

# Standard Conditions of carriage of Gijima

## **1. Definitions**

In these conditions the following words and/or terms shall bear the meanings ascribed hereunder;

- 1.1 **“Carrier” means** – GIJIMA EXPRESS SERVICE and includes the carrier’s servants and agents and any person or persons carrying any goods forming the subject-matter of this contract under and in terms of a sub-contract with the carrier;
- 1.2 **“Cosigner’ means** – the owner of the goods or the person having lawful title to the goods or possession thereof and the duly authorized agent of the cosigner;
- 1.3 **“Consignment’ means** - the goods forming the subject-matter of this agreement, whether contained in one or more parcels or packages and whether cosigned singly or in parcels or in bulk.
- 1.4 **“Consignee” means** – the person to whom or, in the absence of the person named by the consignee, the any person representing himself to be duly authorized to accept delivery on behalf of the consignee and having the appearance of being a person authorized by the cosigner to the consignee to accept delivery on behalf of the consignee;
- 1.5 **“Dangerous Goods’** – includes all the goods which are specified in the special classification of dangerous goods issued by Transnet Limited or which, although not specified therein, are in fact dangerous, and any goods considered by the carrier to be dangerous shall be deemed to be dangerous; “dangerous goods” shall include any dangerous or explosive article or substance or anything likely to encourage vermin or other pets or to cause any damage whatsoever to persons or property;
- 1.6 **“High Risk Goods”** – means without derogating from the generality hereof, clothing of whatever description, including footwear, objects d’Art, antique and contemporary furniture, electronic and sound equipment, glassware and other glass products of whatever description, currency, negotiable

instruments, jewelry, gem stones, wrought or unwrought metals, securities, drugs, weapons, any valuable documents or articles, live animals, and shall include goods which are inflammable, radioactive, perishable or noxious.

## **2. Terms and Conditions of acceptance of goods**

- 2.1 The carrier reserves the right to refuse to accept any goods for carriage, or part of any consignment;
- 2.2 All the goods to be conveyed by the carrier shall be accompanied by a waybill noted, properly filled in by the consigner;
- 2.3 Where the carrier or its agents or employees sign a consignment note as an acknowledgement of the goods referred to therein, this document will not constitute proof of the quality or condition of goods received, or the nature, content, weight or value of such goods at the time they were received by the carrier, or that such goods have been properly packed, marked or described;
- 2.4 Where the Carrier, its agent or employee signs a document, issued by or on behalf of the Consignor, a Consignee or sender of goods, which contains conditions of acceptance, delivery or of conveyance of such goods, contrary to the terms and conditions of this Agreement, such signature shall not constitute an acceptance of such terms and conditions and the terms and conditions herein contained, relating to the acceptance, delivery and conveyance of such goods such prevail;
- 2.5 Where the Carrier, its agent or employee signs a consignment note as an acknowledgement of the goods referred to therein, this document will not constitute proof of the quantity of goods received, condition of such goods, or the nature, content, weight or value of such goods have been properly packed, marked or described.
- 2.6 Where the Consignor requires the transportation of an abnormal load the Consignor shall :
  - 2.6.1.1 ensures that the necessary authorizations from the relevant authorities are first had and obtained;
  - 2.6.1.2 indemnify the Carrier and accept liability for the payment of all claims of any nature arising from any damage to or the removal of any structures or other obstacles, which may become damaged in the course of such conveyance, or which are required to be removed, repaired or replaced for the purpose of the conveyance of the abnormal load.

### **3. Authority of Agent to vary conditions**

No agent or person employed by the carrier shall have any authority to alter or vary, in any way, these conditions, unless he is expressly authorized in writing to do so by the owner

### **4. Remuneration**

The remuneration payable to the Carrier by the Consignor shall be in accordance with the standard scale of charges of the Carrier. Should the Consignor require, the carrier shall make available a small copy of its scale of charges.

### **5. Increase in remuneration**

5.1 Any increase in the Carrier's charges, which without derogating from the generality hereof, are necessitated by any of the following occurrences, shall be for the Consignor's account, and payable to the Carrier in terms of the provisions of clause 6 below :

- 5.1.1 in the event of the Carrier being obligated to obtain licenses or permits, or to comply with the requirements of any lawful authority;
- 5.1.2 in the event of the Carrier being obligated to deviate from the route selected by it, whether as a result of adverse weather conditions, unpassable or dangerous roads, bridges, or ferries, or for any other reason at the discretion of the Carrier;
- 5.1.3 in the event of the Carrier being required to pay customs duties, clearing charges and/or fines;
- 5.1.4 any additional costs incurred for the provision of special packaging to convey valuable and/or fragile and/or dangerous or hazarding goods;
- 5.1.5 additional costs incurred in the loading and/or offloading and/or storage of the Consignor's goods;
- 5.1.6 any increase in transport costs, whether by way of air, sea or land.

