



## GENERAL TERMS AND CONDITIONS FOR THE RENDERING OF TRANSPORT SERVICES TO BETRAM (PTY) LIMITED T/A AMALOOLOO

### INTRODUCTION:

The Transporter has extensive knowledge and experience in rendering the Transport Services (as defined below). Amalooloo is desirous in appointing the Transporter on the terms and condition set out below to render the Transport Services.

### IT IS AGREED

#### 1. DEFINITIONS AND INTERPRETATION

- 1.1 The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of, nor modify nor amplify the terms of this Agreement, nor any clause of this Agreement. Unless a contrary intention clearly appears:
- 1.1.1 words importing:
- 1.1.1.1 any gender includes all others;
- 1.1.1.2 the singular includes the plural and *vice versa*; and
- 1.1.1.3 natural persons include created entities (corporate or un-incorporate) and the state and *vice versa*;
- 1.1.2 the following terms have the meanings assigned to them in this clause 1.2 and cognate expressions shall have corresponding meanings, namely:
- 1.1.2.1 **Affiliates** mean any person or entity Controlling, Controlled by or under common Control with such Party;
- 1.1.2.2 **Agents** means directors, officers, employees, agents, professional advisers, contractors, sub-contractors or any Affiliate of either Party;
- 1.1.2.3 **Agreement** means this agreement, together with any annexures executed hereunder;
- 1.1.2.4 **Control** means the power, direct or indirect, to direct or cause the direction of the management and policies of such entity whether by contract, ownership of shares, membership of the board of directors, agreement or otherwise and, in any event and without limitation of the foregoing, any entity owning more than 50% of the voting securities of a second entity shall be deemed to control that second entity. The terms "**Controlling**" and "**Controlled**" shall have a corresponding meaning;
- 1.1.2.5 **Confidential Information** means Information relating to one Party or its Agents (the "Disclosing Party") and/or the business carried on or proposed or intended to be carried on by the Disclosing Party and which is made available in connection with this Agreement to the other Party (the "Receiving Party") (or its Agents) by the Disclosing Party (or its Agents) or which is recorded in agreed minutes following oral disclosure to the Receiving Party and any other information which is otherwise made available by the Disclosing Party (or its Agents) to the Receiving Party (or its Agents), whether before, on or after the commencement date of this Agreement, including any information, analysis or specifications derived from, containing or reflecting such information but excluding information which:
- 1.2.2.6.1 is publicly available at the time of its disclosure or becomes publicly available (other than as a result of disclosure by the Receiving Party or any of its Agents contrary to the terms of this Agreement); or
- 1.2.2.6.2 was lawfully in the possession of the Receiving Party or its Agents (as can be demonstrated by its written records or other reasonable evidence) free of any restriction as to its use or disclosure prior to it being so disclosed; or

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- 1.2.2.6.3 following such disclosure, becomes available to the Receiving Party or its Agents (as can be demonstrated by its written records or other reasonable evidence) from a source other than the Disclosing Party (or its Agents), which source is not bound by any duty of confidentiality owed, directly or indirectly, to the Disclosing Party in relation to such information;
- 1.1.2.6 **Fees** means the rates and charges payable to the Transporter for the rendering of the Transport Services as detailed under each Order;
- 1.1.2.7 **Good Industry Practice** means the exercise of such reasonable skill, care, prudence, efficiency, foresight and timeliness as would be expected from a reasonably and suitably skilled, trained and experienced person engaged in the same type of undertaking and for the same or similar circumstances;
- 1.1.2.8 **Goods Declaration** shall mean such goods declaration referenced to in the Road Traffic Act, No 93 of 1996 prepared by the Transporter for every load conveyed, the reflecting details of the consignor, consignee, operator, tonnages of goods, the distribution of such tonnages over the axles or axle units of a vehicle and any other information which may be required;
- 1.1.2.9 **Information** means all information including, without limitation, any information relating to systems, operations, plans, intentions, market opportunities, know-how, trade secrets and business affairs in whatever form, whether in oral, tangible or in documented form and, if in tangible or documented form, whether marked or identified as being proprietary or not;
- 1.1.2.10 **Intellectual Property Rights** includes any copyright, design rights, patents, inventions, logos, business names, service marks and trademarks, internet domain names, rights in databases, data, source codes, reports, drawings, specifications, know how, business methods and trade secrets, applications for registration, and the right to apply for registration, for any of these rights and all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world;
- 1.1.2.11 **Order** means an order placed on the Transporter to render the Transport Services.
- 1.1.2.12 **Party** means any one of the Parties to this Agreement. The term “**Parties**” shall have a corresponding meaning;
- 1.1.2.13 **Personnel** means the employees, agents and approved sub-contractors of the Transporter who are assigned to perform the Transport Services;
- 1.1.2.14 **Regulator** means any person/entity having regulatory or statutory authority over any part of the Transport Services or the Transporter’s business as the case may be;
- 1.1.2.15 **Regulatory Change/s** means any change in law, enactment, order, regulation, regulatory policy, guideline or industry code which impacts on the performance of this Agreement;
- 1.1.2.16 **Regulatory Requirements** means all legal and regulatory requirements in the Republic of South Africa and any other jurisdiction from which the Transport Services are provided that are applicable in relation to the Transport Services;
- 1.1.2.17 **Representative** means Amalooloo and Transporter representatives appointed to represent that Party from time to time;
- 1.1.2.18 **Security Policy** means Amalooloo security policies and procedures in place as amended from time to time;
- 1.1.2.19 **Supplier Tools** means all know-how, development tools, processes, methodologies and technologies which are vested in or licensed to the Transporter and which are used by the Transporter in performing the Transport Services;
- 1.1.2.20 **Transport Services** means the transport services to be provided by the Transporter to Amalooloo under this Agreement as described under an Order, as may be amended, supplemented or superseded from time to time;
- 1.1.2.21 **Third Party** means any person or entity which is not a Party to this Agreement; and
- 1.1.2.22 **VAT** means the value added tax or any other similar tax which may be applicable from time to time.

