



STANDARD TERMS & CONDITIONS OF TRADE

oaktreetransport.co.za



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THE CUSTOMER or its duly authorised agent does hereby apply for credit facilities with OAK TREE TRANSPORT and in consideration thereof THE CUSTOMER does hereby irrevocably accept the following terms and conditions:

1. APPOINTMENT

THE CUSTOMER hereby appoints OAKTREE TRANSPORT as their agent with authority to do all things necessary, including the payment of fees, tariffs, duties and amounts in this regard.

Any goods to be carried are accepted and any services rendered subject to the conditions contained herein. All and any business undertaken, including any advice, information or service provided whether gratuitously or not by OAKTREE TRANSPORT, is and shall be subject to the conditions hereunder set out and each condition shall be deemed to be incorporated in and to be a condition of the agreement between OAKTREE TRANSPORT and THE CUSTOMER.

No agent or employee of OAKTREE TRANSPORT has OAKTREE TRANSPORT's authority to alter or vary these conditions either by an oral or written undertaking or promise given before or after receipt of these conditions, nor shall any act or omission by OAKTREE TRANSPORT be construed as a variation or waiver of any of these conditions.

If any legislation is applicable to any business undertaken in terms hereof, these conditions shall as regard such business be read as subject to such legislation and nothing in these conditions shall be construed as a surrender by OAKTREE TRANSPORT of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation. To the extent that any part of these conditions is in conflict with such legislation it shall be regarded as pro non scripto without effecting the rest of these terms and conditions.

2. APPLICABILITY OF CONDITIONS

The terms and conditions as set out herein, shall govern the relationship between OAKTREE TRANSPORT and THE CUSTOMER in each and every Contract of Service between them, including Contracts of Service entered into subsequently to the contract formed by THE CUSTOMER's initial acceptance of OAKTREE TRANSPORT's Written Quotation. For the avoidance of any uncertainty, all prior communications between the parties are excluded, save insofar as it has been expressly included in these terms and conditions (read with OAKTREE TRANSPORT's Written Quotation/Customer Load Confirmation and its acceptance by THE CUSTOMER).

The Contract of Service may be carried out by OAKTREE TRANSPORT itself or on its behalf by any Sub-Contractor appointed by it.

3. CONDITIONS

OAKTREE TRANSPORT shall only be obliged to perform in terms of the Contract of Service provided that:

OAKTREE TRANSPORT has received sufficient notice and information of THE CUSTOMER's requirements to enable it to properly carry out the Contract of Service and ensure that a suitable and appropriate vehicle and/or the necessary plant and equipment is/are available.

The necessary consents and statutory permits have been granted and remain in force. (In the event of such consents or permits being refused or withdrawn for any reason whatsoever with the effect that the Contract of Service cannot be implemented, the said Contract shall terminate automatically and no liability for damages or otherwise shall attach to OAKTREE TRANSPORT).

THE CUSTOMER is not in breach of any terms or conditions of the Contract of Service or any other Contract concluded with OAKTREE TRANSPORT.

It is not impossible, impractical or dangerous for OAKTREE TRANSPORT to comply with its obligations as a result of riots, strikes, lockouts, labour disturbances or disputes, boycotts, economic sanctions, acts of State, industrial legislation, war, terrorism, civil commotion or disturbances, attacks upon its employees or vehicles, floods, rationing or non-availability of fuel, vehicle accident, breakdown in vehicle or equipment, commercial exigencies, any other cause whatsoever beyond its reasonable control or as a result of the occurrence of any event which is unforeseen, unexpected and irresistible and which human foresight cannot guard against.

4. SUSPENSION OF PERFORMANCE

While any of the conditions referred to in clause 3 remain unfulfilled (or operative as the case may be) OAKTREE TRANSPORT shall be entitled to refuse or suspend performance without being liable in any manner whatsoever therefore to THE CUSTOMER or any other Person whatsoever, and without prejudice to OAKTREE TRANSPORT's rights to recover monies then due to it in respect of services already performed by it.

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5. LIMITATION OF EXTENT OF OAKTREE TRANSPORT'S LIABILITY

EXCLUSION OF LIABILITY

All liability of OAKTREE TRANSPORT, save for liability for damages to or losses of goods during transit and/or liability arising from the breach of this Agreement, shall always be delictual liability to be determined in accordance with the normal legal principles for determining delictual liability. Under no circumstances shall OAKTREE TRANSPORT be liable for any indirect-, consequential-, special- and/or punitive damages.

GOODS IN TRANSIT COVER

OAKTREE TRANSPORT has goods in transit insurance and the cover limit will reflect on the OAKTREE TRANSPORT 'Customer Load Confirmation' as amended from time to time and subject to average conditions, subject to exceptions and conditions and terms of said policy, OAKTREE TRANSPORT will, but without any obligation to do so and without giving any undertakings of whatsoever nature endeavour to recover for THE CUSTOMER any loss or damage sustained by THE CUSTOMER.

- OAKTREE TRANSPORT shall not be liable for any indirect or consequential loss or damages howsoever arising.
- Without derogating from the generality of the aforesaid limitations of liability, the parties expressly agree that OAKTREE TRANSPORT shall not at any stage be liable for damage resulting from or caused by or in connection with fire, flood, railway or road accidents, moth vermin, insects, damp, rust, burglary or housebreaking, act of God, riot, civil commotion, invasion, war, sabotage, malicious intent, explosion, marine risks, labour unrest, strikes, lockouts, chemical damage, leakage or any other causes whatsoever.

