange its own insurance cover in respect of these items and indemnifies MacDonald's in this regard.
- 16.1.2 Unless otherwise agreed in writing, MacDonald's shall (safe for the insurance reflected in 16.1.1) not be under any obligation to effect separate insurance for any amount of Goods but may declare it on any open or general policy.
- 16.1.3 Should MacDonald's not be specifically (in writing and accepted by MacDonald's) instructed by the Customer to take out insurance in respect of the Goods (other than that under 16.1.1), MacDonald's shall not be liable for any loss, damage or diminishing value of the Goods. In the event that MacDonald's agrees to take out insurance cover in respect of the Goods, any claim the Customer may have against MacDonald's for any loss, damage or diminishing value of the Goods, shall be limited to the insurance cover so obtained. In such instance, the Customer shall provide instructions regarding the amount of insurance to be effected.
- 16.1.4 The Customer hereby waives any claim it may have against MacDonald's arising out of or in connection with the effecting by it of insurance, whether or not caused by or in any way attributable to MacDonald's negligence in any degree, and indemnifies MacDonald's in respect of any claims made against it in this regard.
- 16.1.5 Instructions relating to the delivery or release of Goods against payment or against surrender of a particular document shall be in writing and MacDonald's liability shall not exceed that provided for in these Conditions in respect of mis-delivery of Goods.
- 16.1.6 MacDonald's accepts no responsibility and/or liability whatsoever for the late departure or arrival of Goods/Containers, demurrage or standing time.
- 16.2 In respect of the Services rendered under clause 4.2 of these Conditions:
- 16.2.1 MacDonald's shall procure and maintain the following insurance:
- 16.2.2 In respect of any goods transported:
- 16.2.3 Goods in transit insurance with a limit of R2,000,000 (VAT inclusive) on payment of an excess in the amount of R250,000 payable by the Customer; and
- 16.2.4 Third Party Liability insurance with a limit of R100,000,000 (Vat and excess inclusive); and
- 16.2.5 General Public Liability Insurance in the amount of R5,000,000 (VAT and excess inclusive);
- 16.2.6 In the event of MacDonald's submitting a claim to its insurers in terms of the above-stated insurance policies, the Customer undertakes to reasonably assist and co-operate with MacDonald's to prepare and timeously submit such claim which assistance shall include but not be limited to the provision of relevant documentation pertaining to the Goods and/or the damages thereto and/or the deposition to such affidavits and/or the giving of such viva voce evidence as reasonably required by the Service Provider, and/or its insurers and/or its appointed attorneys (whose appointment need not be proved).
- 16.2.7 Any insurance cover taken out and maintained in terms of this clause 16.2 are subject to the usual exceptions and conditions of the policies of the insurance company or underwriters taking the risk. It is specifically recorded that second hand implements, equipment, vehicles and/or forklifts, are excluded and the Customer shall in all instances arrange its own insurance