### **6. Payment of carrier's remuneration**

6.1 Unless otherwise specifically agreed upon between the parties the Carrier's remuneration shall be payable by the Consignor in cash and not by cheque and shall be payable immediately before the goods are removed for delivery.

6.2 All payments shall be made free of deduction or set off by the Consignor.

- 6.3 Any increase in the Carrier's charges as contemplated in clause 5 above shall be due and payable by the Consignor 5 (FIVE) days from due date of invoice.
- 6.4 Where the Consignor is an account holder of the Carrier, it will become liable for payment of the Carrier's charges on or before the 25<sup>th</sup> (TWENTY FIVE) of every month, from the previous months invoices.
- 6.5 In the event of non-payment of the Carrier's remuneration, The Carrier shall be entitled to retain the possession of the goods pending payment, as is more fully contemplated in clause 7 below, and shall be entitled to charge the Consignor storage charges in respect of any period during which the goods are stored after tender of delivery up to and including the time of payment of all monies owing to the Carrier by the Consignor, in which event the provisions of clause 7 hereof shall apply mutatis mutandis.

## **7. Carrier's Lien**

- 7.1 Any charges not paid by the Consignor and due to the Carrier shall entitle the Carrier pursuant to a general lien hereunder to take all or any part of any of the Consignor's goods into its possession, or to retain such goods, in its or any other warehouse facility, and in so doing, the Consignor shall be entitled to charge for warehousing or any other expenses in connection therewith. The Consignor shall have a general lien upon all such goods in its possession or in its or any other warehouse as aforementioned ( whether the debt due by the Consignor relates to such goods or not), for all the monies due to, or all liabilities incurred by the Consignor, and if a part of the goods have been delivered , removed, dispatched or sold, the Carrier shall retain a general lien upon the remainder of such goods, for any liabilities outstanding by the Consignor to it. The Carrier shall furthermore be entitled too charge for warehouse storage costs or any other expenses incurred during the period which its lien on the goods is being asserted and all the conditions aforementioned shall apply to such additional charges or expenses.
- 7.2 If the Carrier is not paid any amounts due to within 7 (SEVEN) days after it has first retained such goods, pursuant to its general lien, it shall have the power, without a giving any notice to the Consignor, or anyone else, to open and examine any part of the whole or a part of such goods, and to sell, whether by public auction or private treaty, a whole or a part of such goods falling under its general lien, and from the proceeds realized therefrom to pay the amounts due to its including the expenses of any such sale.
- 7.3 Any surplus realized from the sale of such goods shall be paid to the Consignor without interest, and the Carrier shall thereafter be released from any liability whatsoever in relation to the goods sold. Where only a part of the goods have been sold the Carrier shall be entitled and shall

continue to charge for storage of the remaining goods, and shall be entitled from time to time to sell the remainder or a part only of such goods, and apply to the proceeds as aforementioned and all these conditions shall apply thereto.

7.4 The exercise by the Carrier of any of the rights accorded to it by this clause shall be without prejudice to any other rights it may have under this agreement or at common law in respect of the non-payment by the Consignor of the Carrier's remuneration.

## **8. Consignor duty to ensure delivery of goods to the carrier**

8.1 All the goods to be conveyed by the Carrier shall be accompanied by a waybill note, properly filled in and signed by the Consignor, or its duly authorized servants or agents.

8.2 It shall be the duty of the Consignor to ensure that no goods to be carried by the carrier remain unloaded or left at the place at which delivery of the consignment is to be given to the Carrier at the Carrier shall not be liable for any damage to, or less of, any such goods arising from any breach by the Consignor of such duty.

## **9. The loading and offloading of goods**

9.1 The Consignor shall at all times ensure that adequate facilities are available for the loading and/or delivery of its goods to the Carrier, and that the Carrier is granted safe and adequate access a proper loading of the Consignor's goods, and in addition, and should additional loading equipment be necessary, that, without derogating from the generality hereof, the Consignor ensures the provision of such equipment, including additional tackle, plant, power, labour and the like.

