

## STANDARD TERMS & CONDITIONS OF CARRIAGE OF GOODS BY ROAD

### 1. Definitions

In these conditions the following words and/or terms bear the meaning ascribed herein:

- 1.1 **“Carrier”** means Vehicle Delivery Services a division of Onelogix (Pty) Ltd 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 subcontract with the carrier.
- 1.2 **“Client”** means the owner of the goods or the person having lawful title to the goods or possession thereof and the duly authorised agent of the Client.
- 1.3 **“Consignment”** means the goods forming the subject matter of this agreement, being motor vehicles transported under such vehicle’s own power, alternately on a vehicle carrier.
- 1.4 **“Consignee”** means the person to whom or in the event of no name being given by the Client, the address at which the goods are to be delivered. In the absence of the person named by the Client as the consignee, then any person representing himself to be duly authorised to accept delivery on behalf of the consignee and having the appearance of being a person authorised by the Client or the consignee to accept delivery on behalf of the consignee.

### 2. No Variation of Conditions

It is hereby agreed that any consignment carried is accepted subject to the conditions contained in this agreement and no variation of this agreement will be of any force or effect unless reduced to writing and signed by the parties. The terms hereof shall supersede any other agreement, or terms of carriage, which may be the subject matter of any prior, or subsequent document entered into between the carrier and the Client.

### 3. Exclusion of Common Law Liability

The Vehicle Delivery Services “Liability Conditions and Exclusions” are specifically included herein (copy available on request). It is specifically recorded and agreed that the carrier shall not be a carrier at Common Law, and that the terms of carriage are only undertaken in accordance with the terms and conditions set out herein.

Neither party will be liable to the other party for consequential loss, special or indirect damages of any nature whatsoever which may be suffered arising out of this contract.

#### **4. Quotations and Additional Costs**

- 4.1 Transportation, clearing, storage and towing rates issued by the carrier to the Client are generally governed under current scale of wages, fuel prices, railway or shipping rates and subject to annual review in line with operational and administration cost increases. Unless specified to the contrary in writing, quotations exclude customs duties, taxes, final clearing charges, towing charges and fines.
- 4.2 Should the Client require insurance coverage, the Client shall expressly request the same at the time of quotation.

#### **5. Increase of Quotations**

- 5.1 In the event of the carrier being obliged to incur reasonable additional costs in the execution of its obligation in that it has to purchase and / or hire additional services, equipment or materials, including licenses or permits, to enable the carrier to deliver a consignment, with or without prior notification to the Client, then in such event the Client hereby authorises the carrier to incur such costs on its behalf and agrees that it will be liable for such additional costs not initially quoted on and which amounts will be invoiced to the Client along with the initially quoted charge. The Carrier will be entitled to recover the additional charges incurred in this matter.
- 5.2 The Carrier will be entitled to increase the remuneration specified in the quotation for a consignment in the event of the Client altering the quantity of the consignment to be carried in proportion to such increase / or decrease.
- 5.3 In the event of the Carrier being obliged to deviate from the route selected by it, or to carry the consignment over another route, for any reason necessitating such detour, including but not limited to the following: adverse weather conditions, impassable or dangerous roads, bridges, pontoons, ferries, civil unrest or riots the carrier will be entitled to charge an additional sum over and above the quoted amount as a result of extra distance travelled including but not limited to tolls, liability cover or charges levied by lawful authorities. The Client expressly authorises the carrier to alter its route as contemplated in this paragraph.
- 5.4 The Client or consignee will be liable for storage charges and/or fines/ demurrage charges incurred by the carrier or its agent in respect of the safekeeping of the consignment at any border post or other area nominated by the Carrier which

amount will be payable upon collection / delivery of the consignment against the Carrier's invoice.

- 5.5 Should the Consignment differ in specification from that provided to the Carrier at the time of quotation, the carrier shall be entitled to accept the consignment and levy additional charges accordingly.

## **6. Payment of Carrier's Remuneration**

Unless specially agreed in writing between the parties, the Carrier's remuneration will be payable on presentation of the invoice.