If THE CUSTOMER requires additional insurance cover in respect of any Contract of Service, written notice thereof must be given (by THE CUSTOMER) to OAKTREE TRANSPORT before any goods or documents are entrusted to or Services rendered by OAKTREE TRANSPORT, together with a statement as to the value of the goods or other insurable interest. Upon receipt of such notice OAKTREE TRANSPORT may agree to arrange the required cover, in which case it shall be entitled to effect special insurance to cover the value of the goods or other insurable interest. By giving such notice, THE CUSTOMER shall be deemed to have agreed and undertaken to pay OAKTREE TRANSPORT the amount of the premium payable by OAKTREE TRANSPORT for such insurance.

In the event of THE CUSTOMER expressly requesting insurance cover as set out above, then the following additional conditions shall apply:

PRO RATING

OAKTREE TRANSPORT will manage all claims fairly and in such a manner to benefit all Parties. OAKTREE TRANSPORT cannot guarantee that a claim will be based on 'PRO RATING'. The carrier will always be responsible for the full value of a valid claim.

CROSS BORDER INSURANCE

All goods are at all times carried at THE CUSTOMER'S risk also for all cross-border consignments. OAKTREE TRANSPORT may, however, arrange insurance cover in terms of prior a written request to it wherein the total value of the goods is expressly declared by THE CUSTOMER, which cover will be for the account of THE CUSTOMER.

6. CLIENT'S WARRANTIES AND INDEMNITIES

THE CUSTOMER warrants and represents that:

- The Goods are THE CUSTOMER'S sole and exclusive property and/or that THE CUSTOMER has the full and absolute authority of the persons owning or having an interest in the Goods to enter into the Contract of Service.
- The carriage of the Goods or the rendering of any other Services as contracted for with OAKTREE TRANSPORT does not contravene any Law.
- No Dangerous Goods shall be tendered to OAKTREE TRANSPORT for placing with it and/or any Sub-Contractor without OAKTREE TRANSPORT's express consent in writing and written acknowledgement that THE CUSTOMER has disclosed to OAKTREE TRANSPORT all material information pertaining to the Transportation (or any other service to be rendered) which may affect OAKTREE TRANSPORT'S risk and decision in agreeing to transport the Goods or to render the Services for and on behalf of THE CUSTOMER.

THE CUSTOMER hereby indemnifies OAKTREE TRANSPORT against all liability and any claims of whatsoever nature by any Person in respect of:

- All legal costs incurred by OAKTREE TRANSPORT in resisting any such claims, such costs to be determined on the scale as between attorney and one's own client.
- Any loss or damage arising from the rendering of services in respect of abnormal and/or dangerous loads.

THE CUSTOMER warrants the accuracy, without exception, of all information and specifications given by or on its behalf to OAKTREE TRANSPORT. Except where OAKTREE TRANSPORT is instructed in writing to pack the Goods, THE CUSTOMER warrants that all Goods have been properly and sufficiently packed and/or prepared.

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CHANGE OF ADDRESS

THE CUSTOMER undertakes to notify OAKTREE TRANSPORT forthwith in writing of any change of address.

OBJECTIONS TO STATEMENT

If THE CUSTOMER should fail to object to any item appearing on OAKTREE TRANSPORT'S statement of account within fourteen days of date of the dispatch of the statements, the accounts shall be deemed to be in order.

CHANGE OF OWNERSHIP

THE CUSTOMER undertakes to notify OAKTREE TRANSPORT, in writing, within seven days of any change in ownership of THE CUSTOMER'S business, or should THE CUSTOMER be a Company, of its share transactions whereby the majority shareholding is affected, failing which notice the entire balance owing, whether due or not, will immediately be deemed to be due and payable by THE CUSTOMER. In addition to the foregoing, THE CUSTOMER acknowledges that immediately upon any change of ownership in THE CUSTOMER, any outstanding amount whether due or not shall be deemed to be forthwith payable by THE CUSTOMER to OAKTREE TRANSPORT.

7. PRESCRIPTION OF CLAIMS

Without limiting and without prejudicing the provisions of these conditions (and in particular those relating to the limitation of liability), THE CUSTOMER shall notify OAKTREE TRANSPORT of any loss, damage, complaint or claim within 24 (twenty-four) hours from the time of off-loading, or in the case of late delivery or non-delivery of the Goods, within 24 (twenty-four) hours from the scheduled time of off-loading and shall confirm such notification in writing to be received by OAKTREE TRANSPORT within 72 (seventy-two) hours of such off-loading or scheduled time of off-loading, as the case may be, failing which, any claim arising therefrom shall ipso facto lapse and be unenforceable.

8. PAYMENT WITHOUT DEDUCTION

Notwithstanding any claim, THE CUSTOMER shall pay to OAKTREE TRANSPORT the full amount stated on OAKTREE TRANSPORT'S invoice on due date without any deduction or set-off and without prejudice to THE CUSTOMER'S rights contended for against OAKTREE TRANSPORT. In respect of any such claim THE CUSTOMER shall not be entitled to deduct or set-off any monies which it owes to OAKTREE TRANSPORT against any monies which it contends are due to it by either OAKTREE TRANSPORT and/or any Sub-Contractor. In the event of THE CUSTOMER defaulting in making payment of any amount that has become due and owing, then the full balance outstanding (whether due or not) will immediately become due and payable without notice to THE CUSTOMER.

9. STIPULATION FOR THE BENEFIT OF OAKTREE TRANSPORT

The stipulations contained in clauses 5 and 6 are for the benefit of OAKTREE TRANSPORT and of any person for whose acts and/or omissions OAKTREE TRANSPORT is or may be in Law liable and of any person who may perform any of OAKTREE TRANSPORT'S obligations hereunder.