9.2 Where the Consignor fails to provide adequate loading facilities to the Carrier, the Carrier shall, at its option, be entitled to cancel his Agreement, in which event the Carrier shall not be liable or any loss or damage (including consequential loss or damage) suffered by the Consignor, the Consignee or its agents as a result thereof. Where the Carrier elects to continue with this Agreement, it shall have the right to utilize such additional tackle, plant, power, equipment or labour as the case may be, as it in its sole and absolute discretion deems necessary, and the Consignor shall be liable for all the additional expenses incurred as a result thereof.

9.3 The Carrier shall not be liable to the Consignor, Consignee, or its duly authorized agent in respect of any damage to the consignment, arising out of the loading or offloading of any consignment, or from the use of any such additional tackle, plant, power, equipment, labour or the like, and in this regard the Consignor indemnifies the Carrier against any loss or damage (including consequential loss or damage), arising out of an injury to its employees, agents or any other third person, or any damage to any portion of the consignment so conveyed, whether such damage or loss was

caused by the negligence, gross negligence, or willful misconduct on the part of the Carrier, its employees agents.

## **10. Conveyance of dangerous or hazardous goods**

- 10.1 It shall be the responsibility and the obligation of the Consignor to acquaint itself with the regulations applicable to the carriage of all dangerous and/or hazardous substances or goods or substances to be conveyed, comply with such regulations and bear the appropriate warning labels.
- 10.2 The Consignor shall be obliged to disclose the nature and properties of any hazardous and/or dangerous goods or substances to be conveyed, by not withstanding such declaration, the Consignor shall remain liable to comply with all the obligations set out in sub-paragraph 10.1 above.
- 10.3 The Carrier shall be under no obligation to accept dangerous goods for carriage.
- 10.4 The Carrier shall not for any reason whatsoever be liable or any damage or loss caused by the conveyance of any dangerous and/or any hazardous goods or substances, and the Consignor hereby indemnifies the Carrier against all or any penalties, claims, costs or expenses of whatsoever nature arising from or in connection with the loading transportation, storage or offloading of any such goods.
- 10.5 In the event of the consignor failing to make a proper disclosure of the dangerous nature of the goods to be conveyed, or in the event of any such goods becoming a danger to the carrier, its servants, agents, subcontractors, or any third persons, or to any property, and irrespective of whether the consignor has made a proper disclosure of the goods to be conveyed, the carrier shall be entitled immediately, and without first giving notice to the consignor or consignee, to dispose of such goods, in which event the carrier shall not be liable for any loss or damage (including consequential loss or damage) arising from the disposal of such goods. The carrier shall furthermore be entitled to recover from the consignor its full contractual remuneration in respect of any such carriage, together with any expenses incurred in the disposal of such goods.

## **11. General indemnity of carrier**

- 11.1. The carrier, its servants and/or agents shall not under any circumstances be liable to the consignor, consignee, or its duly authorized agent for any loss, damage, arising out of any loss of or damage to my parcel, any late delivery or failure to deliver any parcel on time or at all, or arising out of any cause beyond its control in respect of any goods conveyed, transported or stored by the contractor, its servants and/or agents, irrespective of whether such loss, damage or expense is caused by

any negligence, gross negligence or wilful act or omission on the part of the carrier, its agents, employees or sub-contractors.

11.2. For the purposes of this clause 12, any reference to goods conveyed, transported and/or stored will be deemed to include a reference to the loading and/or offloading onto or from vehicles operated by the carrier or its agents

11.3. The exclusion of liability on the part of the carrier, shall without derogating from the generality hereof include all damages or loss caused by the negligence, gross negligence or wilful default on the part of the contractor, its agents or employees, and shall include any one or more of the following causes:

11.3.1. An act of God;

11.3.2. Damage caused by damp, or rust;

11.3.3. Burglary or theft;

11.3.4. Riots;

11.3.5. Any explosion;

11.3.6. Any strike, lock-out or other industrial action by workmen or employees, whether such workmen are employed by the carrier or any of its agents, resulting in an interruption or delay in the business of the carrier, relating to the transportation, loading and/or offloading, delivery or receipt of goods by the carrier;

11.3.7. Any consequential loss caused by loss of or damage to goods or any delay in making delivery of any goods;

11.3.8. Shortages, losses of suitable or adequate covering, tearing of restraining devices or coverings over goods.

## **12. Carriage of high-risk goods**

where the consignor requires carriage of "high risk goods", and without derogating from the provisions of clause 12 above, the carrier shall have the right to refuse to convey such goods, unless they are independently insured by the consignor, and notwithstanding such insurance, the carriage of such goods shall be entirely at the risk of the consignor, who shall be liable for any loss or damage from whatsoever cause arising, to such goods.