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

- 7.1 The Carrier shall have a general lien over all consignments carried and in the event of non-payment of any portion of monies due by the Client to the Carrier, the Carrier's general lien shall come into existence as soon as the Carrier takes possession and control of the Client's goods and the general lien will persist until all amounts owing to the Carrier from time to time have been paid in full, whether or not the costs relate to the goods in the Carrier's possession at the time. It is specifically agreed that all goods in the Carrier's possession shall serve as security for payment of all and any amounts that may owe by the Client to the Carrier. The Carrier's general lien shall further endure until such a time that all amounts have been paid and the general lien shall not lapse as a result of delivery of any goods to a Consignee. The Carrier shall be entitled to retrieve the goods from a Consignee in the event of the Client defaulting on any payment obligations to the Carrier.
- 7.2 If the Client does not affect payment of any amounts owing to the Carrier, the Carrier shall in addition to its general lien, specified in clause 7.1 above, be entitled to charge the Client storage in respect of all goods in the Carrier's possession, forming part of the Carrier's general lien, which storage charges shall be market related and be calculated on a day to day basis.

## **8. Release of Obligations**

In the event that the Carrier is unaware of the delivery address of the consignee or the address on the application is not correct; the Carrier will be released from all liability whatsoever in respect of the consignment. The Carrier shall be entitled to deliver the goods to the address of the consignee specified on the particular delivery documentation, alternatively the Carrier shall be entitled to deliver the goods to the closest branch of the South African Police Services, or Police Authorities should the consignment's delivery address be outside the Borders of the Republic of South Africa. Alternatively, the Carrier may at its sole discretion retain the Consignment pending instruction from the Client. The carrier will be entitled to levy storage charges accordingly.

#### **9. Condition of Consignment at Time of Delivery to Carrier**

The condition of the vehicle shall be deemed to be that as stated on the condition report at time of collection /delivery and this document shall be prima facie proof of the contents and condition of any vehicle at the time of delivery, loading / collection. On acceptance of the condition report by the Client's duly authorised representative, shall be deemed that the vehicle was collected /delivered in an undamaged condition and the Client shall bear the burden of proving the contrary.

#### **10. Liability for Damage to or Loss of Goods:**

- 10.1 Refer to "Liability Conditions & Exclusions or Vehicle Delivery Services, A Division of Onelogix (Pty) LTD" to identify the conditions & exclusions offered. Provided that the Client has complied with all of its obligations, the Carrier will at the Client's express written request ensure appropriate Liability Cover for the consignment on the Clients' behalf against damage to, or loss of any goods, subject to the following further terms and conditions
- 10.2 The Client shall pay to the Carrier a Liability Cover administration / handling fee as determined by the Carrier from time to time in respect of any individual consignment carried by the Carrier or alternatively in respect of any bulk consignment.
- 10.3 Liability of the Carrier in respect of any claim arising out of loss or damage to a consignment may not exceed the Clients value reflected on the Client's invoice in respect of the Consignment regardless of the circumstances.

- 10.4 The Carrier excludes liability in circumstances where any damage to or loss of any consignment is occasioned as a result of a patent or latent defect in the vehicle.
- 10.5 Any remuneration awarded by the Carrier or its Insurer / Liability Cover Provider or Agent in terms of the VDS Claims Procedure arising as a result of damage or loss to any consignment shall be payable in the Currency and Country where the liability cover was acquired.
- 10.6 In circumstances where the Client and /or consignee fails to pay the Liability Cover, administration / handling fee, or elects not to accept Liability Cover over the consignment or part thereof, then the sole risk in respect of the carriage of any such consignment shall be borne by the Client and the carrier is excluded from any liability arising from the transportation thereof.
- 10.7 The Carrier shall take out Liability Cover over the goods at the Client's invoice value. Liability Cover will be regarded as the "Dealer Billing Price" of the vehicle. In the event of a claim arising out of loss or damage to a consignment the Client and /or consignee agrees to accept the remuneration offered by the Insurer and /or Liability Cover Provider or its agent in full and final settlement of damages or loss suffered without further liability by the carrier.
- 10.8 All claims will be handled in accordance with the Carriers' Claims Procedure, a copy of which is available on request.
- 10.9 Liability Cover will lapse immediately on the signing by the Client or Consignee or their respective agents, of the Carrier's proof of delivery note.
- 10.10 The Carrier will not be liable for any loss and /or damages to any Consignment with Liability Cover after being off loaded at any border post for customs clearing and / or inspection purposes. The Liability Cover will resume in accordance with the terms of the Liability Cover Provider once the Consignment is returned to the Carrier's custody until its final destination.
- 10.11 Should the Client opt not to make use of the Carriers Liability Cover in respect of the specific goods, such goods shall be carried at the Client's Exclusive Risk and the carrier shall not be liable for any damages and/or losses sustained by the Client whilst the goods are in the custody of the carrier, whether it is being stored, driven under its own power, or being transported on the carriers vehicle transporter.