10. VALIDITY OF QUOTATIONS

Quotations shall remain open for acceptance by THE CUSTOMER for a period of 7 (seven) days from the date thereof, (which acceptance shall be communicated in writing to OAKTREE TRANSPORT), and if not accepted during such period, shall automatically lapse.

11. QUOTATION DATA

All Quotations are subject to the conditions contained herein and to 'Errors and Omissions Excepted' (E&OE). Quotations are based, inter alia, on quantities, densities, dimensions, mass, properties, other technical data, available loading and off-loading hours and other information supplied by THE CUSTOMER and are accepted by OAKTREE TRANSPORT in good faith under representation by THE CUSTOMER. Any variance therefrom shall entitle OAKTREE TRANSPORT to require the freight quoted to be adjusted to take into account such variance, or to suspend performance, or cancel the Contract without thereby incurring any liability whatsoever and in the event of any such cancellation reserving to itself the right to claim from THE CUSTOMER such damages as OAKTREE TRANSPORT may have suffered.

Quotations are subject to:

- Work being carried out by the methods and the route to be decided upon by OAKTREE TRANSPORT without interruption, hindrance or postponement.
- The availability of OAKTREE TRANSPORT'S vehicles, plant, equipment and/or staff on the dates required.
- All part loads being conveyed and delivered at OAKTREE TRANSPORT'S convenience.
- Any increase in OAKTREE TRANSPORT'S costs coming into force and effect after the date of the quotation over which OAKTREE TRANSPORT has no control will be for THE CUSTOMER'S account.
- Any delay due to interruption, hindrance, local traffic, municipal regulation or non-production of necessary licences, permits or customer forms which will be charged to THE CUSTOMER.
- Where the volumes, quantities or scopes of work have increased over what have been quoted for, THE CUSTOMER will be charged for any additions on a pro rata basis.
- A charge increase should there be a change of route due to reasons beyond OAKTREE TRANSPORT'S control.

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- Any postponement or cancellation by THE CUSTOMER entitles OAKTREE TRANSPORT to make a change to cover the expenses incurred and/or losses to OAKTREE TRANSPORT arising therefrom.
- OAKTREE TRANSPORT shall have the right to increase the charge specified in the event of stoppages or delays in the carrying out of the work to which the Contract of Service relates provided that such stoppages or delays are caused by circumstances beyond the control of OAKTREE TRANSPORT or are such that OAKTREE TRANSPORT could not reasonably have foreseen or prevented the cause of such stoppages or delays arising.

12. FREIGHT AND CHARGES

The Freight or other agreed charges payable to OAKTREE TRANSPORT by THE CUSTOMER for the Transportation of Goods or the rendering of any other Services shall be the Freight or charges agreed between OAKTREE TRANSPORT and THE CUSTOMER or shall be calculated at the rate agreed between them, as the case may be.

The Freight or charges shall be subject to variation as provided for in clauses 11, 13 and 14.

STANDING TIME

Standing time has been provided for in any quotation given by OAKTREE TRANSPORT to THE CUSTOMER, is on the basis that three (3) hours be allowed for loading/offloading respectively. Any additional time will be charged at the prevailing OAKTREE TRANSPORT standing time daily rate for the day or part thereof.

EXTRA LOADING/OFF-LOADING POINT FEE

The Freight or other agreed charges payable to OAKTREE TRANSPORT by THE CUSTOMER is for one (1) loading- and one (1) off-loading point only. Any additional loading- or off-loading points will be charged at the rate as agreed to between OAKTREE TRANSPORT and THE CUSTOMER for the relevant load within a radius of 50km.

13. ESCALATION

Subject to clause 11, and provided OAKTREE TRANSPORT performs within 7 (seven) days of date of quotation, the Freight or charges quoted in such quotation shall remain fixed. If, however OAKTREE TRANSPORT performs after such 7 (seven) day period the Freight or charges quoted shall be subject to escalation as at the date of performance by OAKTREE TRANSPORT, the baseline being that prevailing at date of quotation.

14. ADDITIONAL CHARGES

Subject to the above, and in addition to the Freight or charges, OAKTREE TRANSPORT shall be entitled to levy an additional charge at its usual rate, alternatively reasonable rate, in the event of:

- The circumstances envisaged in clauses 24, 29, 30, 31 and 33 occurring; or
- The time taken to load or off-load a vehicle exceeding the maximum time allowed in terms of clauses 25 and 26; or
- Loading and off-loading taking place at more than one point; or
 - OAKTREE TRANSPORT being obliged, due to circumstances beyond its control, to utilise routes different from those intended by it at the time of entering into the Contract of Service.

15. PAYMENT

Subject to clause 8 above, payment shall be received in full, free of any commission, exchange, brokerage, deduction or set-off, within 30 (thirty) days of date of statement by OAKTREE TRANSPORT which may appropriate all monies paid entirely within its sole and unfettered discretion. THE CUSTOMER shall not be entitled to deduct from or set-off against such payments any claims which THE CUSTOMER may contend it has against OAKTREE TRANSPORT arising from any cause whatsoever. Notwithstanding that OAKTREE TRANSPORT may agree to collect and/or receive payment from a third party, THE CUSTOMER hereby acknowledges that THE CUSTOMER is personally bound by the provisions of the Contract of Service, and THE CUSTOMER hereby guarantees payment of the Freight and other charges by such third party to OAKTREE TRANSPORT. There will be no valid discharge of the obligation to pay OAKTREE TRANSPORT by THE CUSTOMER unless payment has been made to OAKTREE TRANSPORT and to no other Person. OAKTREE TRANSPORT is entitled to levy an interest charge against THE CUSTOMER at the rate of 2% (two per cent) per month on all amounts which are outstanding and are unpaid by THE CUSTOMER.