- cover in respect of these items and indemnifies MacDonald's in this regard.
- 16.2.8 The following commodities are further excluded and the Customer shall in all instances obtain its own insurance cover in respect of the following: bullion, specie, jewelry, precious stones, stamps, deeds, travelers cheques, documents, film, alcoholic beverages, cigarettes, copper and copper goods/products or items. The Customer specifically indemnifies MacDonald's in regard to these items.
- 16.2.9 With effect from 1 June 2023 - Electricity Grid Failure is an uninsurable risk. Electricity Grid Failure means an interruption to or suspension of electricity supply, in any manner and from any source, and for any reason (including damage and any inability and/or failure on the part of the supplier) which affects an entire municipality (including local, district, regional or any other level that is created by law) or province or the country at substantially the same time, including any interruption, power surge or suspension at the reconnection or reinstatement of electricity supply". Due to the exclusion received from the Insurer MacDonald's Transport cannot be responsible for any damage, loss or consequential loss due to National Grid Failure and shall in this regard be indemnified against any claims.
- 17 SALE OR DISPOSAL OF GOODS
- 17.1 Without prejudice to MacDonald's other rights and remedies under these Conditions and at law, MacDonald's shall be entitled (but not obliged) to sell the Goods without notice to the Customer:
- 17.1.1 if the Customer fails to remove the Goods given to MacDonald's for storage when requested by MacDonald's to do so; and/or
- 17.1.2 if the Customer at any time fails to pay any amount owed by it to MacDonald's.
- 17.2 MacDonald's shall be entitled to sell or dispose of non-perishable Goods upon giving fourteen (14) days' notice in writing to the Customer, unless the Goods are perishable Goods in which event MacDonald's shall be entitled to exercise such rights of sale at any time at MacDonald's sole and absolute discretion. The sale shall be effected by auction or private contract or otherwise at the sole and absolute discretion of MacDonald's.
- 17.3 All expenses connected with the sale and any other amounts owed by the Customer to MacDonald's shall be recoverable from the proceeds of sale of the Goods.
- 18 GENERAL INDEMNITIES
- 18.1 The Customer shall defend, indemnify and hold harmless MacDonald's against all liability, loss, damage, claims, penalties, costs or expenses arising from:
- 18.1.1 any act or omission of the Customer or any Person acting on its behalf;
- 18.1.2 compliance with the instructions given to MacDonald's by the Customer or any other Person entitled to give them;
- 18.1.3 any breach of warranty or obligation by the Customer or Owner;
- 18.1.4 the negligence, in any degree, of the Customer or Owner;
- 18.1.5 any contractual or other penalties for which the Customer may be liable including, but not limited to, demurrage, detention, dead freight, early arrival and storage in the port due to any particular shipment missing vessel stacks and / or being short-shipped due to the fault Force Majeure or no fault of MacDonald's.
- 18.2 Advice and information, in whatever form it may be given, is provided by MacDonald's for the Customer only and the Customer shall defend, indemnify and hold harmless MacDonald's for all liability, loss, damage, costs and expenses arising out of any other person relying on such advice or information.
- 18.3 The Customer undertakes that no claim be made against any employee, contractor, subcontractor or agent of MacDonald's which imposes or attempts to impose upon any of them any liability whatsoever in connection with the Goods or any services provided, including advice given, if any such claim should nevertheless be made, to indemnify MacDonald's against all consequences thereof.
- 18.4 Without prejudice to the foregoing, every such employee, contractor, subcontractor or agent shall have the benefit of all provisions herein, as if such provisions were expressly for their benefit.
- 18.5 The Customer hereby waives any claims it may have and shall defend, indemnify and hold harmless MacDonald's from and against all claims, costs and demands whatsoever and by whomsoever made or preferred in excess of the liability of MacDonald's under the terms of these Conditions and without prejudice to the generality of this clause this indemnity shall cover all claims, costs and demands arising from or in connection with the negligence of MacDonald's, in whatever degree, its employees, contractors, subcontractors and agents.
- 18.6 Save where caused by the fault of MacDonald's, the Customer shall indemnify and hold MacDonald's harmless against any loss, damages, claim, cost (including but not limited to legal costs on the attorney and own

