



## STANDARD TERMS AND CONDITIONS

### PART A: INTERPRETATION, APPLICATION AND APPOINTMENT

#### 1 INTERPRETATION

1.1 In these T&Cs and elsewhere in the Agreement unless the context otherwise indicates –

- 1.1.1 "**Agreement**" means collectively the Credit Application Form, any Rate Sheet thereto including any Rate Sheet setting out the Service Fee, the T&Cs and any Order, Quotation, Order Confirmation or Invoice issued pursuant thereto;
- 1.1.2 "**Consignee**" means an authorised representative of the Customer who accepts the delivery of the Consignment by United Bulk;
- 1.1.3 "**Consignment**" means either hazardous bulk liquids, liquefied petroleum gas, cryogenic gas, heating fluids and food grade products, as specified in the Order Confirmation;
- 1.1.4 "**Credit**" means the deferral of the Customer's obligation to pay for the Services rendered by United Bulk;
- 1.1.5 "**Credit Application Form**" means the credit application form containing the details of the Customer, to which these T&Cs are attached;
- 1.1.6 "**Credit Limit**" means the maximum amount of Credit to be granted to the Customer as stipulated on the Credit Application Form;
- 1.1.7 "**Customer**" means the party whose full and further details are contained in the Credit Application Form;
- 1.1.8 "**Effective Date**" means the date of signature of the Credit Application Form by the Customer;
- 1.1.9 "**United Bulk**" means United Bulk (Pty) Ltd, registration number 2007/017491/07, a private limited liability company registered under the laws of the Republic of South Africa;
- 1.1.10 "**Governmental Body**" means any country, any national body, any state, province, municipality, or subdivision of any of the foregoing, any governmental department, or any agency, court, entity, commission, board, ministry, bureau, locality or authority of any of the foregoing, or any quasi-governmental or private body exercising any regulatory, taxing, importing, exporting, or other governmental or quasi-governmental function;
- 1.1.11 "**Invoice**" means a tax invoice for the Services rendered by United Bulk and issued to the Customer pursuant to an Order Confirmation;
- 1.1.12 "**OHS Act**" means Occupational Health and Safety Act, No 85 of 1993, as amended;
- 1.1.13 "**Order**" means the order placed by a Customer with United Bulk for the performance of the Service in accordance with clause 7.2;
- 1.1.14 "**Order Confirmation**" means the written order confirmation issued by United Bulk acknowledging receipt of the Customer's acceptance of a Quotation;
- 1.1.15 "**Outstanding Amount**" means, at any relevant point in time, the amount outstanding by the Customer in respect of the Services rendered, and other charges levied in terms of this Agreement by United Bulk;
- 1.1.16 "**Party/ies**" means United Bulk and the Customer;
- 1.1.17 "**POPI Act**" means the Protection of Personal Information Act, No 4 of 2013, as amended;
- 1.1.18 "**Prime Rate**" means the prime interest rate charged by United Bulk's bankers on overdrawn current accounts from time to time, calculated daily and compounded monthly in arrears as certified (in the case of a dispute as to the rate so payable) by any manager of any branch of the bank whose authority, designation and appointment it shall not be necessary to prove;
- 1.1.19 "**Quotation**" means any written quotation by United Bulk, including for avoidance of doubt any quotation submitted via email;
- 1.1.20 "**Rate Sheet**" means any sheet attached to the Credit Application, including any sheet setting out the Service Fees