## **13. Insurance of goods**

- 13.1. In the event of the Carrier becoming liable in terms of this clause for any loss or damage sustained by the consignor, the Carrier's liability shall be limited to R 10.00(TEN RAND) per parcel. The Carrier will, however, accept responsibility up to a maximum value of R 1 500.00 (ONE FIVE ZERO ZERO RAND) in the respect of any parcel conveyed (but excluding any goods defined as "high risk goods"), in the event of the Consignor indicating this requirement on the Carrier's waybill.
- 13.2. Where the Carrier has accepted liability, compensation shall be limited to the replacement, or the repair of loss or damaged goods, or payment of the cost of replacement, or the repair of loss or damaged goods, or payment of the cost of replacement or repair, limited to a maximum of R1 500.00 (ONE FIVE ZERO SERO RAND) per parcel.
- 13.3. Notwithstanding what is stated above, the Carrier shall under no circumstances be liable for any consequential loss or damage of any kind whatsoever.
- 13.4. The maximum compensation payable to the Consigner be the lesser of the amount of the loss or damage to the actual value of the goods.
- 13.5. Notwithstanding what has been stated will not pay any compensation in the event of loss or damage to any of the goods defined as "high risk goods".

## **14. Limitation of liability**

- 14.1. It shall be the responsibility of the Consignor to ensure that it provides the Carrier with the necessary documentation, to enable the carrier to effect proper delivery of the goods, and in particular it shall be the responsibility of the Consignor to ensure that the name and address of the Consignee to which the goods are required to be delivered shall be accurate and correct. Should any of the aforementioned information be incorrect, the Consignor indemnifies the holds blameless the Carrier, should the Consignor incur any loss or damage resulting from the provision by it of incorrect information, or incur any loss or damage resulting from the provision by it of incorrect information, or the failure to provide the Carrier with the necessary and proper documentation.
- 14.2. Where any goods have not been collected or accepted by the Consignee within a reasonable period of time, after the tender thereof, which for the purposes of this agreement shall be deemed to have been made by the Carrier of this Agreement shall be deemed to have been made by the Carrier upon notification to the Consignee that the goods are available for collection, or that the Carrier is willing to deliver the goods, then:
- 14.2.1. The carrier shall afford the Consignor & (SEVEN) written days' notice by delivering to its domicilium citandi et executandi, notice informing it that the goods are ready for delivery and/or available for collection; and
- 14.2.2. Unless the carrier revived new instructions from the Consignor to re-deliver the goods at its expense to an alternate address, or the goods are collected by

the Consignor, as the case maybe , the Carrier shall be entitled and authorized irrevocably to sell and/or dispose of the goods, in any manner that it deems fit, and to retain the proceeds realized from such sale, in settlement of its charges, expenses, and any other cost that it has incurred in respect of the carriage of the goods. Any balance remaining, shall be held by the Carrier on behalf of the Consignor, and shall be available for collection by the Consignor.

14.2.3. In the case of perishable goods, the provisions of clause 15.2.1 shall apply Mutatis mutandis, save that where the goods would deteriorate, the Carrier shall not be required to wait the expiry of the 7 (SEVEN) day period, but shall be entitled immediately to sell and dispose of the goods.

## **15. General INDEMNITY AND INSURANCE**

15.1. Where any delay or detention in respect of the delivery of the goods arises, the Carrier shall be indemnified against any loss, damage or deterioration, arising from such delay, notwithstanding that the Consignor has stipulated that the time and date for the delivery of the indemnified against any such loss, damage or deterioration, whether such delay or detention is caused by the negligence, gross negligence or wilful default on the part of the Carrier, its agents or employees.

15.2. The Carrier's liability to the Consignor shall terminate upon the goods arriving at the designated destination of the Consignor.

## **16. PRESCRIPTION OF CLAIMS AGAINST THE CARRIER**

any claim by the Consignor for the loss damage to goods must be submitted in writing to the Carrier by way of registered post or by hand, at the Carrier's Domicilium within 30 (THIRTY) days from the date on which such goods should have been delivered, Claims submitted after this period will be repudiated on the grounds of late submission regardless of any circumstances of loss or damage, and in this regard the Consignor indemnifies the Carrier Against any loss or damage, direct or indirect, (including consequential loss or damage) arising from the Consignor's failure to observe the terms of this clause.