- 10.12 Should a vehicle be driven under its own power by an employee, sub-contractor or agent of the Carrier, such employee shall be deemed to be the Client's employee and agent, furthering the Client's interests in the transport of the specific goods.
- 10.13 The Carrier shall not be liable for payment of any damages to any third party as a result of the Carrier carrying the consignment on behalf of the Client for any reason whatsoever and the Client indemnifies the Carrier against any claims of whatever nature in this regard.
- 10.14 The Carrier and their Insurers reserve as their sole discretion, the right to decline Insurance cover for exotic / vintage vehicles.

## 11. Disclaimer Conditions

- 11.1 The Carrier shall be advised by the Client / consignee of any obvious damages to any vehicle/s transported by the carrier within a period of 24 hours from date of delivery of the consignment to the consignee and such damages shall be recorded on the Proof of Delivery document presented to the consignee or its nominated Agent at the time of delivery.
- 11.2 In the event of the Carrier rejecting liability in respect of any claim, any action or suit for review must be instituted within a reasonable period of time of said rejection bearing in mind the 3-year prescription period.
- 11.3 Should the Client not institute action within the prescription period, the Client shall not be entitled to proceed for recovery of any amounts against the Carrier in respect of the specific load and shall have no claim in respect of any alleged damages under any circumstances whatsoever.
- 11.4 The Carrier will not accept liability for any personal effects and loose articles placed in the vehicle for transportation.
- 11.5 The Carrier will not accept liability for mechanical failures and electrical defects that a consignment may encounter whilst driven under own power on to or off the car transporter. The onus rests upon the Client to ensure sufficient fluid levels in respect of a consignment whether same is delivered under own power or carried prior to handover to the Carrier and the Carrier is exempt from liability of any claim or loss or damage arising due to the consignment not having sufficient fluids. The Client has to ensure that the vehicle is in a clean condition before collection of the vehicle and ensure that the vehicle is fit for transportation. Any defects to the vehicle must be

pointed out to the Carrier or its representative before handing the vehicle over to the Carrier.

## **12. Route**

The consignment may be carried via any route at the sole discretion of the Carrier. It is recorded that the Carrier use predetermined routes and that all quotations are prepared in accordance with these standard routes. Should the Carrier however deviate from the route as a result of circumstances beyond its control, in its sole discretion, the Carrier shall be entitled to reasonable additional remuneration and expenses incurred as a result of the deviation, which the Client agrees to pay immediately on presentation of an Invoice by the Carrier.

## **13. Limitation of Carrier's Liability Resulting from Incorrect Address of Consignee or failure of consignee to take Delivery of the consignment.**

The onus is upon the Client to supply full and accurate delivery details to the carrier. The Carrier will not be responsible for any loss or damage in respect of incorrect delivery of the consignment due to incomplete or incorrect delivery details being supplied to the Carrier and, the Carrier will not be liable for any loss or damage incurred as a result of the consignee, or his duly authorised agent, not being present to receive the consignment.

## **14. Limitation of Carrier's Liability in Relation to Time of Delivery**

The Carrier will deliver the Consignment in terms of the times and dates of delivery as specified on the delivery documentation provided. The Carrier will not be liable for any delays in delivery of the Consignment, including but not limited to the detention thereof by any border post authority or traffic authority or for any loss or damage arising there from.