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- 1.1.21 "Services" means the transportation of the Consignment to the Consignee by United Bulk;
- 1.1.22 "Service Fee" means –
- 1.1.22.1 the cost for services rendered by United Bulk, specified in a Rate Sheet; or
- 1.1.22.2 if not specified in a Rate Sheet, then specified in a Quotation to be generated by United Bulk;
- 1.1.23 "T&Cs" mean the general terms and conditions contained in this document; and
- 1.1.24 "VAT" means value-added tax in terms of the Value Added Tax Act, No 89 of 1991, as amended.
- 1.2 In these T&Cs and elsewhere in the Agreement —
- 1.2.1 clause headings are for convenience only and are not to be used in its interpretation;
- 1.2.2 an expression which denotes —
- 1.2.2.1 any gender includes the other genders;
- 1.2.2.2 a natural person includes a juristic person and vice versa;
- 1.2.2.3 the singular includes the plural and vice versa;
- 1.2.2.4 a Party includes a reference to that Party's successors in title and assigns allowed at law; and
- 1.2.2.5 a reference to a consecutive series of two or more clauses is deemed to be inclusive of both the first and last mentioned clauses.
- 1.3 Any reference in these T&Cs and elsewhere in the Agreement –
- 1.3.1 "business hours" shall be construed as being the hours between 08h30 and 17h00 on any business day. Any reference to time shall be based upon South African Standard Time;
- 1.3.2 "days" shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time;
- 1.3.3 "laws" means all constitutions; statutes; regulations; by-laws; codes; ordinances; decrees; rules; judicial, arbitral, administrative, ministerial, departmental or regulatory judgements, orders, decisions, rulings, or awards; policies; voluntary restraints; guidelines; directives; compliance notices; abatement notices; agreements with, requirements of, or instructions by any Governmental Body; and the common law, and "law" shall have a similar meaning; and
- 1.3.4 "person" means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality.
- 1.4 The words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- 1.5 Any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in this clause 1 or elsewhere in these T&Cs or elsewhere in the Agreement, shall be given effect to as if it were a substantive provision in the body thereof.
- 1.6 Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout these T&Cs or elsewhere in the Agreement.
- 1.7 Unless otherwise provided, defined terms appearing in these T&Cs or elsewhere in the Agreement in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.
- 1.8 A reference to any statutory enactment shall be construed as a reference to that enactment as at the date of signature of the Credit Application Form and as amended or substituted from time to time.
- 1.9 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day.
- 1.10 Except to the extent that any provision of T&Cs or elsewhere in the Agreement expressly provides otherwise, if the only day or the last day for the exercise of any right, performance of any obligation or taking (or procuring the taking of) any action in terms of any provision falls on a day which is not a business day, such right shall be capable of being exercised, or such obligation performed or action taken on the immediately succeeding business day.
- 1.11 The rule of construction that T&Cs or the Agreement shall be interpreted against the Party responsible for the drafting of thereof, shall not apply.
- 1.12 No provision of the T&Cs or the Agreement shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (*stipulatio alteri*) who is not a Party to this Agreement.

1.13 The words "**clause**" or "**clauses**" and "**annexure**" or "**annexures**" refer to clauses of and annexures to these T&Cs or elsewhere in Agreement, as the case may be.

## 2 APPLICATION

2.1 These T&Cs will apply –

2.1.1 to the rendering of any Services; and/or

2.1.2 to the advance of any Credit (if applicable),  
to the Customer by United Bulk and all transactions related thereto.

2.2 The Credit Application Form, the Rate Sheets, these T&Cs, the Order, any Quotation and the Order Confirmation, shall collectively constitute the Agreement between United Bulk and the Customer.

2.3 The Agreement shall bind the Parties from the Effective Date. Notwithstanding the foregoing and anything to the contrary, if the Customer accepts any Quotation (whether verbally, in writing or implicitly) or submits any Order, then the Customer will be deemed to have accepted these T&Cs.

## 3 APPOINTMENT AND DURATION

3.1 The Customer hereby appoints United Bulk as an independent contractor on a non-exclusive basis to render the Services;

3.2 Notwithstanding anything to the contrary contained herein, the Agreement does not constitute an agreement of employment, partnership, joint venture or agency between the Customer and United Bulk and shall not give rise to any employer and employee relationship, between the Customer and any employee, agent or sub-contractor of United Bulk. Accordingly, neither Party is granted, unless otherwise specially authorised, any right or authority to assume or create any obligation or responsibility, express or implied, in and on behalf of or in the name of the other Party or to bind the other Party in any manner or thing whatsoever.

3.3 The Agreement shall endure from the Effective Date –

3.3.1 until all the obligations of the United Bulk and the Customer in terms of the Agreement have been fully discharged, or

3.3.2 either party has provided the other Party with 90 days prior written notice to terminate the Agreement; or

3.3.3 unless otherwise terminated in accordance with the T&Cs.

3.4 The withdrawal, cancellation or termination of any particular Order shall not affect the provisions of these T&Cs, which will remain binding on the Parties, and shall specifically continue to bind the Parties in respect of any other Orders currently in force at that time or concluded thereafter, unless otherwise agreed in writing between the Parties.

## PART B: CREDIT

### 4 GRANTING OF CREDIT

4.1 The granting of Credit to the Customer in terms hereof shall be entirely to the discretion of United Bulk.

4.2 The Customer shall be entitled to place Orders up to the Credit Limit.

4.3 Subject to clauses 4.1 and 4.2, the Credit Limit may be reduced by either United Bulk or the Customer on written notice (which shall specify the new Credit Limit and when it will take effect), signed by an authorised representative (details of the Customer's authorised representative are set out in the Credit Application), provided that where the Customer requests a decrease in the Credit Limit this will apply only if and to the extent that there is unutilised credit available to the Customer unless the Customer reduces the Outstanding Amount.

4.4 The Credit Limit may only be temporarily or permanently increased by agreement between the Customer and United Bulk.

4.5 Should the Customer exceed the Credit Limit at any time, United Bulk shall at its sole discretion and without prejudice to any of its rights or remedies in terms hereof and at law, be entitled to refuse to accept an Order Confirmation, even though any amount in respect the Services already rendered may not yet be due and payable.