- client scale) and/or other liability (including but not limited to fines and other penalties) which MacDonald's may incur or suffer in terms of the National Road Traffic Act, 93 of 1996, and any regulations promulgated pursuant thereto, as may be in force from time to time and, in particular but without limiting the general meaning of this clause, liability which MacDonald's may incur as a consignor or consignee as defined in the National Road Traffic Act 93 of 1996 or the regulations to that Act.
- 18.7 In no circumstances shall MacDonald's be liable to any Customer for any penalty which a Customer attempts to impose against or on MacDonald's for any reason whatsoever which is alleged by the Customer to be in consequence of negligence or wrongdoing by MacDonald's.
- 19 RATES**
- 19.1 The rates as quoted by MacDonald's are based on certain fixed costs as well as fluctuating costs. In the event of any upward or downward adjustments in the fluctuating costs MacDonald's has the right to adjust the rates charged to the Customer accordingly.
- 19.2 All tax invoices will be net of VAT and accordingly VAT will be added to the Rates as quoted or agreed to.
- 20 PAYMENT TERMS**
- 20.1 The Customer shall make payment to MacDonald's:
- 20.1.1 of the invoices delivered by MacDonald's;
- 20.1.2 within 30 (Thirty) days from date of statement;
- 20.1.3 in South African currency;
- 20.1.4 free of bank and other charges, without delay, counterclaim, holding-over, set-off or deduction and shall, unless otherwise agreed in writing, be made by way of EFT into the bank account designated from time to time by MacDonald's for this purpose.
- 20.2 All EFT's shall be made at such time as to reflect such payment in good and cleared funds in the designated bank account by no later than the due date.
- 20.3 In the event of the Customer not paying the whole of the invoice by the required day the Customer shall pay interest on the amount outstanding from the date due for payment until the actual date of payment at the rate of prime plus 2% per annum, compounded monthly in arrears.
- 20.4 So long as any payment is outstanding whether relating to the current agreement between the Customer and MacDonald's of any other agreement, MacDonald's shall have a special and general lien on any of the Customer's Goods or equipment in MacDonald's possession and MacDonald's shall be entitled to retain such Goods or equipment or any part of it and/or suspend the delivery of services on any contract until payment is made.
- 20.5 In the event of any payment being overdue, MacDonald's reserves the right to withdraw any credit facilities granted to the Customer without further notice to such Customer. In such event the full amount outstanding by the Customer to MacDonald's shall immediately become due owing and payable. MacDonald's shall be entitled to set-off any overdue amount owed to it against any amount owed to the client by MacDonald's.
- 20.6 The Customer shall be obliged to pay all and any costs incurred by MacDonald's in complying with all and any statutory requirements and regulations, notices, requirements of a competent authority or order of court, including storage, movement, permanent removal or destruction of infested or contaminated Containers or Goods or the treatment of MacDonald's employees, agents, contractors or sub-contractors or premises or any other persons or premises as a result of any infestation or contamination arising from such Containers or Goods, and the Customer waives any claims it may have against MacDonald's for loss of or damage to property or injury to persons, arising directly or indirectly from such infestation or contamination and indemnifies MacDonald's against any claims in this regard made by any other Person, except where and only to the extent attributable to the negligence of MacDonald's or its employees.
- 20.7 A certificate signed by any Director or CFO of MacDonald's (whose appointment and authority it shall not be necessary to prove) as to the existence of any facts and, in particular, without limiting the generality of the foregoing, as to the amount of the indebtedness of the Customer to MacDonald's, shall constitute prima facie proof of such facts for any purpose and, more particularly, for the purposes of obtaining provisional sentence, default judgment or summary judgment or their equivalent in any court of competent jurisdiction, without further notice.
- 21 LIEN**
- 21.1 All Goods as well as 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 and may be held by MacDonald's in any place by MacDonald's or any other authorized agent of MacDonald's as security either for monies

- due in respect of such Goods or for other monies due to MacDonald's whether in respect of the storage of such Goods or other goods or for other Charges or costs payable by the Customer and/or the owner of the Goods, whether such lien and rights are afforded by law, the Agreement, Conditions or otherwise. If the special and general lien or pledge is not satisfied within fourteen (14) days from the day when the amounts in question become payable, the Goods may be sold by auction or otherwise at MacDonald's sole and absolute discretion as provided for in clause 17 and at the expense of the Customer and the proceeds of sale will be applied to the satisfaction of the lien and the overdue amounts. Any balance of the proceeds from the sale of the Goods after the proceeds have been applied in or towards the satisfaction of such lien and expenses will be paid to the Customer. Storage fees will be charged for the Goods detained under the lien.
- 21.2 The Customer agrees and acknowledges that the lien ranks in priority to any other right (security or otherwise) which it may give or have given to any other person in relation to the Goods.
- 21.3 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 MacDonald's or any other companies within the Group at that time or which become payable in the future. In the event of MacDonald's utilizing 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 MacDonald's for purposes of exercising MacDonald's right to retention under lien and/or pledge.
- 21.4 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, hypothec, right of retention, or lien and pledge, without the prior written consent of MacDonald's. The lien and pledge and right of retention in favor of MacDonald's referred to above in this clause 21.1 and 21.3, shall operate as a first and prior charge against the Goods and the documents relating to the Goods and no other security shall rank prior to MacDonald's lien, pledge or right of retention.
- 22 CONDITIONS APPLICABLE TO CONTAINERS
- 22.1 If a Container has not been packed or stuffed by MacDonald's, MacDonald's shall not be liable for loss of or damage to the contents if caused by:
- 22.1.1 the unsuitability of the Goods for carriage in containers, unless MacDonald's has approved the suitability in writing;
- 22.1.2 the unsuitability or defective condition of the Container
- 22.1.3 the fact that the Container has not been properly sealed at the commencement of the Carriage except where MacDonald's has agreed to seal the Container.
- 22.2 If a Container has been packed or stuffed by MacDonald's, MacDonald's shall only be liable for the loss of or damage to the contents if, the Customer or its agent provided proper loading and securing instructions to MacDonald's, and MacDonald's failed to follow such instructions. Should the Customer fail to provide such instructions to MacDonald's, MacDonald's shall be entitled pack, stuff and or secure the Goods in the container, and shall not be liable for any damage or loss incurred due to the manner in which the Goods were packed, stuffed and or secured.
- 22.3 If a Container has been packed or stuffed by MacDonald's and MacDonald's sends photographs to the Customer reflecting how the Goods were stuffed and/or secured and the Customer does not within 24 hours from receipt of such photographs inform MacDonald's that the Goods were packed, stuffed or secured incorrectly, MacDonald's shall be entitled to accept that the Goods are correctly loaded and secured and shall not be liable for any damage or loss incurred due to the manner in which the Goods were packed, stuffed and or secured.
- 22.4 The Customer shall at all times be entitled to have a surveyor or any representative present at the loading, stuffing and/or securing of Goods in a Container and shall be liable for any damage or loss incurred due to the manner in which the Goods were packed, stuffed and or secured.
- 22.5 MacDonald's shall not be liable for any Demurrage, and or Storage charges due to reasons beyond MacDonald's control. MacDonald's shall not be liable for the costs incurred as a result of any Containers that are moved to overstay depots, under the instruction/s of the Customer, shipping line, and or any agent acting in their behalf.
- 22.6 MacDonald's shall not be liable for any costs incurred as a result of any Container in respect of which demurrage has been incurred as a result of early empty container collection, on instruction of the Customer,

