

TERAKA'S TERMS AND CONDITIONS – CUSTOMER

1. AMENDMENTS

- 1.1 No agent or employee of Teraka has Teraka's authority to alter or vary these terms and conditions either by an oral or written undertaking or promise given before or after receipt of these terms and conditions unless the Managing Director or the General Manager: Finance approves such alteration or variation in writing, nor shall any act or omission of Teraka be construed as a variation or waiver of any of these conditions.

2. COLLECTION AND DELIVERY

- 2.1 Any collection or delivery date and time, as the case may be, indicated by Teraka, whether in the load confirmation or otherwise, shall merely be regarded as the estimated date and time of collection or delivery, and shall not bind Teraka to effect collection or delivery on or near such date or time.
- 2.2 Teraka shall be entitled in its sole discretion to split the rendering of the services in the quantities and on the dates and times it decides.
- 2.3 The Customer shall ensure that:
- 2.3.1 the goods shall be ready for loading on the date specified;
 - 2.3.2 all documentation necessary in connection with the goods and the transportation thereof shall be fully and correctly prepared;
 - 2.3.3 at all places where Teraka is to collect and off-load the goods there will be safe, suitable and adequate access and loading and off-loading facilities, and that it is possible for Teraka to do so by means of ordinary staircases and/or doorways and/or gates and/or loading docks, without need for any special or additional tackle, plant, power, labour or equipment;
 - 2.3.4 the goods will be sufficiently packed and/or prepared for carriage, whether in suitable receptacles/bags/containers or in bulk; and
 - 2.3.5 the Customer shall sign such certificates and receipts on loading and off-loading as Teraka may require.
- 2.4 The Customer shall accept delivery of the goods and shall not be entitled to resile from the agreement nor to withhold or defer any payment nor will the Customer be entitled to a reduction in the load confirmation price nor to any other right or remedy against Teraka, its servants, agents or any other persons for whom it is liable in law (in whose favour this constitutes a *stipulatio alteri*) whether for losses, costs, damages, expenses, interest or otherwise (not limited *eiusdem generis*) on account of delays in effecting delivery, partial delivery or non-delivery, whether occasioned by any negligent act or omission on the part of Teraka, its servants, agents or any other persons for whom it is liable in law, or not.
- 2.5 If the Customer fails or refuses to furnish the information necessary to enable delivery to be effected, or if it fails or refuses to take delivery, the goods shall, without prejudice be deemed to have been delivered to the Customer upon notification by Teraka to the Customer to that effect.
- 2.6 Teraka shall not be under any obligation to provide any plant, power or labour which in addition to its vehicle's crew is required for the loading or unloading of any goods. Any assistance given by Teraka in such loading or unloading shall be at the sole risk and cost of the Customer.
- 2.7 The Customer or owner conducting any packing or other operation or activity in any area or premises provided by Teraka shall do so at its own risk, and the Customer indemnifies and holds Teraka harmless against all claims or losses arising out of the presence of the Customer or owner in such area or premises.
- 2.8 Any delivery note (copy or original) signed by the Customer or a third party to transport the goods and held by Teraka shall be conclusive proof that delivery was made to the Customer. Save as specifically agreed, in cases of transport by third parties, such parties are deemed the Customers agent irrespective of by whom they are to be paid
- 2.9 The Customer shall be obliged to inspect all goods upon delivery and shall endorse the delivery note as to any failure to deliver or defects. No claims for failure to deliver or defects shall be valid unless the delivery note has been endorsed as aforesaid and unless, in addition, the Customer notifies Teraka in writing within 3 (three) business days of delivery of the goods of the claim in question, furnishing full details in regard thereto. The Customer shall bear the onus of proving that upon delivery, any goods are defective or not delivered. Failure to notify Teraka accordingly and this shall constitute *prima facie* evidence that the goods were delivered to the Customer or its nominee in the same order and condition that Teraka and/or its subcontractor received them.

3. CUSTOMER'S RISK

- 3.1 Teraka renders the services on the basis that it is neither a common carrier nor a public carrier.
- 3.2 The goods shall be handled, packed, loaded, off-loaded, and warehoused at the sole risk of the Customer or the owner of the goods, and the Customer indemnifies and holds Teraka harmless accordingly.