4.6 The fact that the Customer receives Credit in terms of this Agreement does not mean and shall not be construed as obliging United Bulk to render Services to the Customer, it being understood that United Bulk shall always be entitled to refuse to render Services required by the Customer.

### 5 CREDIT PERIOD

5.1 The Outstanding Amount shall not bear interest for the duration of the period that Credit is provided ("**Credit Period**").

5.2 Subject to clause 5.1, the Credit Period shall not exceed 30 (thirty) days unless otherwise specifically agreed in terms of the Credit Application Form or in any particular Order Confirmation.

### 6 CREDITWORTHINESS AND CREDIT INFORMATION

6.1 The Customer agrees that United Bulk may -

6.1.1 make inquiries to confirm any information provided by the Customer in its Credit Application Form;

- 6.1.2 seek information from any credit bureau when assessing the Customer's application and at any time during the existence of these T&Cs; or
- 6.1.3 disclose the existence of the Customer's account to any credit bureau, share positive and negative information about the Customer and its compliance with any agreement with any such credit bureau,  
in terms of and in compliance with the National Credit Act, No 34 of 2005, as amended ("**NCA**").
- 6.2 Notwithstanding anything contrary in the Agreement, United Bulk has the right to –
  - 6.2.1 refuse to grant Credit to the Customer;
  - 6.2.2 offer the Customer a lower Credit Limit than applied for, or reducing the existing Credit Limit;
  - 6.2.3 refuse a request from the Customer to increase a Credit Limit.

#### **PART D: SERVICES**

### **7 ORDERS, QUOTATIONS AND ACCEPTANCE**

- 7.1 If the Customer requires the Services of United Bulk, they shall contact United Bulk, electronically or alternatively via the United Bulk customer portal, and confirm thereafter by written Order the Services it requires, by not be less than 5 days prior to the date the Service must be performed.
- 7.2 The Order must specify the -
  - 7.2.1 date and the time frame for both loading and delivery of the Consignment;
  - 7.2.2 name of the Customer, its physical address and the identity and physical address of where the loading is to be effected;
  - 7.2.3 name of the Consignee and the physical address of the off-loading site;
  - 7.2.4 details of the weight of the Consignment;
  - 7.2.5 description of the Consignment;
  - 7.2.6 any additional reasonable instructions by the Customer which United Bulk must comply with in performance of its Services; and
  - 7.2.7 the load reference number.
- 7.3 If the Service Fee is not specified in a Rate Sheet, United Bulk will provide the Customer with a Quotation for the Services.
- 7.4 All Quotations generated will be deemed exclusive of delivery costs by means of a pump and pipe(s) to be supplied by United Bulk. The Customer must notify United Bulk prior to the loading of the Consignment, in the event the delivery of the Consignment requires the use of a pump. In the event the Customer fails to notify United Bulk, United Bulk shall retain the right to add such costs incurred to the rate invoiced to the Customer.
- 7.5 Quotations must be accepted by an authorised representative of the Customer either in writing or through the placement of the Customers Order. Failure to provide acceptance within 7 days of any Quotation will result in the expiration of a Quotation.
- 7.6 United Bulk shall issue an Order Confirmation as soon as practically possible after receipt of the Customer's Order (and acceptance of Quotation, if applicable), for the Services to be rendered.
- 7.7 Upon the issue of an Order Confirmation, United Bulk hereby undertakes to perform the Services of delivering the Consignment to the Consignee, as specified in the relevant Order Confirmation.
- 7.8 Any change to the Order, after receipt of the Order Confirmation, shall immediately be notified to United Bulk. United Bulk shall confirm acceptance of such changes within 1 day after the Order has been processed for performance. Any additional costs incurred by United Bulk as a result of the change to the Order will be invoiced to the Customer.
- 7.9 Any cancellation of the Order after the truck has departed will result in a futile trip being recorded by United Bulk, whereby the Customer will be invoiced the full Service Fee.

### **8 SERVICES**

- 8.1 United Bulk shall render the Services set out in an Order Confirmation.
- 8.2 In carrying out the Services, United Bulk shall –
  - 8.2.1 perform the Services in accordance with the terms of the Agreement;
  - 8.2.2 render the Services in a professional and workmanlike manner;
  - 8.2.3 appoint an authorised representative at United Bulk (or in his/her absence a duly authorised substitute) who shall be responsible for liaising with the Customer on the performance of the Service and the delivery of the Consignment;
  - 8.2.4 ensure that it, at all times, performs its obligations with due regard to the safety of the Consignee and any other person who may at any time be present at a loading site or off-loading site; and