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- 1.1.3 reference to a "**clause**" is a reference to a clause of the body of this Agreement which follows this definition section;
- 1.1.4 reference to any legislation is intended to refer to that piece of legislation and related rules and regulations as existing on the signature date and as updated/amended/replaced from time to time;
- 1.1.5 the definitions are intended to be fundamental parts of this Agreement;
- 1.1.6 when periods of "**days**" are referred to, then you count that period by excluding the first day and including the last day – always counting business days only;
- 1.1.7 when we described figures in words and numbers, the words will always take precedence;
- 1.1.8 the definitions will also apply to any annexures you attach to this Agreement;
- 1.1.9 sometimes we define a word in a particular clause in this Agreement, if we do so, that defined word or term will apply to its use throughout this Agreement;
- 1.1.10 some provisions of this Agreement may expressly say that they survive the expiration or termination of this Agreement, but they may also survive if they must out of necessity to achieve the Party's intention;
- 1.1.11 sometimes courts use a rule for interpreting a contract which is: the contract will be interpreted against the Party responsible for the drafting or preparation of the contract. The Parties agree that this will not apply in the case of this Agreement;
- 1.1.12 any reference to a Party will include any person who takes on the Party's rights and/or obligations in future (including assignees, creditors, liquidators, testamentary heirs, etc.);
- 1.1.13 whenever we use words intended to create examples (like "**include**", "**including**" and "**in particular**"), the use of such words or examples will not limit the generality of any preceding word(s); and
- 1.1.14 if we refer to any other agreement or document in this Agreement, then we refer to that agreement or document as it exists from time to time (i.e. as amended, cancelled, replaced, supplemented, etc.).

## **2. APPOINTMENT AND RELATIONSHIP BETWEEN THE PARTIES**

- 2.1 Amalooloo hereby appoints the Transporter, on a non – exclusive basis, to provide it with the Transport Services on an on-going basis and the Transporter hereby accepts such non - exclusive appointment.
- 2.2 Nothing contained in this Agreement shall be construed so as to create any partnership, joint venture or similar relationship between the Parties. Similarly, no Transporter or employment relationship is established between the Parties.
- 2.3 This Agreement is entered into solely between, and may be enforced only by, Amalooloo and the Transporter and this Agreement shall not be deemed to create any rights to Third Parties, including Transporters and clients of a Party, or to create any obligations of a Party to any such Third Parties.

## **3. TRANSPORT SERVICES**

- 3.1 Amalooloo may from time to time place an Order on the Transporter to render the Transport Services to Amalooloo on such terms as set out in such Order and as set out in Annexure A – Transport Services attached hereto.
- 3.2 No terms or conditions submitted by either Party that are in addition to, different from or inconsistent with those contained in the Order or this Agreement, including, without limitation, the Transporter's printed terms and conditions, and any terms and conditions contained in any Transporter's quotation, invoice, purchase order acknowledgment, confirmation, acceptance, bill of lading or other instrument, shall be binding upon either Party unless specifically and expressly agreed to in a writing signed by duly authorised representatives of both Parties.

## **4. FEES, INVOICING AND PAYMENT**

- 4.1 The fees and charges applicable in performing the Transport Services by the Transporter shall be as detailed under each Order.

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- 4.2 For any amounts payable by Amalooloo to the Transporter under this Agreement, the Transporter shall invoice Amalooloo the agreed Fees and Amalooloo shall pay the Transporter in accordance with the invoicing and payment provisions set out below.
- 4.3 Amalooloo shall pay to the Transporter the Fees within 30 (thirty) days after the date on which Amalooloo receives an invoice properly raised from the Transporter. The Fees shall be paid to a bank account nominated by the Transporter in writing to Amalooloo.
- 4.4 If at any time Amalooloo acting in good faith disputes all or any of the Fees before payment of an invoice raised in accordance with clause 4.3 (Fees, Invoicing and Payment):
- 4.4.1 Amalooloo shall notify the Transporter within 30 (thirty) days after the date of receipt of a proper invoice for the Fees, specifying in reasonable detail Amalooloo reasons for disputing the invoice;
- 4.4.2 Amalooloo shall pay to the Transporter within 30 (thirty) days after the date of receipt of the relevant invoice all amounts not disputed by Amalooloo; and
- 4.4.3 if the Parties are unable to resolve the dispute within 30 (thirty) business days of notice given in accordance with clause 4.4.1 (Fees, Invoicing and Payment), either Party may escalate the matter for resolution in accordance with clause 14 (Dispute Resolution).
- 4.5 Upon resolution of a dispute, (i) any sum which Amalooloo is ordered to pay (whether such agreed sum is in the amount originally invoiced, or a reduced amount) shall be payable in the same manner as set out in clause 4.3 (Fees, Invoicing and Payment), within 30 (thirty) business days of the resolution of the dispute and (ii) any sum which the Transporter is ordered to pay or refund to Amalooloo shall be payable to an account within 30 (thirty) business days of the resolution of the dispute or, at Amalooloo option, shall be set off against amounts payable by Amalooloo to the Transporter.
- 4.6 Payment of an invoice shall not prevent Amalooloo from subsequently disputing all or any of the Fees in good faith whether during or after the term of this Agreement and any sum which the Transporter agrees to pay or refund to Amalooloo following the resolution of the dispute shall be paid to Amalooloo in accordance with 5.3 (Fees, Invoicing and Payment) above.
- 4.7 Without prejudice to its other rights or remedies under this Agreement, either Party may charge and the other Party shall pay interest, accruing daily, from the due date to the date of actual payment on any overdue amounts under this Agreement at the rate of 2 (two) percentage points above the base rate of First Rand Bank Limited in force for the time. Such interest shall not accrue on sums that are in dispute, unless or until the dispute resolution procedure determines that such sums ought to have been paid at their due date.
- 4.8 If applicable, the Transporter shall be required to print Amalooloo's VAT registration number on every tax invoice presented to Amalooloo for payment.
- 4.9 All payment obligations under this Agreement shall be met in Rand.

## **5. OBLIGATIONS OF THE TRANSPORTER**

- 5.1 The Transporter shall appoint a Representative under this Agreement, who will be responsible for the Transport Services to be provided by the Transporter to Amalooloo in accordance with this Agreement.
- 5.2 The Representatives shall be properly authorised by the Transporter to carry out the Transporter's obligations under this Agreement.
- 5.3 The Representatives shall report to Amalooloo within the time frames and in the format as required in this Agreement on the progress of the Transport Services.
- 5.4 The Transporter shall ensure that it has appropriate agreements in place with Third Parties to enable Amalooloo to receive the Transport Services under this Agreement, where the Transporter is using or providing Amalooloo with Third Party information, support or materials for a project including but not limited to where the Transporter is employing other Transporters whose work may affect Amalooloo's ability to receive the Transport Services.

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5.5 The Transporter shall apply reasonable endeavours to promptly bring to Amalooloo's attention any act, failure, defect or omission on the part of Amalooloo or its Personnel which may impact upon the delivery of the Transport Services. In addition, the Transporter undertakes to apply reasonable endeavours to promptly bring to Amalooloo's attention any act, failure, defect or omission on the part of the Transporter or its Personnel which may impact upon the rendering of the Transport Services.