16. RATE OF EXCHANGE

All duties, surcharges and quoted rates and charges are based on the prevailing Rand to Dollar or Sterling or Euro (whichever may be applicable) rate of exchange ("ROE") on the day quoted. Consequently, all OAKTREE TRANSPORT's charges may be subject to change without prior warning or notice in the event of any fluctuations of more than 2% of the ROE in 24-hour periods from the effective date. In the event of such change, OAKTREE TRANSPORT reserves the right to issue a further invoice claiming any increases that may be due by reason thereof which will also take into account any variations in final shipped volume, mass and quantity of the cargo applicable. For the avoidance of doubt, the ROE for Airfreight is determined by the monthly IATA US dollar exchange rate.

17. LOADING AND OFF-LOADING

Where THE CUSTOMER is not the consignor and/or consignee, the consignor and/or consignee and their servants and agents shall be deemed to be agents of THE CUSTOMER and to be authorised to act on THE CUSTOMER's behalf in the situations contemplated in clauses 23 to 31 inclusive.

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18. OAKTREE TRANSPORT'S DISCRETION IN THE ABSENCE OF INSTRUCTIONS

In the absence specific instructions given timeously in writing by THE CUSTOMER to OAKTREE TRANSPORT-

- It shall be in the reasonable discretion of OAKTREE TRANSPORT to decide at what time to perform or to produce the performance of any or all of the acts which may be necessary or required for the discharge of its obligations to THE CUSTOMER:
 - OAKTREE TRANSPORT shall have an absolute discretion, to be exercised on reasonable grounds, to determine the means, route and procedure to be followed by it in performing all or any of the acts or services it has agreed to perform;
- In all cases where there is a choice of tariff rates or premiums offered by any carrier, warehouseman, underwriter, or other person depending upon the declared value of the relevant goods or the extent of the liability assumed by the carrier, warehouseman, underwriter or other person, it shall be in the discretion of OAKTREE TRANSPORT as to what declaration, if any, shall be made, and what liability, if any, shall be imposed on the carrier, warehouseman, underwriter or another person.

19. OAKTREE TRANSPORT'S GENERAL DISCRETION

Notwithstanding anything to the contrary herein contained, if at any time OAKTREE TRANSPORT should on reasonable grounds consider it to be in THE CUSTOMER's interest or for the public good to depart from any of THE CUSTOMER's instructions, OAKTREE TRANSPORT shall be entitled to do so and shall not incur any liability in consequence of doing so. If events or circumstances come to the attention of OAKTREE TRANSPORT, its agents, servants or nominees which, in the opinion of OAKTREE TRANSPORT and on reasonable grounds, make it in whole or in part, impossible or impracticable for OAKTREE TRANSPORT to comply with THE CUSTOMER's instructions OAKTREE TRANSPORT shall take reasonable steps to inform THE CUSTOMER of such events or circumstances and to seek further instructions. If such further instructions are not timeously received by OAKTREE TRANSPORT in writing OAKTREE TRANSPORT shall, at its sole discretion, and depending on the prevailing circumstances, be entitled to detain, return, store, sell, abandon, or destroy all or part of the goods concerned at the risk and expense of THE CUSTOMER.

20. CONDITIONS OF GOODS

The onus of establishing the condition of the Goods at the time of delivery to OAKTREE TRANSPORT shall at all times remain on THE CUSTOMER, and no delivery note, receipt, or other document given at such time by OAKTREE TRANSPORT to THE CUSTOMER shall constitute proof of such condition, *save to the extent that any specific record in relation thereto may have been made thereon by OAKTREE TRANSPORT.*

21. PACKING

OAKTREE TRANSPORT shall not be responsible for the manner in which any goods are at any stage packed by or on behalf of THE CUSTOMER, whether such packing occurs originally or consequent upon a subsequent transshipment. Furthermore, OAKTREE TRANSPORT reserves the right to decline the carriage of any goods, which in its opinion (based on reasonable grounds) have not been properly packed.

22. RESPONSIBILITY FOR LOADING AND OFF-LOADING

THE CUSTOMER shall deliver the Goods onto the vehicle nominated by OAKTREE TRANSPORT and/or the Sub-Contractor and shall take delivery therefrom, and shall be fully responsible for the loading and offloading thereof. OAKTREE TRANSPORT and/or the Sub-Contractor shall not be responsible for any loss or damage arising from the loading and off-loading of the vehicles and THE CUSTOMER indemnifies OAKTREE TRANSPORT and/or the Sub-Contractor against any claims which may be brought against OAKTREE TRANSPORT and/or the Sub-Contractor arising out of such loading, off-loading, overloading, unsafe loading or out of the nature of or any defect in the Goods concerned.

OAKTREE TRANSPORT's employees may assist with the loading and off-loading where such assistance is customary and practicable, and were contracted for, but such assistance shall be rendered at the sole risk of THE CUSTOMER without any liability for any loss or damage arising therefrom attaching to OAKTREE TRANSPORT and/or the Sub-Contractor.

23. LOADING AND OFF-LOADING FACILITIES

THE CUSTOMER undertakes:

- To provide or procure the provision of safe and adequate labour and equipment for loading and off-loading and safe, convenient and adequate loading and off-loading points and access to any such loading and off-loading points.
- To ensure that loading and off-loading will be possible at the agreed points during such hours and days as the parties have agreed.
- To ensure that OAKTREE TRANSPORT's or the Sub-Contractor's vehicle is suitably clean for the purpose of receiving and conveying the Goods before the loading of the Goods in the contracted vehicle/s is commenced with.
- To ensure that all Goods loaded shall be in such condition as to enable due and proper off-loading to be affected at the point of destination.
- To ensure that the Goods are off-loaded into the correct tank, vessel or container store or warehouse, as the case may be.