- 8.2.5 apply reasonable endeavours to promptly bring to the Customer's attention an act or omission of the Customer or its staff, which may impact upon the provision of the Services.
- 8.3 The Consignee shall furnish United Bulk with a delivery note which shall be signed by the driver of the vehicle transporting the Consignment.
- 8.4 The Consignee shall verify the Consignment on the delivery note and weighbridge note as the correct Consignment before accepting the Consignment.
- 8.5 If the tanker was sealed by the loading point, all seal numbers shall be verified by the Consignee according to the documentation provided by the United Bulk driver. Only the designated representative of the Consignee at the off-loading site can break the seal numbers. If the seal numbers are missing or do not correspond to the documentation provide by the United Bulk driver then the load should not be accepted by the Consignee. United Bulk is not responsible for sealing the tankers, it is the responsibility of the loading point to do so as requested by the Customer and must be indicated on the loading documents provided to the United Bulk driver after loading.
- 8.6 United Bulk shall be responsible for the delivery of the Consignment to the off-loading site and must obtain the signature of the delivery note by the Consignee to indicate that delivery was completed.
- 8.7 The Consignee undertakes the responsibility to monitor the off-loading of the Consignment at the off-loading site.
- 8.8 In the event that United Bulk is unable, for any reason, to perform the Services within the timeframe contemplated in the Order Confirmation, then it shall notify the Customer of such reason and delay as soon as reasonably possible.
- 8.9 In the event that the offloading of the Consignment by United Bulk is rejected by the Consignee, United Bulk shall notify the Customer as soon as reasonably possible. Thereafter, standard operating procedures for rejected Consignment is to be followed by United Bulk as advised by the Customer. If the Customer does not have standard operating procedures for rejected Consignment, the Customer shall within 48 hours investigate and inform United Bulk of the procedure to follow. Should the product remain in United Bulk's tanker for more than 48 hours it shall be deemed to be held in storage and the Customer will be charged the applicable daily storage rate.

## 9 SUB-CONTRACTING

United Bulk will be responsible for the transportation of all agreed Consignments. Should the United Bulk be unable to transport any or all of the Consignments, it shall be entitled to sub-contract such portion of the Services to a third party.

## 10 UNDERTAKINGS BY UNITED BULK

United Bulk shall ensure that -

- 10.1 it has obtained all applicable permits, consents or approvals required under applicable legislation from the relevant authorities. Such permits, consents or approvals must be obtained for the due and proper performance of United Bulk's obligations in terms of the Agreement, and must remain in full force and effect for the duration of the Agreement.
- 10.2 its vehicles which are used for the performance of the Services are maintained in a roadworthy condition;
- 10.3 its vehicles, whilst transporting the Consignment, can be reasonably telephonically contactable;
- 10.4 it has sufficient resources, including sufficient suitably qualified, trained, and skilled personnel to enable it to properly and promptly perform its obligations in terms of Agreement, where reasonably required;
- 10.5 it and its staff at all times abide by the Customer and Consignees' reasonable instructions, provided that United Bulk and its staff has received prior notification thereof (including but limited to the rules and regulations regarding access control at the loading sites and off-loading sites), while they are at any loading site or off-loading site;
- 10.6 it and its staff shall, at all times, comply with the requirements of all applicable Laws, including the relevant health and safety requirements provided in the OHS Act and the regulations thereto; and
- 10.7 it attends, and procure the attendance of its staff, at all meetings required in terms of the Agreement or as reasonably required by the Customer from time to time.

## PART E: PRICE AND PAYMENT TERMS

### 11 SERVICE FEES

- 11.1 The Customer agrees that the Service Fees -
- 11.1.1 may, at the discretion of United Bulk, be adjusted, and any Service Fees indicated in a Rate Sheet or Quotation may be updated from time to time by United Bulk; and
- 11.1.2 are at the discretion of United Bulk, subject to revision in the event of any increase in any statutory or state-determined cost.
- 11.2 In the event of any adjustment of the fuel price leading to an increase or decrease in the prevailing price at the time, the transport charges, included in the Service Fees, shall be adjusted with the percentage of such increase or decrease. United Bulk shall advise the Customer of such change in writing.
- 11.3 United Bulk reserves the right to make any amendments to the Quotation in the event that the loading and offloading process vary materially from the envisaged and quoted rate or the actual trip time materially exceeds the estimated trip time used to calculate the quotation.,

11.4 The Service Fee shall, unless expressly stated otherwise in the Order Confirmation, exclude VAT, general sales tax, any other taxes, costs, duties, levies or any other charge imposed by any law to which the Customer is subject or by any regulatory authority exercising jurisdiction, all which shall be paid by the Customer at the prevailing rate in addition to the Service Fee.