shipping line and or agent acting on behalf of the Customer or shipping line.

22.7 The Customer shall defend, indemnify and hold harmless MacDonald's against all liability, loss, damage, costs, claims and expenses arising from one or more of the matters covered by this clause 22.

22.8 Where MacDonald's is instructed to provide a Container, in the absence of a written request to the contrary, MacDonald's is not under an obligation to provide a Container of any particular type or quality.

23 **FORCE MAJEURE**

23.1 MacDonald's shall not be liable for any loss of, damage to or destruction of the Goods, or for any delay in the performance or non-performance that arise in whole or in part due to any cause not within the control of MacDonald's, whether or not existing at the date of quotation (a "force majeure event") including the following:

23.1.1 war, terrorism, threat of war, disease, official action, quarantine, civil disturbance, sabotage, strike, lock-out, interference with communications, lack of transport, labour, natural disaster, strikes, walk-outs, civil commotion or any other form of labour unrest (and whether any of the foregoing is lawful or unlawful) or as a result of war (whether declared or not) or riot (including political riot) and/or storage accommodation;

23.1.2 storm, fog, lightning, fire, flood, heavy rains, high and low tide or water level, frost, freezing, ice, heat, drought, acts of god;

23.1.3 subsidence and/or collapse of the ground and/or any storage facility, water leakage or seepage, dampness, odor, stench, worms and rodents, damage through rats, mice, insects or other creatures;

23.1.4 the natural properties of the Goods, inherent changes in quality, spontaneous deterioration, self-generated heat, combustion, explosion, drying, mold, yeasts, leaks, rot and mildew, rust and sweating;

23.1.5 breakage of glass, wickered bottles and flasks, cast-iron and other brittle articles, inadequate packing; and

23.1.6 all other causes which are beyond the control of MacDonald's.

23.2 If a force majeure event occurs which prevents, delays or hinders performance of Services by MacDonald's, MacDonald's shall give notice of such force majeure event to the Customer. In the event of a force majeure event occurring, the Agreement will remain in force but MacDonald's obligations will be suspended for so long as the force majeure event subsists. In case the force majeure event lasts for more than three (3) months,

MacDonald's shall have the option to terminate the Agreement with no liability. All additional costs which may be incurred as a result of a force majeure event, including but not limited to transportation and storage charges, warehouse or yard rental, demurrage for vessels or trucks, charges in respect of delivery from warehouses, bonded or otherwise, will be borne by the Customer and interest will be chargeable on any amounts due in terms of this clause.