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4. PRICE AND PAYMENT

- 4.1 Unless otherwise expressly stated, prices are exclusive of value-added tax, which shall be for the account of the Customer, unless the Customer has given acceptable proof to Teraka that the supply is a zero-rated or an exempt supply.
- 4.2 Teraka shall be entitled to invoice each delivery/performance actually made in terms of a load confirmation separately.
- 4.3 The Customer shall be obliged to pay to Teraka, in addition to the load confirmation price, on demand:
 - 4.3.1 the amount of any tax, duty or other charge of any nature whatsoever imposed by any law, regulation or enactment of whatsoever nature which comes into force on a date after the date on which any price charged is determined, but prior to the due date for payment;
 - 4.3.2 the costs associated with taking out any licenses or permits required for the rendering of the services in respect of the Customer's goods, including the costs to comply with the requirements of any lawful authority;
 - 4.3.3 any other additional costs of any nature whatsoever arising due to factors beyond the control of Teraka in relation to the rendering of the services; and/or
 - 4.3.4 any demurrage or storage charges of any nature whatsoever and howsoever arising paid by Teraka. The Customer hereby appoints Teraka irrevocably and in rem suam as its agent and in its name, place and stead, to contract for the storage of the goods upon such terms and conditions as Teraka may in its sole discretion elect, without any liability whatsoever attaching to Teraka to attend to such storage; and/or
 - 4.3.5 any increases in cost or losses suffered by Teraka as a result of any act or omission by the Customer, including but not limited to costs of insurance and any additional delivery charges incurred in consequence of the delay in or non-acceptance of delivery by the Customer or costs relating to the Customer suspending, postponing or cancelling the services.
- 4.4 All outstanding payments by the Customer to Teraka shall be paid in accordance with the payment terms as agreed to by Teraka in writing from time to time.

5. DEFAULT BY THE CUSTOMER

- 5.1 Any amount falling due for payment and not paid by the Customer on due date, including any amount which may be payable as damages, shall bear interest at the maximum rate permissible under the Prescribed Rate of Interest Act 55 of 1975 and be compounded monthly in arrears.
- 5.2 All payments received shall firstly be appropriated towards legal and other costs, thereafter towards interest and thereafter in reduction of capital.
- 5.3 Upon termination and breach for any reason whatsoever, all amounts owing to Teraka by the Customer will become immediately due and payable.

6. CUSTOMER WARRANTIES

The Customer warrants in favour of Teraka that:

- 6.1 the carriage of the goods will not violate or infringe any act, regulation or law; and
- 6.2 the goods are the Customer's sole property, alternatively, the Customer is authorised by the person owning the goods to enter into this agreement in respect of the relevant goods subject to these terms and conditions.

7. EXEMPTION AND INDEMNITY

- 7.1 The Customer shall have no claim of any nature whatsoever, whether for damages, a remission of any payments, cancellation or otherwise, against Teraka, its servants, agents or others on whose behalf Teraka would be liable, in respect of any loss or damage sustained by the Customer of any nature whatsoever or any damage directly or indirectly caused to the goods or assets of the Customer or assets kept on its premises by any third parties or in regard to the Customer's business or for any loss, damage, injury or death sustained by any of its customers, servants, agents or person for whom it is liable in law, howsoever caused, including the negligent acts or omissions of Teraka, its servants, agents or others for whom it may be liable in law. This constitutes also a *stipulatio alteri* in favour of such persons the benefits of which may be accepted by them at any time.

8. LIMITATION OF LIABILITY

Notwithstanding anything to the contrary contained in this agreement, any liability that Teraka may have to the Customer, howsoever arising, including but not limited to liability or in terms of any provision of this agreement and whether in delict or otherwise, shall be limited to the least of the following respective amounts

- 8.1 the value of the goods evidenced by the relevant documentation or declared by the Customer for customs purposes or for any purpose connected with their transportation;
- 8.2 the value of the goods declared for insurance purposes;

9. EXCLUSION OF CONSEQUENTIAL DAMAGES

Under no circumstances whatsoever, including as a result of its negligent acts or omissions or those of its servants, agents or contractors or other persons for whom in law it may be liable, shall Teraka or its servants (in whose favour this constitutes a *stipulatio alteri*) be liable for any indirect, extrinsic, special, penal, punitive, exemplary or consequential loss or damage of any kind whatsoever or howsoever caused (whether arising under contract, delict or otherwise and whether the loss or damage was actually foreseen or reasonably foreseeable), sustained by the Customer, its directors and/or servants and/or its customers, including but not limited to any loss of operation time, corruption or loss of information, loss of contracts and/or loss of profits.