## 12 PAYMENT TERMS

12.1 United Bulk shall issue an Invoice to the Customer for payment.

12.2 All invoiced amounts shall be payable within 30 days from the date of statement and any amounts amount that is not paid on due date shall bear interest at the Prime Rate, plus 3%, compounded monthly, from the due date until date of payment in full

12.3 All amounts will be paid into the bank account nominated in writing by United Bulk, without deduction or set-off of any nature. All payments shall be made in the currency of the Republic of South Africa (Rands), unless otherwise agreed in writing.

## 13 SECURITY, SURETYSHIP AND LIENS

13.1 United Bulk shall be entitled from time to time in its sole discretion to require that the Customer provide suitable and adequate security to United Bulk for payment of the Service Fee or any Credit facility. Security shall be in a form acceptable to United Bulk, including without limitation, an advance deposit or a suretyship for an amount determined by United Bulk.

13.2 The Customer undertakes to comply with any such security requirements of United Bulk, within 15 business days after request thereof (or such earlier or later period specified by United Bulk). United Bulk shall be entitled to suspend any Services or terminate any Order if such security is not provided.

13.3 The Customer binds all members/representatives of the Customer signing hereunder in their/his/her personal capacity, as surety and co-principal debtor with the Customer, in favour of United Bulk, for the due payment of all amounts which may now or at any time hereafter be or become payable by the Customer to United Bulk, from any cause whatsoever, under renunciation of the benefits of excision and division.

13.4 The Consignments and documents, including but not limited to 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 and pledge for monies due in respect of the Services rendered by United Bulk in terms of the Agreement.

13.5 If any monies due to United Bulk is not paid within 14 days after notice has been given that such amounts are due and payable, then United Bulk shall be entitled to suspend the rendering of further Services in terms of the Agreement.

## PART F: INSURANCE AND RISK

### 14 RISK

14.1 Risk in and to the Consignment shall pass from the Customer to United Bulk when the Consignment crosses the valve of United Bulk's tanker upon loading of the Consignment at the loading site, provided that this has not detracted from United Bulk's obligation with regards to the positioning of the Consignment on the vehicle. It is United Bulk's obligation to direct the placement of the Consignment on the vehicle, subject to the proviso that the Customer shall comply with the United Bulk's directions in respect of the load distribution on the vehicle.

14.2 Risk in and to the Consignment shall pass from United Bulk to the Customer from the point at which the Consignment exits United Bulk's tanker's discharge point and crosses the valve –

14.2.1 if the Consignee is responsible for off-loading the Consignment at the off-loading site; or

14.2.2 if United Bulk is responsible for off-loading the consignment at the off-loading site.

14.3 The Customer shall be responsible to -

14.3.1 inspect and approve the tanker for loading of the Consignment prior to the commencement of the loading; and

14.3.2 sample and approve the specification of the Consignment prior to the commencement of the off-loading.

14.4 If the Customer does not perform as per the abovementioned responsibilities and a contamination occurs, then the policy will not respond.

14.5 United Bulk accepts no liability after the Consignment has been off-loaded into bulk storage, and without limiting the generality of this provision, for any contamination of the Consignment or damages sustained after off-loading.

### 15 INSURANCE

15.1 For the duration of the Agreement, United Bulk shall maintain –

15.1.1 sufficient legal liability insurance in respect of claims for any death or injury to persons or loss of or damage to the Customer and/or third-party property; and

15.1.2 employer's common law liability insurance covering United Bulk and its sub-contractor's liability at common law.

15.1.3 goods in transit insurance to the limit of R 4,000,000. In the event the Customer require insurance at a higher value, the Customer shall notify United Bulk to secure the cover and amend the pricing on the Consignment.

15.2 The cost values of the insurance cover obtained constitutes a maximum limitation of the United Bulk's liability under the Agreement.

15.3 United Bulk shall furnish the Customer with confirmation of insurance cover provided by its brokers within seven days of request by the Customer.

## 16 FORCE MAJEURE

16.1 Notwithstanding anything to the contrary herein contained, United Bulk shall not be liable to the Customer in respect of the non-performance of any of its obligations if and to the extent that such non-performance is as a result of or has been caused by *force majeure*, which shall mean any event beyond the reasonable control of United Bulk or which could not reasonably have been foreseen by it, and shall include, but not be limited to, –

16.1.1 any act of God, war, strike, lockout or other labour dispute, fire, flood, drought, rain, storm, rough seas, wind or any existing or new legislation, general power failures, breakdown of telecommunication networks or computers, political intervention, imposition of sanctions, riot, insurrection embargoes, quarantine or any governmental barring directive or order;

16.1.2 any delay in obtaining any regulatory or other permit or approval; or

16.1.3 any other cause beyond the reasonable control of United Bulk.