23.3 If at any time the performance of MacDonald's obligations, in the opinion of MacDonald's or any person whose services MacDonald's makes use of, is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage whatsoever and which cannot be avoided by reasonable endeavors by MacDonald's or such other Person, MacDonald's may, on giving notice in writing to the Customer or without notice where it is not reasonably possible to give such notice, treat the performance of its obligations as terminated and place the Goods or any part thereof at the disposal of the Customer at any place which MacDonald's may deem safe and convenient, whereupon the responsibility of MacDonald's in respect of the Goods shall cease. The Customer shall be responsible for any additional costs of carriage to and delivery and storage at such place and all other expenses incurred by MacDonald's.

24 **GENERAL LIABILITY**

24.1 Except insofar as otherwise provided by these Conditions, MacDonald's shall not be liable for any claims, whether arising in contract or delict, which are in any way related or attributable to:

24.1.1 any act or omission of the Customer or any Person acting on its behalf;

24.1.2 compliance with the instructions given to MacDonald's by the Customer or any other Person entitled to give them;

24.1.3 insufficiency of the packing or labeling of the Goods except where such service has been provided by MacDonald's;

24.1.4 the weight, measurements, count, contents, quality, defect or description of any Goods;

24.1.5 handling, loading, stowage or unloading of the Goods by the Customer or any person acting on its behalf;

24.1.6 inherent vice of the Goods;

24.1.7 riots, civil commotions, strikes, lockouts, stoppage or restraint of labor from whatsoever cause;

24.1.8 fire, flood or storm;

24.1.9 damages, costs, claims, penalties and/or charges of whatever nature arising from loss

- of market or attributable in any way to delay in forwarding or in transit or failure to carry out any instructions given to MacDonald's, including any indirect and/or consequential loss;
- 24.1.10 loss or non-delivery of any separate package forming part of a consignment or for loss for a package or an unpacked consignment or for damage or mis-delivery;
- 24.1.11 injury or death suffered by the Customer or any Person arising from any cause, including but not limited to MacDonald's negligence, in whatever degree, as a result of MacDonald's performance or attempted performance of its obligations to the Customer and/or the Customer's requirements or mandate;
- 24.1.12 the failure and/or malfunction, for whatever reason, and regardless of negligence in whatever degree on the part MacDonald's and/or breach by it of these Conditions, of MacDonald's computer systems and/or software programs, including those "Information System Services" as defined in the Electronic Communications and Transactions Act, No. 25 of 2002, as amended from time to time, provided and/or operated by MacDonald's and/or by any person with whom MacDonald's conducts business, and/or any third party;
- 24.1.13 the provision by MacDonald's to the Customer in whatever manner and/or form, of incorrect information, including data as defined in the Electronic Communications and Transactions Act, No. 25 of 2002, as amended from time to time, where such incorrect information has been generated by and provided to MacDonald's by any Person with whom MacDonald's conducts business, and/or any other third party any cause which MacDonald's could not have prevented by the exercise of reasonable diligence.
- 24.2 Notwithstanding anything to the contrary contained in these conditions, MacDonald's shall not be liable for: Any loss or damage to property other than the Goods themselves; any indirect or consequential loss or damage; loss of profit; delay or deviation arising from any cause, including but not limited to MacDonald's negligence, in any degree, or breach by it of any of these Conditions.
- 25 AMOUNT OF COMPENSATION
- 25.1 Except insofar as otherwise provided by these Conditions, the liability of MacDonald's, howsoever arising, and notwithstanding that the cause of loss or damage be unexplained shall not exceed the following:
- 25.1.1 in respect of all claims, of whatsoever nature, relating to the Goods (excluding Containers), whichever is the least of:
- 25.1.1.1 the value of, or
- 25.1.1.2 R20 per gross Kilogram of, the Goods, lost, damaged, misdirected, misdelivered or in respect of which a claim arises, provided that no claim of any nature whatsoever, shall ever exceed the maximum insurance cover of MacDonald's which pertains specifically to the Goods (if any) as updated from time to time.
- 25.1.2 In respect of claims arising out of loss of or damage to Containers, which for whatever reason are not excluded by the provisions of these conditions:
- 25.1.2.1 the reasonable cost of repair thereof; or
- 25.1.2.2 the lesser of the market or depreciated value thereof at the date of such loss or damage in the event of total loss and/or damage being beyond economical repair.
- 25.1.3 In respect of any and all other claims, whether related to the Goods or other property and/or equipment, including claims arising out of or in any way attributable to delay, which for whatever reason are not excluded by the provisions of these Conditions, the amount of MacDonald's charges in respect of the Goods.
- 25.2 The value of Goods shall be calculated by reference to the invoice value of the Goods plus freight and insurance if paid.
- 25.3 If there be no invoice value for the Goods, the value shall be calculated by reference to the value of such Goods at the place and time when they are delivered to the Customer or Owner or should have been so delivered. The value of the Goods shall be fixed according to the current market price or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.
- 26 NOTICE OF LOSS, TIME BAR
- 26.1 MacDonald's shall be discharged of all liability unless:
- 26.1.1 notice of any claim is received in writing by MacDonald's or its agent within 14 (fourteen) days after the date specified in 26.2 below, or within a reasonable time after such date, but in any event not exceeding 60 (sixty) days, if the Customer proves that it was impossible to so notify, and
- 26.1.2 suit is brought in the proper forum and written notice thereof received by MacDonald's within 9 (nine) months after the date specified in 26.2 below.
- 26.2 The time limits referred to in clause 26.1 shall commence on:
- 26.2.1 in the case of loss or damage to Goods, the date of delivery of the Goods;