THE CUSTOMER warrants that if any Goods require special appliances for loading or off-loading of the vehicle, those appliances will be available at the point of collection or place of delivery of the consignment at THE CUSTOMER's expense.

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24. DELAYS AND DAMAGES

In the event of a vehicle being delayed or damaged due to THE CUSTOMER's failure to comply with the provisions of clauses 22 and 23, THE CUSTOMER shall be liable for additional charges at OAKTREE TRANSPORT's usual rates, alternatively reasonable rates, and/or such damages as the case may be.

In the event of any damage whatsoever being caused to OAKTREE TRANSPORT's own/leased/hired/contracted vehicle/s and/or equipment whilst loading or off-loading Goods at THE CUSTOMER's premises (or any other designated premises), then and in such event, THE CUSTOMER shall be liable for the fair and reasonable costs of repairing the damage caused to OAKTREE TRANSPORT's own/leased/hired/contracted vehicle/s and/or equipment and restoring the vehicle/s and/or equipment to the condition it/they was/were in prior to the damage caused to it.

25. LOADING TIME

The maximum loading time allowed to THE CUSTOMER shall be 3 hours or as stipulated on the Written Quotation unless otherwise agreed to in writing by OAKTREE TRANSPORT. Loading time shall be deemed to commence at the time when the vehicle to be loaded arrives at the entrance to the property on which the loading point is situated.

26. OFF-LOADING TIME

The provision of clause 25 shall apply mutatis mutandis to off-loading time.

27. DELIVERY DETAILS

After completion of loading THE CUSTOMER shall verify the correctness of all the details contained in THE CUSTOMER's delivery documents.

28. DELIVERY AND OFF-LOADING INSTRUCTIONS

THE CUSTOMER shall ensure, prior to the Goods being off-loaded, that the Goods to be off-loaded are the precise Goods which are contracted to be off-loaded, that during off-loading clear and precise off-loading and delivery instructions are given, that the Goods are off-loaded at the correct place and/or off-loading point, and that immediately after off-loading the Goods comprise the correct quantity and are in good order and condition.

29. COMPLETION OF LOADING

When off-loading is completed, THE CUSTOMER shall inspect the vehicle/s, as the case may be, to verify that the complete consignment has been off-loaded. Goods left on OAKTREE TRANSPORT's or the Sub-Contractor's vehicle/s for any reason to suit the convenience of THE CUSTOMER or the consignee, are held at the sole risk of THE CUSTOMER. Pending forwarding and delivery, Goods may be warehoused or otherwise held at any place/s at the sole discretion of OAKTREE TRANSPORT or the Sub-Contractor, at THE CUSTOMER's risk and expense.

30. FAILURE BY THE CUSTOMER TO TAKE DELIVERY

Should THE CUSTOMER fail or neglect or be unable or refuse to take delivery of the whole or any part of the Goods at the agreed off-loading point or at the agreed off-loading time, or should (through no fault of OAKTREE TRANSPORT) it not be possible or practicable to off-load the Goods within the prescribed time set out in 26 above and should no acceptable alternative written delivery instruction be received from THE CUSTOMER, OAKTREE TRANSPORT shall be entitled to store or abandon the goods at its discretion based on reasonable grounds. In such event THE CUSTOMER shall be liable to pay any additional charges thereby incurred and shall have no claim whatsoever against OAKTREE TRANSPORT for any act or omission arising therefrom.

31. DEMURRAGE

OAKTREE TRANSPORT shall not be liable for demurrage or storage charges of any nature howsoever arising, levied by third parties, and where paid by OAKTREE TRANSPORT, shall be refunded to OAKTREE TRANSPORT by THE CUSTOMER on demand. THE CUSTOMER does hereby appoint OAKTREE TRANSPORT irrevocably and in rem suam as its agent in its place and stead to contract for the storage of such Goods upon such terms and such conditions as OAKTREE TRANSPORT may, in its discretion, (and based on reasonable grounds) elect and without any liability whatsoever attaching to OAKTREE TRANSPORT to attend to such storage.

32. DANGEROUS GOODS

OAKTREE TRANSPORT is not obliged to contract for the carrying of Dangerous Goods on behalf of its Client.

In the event of OAKTREE TRANSPORT agreeing in writing to itself carry or to place with the Sub-Contractor THE CUSTOMER's Dangerous Goods, THE CUSTOMER shall:

- Disclose fully the nature and properties of such Goods to OAKTREE TRANSPORT.

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- Prior to loading, give OAKTREE TRANSPORT special detailed instructions to enable OAKTREE TRANSPORT to place such Goods for the proper safety and handling.
- Comply with all regulations governing the loading, off-loading, storage and carriage of such Goods.

In the event of THE CUSTOMER failing to disclose the dangerous nature of any Goods, or in the event of any Goods becoming a danger to persons or property, whether the dangerous nature thereof has been disclosed or not, OAKTREE TRANSPORT shall be entitled immediately, and without prior notice to THE CUSTOMER, to discharge or dispose of any such Goods, in any manner and OAKTREE TRANSPORT shall not be liable for any loss or damage arising from such discharge or disposal whatsoever. OAKTREE TRANSPORT shall furthermore be entitled to recover from THE CUSTOMER the Freight or charges in respect of any such carriage, notwithstanding the non-delivery of such Goods, together with any expenses incurred in discharging or disposing thereof.