## PART G: WARRANTIES, INDEMNIFICATION AND LIMITATION OF LIABILITY

### 17 WARRANTIES BY THE CUSTOMER

The Customer warrants that:

17.1 it is either the owner of the Consignment or the authorised agent of the owner of the Consignment in respect of which the Customer instructs United Bulk to render the Services;

17.2 it is authorised to agree to the terms and conditions in the Agreement on behalf of any person or entity that it represents including third party Customers and Consignees;

17.3 all information provided is accurate and comprehensive including the description and/or specification of the Consignment and weight or volume thereof and no necessary or pertinent information has been withheld, and the Customer indemnifies United Bulk against all claims, penalties, fines, damages and expenses arising as a result of any breach of this undertaking;

17.4 it shall ensure that any of United Bulk's vehicles can access all the loading sites and the off-loading sites, taking into account that the infrastructure at the loading sites and the off-loading sites (including but not limited to turning circles, gate and weighbridge widths and loading site and off-loading site height restrictions) may differ;

17.5 the Consignment is suitable for the type and mode of carriage contemplated in or on the vehicle concerned and the Customer has given special instructions to United Bulk timeously as to securing and protecting the Consignment prior to commencement of the Services;

17.6 the Consignment is accompanied by all necessary completed documents including dangerous goods placarding and TREC cards, save to the extent that United Bulk has undertaken to prepare or procure this. The failure of the Customer placing dangerous goods placarding and TREC cards entitles United Bulk to withhold delivery until such time the Customer's obligation is fulfilled; and

17.7 it has the requisite International Maritime Dangerous Goods Code certification to handle hazardous goods.

17.8 The Customer –

17.8.1 warrants that it has full capacity and authority, and has obtained all the necessary approvals to enter into and perform its obligations under this Agreement;

17.8.2 the Credit Application Form (if applicable) is executed by a duly authorised representative of the Customer; and

17.8.3 shall be bound by and warrants the accuracy of all documents and information furnished to United Bulk for any reason whatsoever (including but not limiting any information to assess the Customer's creditworthiness, for purposes of any customs clearance or any other information).

### 18 LIMITATION OF LIABILITY

18.1 Notwithstanding anything to the contrary in these T&Cs, neither United Bulk nor any of its employees, directors, officers, agents, contractors or subcontractors shall be liable for any losses, damages, charges, expenses, costs or any other claims of whatsoever nature howsoever arising, for an amount in excess of its insurance cover, in terms of clause 15.

18.2 In addition, United Bulk shall not be liable for any of the following:

18.2.1 any indirect, incidental, special or consequential damages and loss of profits of any nature, which may arise in relation to the Services carried out by United Bulk;

18.2.2 any loss or damages arising from any delay in delivery of any Consignment by United Bulk;

18.2.3 any loss or damage to or destruction or theft of property of the Customer or the Consignee whilst in the care and custody of United Bulk or whilst in possession of United Bulk or its employees, contractors or sub-contractors;

18.2.4 any loss or damage to or destruction or theft of Consignment whilst stored at the Customer or Consignees premises; and

18.2.5 any damage to or destruction or theft of Consignment whilst loading and off-loading, whether at the Customer, Consignee's or United Bulk's premises.

- 18.3 The Customer hereby indemnifies United Bulk and holds it harmless against any and all liability, loss, damage or claim of whatsoever nature suffered by either the Customer, the Consignee or any third party in relation to any act or omission by the Customer, the Consignee or the Customer's members, employees, representatives, agents or assigns or any third party in relation to the Consignment and Services rendered.

## **PART H: DEFAULT EVENTS, CERTIFICATE OF INDEBTEDNESS, LEGAL COSTS AND DISPUTE RESOLUTION**

### **19 DEFAULT EVENTS**

19.1 In the event that –

- 19.1.1 the Customer fails to pay punctually any amount due and payable to United Bulk and fails to remedy such default within 7 business days from the date of dispatch by United Bulk of written notice to that effect; or
- 19.1.2 the Customer commits any other breach of any of the terms of these T&Cs or Agreement and fails to remedy such default within 7 business days from the date of written notification to that effect from United Bulk; or
- 19.1.3 a default judgement is entered against the Customer and it fails, within 10 business days after such entry of judgement, to satisfy or take steps to rescind the same; or
- 19.1.4 the Customer compromises or attempts to compromise any debt with any of its creditors; or
- 19.1.5 the Customer is wound up or liquidated (whether provisionally or finally) or placed under judicial management order =, or its members pass a resolution to liquidate or wind up the company (other than for the purposes of internal reorganisation), or commit any act of insolvency or enters into business rescue proceedings;
- 19.1.6 the Customer is sequestrated or placed under administration (whether provisionally or finally), or a voluntary surrender order or receivership;
- 19.1.7 the Customer permits any lien, hypothec, notarial bond, pledge, other security, or interest or encumbrance to be created over the Consignment, or abandons the Consignment or relinquishes possession of the Consignment, or allows the Consignment to be seized under any legal process issued against the Customer prior to the discharging all of its obligations arising from any Agreement,

then without prejudice to any other rights that it may have at law or under any Agreement, United Bulk shall be entitled to –