**6. OBLIGATIONS OF THE CLIENT**

6.1 Amalooloo shall for the duration of this Agreement ensure that its personnel co-operate with the Transporter and are made available to the Transporter as reasonably required by the Transporter where the co-operation with and availability of such personnel to the Transporter is reasonably necessary and/or desirable for the effective and successful provision of the Transport Services.

6.2 Amalooloo shall appoint a Representative under this Agreement, who has the overall authority, responsibility and accountability on behalf of Amalooloo to monitor the rendering of the Transport Services by the Transporter in accordance with this Agreement.

6.3 Amalooloo Representative shall take responsibility for all Amalooloo activities relating to Transport Services envisaged by the Parties in this Agreement, be responsible for the overall co-ordination of such activities and oversee the rendering of the Transport Services by the Transporter.

6.4 Amalooloo shall grant the Transporter access to all data, information, systems and facilities as reasonably required by the Transporter to effectively perform its duties and obligations in terms of this Agreement, but always subject to Amalooloo's security policies and procedures.

**7. WARRANTIES AND UNDERTAKINGS**

7.1 Each Party warrants and represents that:

7.1.1 it has full capacity and authority to enter into and perform its obligations under this Agreement; and

7.1.2 this Agreement is executed by a duly authorised Representative of that Party.

7.2 The Transporter warrants, represents and undertakes on an on-going basis that:

7.2.1 it shall ensure that the Transport Services are performed in a professional manner by suitable Transporter staff utilising professional standards and practices;

7.2.2 its obligations under this Agreement will be performed by a sufficient number of appropriately experienced, qualified, competent, trained and efficient Personnel and in accordance with Good Industry Practice;

7.2.3 all Personnel will be vetted in accordance with Good Industry Practice;

7.2.4 the performance of its obligations under this Agreement and any licences granted by the Transporter to Amalooloo will not infringe any Intellectual Property Rights of any Third Party;

7.2.5 all Personnel are entitled to work in the Republic of South Africa or any other country in which the Transport Services are to be provided including without limitation the necessary work permits;

7.2.6 it will be solely responsible for the payment of remunerations and associated benefits, if any, of the Personnel, and for withholding and remitting income tax and/or any other applicable requirement to conform with any applicable laws and regulations;

7.2.7 there are no actions, suits or proceedings or regulatory investigations pending or, to the Transporter's knowledge, threatened against or affecting the Transporter before any court or administrative body or arbitration tribunal that might affect the ability of the Transporter to meet and carry out its obligations under this Agreement;

7.2.8 the Transporter has and will continue to hold all necessary approvals from Regulators necessary to perform the Transporter's obligations under this Agreement;

7.2.9 the Transporter will perform its obligations under this Agreement in compliance with all applicable laws, enactments, orders, regulations, guidance and all Regulatory Requirements and/or Regulatory Changes;



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- 7.2.10 whilst at any Amalooloo site or on Amalooloo's premises it shall and shall ensure that its Personnel shall comply with Amalooloo's health and safety policy in force from time to time (copy of which will be provided to the Transporter on the Transporter's written request) and all reasonable requirements and procedures made known to the Transporter by Amalooloo concerning conduct at any of Amalooloo sites or on Amalooloo's premises;
- 7.2.11 the performance of its obligations under this Agreement and Amalooloo's use of the Transport Services and any licences granted by the Transporter to Amalooloo will not infringe any Intellectual Property Rights of any Third Party;
- 7.2.12 it has taken all reasonable precautions to ensure that, in the event of a disaster, the impact of such disaster on the ability of the Transporter to comply with its obligations under this Agreement will be reduced to the greatest extent possible and that the Transporter shall ensure that it has appropriate back-up arrangements and procedures in place;
- 7.2.13 all documents, data, software or other materials relevant to the rendering of the Transport Services are kept under secure conditions with appropriate back-up arrangements in place;
- 7.2.14 it will comply with Amalooloo's Security Policy in force from time to time (copy of which will be provided to the Transporter on the Transporter's written request); and
- 7.2.15 without the consent of Amalooloo, the Transporter will not knowingly or negligently insert, or authorize Third Parties including subcontractors to insert, into any software used to perform its obligations under this Agreement, any code that would have the effect of disabling or otherwise shutting down all or any portion of Amalooloo Transport Services or otherwise impairing the operation of Amalooloo Transport Services to its customers. The Transporter further warrants, represents and undertakes that, with respect to any disabling code that may be part of the software, the Transporter will not knowingly or negligently invoke, or authorise a Third Party to invoke, such disabling code at any time, including upon expiration or termination of this Agreement for any reason, without Amalooloo's written consent.
- 7.3 Both Parties warrant and undertake that they shall and will remain, for the duration of this Agreement, cognisant of and compliant with all relevant legislative or Regulatory Requirements and/or rulings or codes of practice of any competent authority or industry body that has jurisdiction over that Party and its business and over the provision of the Transport Services or which are relevant to the provision, receipt of the Transport Services hereunder, as the case may be.
- 7.4 Amalooloo warrants that it has not been induced to enter into this Agreement by any prior representations, warranties or guarantees, whether oral or in writing, except as expressly contained in this Agreement.
- 7.5 Except as expressly stated in this Agreement, all warranties and conditions, whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.

## 8. **CONFIDENTIAL INFORMATION**

- 8.1 From time to time during the duration of this Agreement, Confidential Information may be given by the Disclosing Party to the Receiving Party.
- 8.2 The Receiving Party will treat and keep all Confidential Information as secret and confidential and will not, without the Disclosing Party's written consent, directly or indirectly communicate or disclose (whether in writing or orally or in any other manner) Confidential Information to any other person other than in accordance with the terms of this Agreement.
- 8.3 The Receiving Party will only use the Confidential Information for the sole purpose of complying with its obligations under this Agreement.
- 8.4 Notwithstanding clause 8.2 (Confidential Information) the Receiving Party may disclose Confidential Information:

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- 8.4.1 to those of its Agents who strictly need to know the Confidential Information for the sole purpose set out in clause 8.3 (Confidential Information) provided that the Receiving Party shall ensure that such Agents are made aware prior to the disclosure of any part of the Confidential Information that the same is confidential and that they owe a duty of confidence to the Disclosing Party on the same terms as contained in this Agreement. The Receiving Party shall at all times remain liable for any actions of such Agents that would constitute a breach of this Agreement; or
- 8.4.2 to the extent required by law or the rules of any applicable regulatory authority, subject to clause 8.5 (Confidential Information) below.
- 8.5 If the Receiving Party is required to disclose any Confidential Information in accordance with clause 8.4.2 (Confidential Information) above, it shall promptly notify the Disclosing Party so that the Disclosing Party may have an opportunity to prevent the disclosure through appropriate legal means and the Receiving Party shall co-operate with the Disclosing Party regarding the form, nature, content and purpose of such disclosure or any action which the Disclosing Party may reasonably take to challenge the validity of such requirement.
- 8.6 The contents and the existence and the scope of this Agreement are Confidential Information.
- 8.7 If any Confidential Information is copied, disclosed or used otherwise than as permitted under this Agreement then, upon becoming aware of the same, without prejudice to any rights or remedies of the Disclosing Party, the Receiving Party shall as soon as practicable notify the Disclosing Party of such event and, if requested by the Disclosing Party, take such steps (including the institution of legal proceedings) as shall be necessary to remedy (if capable of remedy) the default and/or to prevent further unauthorised copying, disclosure or use.
- 8.8 Notwithstanding whether the Receiving Party uses the Confidential Information in accordance with this Agreement or not (including modifying or amending the Confidential Information), all Confidential Information shall remain the property of the Disclosing Party and its disclosure shall not confer on the Receiving Party any rights of the Disclosing Party (or its Agents), including Intellectual Property rights, over the Confidential Information whatsoever beyond those contained in this Agreement.
- 8.9 Use by the Receiving Party of any Confidential Information in accordance with the terms of this Agreement will not infringe the Intellectual Property of any other person or party.
- 8.10 The Receiving Party agrees to ensure proper and secure storage of all Confidential Information and any copies thereof to at least the same standard as the Receiving Party keeps its own Confidential Information. The Receiving Party shall not make any copies or reproduce in any form any Confidential Information except for the purpose of disclosure as permitted in accordance with this Agreement.
- 8.11 The Receiving Party shall keep a written record, to be supplied to the Disclosing Party upon request, of the Confidential Information received and any copies made thereof and, in so far as is reasonably possible, of the location of such Confidential Information and any copies thereof.
- 8.12 Without prejudice to any other rights or remedies of the Disclosing Party, the Receiving Party acknowledges and agrees that damages may not be an adequate remedy for any breach by it of the provisions of this clause 8 (Confidential Information) and that the Disclosing Party shall be entitled to seek the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of any such provision by the Receiving Party or its Agents, and no proof of special damages shall be necessary for the enforcement of the rights under this clause 8 (Confidential Information).

## 9. **INTELLECTUAL PROPERTY RIGHTS**

- 9.1 All Intellectual Property Rights belonging to a Party prior to the execution of this Agreement shall remain vested in that Party.
- 9.2 The Transporter and its Affiliates will retain all Intellectual Property Rights in the Supplier Tools. The Transporter hereby grants, and will procure that its Affiliates grant, to Amalooloo a royalty-free, non-exclusive, non-transferable licence to use the Supplier Tools to the extent necessary to receive the Transport Services during the term of this Agreement.
- 9.3 All Intellectual Property Rights developed or created in the provision of the Transport Services shall remain vested in the Transporter.

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- 9.4 Where there are modifications to pre-existing material which are inseparable from the pre-existing material, then the Party which owns the pre-existing material will own the modifications.
- 9.5 None of the Intellectual Property Rights in Amalooloo's trademarks and brands shall be used by the Transporter for any purpose without Amalooloo's prior written consent.
- 9.6 The Transporter shall at all times whether during or after termination or expiry of this Agreement, indemnify and keep indemnified Amalooloo against all losses, claims, damages, liabilities, additional licence fees and expenses (including all reasonable legal fees) incurred by or awarded against Amalooloo or which are agreed by Amalooloo to be paid by way of settlement or compromise arising out of or in relation to any infringement or alleged infringement of any Intellectual Property Rights of any Third Party which is suffered by Amalooloo as a result of Amalooloo's receipt of the Transport Services or its use or possession of the Supplier Tools, or any part thereof, ("IPR Claim") provided that Amalooloo shall:
- 9.6.1 allow the Transporter to conduct all negotiations and proceedings and give the Transporter all reasonable assistance in relation to the IPR Claim, each at the Transporter's cost; and
- 9.6.2 make no admission relating to the IPR Claim.
- 9.7 Amalooloo shall notify the Transporter in writing as soon as is reasonably possible of any IPR Claim of which Amalooloo has notice.
- 9.8 The Transporter shall conduct the litigation diligently using competent counsel and in such a way as not to bring the reputation or name of Amalooloo into disrepute.
- 9.9 The Transporter shall not be entitled to settle or compromise any IPR Claim made against Amalooloo without Amalooloo's prior written consent (not to be unreasonably withheld).
- 9.10 If at any time an IPR Claim is made, the Transporter may, at its own expense and sole option, either:
- 9.10.1 procure for Amalooloo the right to continue using the relevant Transport Services or Supplier Tools; or
- 9.10.2 replace or modify the Transport Services or Supplier Tools with non-infringing substitutes, provided that any substitute shall not materially prejudice Amalooloo's use of the Transport Services or Supplier Tools and that such substitution will be carried out so as to avoid or reduce insofar as possible any interruption to Amalooloo's business operations.
- 9.11 If the Transporter has availed itself of its rights to supply substitute item(s) under clause 9.10.2 (Intellectual Property Rights Indemnity) or to procure a licence in accordance with clause 9.10.1 (Intellectual Property Rights Indemnity) and such exercise of the said rights has not avoided the relevant IPR Claim, then Amalooloo may terminate this Agreement by giving the Transporter 30 (thirty) days written notice.

## 10. **LIMITATION OF LIABILITY**

- 10.1 Subject to clause 10.3 (Limitation of Liability), the total liability of Amalooloo and the Transporter, as the case may be, in respect of a claim arising in terms of this Agreement (whether arising from negligence, breach of contract or otherwise howsoever) (in this clause, "Default") in any Contract Year will be limited to 100% (one hundred per cent) of the total Fees paid to the Transporter in terms of the Transport Services provided under an Order or Orders that gave rise to such claim.
- 10.2 Subject to clause 10.3 (Limitation of Liability) and to the maximum extent permitted by law, in no event shall either Party be liable to the other Party for any indirect or consequential losses or damages, loss of profits, business, revenue, goodwill or anticipated savings suffered by the other Party during the term of this Agreement.
- 10.3 Neither Party excludes or limits liability to the other Party for death, personal injury caused by its proven negligence or that of its employees, for fraud or theft by it or its employees, for any indemnity claims under this Agreement, for a breach of any of the provisions under clause 8 (Confidential Information) and clause 9 (Intellectual Property Rights).