THE CUSTOMER:

- Shall be liable for all loss and/or damages suffered by OAKTREE TRANSPORT or any other Person/s caused by Dangerous Goods whether the dangerous nature thereof has been disclosed or not.
- Hereby indemnifies OAKTREE TRANSPORT against all liability and all claims by any Person/s arising from such loss and/or damage. No goods, including radio-active materials, which are or may become dangerous, inflammable or noxious, or which by their nature may cause injury or damage to any person, goods or property whatsoever, shall be tendered to OAKTREE TRANSPORT without its express consent in writing. The goods or the container package or other covering in which the goods are to be tendered to OAKTREE TRANSPORT or its agents shall be prominently marked on the outside so as to indicate the nature and character of the goods, and so as to comply with any applicable laws, regulations or requirements of any authority or carrier. If any such goods are tendered to OAKTREE TRANSPORT without its written consent or without being marked as aforesaid, the same may at any time be destroyed, disposed of, abandoned or rendered harmless at the sole discretion of OAKTREE TRANSPORT and at the entire risk and expense of THE CUSTOMER, without compensation to him or any other party and without prejudice to OAKTREE TRANSPORT's right to its charges or fees including the cost of destruction or disposal. Notwithstanding the acceptance of the goods with its express consent, OAKTREE TRANSPORT may nevertheless for good reason, such as the risk to other goods or property, life or health, destroy or otherwise deal with the goods at the entire risk and expense of THE CUSTOMER, and without compensation to him or to any other party and without prejudice to OAKTREE TRANSPORT's right to its charges or fees including the cost of destruction or disposal. Whether or not THE CUSTOMER was aware of the nature of the goods and whether or not OAKTREE TRANSPORT's written consent thereof was obtained, THE CUSTOMER shall be deemed to have indemnified OAKTREE TRANSPORT against all loss, damage or liability caused to OAKTREE TRANSPORT as a result of the tender of the goods to OAKTREE TRANSPORT.

33. CANCELLATION OF REQUEST FOR VEHICLE

THE CUSTOMER shall be entitled to cancel a request for a vehicle to carry out a particular service in terms of the Contract of Service, provided that THE CUSTOMER gives OAKTREE TRANSPORT not less than 12 hours for a national domestic Contract of Service and 24 hours for an over border Contract of Service notice of cancellation (Saturdays, Sundays and Public Holidays excluded), prior to the time of _____ dispatch of the vehicle as scheduled by OAKTREE TRANSPORT, failing which THE CUSTOMER shall be liable to pay OAKTREE TRANSPORT's usual, alternatively reasonable additional charges.

34. BREACH OF CONTRACT BY OAKTREE TRANSPORT

Should OAKTREE TRANSPORT breach any material term or condition of the Contract of Service, THE CUSTOMER shall give OAKTREE _____ TRANSPORT written notice to remedy such breach within 7 (seven) days of receipt thereof, and only in the event of OAKTREE TRANSPORT failing to comply therewith, shall THE CUSTOMER be entitled to cancel the Contract on written notice to OAKTREE TRANSPORT.

35. DUTIES AND TAXES

THE CUSTOMER shall be liable for any duty, tax, imports or outlays of whatsoever nature levied by the authorities at any post or place for or in connection with the Goods, and for any payments, fines, expenses, loss or damage incurred or sustained by OAKTREE TRANSPORT or the Sub- Contractor in connection therewith.

36. FORCE MAJEURE

Without prejudice to any other rights to which it is entitled, OAKTREE TRANSPORT shall be entitled in the event of force majeure, if it so decides, to suspend the performance of its obligations under the Contract of Service or to dissolve the Contract of Service without judicial intervention, by notifying THE CUSTOMER in writing and without OAKTREE TRANSPORT being liable to pay any compensation.

Force majeure shall be taken to mean every failure that cannot be attributed to OAKTREE TRANSPORT because the fault does not lie with it and it cannot be blamed either by virtue of the law, legal act or generally accepted practice.

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37. LIEN

OAKTREE TRANSPORT shall have a lien over all Goods for monies owing to OAKTREE TRANSPORT by THE CUSTOMER in respect of services rendered by OAKTREE TRANSPORT whether or not payment in respect of such Services is due. In addition, OAKTREE TRANSPORT shall be entitled to hold all Goods as security for any monies which are due and payable to it by THE CUSTOMER from any cause whatsoever. If any monies owing is not paid within 45 (forty-five) days after they become due., OAKTREE TRANSPORT shall be entitled without further notice to THE CUSTOMER:

- To open and examine any part of the consignment.
- To hold any part of the consignment in such manner and upon such terms and conditions as it deems fit in order to secure its lien and security.
- To sell the Goods over which OAKTREE TRANSPORT has a lien, and to apply the proceeds of any such sale after deducting all expenses thereof in payment or deduction of any amount due by the Client to OAKTREE TRANSPORT provided that any surplus is to be paid over to THE CUSTOMER, without interest, as soon as possible after the sale if THE CUSTOMER's address is known, or if not, upon demand by THE CUSTOMER.
- Upon payment or tender of the proceeds of any such sale, OAKTREE TRANSPORT shall be released from all liability (if any) to THE CUSTOMER in respect of the Goods.

38. WARSAW CONVENTION

If transportation or carriage by air of any consignment involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may apply and the convention governs and, in most cases, further limits the liability of OAKTREE TRANSPORT in respect of loss or damage to such consignment.

39. DUPLICATE DOCUMENTS

OAKTREE TRANSPORT is under no obligation whatsoever to provide Clients with duplicates of any documents issued by it. Nevertheless, OAKTREE TRANSPORT without being legally obligated to do so will in its discretion endeavour wherever possible to provide Clients with duplicate documents but reserves the right to charge for such copies.