- 19.1.8 accelerate payment of any Outstanding Amount;
- 19.1.9 suspend or terminate the Credit facility or the provision of the Services to the Customer; or
- 19.1.10 cancel any Agreement or claim specific performance in terms of that Agreement for any obligation owed by the Customer to United Bulk in terms of these T&Cs; and
- 19.1.11 claim damages from the Customer.
- 19.2 If United Bulk cancels or purports to cancel any Agreement then, notwithstanding anything to the contrary herein, the Outstanding Amount shall immediately be due and payable by the Customer to United Bulk.
- 19.3 The Customer shall be deemed to be in default if the surety hereunder commits an event of default as contemplated in this clause, it being acknowledged that the surety is also a co-principal debtor of the Customer in favour of United Bulk.
- 19.4 Notwithstanding anything to the contrary herein contained, subject to any applicable laws, and without prejudice to any of United Bulk's rights herein or at law, in the event of the Customer cancelling any Order once an Order Confirmation has been issued, or repudiating any of its obligations in terms of an Agreement, United Bulk shall be entitled to recover the Service Fee for the Services performed.

### **20 CERTIFICATE OF INDEBTEDNESS**

A certificate signed by any director or manager (whose appointment, authority or qualification need not be proved) for the time being of United Bulk shall be –

- 20.1 *prima facie* proof of the quantum of the Outstanding Amount; and
- 20.2 valid, together herewith, for any purpose and as a liquid document (alternatively as proof of a liquidated amount) in any Court or forum of competent jurisdiction for the purpose of obtaining provisional sentence, summary judgement or any other judgement against the Customer,
- 20.3 and the Customer acknowledges its indebtedness in respect of any amount so certified.

### **21 LEGAL COSTS**

In the event of a default by the Customer under any Agreement, the Customer will be liable for all legal costs, which will include but not be limited to –

- 21.1 legal costs on the scale as to attorney and own client, including all cost of an advocate instructed by the attorney;
- 21.2 collection charges and tracing fees;
- 21.3 VAT added thereon; and

- 21.4 where appropriate, the cost of an arbitration, including the costs of the arbitrator/s,  
21.5 and to the extent permissible in law the Customer waives any right to taxation of any costs.

## 22 DISPUTE RESOLUTION

- 22.1 If any dispute arises in respect of any provision contained in the Agreement, then such dispute shall be decided in consultation between the Parties at a meeting convened specifically for that purpose at a time and venue suitable to the parties concerned. In the event that the Parties shall fail to reach consensus on any issue envisaged in the matter of dispute within 3 business days from the date on which any such dispute shall arise, then -
- 22.1.1 if the matter is primarily an accounting matter, an independent accountant in Johannesburg with the experience of a senior partner at any international firm of accountants; or
- 22.1.2 if the matter is primarily a legal matter, a practising senior counsel in Johannesburg with no less than 10 years' experience in commercial law,
- shall be appointed to act as an expert and who, in determining such dispute shall, if he/she deems it necessary, be entitled to receive oral or written representations from the Parties and whose decision shall be final and binding upon the parties and, in the absence of manifest error, not be subject to review.
- 22.2 The Parties shall jointly nominate the expert provided that if the parties shall be unable to agree either on the category in which the dispute falls or on the identity of the expert, within 7 days of the nomination being called for in writing, then the expert shall be nominated by the president for the time being of the Law Society of the Northern Provinces or its successor in title, or the executive director of the South African Institute of Chartered Accountants or its successor in title, as the case may be.
- 22.3 It is the intention of the Parties that any dispute referred to an expert in terms of this clause 22 shall be resolved within 21 days of the date of the expert being nominated. Accordingly, if the expert shall be unable to resolve the dispute within such period, then the Party raising the dispute shall be entitled to terminate the mandate of the expert and institute proceedings in respect of the dispute in any competent court having jurisdiction.
- 22.4 During the course of any dispute resolution the Parties will continue to discharge their obligations and perform in terms of the agreement and undertakes to make due and punctual payments of any amounts due pending the outcome of the dispute, save that any amount that forms part of the dispute, will be paid into an interest bearing account of an independent attorney, who will hold same until outcome of the dispute.
- 22.5 The provisions of this clause 22 shall not preclude either Party from issuing proceedings in any court of competent authority, should it wish to do so

## PART I: GENERAL

### 23 CONFIDENTIALITY

- 23.1 The Customer shall at all times and shall ensure that all its employees treat the business processes, confidential information, all transactions resulting from any Agreement and the T&Cs as confidential and undertake not to disclose to any third party any such information except insofar as such disclosure is authorised in writing by United Bulk or is ordered by a Court of law, or is otherwise essential for application in judicial action. Any confidential information received in terms of the Agreement may only be used for the purposes of the NCA.
- 23.2 The foregoing provisions do not apply to information which is publicly known or becomes publicly known through no unauthorised act of the recipient party, rightfully received by the recipient party from a third party, required to be disclosed pursuant to a requirement of a governmental agency or any applicable law, so long as the Party required to release the information provides the disclosing party with prior notice of such disclosure, publicly disclosed with the disclosing party's prior written consent.