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- 10.4 The Parties expressly agree that if any limitation or provision contained or expressly referred to in this clause 10 (Limitation of Liability) is held to be invalid under any applicable statute or rule of law it will to that extent be deemed omitted but if any Party becomes liable for loss or damage which would otherwise have been excluded that liability will be subject to the other limitations and provisions set out in this clause 10 (Limitation of Liability).
- 10.5 Nothing in this clause 10 (Limitation of Liability) will be taken as in any way reducing or affecting a general duty to mitigate loss suffered by a Party.

#### 11. **REGULATORY INDEMNITY**

- 11.1 The Transporter will be solely liable for all losses, damages, costs, expenses and liabilities (including legal fees) incurred by or awarded against Amalooloo or their respective directors, officers, agents, employees, members, subsidiaries and successors in interest (together the "Indemnified Persons") in connection with any proceedings, claim or action against an Indemnified Person resulting from a breach by the Transporter of any Regulatory Requirements.
- 11.2 The Transporter will hold harmless each of the Indemnified Persons and indemnify each Indemnified Person on written demand in respect of all losses, damage, costs, expenses and liabilities (including legal fees) incurred by or awarded against an Indemnified Person in connection with any proceedings, claim or action against an Indemnified Person resulting from a breach by the Transporter of any Regulatory Requirements.

#### 12. **TERMINATION**

- 12.1 Should the Transporter breach or otherwise be in default of any of its obligations under or in terms of this Agreement and remain in default or fail to remedy such breach, if such breach is indeed capable of remedy, within 14 (fourteen) days of receipt of written notice calling upon it to do so, Amalooloo will be entitled, but not obliged, in addition to any other rights which it may have or remedies which may be available to it:
- 12.1.1 to cancel this Agreement (including all annexures executed), with or without claiming damages, provided that such breach constitutes a material breach; or
- 12.1.2 to obtain an order against the Transporter for specific performance, with or without claiming damages.
- 12.2 In the event that either Party is provisionally or finally liquidated or adopts a resolution to voluntarily begin with business rescue proceedings or is placed under business rescue proceedings by order of a court, or ceases or threatens to cease to carry on its normal line of business in the Republic of South Africa or defaults or threatens to default in the payment of its liabilities generally, or commits any act or omission which would, in the case of an individual, be an act of insolvency in terms of the Insolvency Act, 1936 (as amended), then the other Party will be entitled to terminate this Agreement on written notice to the other Party.
- 12.3 Amalooloo may terminate this Agreement for convenience at any time on giving the Transporter not less than 30 (thirty) days' notice, provided that Amalooloo shall pay to the Transporter all outstanding undisputed fees (apportioned on a daily basis) relating to the work undertaken by the Transporter up until the date of such termination subject always to the Transporter's duty to mitigate its loss and to the Transporter providing Amalooloo with a full breakdown of all Fees.

#### 13. **CONSEQUENCES OF TERMINATION**

- 13.1 Any termination of this Agreement will not affect any accrued rights or liabilities of either Party nor will it affect the coming into force or continuation in force of any other clauses and provisions of this Agreement which are expressly or by implication intended to come into force or continue in force on or after termination.
- 13.2 On termination of this Agreement for whatever reason, either Party shall ensure that its personnel, immediately, or as otherwise advised in writing by the other Party: deliver to him, or any Third Party nominated in writing by him, property belonging to him including any Confidential Information which may be in the possession of, or under the control of the other Party and/or its personnel. The other Party may not withhold such delivery for any reason, including any dispute between Amalooloo and the Transporter arising from the operation, construction, or termination of this Agreement and the other Party shall on request supply a certificate signed by a director as to its full compliance with the requirements of this clause.

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13.3 To the extent any of the property referred to in clause 13.2 (Consequences of Termination) is in electronic form and contained on non-detachable storage devices, the other Party shall provide the requesting Party with unencrypted copies of the same on magnetic media or, at requesting Party's option, if such information is capable of transmission by e-mail, and shall irretrievably destroy and delete copies so held. The other Party shall also provide to the requesting Party any media or images containing copies of artwork, text or designs provided by Amalooloo and the Transporter shall on request supply a certificate signed by a director as to its full compliance with the requirements of this clause and clause 13.2 (Consequences of Termination).

#### 14. **DISPUTE RESOLUTION**

14.1 Prior to the initiation of formal arbitration procedures, the Parties shall, within 5 (five) business days after a dispute has arose, first attempt to resolve their dispute informally by reference to a joint committee comprised of a single designated representative of each Party who shall have the authority of the Party he/she represents to settle the dispute.

14.2 Should the designated representatives, within 5 (five) business days after the dispute has been referred to them, conclude in good faith that they are unable to settle the dispute or should either Party have failed to appoint a designated representative on the written request of the other within 5 (five) business days after being requested to do so, then either Party may refer the matter for arbitration in terms of clause 15 (Arbitration) below or to any court in the Republic of South Africa that has the authority to hear any legal proceedings connected with this Agreement.

#### 15. **ARBITRATION**

15.1 Subject to clause 14 (Dispute Resolution), any dispute which may arise at any time between the Parties relating to any matter arising out of this Agreement or the interpretation, termination and/ or cancellation thereof, shall, if not resolved by dispute resolution, be submitted to and decided by arbitration, in accordance with the Rules of the Arbitration Foundation of Southern Africa for Commercial Arbitrations by an arbitrator or arbitrators appointed by the Foundation.

15.2 Either Party to this Agreement may demand that a dispute be referred to arbitration by giving written notice to that effect to the other Party.

15.3 This clause shall not preclude either Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

15.4 The arbitration referred to in this clause 15 shall be held:

15.4.1 at Pretoria in the English language; and

15.4.2 immediately and with a view to its being completed within 15 (fifteen) business days after it is demanded.

15.5 The Parties irrevocably agree that the decision in arbitration proceedings:

15.5.1 shall be final and binding upon the Parties subject to review if the arbitrator made a manifest error or appeal in terms of Article 22 of the Rules of the Arbitration Foundation of Southern Africa for Commercial Arbitrations;

15.5.2 shall be carried into effect; and

15.5.3 may be made an order of any court of competent jurisdiction.

15.6 This clause is severable from the rest of this Agreement and therefore shall remain effective between the Parties even if this Agreement is terminated.

#### 16. **NOTICES**

16.1 Any notice or other document to be served under this Agreement to a Party may be to be served at its address referred to on page 1 of this Agreement.

16.2 Either Party shall be entitled from time to time, by written notice to the other, to vary its domicilium address to any other address within the Republic of South Africa, which is not a post office box.