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10. DANGEROUS GOODS

No goods, including radioactive materials, which are or may become dangerous, inflammable or noxious, or which by their nature are or may become liable to cause injury or damage to any person, goods or property whatsoever, shall be tendered to Teraka without prior written consent.

11. BREACH AND TERMINATION

- 11.1 Subject to the remaining provisions of this clause 11, if either party commits a breach of this agreement and/or fails to comply with any of the provisions hereof (the "defaulting party"), then the other party (the "aggrieved party") shall be entitled to give the defaulting party 7 (seven) calendar days notice in writing to remedy such breach and/or failure, and if the defaulting party fails to comply with such notice then the aggrieved party shall forthwith be entitled, but not obliged, without prejudice to any other rights or remedies which the aggrieved party may have in law (including the right to claim damages), to cancel this agreement or to claim immediate performance and/or payment of all the defaulting party's obligations in terms hereof.
- 11.2 Upon termination and breach for any reason whatsoever, all amounts owing to Teraka by the Customer will become immediately due and payable.
- 11.3 Teraka has the right to terminate this agreement at any time without any prejudice to its rights and shall not thereby become liable to the Customer for breach or damages. Any supply of services in terms of this agreement is subject to immediate cancellation by Teraka:
 - 11.4.1 due to force majeure or any other cause beyond the control of Teraka, including without limitation, inability to secure labour, power, materials or supplies, or by reason of an act of God, war, civil disturbance, riot, state of emergency, strike, lockout, or other labour disputes, fire, flood, drought or legislation; or
 - 11.4.2 if the Customer breaches any term of this agreement or makes any attempt to compromise with its creditors, applies for business rescue, is subject to an order of liquidation or sequestration, whether provisional or final, or judgment is given against the Customer or any of its principals which remains unsatisfied for 10 (ten) business days and it is neither appealed or rescinded.

12. DOMICILIUM CITANDI ET EXECUTANDI

- 12.1. Teraka and the Customer hereby select their domicilia citandi et executandi for all purposes under this agreement as follows:
 - 12.1.1 Teraka: First Floor, Platinum Square, 20 Techno Drive, Techno Park, Stellenbosch, 7600
 - 12.1.2 The Customer: as set out in the application form
- 12.2 Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if in writing.
- 12.3 Any party may by notice to the other party change the physical address chosen as its domicilium citandi et executandi to another physical address where postal delivery occurs in South Africa, provided that the change shall become effective on the 5th (fifth) business day from the deemed receipt of the notice by the other party.
- 12.4 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered to its chosen domicilium citandi et executandi.

13. RIGHT TO CEDE AND ASSIGN

- 13.1 Teraka shall be entitled to cede and assign all its rights and obligations in and under this agreement to a third party on written notice of such cession and assignment being given to the Customer.
- 13.2 The Customer will not be entitled to cede or assign any of its rights or obligations in and under this agreement to a third party without the prior written consent of Teraka, which consent shall not be unreasonably withheld.

14. GENERAL

- 14.1 The Customer agrees that the amount due and payable to Teraka may be determined and proven by a certificate issued by Teraka and signed on its behalf by anyone purporting to be a duly authorised person which authority need not be proven. Such certificate shall be binding and shall be prima facie proof of the indebtedness of the Customer.
- 14.2 The Customer shall be liable for all costs incurred by Teraka in the recovery of any amounts or the enforcement of any rights which it has hereunder, including collection charges and costs on an attorney and own client scale whether incurred prior to or during the institution of legal proceedings or if judgment has been granted, in connection with the satisfaction or enforcement of such judgment.
- 14.3 The parties agree that each clause of this agreement shall be severable, the one from the other, and if any clause is found to be defective or unenforceable for any reason by any competent court, then the remaining clauses shall be and continue to be of full force and effect.
- 14.4 No extension of time or waiver or relaxation of any of the provisions or terms of this agreement or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this agreement, shall operate as an estoppel against Teraka in respect of its rights under this agreement, nor shall it operate so as to preclude Teraka thereafter from exercising its rights strictly in accordance with this agreement.
- 14.5 This agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa.

THUS DATE AND SIGNED ON THIS _____ DAY OF _____ IN THE YEAR _____.

SIGNATURE OF CUSTOMER: _____

Client's registered name: _____

Name & Surname (and duly authorized): _____

Position held: _____