40. CREDIT TERMS

41.1 THE CUSTOMER agrees that any amount reflected in a Tax Invoice shall be due and payable unconditionally (a) Cash on Delivery; or (b) if THE CUSTOMER is a Credit Approved Customer, within 30 days from the end of the month in which a Tax Invoice has been issued by OAKTREE TRANSPORT. Settlement is affected only by way of Electronic Funds Transfer (EFT) or any other payment instrument acceptable to OAKTREE TRANSPORT and shall be made to OAKTREE TRANSPORT free of exchange and without deductions of any nature. Any credit facilities granted to THE CUSTOMER by OAKTREE TRANSPORT is entirely at the discretion of OAKTREE TRANSPORT and may be withdrawn at any time.

41.2 THE CUSTOMER agrees to accept the receipt of electronic format statements, tax invoices, shipment documents (proof of delivery), credit and debit notes from OAKTREE TRANSPORT, which will be transmitted via email, and the following conditions thereto as required by South African Revenue Services and in terms of the provisions of the Value-Added Tax Act for the issuing of tax invoices, credit, and debit notes:

Both THE CUSTOMER and OAKTREE TRANSPORT shall retain the electronic documents in its original encrypted format for a period of five years from the date of the delivery to which it relates.

41.3 The transmitted electronic document will constitute the original statement, tax invoice, credit, or debit note. No other tax invoice, credit or debit note will be issued in respect of any specific delivery, unless as a copy of the original document.

41.4 THE CUSTOMER agrees to report any queries relating to incomplete documentation or erroneous information on the invoice, within 7 days of receipt of invoice and POD's, and providing the necessary proof for correction.

41. INTEREST ON OVERDUE ACCOUNTS

OAKTREE TRANSPORT shall be entitled to charge THE CUSTOMER interest at the rate of 2% per month a tempora morae (from the moment the debt is overdue) provided however, that nothing contained herein shall be interpreted as obliging OAKTREE TRANSPORT to afford THE CUSTOMER any such indulgence to effect payment after due date.

42. CONSENT TO SHARING INFORMATION AND RETENTION PERIODS

43.1 For the purposes of making credit risk management decisions and preventing fraud, THE CUSTOMER hereby warrants that OAKTREE TRANSPORT has consent to: -

- Carry out a credit enquiry on THE CUSTOMER and the Directors/Members/Partners/Trustees/Principals of THE CUSTOMER from time to time with one or more credit bureaus, credit information agents, credit insurance companies or other creditors (trade references) of THE CUSTOMERS in terms of this agreement.
- OAKTREE TRANSPORT may transmit details to credit bureaus, credit information agents, credit insurance companies or other creditors of THE CUSTOMER'S of how THE CUSTOMER has performed in meeting his/her/its obligations in terms of this agreement.

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• If THE CUSTOMER fails to meet his/her/its commitments to OAKTREE TRANSPORT; OAKTREE TRANSPORT may record THE CUSTOMER 'S non- performance with credit bureaus, credit information agents, credit insurance companies or other creditors of THE CUSTOMER.

43.2 Such information shall be retained for periods as stipulated in any applicable law, but no longer than the duration of the validity of this agreement. Where THE CUSTOMER has not used a facility under this agreement for 12 months, THE CUSTOMER will be required to re-apply for such a facility.

43.3 OAKTREE TRANSPORT is required to collect, process, and share THE CUSTOMER'S personal information. THE CUSTOMER'S personal information is collected and processed by OAKTREE TRANSPORT staff, representatives, and sub-contractors and OAKTREE TRANSPORT makes every effort to protect and secure THE CUSTOMER'S personal information. THE CUSTOMER is entitled at any time to request access to the information OAKTREE TRANSPORT has collected, processed, and shared.

43. RECOVERY OF LEGAL / COLLECTION COSTS

Should OAKTREE TRANSPORT instruct its attorneys or collection agent to collect any overdue amounts, or to take any action against THE CUSTOMER in the implementation or protection of OAKTREE TRANSPORT'S rights, OAKTREE TRANSPORT shall be entitled to the recovery of all legal or collection costs arising there from, on the scale as between attorney, agent or collection agency and own client.

OAKTREE TRANSPORT will not be in any way responsible for losses; consequential losses; damages or delays sustained by THE CUSTOMER, caused by or arising from any error; discrepancy; defect on specifications; measurements or other instructions; natural disasters, unavoidable accidents of any kind, acts of the State's enemies, riots, lockouts, cessation of labour, transport delays, shortened hours of labour, insurrection, infectious diseases, war, the imposition of any trade boycotts or sanctions of trade restrictions by any government, authority, company or organisation or person or persons, whether within the Republic of South Africa or anywhere else, or any other cause or contingency whatsoever beyond the control of OAKTREE TRANSPORT.

44. JURISDICTION OF THE MAGISTRATES COURT

OAKTREE TRANSPORT shall be entitled to institute any proceedings against THE CUSTOMER in any Magistrates Court having jurisdiction over it, even though the cause of action or amount claimed is beyond that jurisdiction of the court.

45. DISPUTE

Should there be any dispute of any nature whatsoever between the parties in regard to any aspect, matter or thing relating to these trading terms and conditions including whether or not OAKTREE TRANSPORT has executed its obligations in terms of any other agreement it has with THE CUSTOMER, then and in such event THE CUSTOMER shall nevertheless be obliged to perform all its obligations to OAKTREE TRANSPORT in terms of any such agreement as though OAKTREE TRANSPORT had performed properly and to THE CUSTOMER'S satisfaction. THE CUSTOMER shall not be entitled to withhold payments of any amounts, by reason of any disputes with OAKTREE TRANSPORT, whether in relation to OAKTREE TRANSPORT'S performance in terms of any agreement, or lack of performance or otherwise. In any dispute between OAKTREE TRANSPORT and THE CUSTOMER OAKTREE TRANSPORT shall be deemed to have performed its obligations in a proper and workmanlike manner and strictly in accordance with any agreement between it and THE CUSTOMER, until such time as THE CUSTOMER proves the contrary.