16.3 All notices given in terms of this Agreement shall be in writing and any notice given by one Party to the other (the addressee) which:

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- 16.3.1 is delivered by hand during the normal business hours at the addressee's *domicilium* shall be deemed to have been received by the addressee at the time of delivery; or
- 16.3.2 is sent by email to the addressee's email address shall be deemed to have been received by the addressee on the 1<sup>st</sup> (first) business day after the date of transmission thereof.
- 16.4 Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication actually received by one of the Parties from the other including by way of email transmission shall be adequate written notice or communication to such Party.

**17. DATA PROTECTION**

- 17.1 The Parties herewith give each other permission to collect and process the other Party's Personal Information and acknowledge that it understands the purpose for which it is required and for which it will be used. Personal Information will be as defined under the Protection of Personal Information Act, No 4 of 2013 ("POPI Act").
- 17.2 The Parties further agree that a Party's Personal Information will only be processed by the other Party to give effect to the Disclosing Purpose. Disclosing Purpose shall mean giving effect to the transaction as set out under this Agreement.
- 17.3 Each Party warrants that it is duly authorised to disclose the Personal Information to the other Party.
- 17.4 Only the Personal Information provided directly by a Party to the other Party will be collected and processed to give effect to the Disclosing Purpose.
- 17.5 The Parties may disclose the Personal Information to its service providers and shall ensure that it has agreements in place with such service providers to ensure that they comply with the privacy requirements set out hereunder and as required by the POPI Act.
- 17.6 The Parties will store the Personal Information securely, electronically and in a centralised data base, which, for operational reasons, will be accessible to all within the organisation of such Party on a need to know and business basis, save that where appropriate, some of the Personal Information may be retained in hard copy.
- 17.7 Once the Personal Information of a Party is no longer required due to the fact that the purpose for which the Personal Information was held has come to an end and has expired, such Personal Information will be safely and securely archived for such periods as may be required by any law applicable in South Africa. Thereafter such Party will ensure that such Personal Information is permanently destroyed.
- 17.8 The Parties shall be obliged to provide adequate protection for the Personal Information it holds and to stop unauthorized access and use of the Personal Information in its possession. The Parties will, on an on-going basis, continue to review its security controls and related processes to ensure that the Personal Information remains secure. The Parties shall immediately notify each other if a breach in information security or any other applicable security safeguard occurs or where there are reasonable grounds to believe that the Personal Information has been accessed or acquired by any unauthorised person and remedy any breach of a security safeguard in the shortest reasonable time.
- 17.9 When a Party contracts with third parties, it will impose appropriate security, privacy and confidentiality obligations on them to ensure that Personal Information that it remains responsible for, is kept secure. The Parties will ensure that anyone to whom it passes the Personal Information to agrees to treat the Personal Information with the same level of protection as set out under this Agreement.
- 17.10 The Parties have the right to request a copy of the Personal Information the other Party holds. To do this, the requesting Party must follow the procedure as set out under the PAIA and POPIA Manual of the Party holding such Personal Information and specify what information is required.
- 17.11 Each Party has the right to ask from the other Party to update, correct or delete Personal Information provided to such Party.

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18. **AUDIT.**

- 18.1 Amalooloo may at its discretion and cost audit the Transporter's compliance with this Agreement (including audits of the Transporter's premises and systems) provided that any such audit is carried out with reasonable prior notice and in a reasonable way so as to cause as little disruption as is reasonably possible to the rendering of the Transport Services and the Transporter's other business activities.
- 18.2 Where Amalooloo has reasonable grounds to believe that the Transporter is not complying with its obligations under this Agreement, an audit may be carried out with minimum prior notice.
- 18.3 The Transporter shall provide all assistance reasonably requested by Amalooloo in relation to any audit, including access to the Transporter's Personnel, records and premises.
- 18.4 Amalooloo may engage Third Party advisers to undertake any audit subject to confidentiality obligations.
- 18.5 Amalooloo may allow any Regulator and any persons appointed by such Regulator (subject to confidentiality obligations) to participate in any audit and to receive the results of that audit.

19. **SUBCONTRACTING AND THIRD PARTY CONTRACTS**

- 19.1 The Transporter may, only with the prior written approval of Amalooloo which approval may be withheld or conditioned in Amalooloo's sole discretion, employ subcontractors for the execution of any portion of its obligations under this Agreement, but such subcontracting shall not relieve the Transporter of its obligations under this Agreement and the Transporter shall remain liable for any acts or omissions of such subcontractors. The Transporter shall further ensure that all sub-contractors perform in terms of all applicable provisions of this Agreement.
- 19.2 Amalooloo shall have the right during the continued duration of this Agreement to direct the Transporter to replace such sub-contractor upon 30 (thirty) days written notice if the sub-contractor's performance is materially deficient, or good faith doubts exist concerning the sub-contractor's ability to render future performance because of inter alia changes in the ownership, management, or the financial condition of the sub-contractor.
- 19.3 Each subcontractor shall, prior to its appointment as subcontractor under this Agreement, sign irrevocable, unconditional and written confidentiality and non-disclosure undertakings in favour of Amalooloo on terms and conditions acceptable to Amalooloo.

20. **FORCE MAJEURE**

- 20.1 Delay or failure to comply with or breach of any of the terms and conditions of this Agreement if occasioned by or resulting from an act of God or public enemy, fire, explosion, earthquake, perils of the sea, flood, war declared or undeclared, civil war, revolution, civil commotion or other civil strife, riot, strikes, blockade, embargo, sanctions, epidemics, act of any Government or other Authority, compliance with Government orders, demands or regulations, or any circumstances of like or different nature beyond the reasonable control of the Party so failing ("**force majeure event**"), will not be deemed to be a breach of this Agreement nor will it subject either Party to any liability to the other.
- 20.2 Should either Party be prevented from carrying out its contractual obligations as a result of a force majeure event lasting continuously for a period of 5 (five) days, either Party shall be entitled, after due consultation with the other Party in an effort to come to a mutually acceptable arrangement, to terminate this Agreement on written notice to the other Party, without liability.

21. **GENERAL**

- 21.1 **Entire Agreement:** This Agreement constitutes the whole of the agreement between the Parties hereto 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 any of the Parties.