## **17. PAYMENT OF CHARGES DUE**

17.1. the Consignor shall remain responsible to the Carrier in respect of all charges due. All chargers owing by the Consignor to the Carrier shall be made free of any deduction or set off to Carrier, at its chosen domicilium citandi et executandi set out on its waybill overleaf.

17.2. Where the Carrier has agreed to payment in respect of any its freight charges from third parties designated by the Consignor, the Consignor shall remain liable to the Carrier for any such payment, should the Carrier be unable to secure payment from the third party so designated. In any event, it will remain the responsibility of the Consignor at all times to ensure that payment due to the Carrier shall at all times remain liable for any charges outstanding by third parties to the Carrier.

17.3. Should any payment due by a consignor or a third party not be made on due date, the Consignor shall liable for the payment of interest on all outstanding

accounts, calculated at the prime rate of interest as charged by the carriers' bankers on all overdraft accounts from time to time.

## **18. Route**

The Carrier shall at its sole discretion determine the route to be utilized in the carriage of all goods.

## **19. Storage charges on failure to take delivery by consignor or consignee.**

The Carrier shall be entitled to charge the Consignor storage charges, at a rate to be determined by it, in respect of any period during which it is obliged to store goods carried, by reason of the failure either of the Consignor or the Consignee the said consignment, due to any fault on the part of the Consignor or Consignee.

## **20. SUB CONTRACTORS or AGENTS**

20.1. The Carrier reserves the right and shall be entitled at all times to employ sub-contractors and/or agents in the performance of the fulfilment of the contract with the Consignor.

20.2. The Consignor Shall become liable and subject to the additional terms and conditions stipulated by any such third party, including any warehouseman into whose possession, control or custody the goods are placed and by any government authority in whose area of jurisdiction the goods are conveyed, provided however, that only those conditions of carriage imposed by the third party which are not less favorable to the Contractor than the conditions contained herein, shall apply to the carriage by the nominated third party.

20.3. Any agreement concluded between the carrier and any such third party, shall be deemed to have been agreed to and accepted by the Consignor, and any of the terms and condition of any such agreement shall, having regard to what is stated in clause 22.2 above, be valid and Binding on the Consignor.

## **21. DOMICILIUM CITANDI ET EXECUTANDI**

the domicilium citandi et executandi of the parties shall be addresses set out on the waybill note, on the reverse side hereof. No variation of any domicilium shall be binding and effective on either party, unless that party has in writing forwarded to the other, written notice of its new domicilium citandi et executandi.

## **22. PRESUMPTIONS AS TO NOTICES**

any notice required to be given by one to the other, shall be deemed to have been validly received by that party, provided that the notice has been posted to that party's domicilium citandi et executandi, and provided further that the lapse of 4 (FOUR) days has occurred.

### **23. CARRIER NOT COMMON CARRIER**

23.1. The Carrier is not a common carrier and has accordingly not undertaken the obligations or liability of a common carrier. The carrier may in its absolute discretion refuse to accept for carriage any goods or any class of goods and shall not be obliged to give any reasons for such refusal. All goods are accepted by the Carrier only upon these terms and conditions.

23.2. No variation of any of the terms of this Agreement shall be of any force or effect, unless reduced to writing and signed by both parties.

### **24. CONTINUITY**

the Consignor specifically accepts and agrees that these conditions shall apply to any further or additional work carried out by the Carrier or any Subcontractor or agent employed by it, unless these conditions are specifically amended or deletion has been brought to its attention in writing by the Carrier, in respect of subsequent carriage or storage being entered onto by the parties.

### **25. Jurisdiction**

The consignor hereby consents to the jurisdiction of the Magistrate's Court in terms of Section 28 of the Magistrate's Court Act 32 of 1944, as amended, provided however that where a claim exceeds the jurisdiction of the Magistrate's Court, the Carrier shall at its sole discretion be entitled either to institute an action out of the Magistrate's Court, or high court of the south Africa, and the Consignor shall be bound by and be deemed to have agreed to any such decision.

THUS DONE AND SIGNED at \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_

CUSTOMER

CAPACITY:

(he being duly authorized to sign thereto)

\_\_\_\_\_

COMPANY

\_\_\_\_\_