26.2.2	in the case of delay or non-delivery of the Goods, the date that the Goods should have been delivered;				authorisation would violate the Anti-Corruption Controls.
26.2.3	in any other case, the event giving rise to the claim.			28.2	In the event of any breach of the warranties and undertakings in clauses 28.1.1 and 28.1.2, the non-breaching party may terminate the Agreement with immediate effect upon written notice to the other Party. This shall be the sole remedy available for a breach of the warranties and undertakings in Clauses 28.1.1 and 28.1.2.
27	BREACH AND TERMINATION				
27.1	Notwithstanding anything herein to the contrary, MacDonald's may at any time terminate the Agreement by written notice to the Customer, effective immediately if:				
27.1.1	the Customer commits a material breach of any of the terms of the Agreement, including these Conditions (or a document issued pursuant thereto or hereto), and such breach if capable of cure is not cured within fifteen (15) days after the Customer being notified by MacDonald's; or			29	DISCLOSURE OF PERSONAL INFORMATION
27.1.2	the Customer is dissolved, becomes insolvent, is unable (or admits it is unable) to pay its debts as they fall due, enters into an arrangement with or for the benefit of its creditors, goes into liquidation or commits an act of bankruptcy under the laws of its relevant jurisdiction of incorporation, or if a receiver is appointed over any of its assets or anything occurs with analogous effect to the above.			29.1	The Customer understands that the personal information given in the credit application form is to be used by MacDonald's for the purpose of assessing the Customer's credit worthiness. The Customer confirms that the information given is accurate and complete. The Customer further agrees to update the information supplied, in order to ensure the accuracy and completeness of the information given, failing which MacDonald's will not be liable as a result of any inaccuracies or lack of completeness of information.
27.2	In the event that the Customer terminates the Agreement unilaterally, MacDonald's will be entitled to a compensation for all loss it suffers (including but not limited to any loss of profit) as a result of the termination of the Agreement.			29.2	MacDonald's has the Customer's consent at all times to contact and request information from any persons, credit bureaus, commercial bank, financial institution or business, including those mentioned in the credit application form and to obtain any information relevant to the Customer's credit assessment, including but not limited to, information regarding the amounts purchased from the suppliers per month, length of time that the Customer has dealt with such supplier, type of goods or services purchased and manner and time of payment.
27.3	Upon the occurrence of a termination of the Agreement, any Charges or expenses (whether present or future, contingent or otherwise) shall become immediately due and owing by the Customer to MacDonald's.			29.3	The Customer agrees and understands that information given in confidence to MacDonald's by a third party on the Customer will not be disclosed to the Customer.
28	ANTI-BRIBERY AND CORRUPTION			29.4	The Customer hereby consents to and authorises MacDonald's at all times to furnish credit information concerning the Customer's dealings with MacDonald's to a credit bureau and to any third party seeking a trade reference regarding the Customer in his dealings with MacDonald's. The Customer hereby irrevocably consents and acknowledge that that failure to make payment to MacDonald's may result in a credit listing at a credit reporting agency.
28.1	Each Party respectively warrants and undertakes to the other Party that in connection with the Agreement:				
28.1.1	it has implemented adequate internal procedures designed to ensure it shall not authorise the giving or offering of any financial or other advantage with the intention of inducing or rewarding an individual or entity to improperly perform an activity undertaken in the course of an individual's employment or connected to an entity's business activities (the "Anti-Corruption Controls"); and				
28.1.2	it has not authorised and it will not authorise, in connection with the performance of the Agreement, any financial or other advantage to or for the benefit of any public official, civil servant, political party, political party official, candidate for office, or any other public or private individual or entity where such			30	SUSPENSION OF MACDONALD'S OBLIGATIONS
				30.1	If any amount owed by the Customer to MacDonald's from any cause whatever, whether under this agreement or not, is not