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- 21.2 **No Variation:** No variation, addition, deletion, or agreed cancellation will be of any force or effect unless in writing and signed by or on behalf of the Parties hereto. Failure or delay on the part of any Party hereto in exercising any right, power or privilege hereunder 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.
- 21.3 **Assignment:** Save as otherwise herein provided, neither this Agreement nor any part, share or interest therein nor any rights or obligations hereunder may be ceded, assigned, or otherwise transferred without the prior written consent of the other Party.
- 21.4 Any consent or approval required to be given by any Party in terms of this Agreement will not be unreasonably withheld.
- 21.5 Each Party agrees that, in its respective dealings with the other Party under or in connection with this Agreement, it shall act in good faith.
- 21.6 **Counterparts:** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement as at the date of signature of the Party last signing one of the counterparts. The Parties undertake to take whatever steps may be necessary to ensure that each counterpart is duly signed by each of them without delay.
- 21.7 **Governing Law:** This Agreement will in all respects be governed by and construed under the laws of the Republic of South Africa.
- 21.8 **Jurisdiction:** The Parties hereby consent and submit to the exclusive jurisdiction of the North Gauteng High Court of the Republic of South Africa.
- 21.9 **Severability:** If any term, condition, provision or performance, or any part of a term, condition, provision or performance of this Agreement is determined to be invalid, illegal, unlawful or unenforceable to any extent, that term, condition, provision or performance or the relevant part thereof shall be severed from the remaining terms, conditions, provisions and performance of this Agreement, or amended to make it valid, legal, lawful and enforceable, in such a manner as to leave the amended Agreement substantially the same in essence, and this Agreement so amended shall remain in force and effect.
- 21.10 If there are any changes to legislation which impacts on this Agreement, the Parties in good faith undertake to inform the other. The Parties shall discuss the impact of such legislative changes and if necessary the effective date on which such changes shall be practically implemented.

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## ANNEXURE A – Transport Services

### 1. **GENERAL**

Amalooloo may from time to time place an Order on the Transporter to render the Transport Services to Amalooloo.

### 2. **PLACING OF ORDER AND RENDERING OF TRANSPORT SERVICES**

- 2.1 An Order shall be placed on the Transporter not less than 24 (twenty-four) hours prior to Amalooloo requiring the Transporter to render any Transport Services.
- 2.2 Each Order shall contain:
- 2.2.1 the physical addresses of the applicable collection points and delivery points;
  - 2.2.2 a description of the goods forming the subject matter of the specific Transport Services to be rendered;
  - 2.2.3 the dates upon and times at which Amalooloo requires the Transporter to commence loading the goods at the collection point/s concerned; and
  - 2.2.4 Incoterms (if any) which may apply to the consignment.
- 2.3 Amalooloo has and retains the right to revise and/or vary the directives contained in any particular collection and delivery schedule provided only that it is both reasonable and feasible to do so in the circumstances.
- 2.4 The Transporter warrants, represents and undertakes to:
- 2.4.1 perform the Transport Services in an efficient, prompt, and professional manner and in particular, but without limitation ensuring that:
    - 2.4.1.1 loading and/or offloading of goods are booked daily with Amalooloo, before the appropriate cut-off time, specified by Amalooloo from time to time. The Transporter will immediately notify Amalooloo of any changes to or delays in respect of a booking to load or offload goods;
    - 2.4.1.2 when booking to load and/or offload as set out in clause 2.4.1.1, the Transporter will provide the following details to Amalooloo:
      - 2.4.1.2.1 vehicle registration number; and
      - 2.4.1.2.2 the driver's name, identity number and contact details.
  - 2.4.2 the goods are loaded and offloaded on to and from the vehicles without any delays occasioned by any act or omission on the part of the Transporter or its drivers, agents or employees;
  - 2.4.3 not overload any vehicle and prepare and keep record of all Goods Declarations;
  - 2.4.4 once loaded, the goods are adequately covered by a tarpaulin, secured and protected where applicable or required;
  - 2.4.5 once loaded, attend to a Goods Declaration and provide Amalooloo with a copy thereof;
  - 2.4.6 to verify loading documents against an Order and immediately report any discrepancies;
  - 2.4.7 once loaded, the vehicles proceed directly to the relevant delivery points by the most direct and safest route possible;
  - 2.4.8 the vehicles are driven in such manner as ensures the safety and preservation of the goods being transported;
  - 2.4.9 with the exception of attending at weighbridges and obeying traffic regulations, there are no unscheduled stops between the collection points and the delivery points. To this end, the Transporter shall ensure that all vehicles are properly and adequately fuelled prior to rendering any specific Transport Services;
  - 2.4.10 ensure that delivery of the goods occurs at the delivery points during the hours that each relevant Client has agreed to accept such delivery, and notify Amalooloo immediately of any breakdowns, delays, accidents or incidents preventing the Transporter to execute an Order;
  - 2.4.11 to provide Amalooloo with a schedule with the status of any loads of goods pertaining to an Order, on a daily basis;
  - 2.4.12 to report if any goods appear to be missing, damaged or contaminated, immediately and before the goods are offloaded at the delivery point;
  - 2.4.13 ensure that the POD is signed by an authorised representative, on delivery;



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- 2.4.14 take out and maintain sufficient insurance to cover the Transporter's liability in rendering the Transport Services;
- 2.4.15 abide by and fully comply with Amalooloo's procedures (as notified to the Transporter in writing from time to time) relating to the production, processing and handling of all relevant and necessary documentation pertaining to the Transport Services including, but without limitation, delivery notes, proof of delivery and specific goods movement documentation;
- 2.4.16 fully accommodate any increase or decrease in the volumes of goods to be transported and distances to be travelled by the vehicles in terms of this Agreement, provided that it receives reasonable written notice of such increase or decrease;
- 2.4.17 liaise with Amalooloo's management on all matters concerning the implementation of this Agreement and in general to carry out all of Amalooloo's reasonable instructions and to do all things necessary to ensure that the Transport Services are performed in an efficient and expeditious manner; and
- 2.4.18 on request of Amalooloo, provide a list of the Transporter's employees, drivers and agents and relevant permits, licensing and qualifications to perform the Transport Services.