### 24 PROTECTION OF PERSONAL INFORMATION

By virtue of completing the Agreement, the Customer hereby gives its unconditional consent for the collection, retention and dissemination of information in terms of the POPI Act.

### 25 DOMICILIUM AND INFORMATION

- 25.1 The Customer hereby chooses as its domicilium citandi et executandi for all purposes under or arising from any Agreement the physical address or email address set out in the Credit Application Form.
- 25.2 Any notices delivered by hand shall be deemed to have been received on the date of delivery and any notices sent by email shall be deemed to have been received on the date of transmission, provided that the transmission or receipt report does not indicate otherwise.
- 25.3 Any Party shall notify the other Party in writing on 10 (ten) business days' notice of a change of address, provided that no address may be changed to a post office box or poste restante.

### 26 CESSION AND ASSIGNMENT

The Customer shall not, without the written consent of United Bulk, be entitled to cede, assign or delegate any of its rights and/or obligations in terms of or arising from these T&Cs to any third party without the prior written consent of United Bulk first being obtained.

### 27 NO CHANGE OF CONTROL

If the Customer is an unlisted company or a close corporation or a trust, no shares or membership interest therein, as the case may be, shall be transferred from its shareholders or members, nor may any shares or membership interests be allotted to any person other

than existing shareholders or members, nor may there be any change in the trustees or beneficiaries of a trust, without United Bulk's prior written consent, save in the case of a transfer of shares or membership interests which will leave control of the customer with the original shareholder/s or member/s, or of a transfer of shares or membership interests to a deceased shareholder or member's heirs, or trustees, as the case may be.

## 28 AMENDMENT OF T&CS

- 28.1 United Bulk reserves the right to amend or update portions of or the whole of these T&Cs from time to time.
- 28.2 Changes or updates to the T&Cs will be communicated in writing to the Customer and will become effective from such date, unless otherwise stated by United Bulk.

## 29 GENERAL

- 29.1 United Bulk shall be entitled to assume –
- 29.1.1 the authenticity of, and to act in reliance upon, any document provided to it by the Customer or its representatives appearing to it to be authentic (including but not limiting any written acceptance of a Quotation, any written acceptance of a delivery and any written instruction to undertake extraordinary measures); and
- 29.1.2 the authority of, and to act in reliance upon, the instruction or acceptance of/by any person appearing to it to be authorised to be acting on behalf of the Customer.
- 29.2 This Agreement will in all respects be governed by and construed under the laws of the Republic of South Africa.
- 29.3 This Agreement constitutes the whole of the Agreement between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on either of the Parties.
- 29.4 This Agreement supersedes and replaces any and all Agreements between the Parties (and other persons, as may be applicable) and undertakings given to or on behalf of the Parties (and other persons, as may be applicable) in relation to the subject matter hereof.
- 29.5 No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of this Agreement will be of any force or effect unless in writing and signed by the Parties.
- 29.6 No latitude, extension of time or other indulgence which may be given or allowed by either Party to the other in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of either Party arising from this Agreement and no single or partial exercise of any right by either Party under this Agreement, shall in any circumstances be construed to be an implied consent or election by that Party or operate as a waiver or a novation of or otherwise affect any of its rights in terms of or arising from this Agreement or estop or preclude it from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof. Failure or delay on the part of either Party in exercising any right, power or privilege under this Agreement will not constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 29.7 No party shall be bound by any representation, warranty, promise or the like not recorded in this Agreement. The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provided that they will operate after any such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 29.8 No waiver, suspension or postponement by either Party of any right arising out of or in connection with this Agreement shall be of any force or effect unless in writing and signed by that Party. Any such waiver, suspension or postponement will be effective only in the specific instance and for the purpose given.
- 29.9 All provisions and the various clauses of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this Agreement which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatsoever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as pro non scripto and the remaining provisions and clauses of this Agreement shall remain of full force and effect. The Parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.
- 29.10 Except as otherwise specifically provided herein, each party will bear and pay its own legal costs and expenses of and incidental to the negotiation, drafting, preparation and implementation of this Agreement.
- 29.11 The Credit Application and any other part of this Agreement may be signed by the Parties in counterparts