## **15. Storage Charges on Failure by Client or Consignee to take Delivery**

The Carrier will be entitled to charge the Client storage charges at a reasonable rate (it will be presumed that the Carrier's charges are reasonable until the contrary is proved by the Client) in respect of any period during which the Carrier is obliged to store the goods carried by reason of the failure of the Client or the consignee to take delivery thereof, when tendered by the Carrier for delivery or in the event of the Carrier being unable to deliver the said consignment due to the fault of the Client or consignee.

## 16. Special Limitation of the Carrier's Liability

Notwithstanding the terms of this agreement, the Carrier will not be liable for:

- 16.1 The loss of a particular market;
- 16.2 Indirect or consequential damages;
- 16.3 Loss of value of vehicle after repairs and
- 16.4 Loss or damage arising from riots, civil commotion, strikes, lockouts or stoppage of work from whatever cause, whether partial or general.
- 16.5 Any glass claims whatsoever including windscreens and stone chip damage to any part of the vehicle which are excluded from the Carrier's Liability Cover for used cars. No glass and stone chip claims will be entertained whatsoever for used vehicles.

## 17. Subcontractors

- 17.1 Where any consignment is consigned to any place beyond the limit of the Carrier's usual delivery radius, the Carrier reserves the right at its discretion, to employ another carrier on the Client's behalf and at the Client's expenses in order to ensure the carriage of the said consignment to the address of the consignee, whether such carriage be affected by road or by whatever means.
- 17.2 In the event of the carrier electing to exercise its discretion as contemplated in clause 17.1 above, the Carrier will be entitled to agree to, and to accept any conditions of carriage imposed by any other carrier and the Client will be deemed to have had knowledge of, and to have accepted, any such conditions of carriage, provided that the Carrier's liability as defined herein will in no way be extended by any such conditions of carriage.

## 18. Domicilium Citandi Et Executandi

The Client hereby appoints the address as given on the credit application as its domicilium citandi et executandi at which address it will accept notices in relation to these terms and conditions and any other agreement with the carrier. The Client may change its elected address as contemplated herein by giving the carrier written notice of its new address.

## 19. Presumption as to Notices

Any notice required to be given by the Carrier to the Client will be deemed to have been validly given if posted or delivered to the *domicilium citandi et executandi* of the Client alternatively emailed to the Client's contact person and will be deemed to have been received by the Client on the date of sending.

## 20. South African Laws

In the event of any dispute arising out of this agreement or the terms hereof, or the interpretation of the agreement, the laws of the Republic of South Africa shall apply.

## 21. Jurisdiction

The parties consent to the jurisdiction of the Magistrates Court in respect of any legal action which either of the parties may institute against the other, provided that such consent shall not be construed as excluding the right of either party to pursue legal action in the High Court of South Africa. Should either party institute action against the other, the successful party shall be entitled to recover all costs incurred on the scale of fees as between attorney and client.

## 22. Interest

The Carrier shall be entitled to levy interest on all overdue amounts at the rate of prime plus 4 %.

## 23. Costs

In the event of any dispute arising out of the relationship between the parties to this agreement which requires litigation, the successful party shall be entitled to claim attorney and client costs.

## 24. Consent to Credit Bureau Information

- 24.1 The Client consents to the Carrier accessing its credit information with any and all credit bureaus whether within the territory of South Africa or internationally.
- 24.2 The Client further consents to the Carrier making information regarding the Client's conduct of its account available to any of the recognized credit bureaus in South Africa.

24.3 The Client further consents to the Carrier enquiring with the banker of the Client to obtain it's opinion with regards to lending amounts and lending terms applicable to the Client.

**ACCEPTANCE**

I \_\_\_\_\_ being duly authorised by the above Client do hereby acknowledge that I have read and understood the terms and conditions and hereby accept such terms and conditions.

Signed: \_\_\_\_\_

Designation: \_\_\_\_\_

Full name: \_\_\_\_\_

Date: \_\_\_\_\_