- paid on due date, then, without prejudice to any other right which it may have, MacDonald's may:
- 30.1.1 require that all amounts then owed to it by the Customer, from any cause whatever (and whether under the agreement or not) shall immediately become due and payable;
 - 30.1.2 until payment is made, suspend the carrying out of any of its then uncompleted obligations or withhold the supply of further services;
 - 30.1.3 terminate any credit facilities granted to the customer, whether under this agreement or not.
- 31 **OVERRIDING EFFECT**
The terms and conditions as set out in this document shall override all terms and conditions stipulated, incorporated or referred to by the Customer in any order or negotiations and shall be the only terms and conditions binding on the parties.
- 32 **GOVERNING LAW**
- 32.1 The rights and obligations of MacDonald's and the Customer shall be governed by the law of the Republic of South Africa and the Customer agrees to submit to the jurisdiction of the Courts of the Republic of South Africa for the determination of disputes.
 - 32.2 The Customer hereby consents to the jurisdiction of the Magistrate's Court for the determination of any dispute or claim arising between MacDonald's and the Customer notwithstanding that the value of such dispute or claim may otherwise be beyond the jurisdiction of that Court, provided that this provision shall not preclude MacDonald's at its sole discretion from instituting any action in the High Court of South Africa having jurisdiction or any other Court of competent jurisdiction.
- 33 **LEGAL COSTS**
The Customer shall be liable for any legal costs occasioned by MacDonald's. The expression "legal costs" herein shall include, without limiting the generality of the foregoing, all costs relating to legal expenses incurred in enforcing MacDonald's rights and recovering any amounts due. These costs shall include attorney's fees on an attorney own client scale, collection commission and tracing agents.
- 34 **VARIATION AND APPLICABILITY**
- 34.1 No amendment or variation of these conditions shall be of any force or effect unless recorded in writing and signed on behalf of MacDonald's authorised signatory. No striking through of any term of condition contained herein shall be deemed to have been accepted by MacDonald's unless MacDonald's authorised representative has initialled such striking through.
 - 34.2 Any additional or different terms or conditions proposed by the Customer before or after conclusion of the Agreement, whether in a proposal, purchase order, acknowledgement, acceptance or otherwise, are rejected and will not apply to or form part of or amend any part of the Agreement unless expressly assented to in writing by an authorised representative of MacDonald's board of directors, notwithstanding any statement at any time by the Customer that any act or failure to act by MacDonald's constitutes acceptance of such different or additional terms or conditions.
 - 34.3 In the case of any inconsistency between the provisions of any Commercial Agreement and these Conditions, the Commercial Agreement shall prevail.
 - 34.4 In the case of any inconsistency between the provisions of these Conditions and law, the Conditions shall, to the extent permitted by law, prevail.
- 35 **RELAXATION NOT WAIVER**
No relaxation or indulgence of these conditions by MacDonald's in favour of the Customer shall be construed as a waiver of MacDonald's rights.
- 36 **RIGHT TO CALL ON SECURITY**
In the event that the Customer is in default of payment or cannot be granted credit on an unsecured basis and without derogating from the terms and conditions set out herein, MacDonald's shall be entitled to call on security in the form of a bank guarantee, suretyship and/or other suitable form of security to be provided by the Customer at any time, for the due and proper performance of any of the Customers