46. ARBITRATION

47.1 A dispute which arises in regard to –

- the interpretation of; or
- the carrying into effect of; or
- any of the parties' rights and obligations arising from; or
- the termination or purported termination of or arising from the termination of; or
- the rectification or proposed rectification of

The Contract of Service, or out of or pursuant to the said Contract, (other than where an interdict is sought or urgent relief may be obtained from a Court of competent jurisdiction), shall be submitted to and decided by arbitration as set out below:

47.2 That arbitration shall be held –

- with only the parties and their representatives present thereat;
- at Cape Town.

47.3 It is the intention that the arbitration shall, where possible, be held and concluded in 21 (twenty-one) Business Days after it has been demanded. The parties shall use their best endeavours to procure the expeditious completion of the arbitration.

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47.4 Save as expressly provided in the Contract of Service to the contrary, the arbitration shall be subject to the arbitration legislation for the time being in force in the Republic of South Africa.

47.5 The arbitrator shall be, if the matter in dispute is principally –

- an accounting matter, independent auditors agreed between the parties in writing or, failing such agreement within 10 (ten) days after the arbitration has been demanded, at the request of either of the parties shall be nominated by the president for the time being of the South African Institute of Chartered Accountants (or its successor body), whereupon the parties shall forthwith appoint such person as the arbitrator. If that person fails or refuses to make the nomination, either party may approach any court having jurisdiction to make such appointment and, to the extent necessary, such court is expressly empowered to do so;
- any other matter, an impartial admitted senior counsel of not less than 10 (ten) years' standing or a retired judge agreed between the parties in writing or, failing such agreement within 10 (ten) days after the arbitration has been demanded, at the request of either of the parties shall be nominated by the president for the time being of the Law Society of the Western Cape (or its successor body in Cape Town), whereupon the parties shall forthwith appoint such person as the arbitrator. If that person fails or refuses to make the nomination, either party may approach any court having jurisdiction to make such appointment and, to the extent necessary, such court is expressly empowered to do so.

47.6 The parties shall keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential.

47.7 The arbitrator shall be obliged to give his award in writing fully supported by reasons.

47.8 The provisions of this clause are severable from the rest of this agreement and shall remain in effect if this agreement is terminated for any reason.

47.9 The arbitrator shall have the power to give default judgment if either party fails to make submissions on due date and/or fails to appear at the arbitration.

47.10 The parties agree that a written demand by either party to a dispute in terms of this clause 45 that the dispute be submitted to arbitration is to be deemed to be a legal process for the purpose of interrupting extinctive prescription in terms of the Prescription Act, 1969.

47. GENERAL

- OAKTREE TRANSPORT may, after THE CUSTOMER was notified, cede all its rights under this contract.
- OAKTREE TRANSPORT may appoint a sub-contractor to perform on its behalf in terms of this contract.
- These conditions shall apply to any other additional work and/or transport carried out for and on behalf of THE CUSTOMER, whether or not THE CUSTOMER's attention has been specifically drawn to these terms and conditions as being applicable to the contract governing the relationship.

It shall therefore be construed that THE CUSTOMER has agreed that all terms and conditions herein contained shall apply to all future and/or additional transport work carried out or services rendered for and on behalf of THE CUSTOMER by OAKTREE TRANSPORT and/or the Sub-Contractor.

- All Contracts shall be interpreted and governed by the Laws of the Republic of South Africa in their entirety. This Contract shall be deemed to have been entered into in the Republic of South Africa.

- The head notes to the various clauses contained in these conditions are for reference purposes only and do not affect the interpretation of the individual clauses.
- THE CUSTOMER selects as its domicilium citandi et executandi for all purposes hereunder its place of business as reflected on its invoices, Delivery notes and letterheads.
- OAKTREE TRANSPORT selects as its domicilium citandi et executandi the address that appears on the face hereof.

48. SEVERABILITY

Each clause of the Contract of Service is severable, the one from the other. If any clause is found to be defective or unenforceable for any reason by any competent court, then the remaining clauses will be and continue to be of full force and effect.

49. NO WAIVER

No relaxation, indulgence or extension of time that OAKTREE TRANSPORT grants THE CUSTOMER will be construed as a waiver of any of OAKTREE TRANSPORT's rights in terms of the Contract of Service, or a novation of any of the terms of the said Contract, or estop OAKTREE TRANSPORT from enforcing strict and punctual compliance with the terms of the said Contract.

50. NO VARIATION

No variation of, addition to, consensual cancellation of or waiver of any right arising in terms of the Contract of Service will be of any force or effect unless it is reduced to writing and signed by the parties or their duly authorised representatives.

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51. WHOLE AGREEMENT

The Contract of Service constitutes the whole agreement between the parties in relation to the subject matter thereof and no party is bound by any undertaking, representation or warranty not recorded therein.

ACCEPTANCE OF TERMS AND CONDITIONS:

Signed at _____ on this _____ day of _____ 20_____ before the undersigned witnesses by THE CUSTOMER or its duly authorised agent/signatory who hereby warrants that he/she is authorised to sign on behalf of THE CUSTOMER by:

Name: _____ **ID Number:** _____

Designation: _____ **Signature:** _____

As Witness (1): As Witness (2):

Name: _____ Name: _____

ID Number: _____ ID Number: _____

Signature: _____ Signature: _____

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