### 3. **VEHICLES, DRIVERS AND EMPLOYEES**

- 3.1 The Transporter warrants, represents and undertakes that:
  - 3.1.1 the Vehicles are designed, intended and equipped to transport the goods;
  - 3.1.2 only trucks and trailers of the configuration specified by Amalooloo, if any, is used to execute the Order;
  - 3.1.3 the vehicles that will be used will conform with the requirements of all relevant and applicable laws, by-laws and regulations or any specification required by Amalooloo for a specific Order;
  - 3.1.4 the vehicles are kept in good working order and repair, clean, dry, leak proof, free of residue of previous goods or cargo transported and, in the condition, necessary to effectively enable the Transporter to perform the Transport Services;
  - 3.1.5 it shall have sufficient vehicles to perform the Transport Services as directed by Amalooloo notwithstanding increases in distances to be travelled and volumes of goods to be loaded, transported and delivered;
  - 3.1.6 all motorised vehicles are equipped with satellite tracking and cellular telephones, thereby enabling the drivers thereof and the Transporter's management to be in constant communication with each other at all times and to facilitate the provision by the Transporter of accurate and up to date information to Amalooloo in relation to any specific service being rendered;
  - 3.1.7 all of the Transporter's managers and supervisors will have unimpeded access to cellular telephones and satellite tracking to enable them to be in contact with each other and with the Transporter's drivers engaged in the performance of any particular service/s;
  - 3.1.8 the maintenance in relation to each vehicle is timeously and comprehensively carried out so as to ensure roadworthiness and minimise breakdowns or failures;
  - 3.1.9 complete and comprehensive records of the operating, repairs and history of maintenance on each vehicle are kept;
  - 3.1.10 complete and comprehensive records are kept of the operating kilometres and operating hours in relation to each vehicle engaged in the performance of the Transport Services;
  - 3.1.11 complete and comprehensive records are kept of Goods Declarations in relation to each load conveyed by the Transporter in the performance of the Transport Services, copies whereof shall be made available for inspection by Amalooloo on reasonable notice; and
  - 3.1.12 the vehicles will be equipped with an operational tested and approved fire extinguisher of suitable design.
- 3.2 All drivers and other employees required by the Transporter in order to render the Transport Services shall be provided at the sole cost and expense of the Transporter.
- 3.3 The Transporter warrants, represents and undertakes that:
  - 3.3.1 all drivers provided by it for the purpose of rendering the Transport Services shall be fully qualified, licenced, fit and properly trained;

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- 3.3.2 all drivers hold, and carry with them at all times an endorsed license issued in terms of the Road Traffic Act, No93 of 1996 to operate a vehicle, including a public driver permit and must, on request of Amalooloo, produce such license and permit;
- 3.3.3 it complies at all times with statutory limits on working hours and minimum wages as determined by competent authority or statute in respect of all drivers and other employees;
- 3.3.4 all drivers and employees comply at all times with security regulations which Amalooloo may impose from time to time and co-operate and subject themselves to security checks and investigations conducted by Amalooloo;
- 3.3.5 all drivers and employees wear protective clothing where necessary and are neatly dressed, competent, reliable, of sober habits and courteous;
- 3.3.6 no person is engaged by the Transporter in the performance of the Transport Services who, to the knowledge of the Transporter, has a criminal record for drunken driving, reckless and/or negligent driving or an offence involving an element of dishonesty; and
- 3.3.7 all drivers provided by it for the purpose of rendering the Transport Services undergo comprehensive medical examinations to ensure that they are fit for driving purposes.
- 3.4 Upon written request by Amalooloo, which shall take into account fair labour practice, the Transporter shall replace any driver or employee which, in the reasonable opinion of Amalooloo, is incompetent, negligent or otherwise unsuitable for the purposes of this Agreement.

#### **4. LEGISLATION AND LICENCES**

- 4.1 The Transporter warrants, represents and undertakes to act in accordance with and maintain the necessary licences, certificates, permits, letters of good standing or exemptions relating to all legislation and subordinate legislation (including regulations and proclamations) applicable to the rendering of the Transport Services, irrespective of whether such legislation and/or subordinate legislation applies to the performance of the Transport Services, the Transporter's drivers or employees or the vehicles, which legislation shall include, but without limitation the National Road Traffic Act, No 93 of 1996, including the Road Transport Quality System and the Administrative Adjudication of Traffic Offences Act, No 46 of 1998.
- 4.2 The Transporter shall, on the written request of Amalooloo, forthwith provide Amalooloo with copies of all of the licenses, certificates, permits or exemptions referred to in clause 4.1 above.

#### **5. RISK**

- 5.1 **THE RISK OF LOSS OR DAMAGE IN AND TO THE GOODS SHALL PASS FROM THE CLIENT TO THE TRANSPORTER IMMEDIATELY UPON COMPLETION OF THE LOADING OF THE GOODS ONTO THE VEHICLES AT THE COLLECTION POINTS AND SHALL REMAIN VESTED IN THE TRANSPORTER UNTIL SUCH TIME AS THE GOODS HAVE BEEN OFF-LOADED AT THE DELIVERY POINTS.**
- 5.2 **NOTWITHSTANDING ANY PROVISION OF ANY LAW TO THE CONTRARY, THE TRANSPORTER WILL BE LIABLE FOR AND HEREBY INDEMNIFIES THE CLIENT AGAINST ANY LOSS OR DAMAGE SUFFERED BY THE CLIENT OR ANY CLIENTS ARISING FROM THE POINT IN TIME THAT THE TRANSPORTER HAS LOADED THE GOODS ONTO THE VEHICLES, UP UNTIL THE TIME THE GOODS HAVE BEEN OFFLOADED AT THE DELIVERY POINT AND A POD HAVE BEEN ISSUED, WHICH LOSS OR DAMAGES INCLUDE INTER ALIA:**
  - 5.2.1 **DEMURRAGE COSTS CHARGED AT A LOADING OR DELIVERY POINT AND LEGAL COSTS INCURRED FOR THE RECOVERY THEREOF;**
  - 5.2.2 **DAMAGES TO GOODS DUE TO HANDLING AND TRANSPORTATION;**
  - 5.2.3 **DESTRUCTION TO GOODS DUE TO HANDLING AND TRANSPORTATION; AND**
  - 5.2.4 **COSTS INCURRED BY THE CLIENT TO REPLACE THE TRANSPORTER WITH ANOTHER TRANSPORTER, DUE TO THE TRANSPORTER'S FAILURE TO EXECUTE A PURCHASE ORDER ISSUED.**

**betram**<sup>®</sup>

Patented Waterborne and Dry Sanitation Solutions

**DIRECTORS: CEO** Lukas Fourie ( B.Sc MBA ) • Lumar Fourie (M.Inst.D)

**Reg No:** 1986004256/07

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- 5.3 The Transporter shall immediately notify Amalooloo (to be confirmed in writing as soon thereafter as is possible) of any delays, accident, breakdown, theft and interference with any vehicle or its contents or of any other circumstance, which could adversely affect the condition of any goods or the anticipated time of their delivery.
- 5.4 Amalooloo will debit the Transporter by way of a separate invoice for all losses of goods occurring on any single trip. The losses shall be calculated at actual cost (ex-factory) in the case of deliveries and collections and will exclude loss of profits or loss of market share and custom or any other consequential losses. Such invoices may be set off against payment of a Transporter's invoice in accordance with the invoicing and payment provisions contained in this Agreement.

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