

# TERMS AND CONDITIONS OF SERVICE

(Please Read Carefully)

By requesting or accepting goods or services from Expeditors, the Customer agrees to the following terms and conditions of service (“Terms and Conditions”).

## 1. Definitions and Rules of Construction.

“Expeditors” means each of **Expeditors International SA (Pty) Ltd** and **Expeditors International of Washington, Inc.**, its subsidiaries and affiliates.

“Customer” means any Person for whom, for whose benefit, or at whose request, Expeditors directly or indirectly renders services, including all of the Person’s agents, contractors, and/or other representatives, including shippers, importers, exporters, notify parties, carriers, secured parties, warehousemen, buyers and/or sellers, shipper’s agents, insurers and underwriters, break-bulk agents, consignees, holders and assignees of Transport Documents, Storage Documents or other commercial documents, and other similar parties. Customer shall give copies of these Terms and Conditions to all such Persons.

“Governmental Unit” means any applicable nation, state, province, district, county, municipality, public corporation, or any court, tribunal, department, subdivision, agency or instrumentality of any of the foregoing.

“Laws” means each present and future law, statute, code, rule, regulation, ordinance, rule of law, principle of law, order, decree, judgment, guidance, or the equivalent enacted, ratified, adopted, promulgated, or issued by an applicable Governmental Unit, and all international conventions ratified by the United States

of America and/or the Republic of South Africa or otherwise mandatorily applicable under the laws of the United States of America and/or the Republic of South Africa.

Terms such as “liability”, “obligation”, and “responsibility” include every duty to pay money, deliver value, provide services, perform an act, or refrain from performing an act.

“Person” includes an individual, trust, estate, partnership, association, business or nonprofit organization, Governmental Unit, or other legal entity.

“Storage Document” means a warehouse receipt, storage agreement, or other document evidencing the receipt of goods for storage, distribution or other handling.

The term “third party” includes each of the following, by whomever chosen or compensated: carrier, truckman, cartman, lighterman, forwarder, ocean transportation intermediary, ocean freight forwarder, non-vessel operating carrier, customs broker, agent, warehouseman, and each other Person to whom goods are entrusted for transportation, carriage, cartage, drayage, handling, delivery, storage, distribution, clearance, entry, or other service or activity.

“Transport Document” means a bill of lading, waybill, forwarder’s cargo receipt, contract of carriage, or other document issued by Expeditors evidencing the receipt of goods for carriage.

Terms such as “includes” and “including” are not limiting. All references to documents include documents in paper or electronic form. The captions are for convenience only and are not part of these Terms and Conditions. These Terms and Conditions shall be construed without regard to any presumption or rule requiring

that they be construed against the Person causing all or part of them to be drafted. If these Terms and Conditions conflict with the terms of a Transport Document or Storage Document issued by Expeditors, the Transport Document or Storage Document controls. If any part of these Terms and Conditions is held invalid or unenforceable in a jurisdiction by a final, non-appealable judgment, the judgment does not affect the validity or enforceability of any other part of these Terms and Conditions in that jurisdiction or of any part of these Terms and Conditions in another jurisdiction.

## **2. Expeditors' Role.**

Expeditors acts either as the agent of the Customer, or as principal, as Expeditors in its absolute discretion deems fit.

## **3. Choosing Routes or Agents.**

Unless Expeditors otherwise agrees, Expeditors has complete freedom in choosing the means, routes, and procedures to be followed in handling, transporting, loading, unloading, storing, clearing, entering, delivering, distributing, or otherwise dealing with the goods, and in choosing the third parties to perform these services. All such third parties shall be considered as the agents of Customer. Advice by Expeditors to Customer that a particular Person has been selected to render services shall not be construed to mean that such Person will render such services.

## **4. Quotations Not Binding.**

Quotations by Expeditors are for informational purposes only and are subject to change without notice. No quotation binds Expeditors unless Expeditors agrees to

handle or transport the goods at specific rates and payment terms.

## **5. Customer's Duties.**

(a) Customer must do the following: (1) provide and disclose all documents and information required to handle, transport, load, unload, store, clear, enter, deliver, distribute, and otherwise deal with goods (including commercial invoices in proper form and number, other documents necessary or useful in the preparation of the customs entry, and such further information to enable Expeditors to perform services, including the dutiable value, weights, measures, number of pieces, packages, cartons or containers, condition of the goods, classification, country of origin, genuineness of the goods and any mark or symbol associated with them, Customer's right to export, import and/or distribute the goods, and the admissibility of the goods, pursuant to Law, all in the languages of and as may be required by the Laws of the country of origin or of destination); (2) immediately advise Expeditors of any errors, discrepancies, incorrect statements, or omissions in any document or other information; (3) review all documents, declarations, security filings, and other submissions prepared or filed with any Governmental Unit or any other Person; and (4) maintain all records required under §§ 508 and 509 of the Tariff Act (19 U.S.C. §§ 1508 and 1509), as amended, if applicable, or other applicable Law. Unless otherwise agreed, Expeditors shall only keep such records that applicable Law requires Expeditors itself to maintain, but shall not act as a "record-keeper" or "third-party record-keeper" for Customer. Expeditors has no liability for any action taken or fines or penalties assessed by any Governmental Unit because Customer fails to comply with any Law.

(b) Expeditors has no liability for increased duty, penalty, fine or expense,

unless caused by the negligence or other fault of Expeditors, in which case its liability is governed by the provisions of paragraphs 7 and 8 below.

(c) Customer represents, warrants and covenants the accuracy, sufficiency, and completeness of all documents and information furnished to Expeditors by or for Customer. Expeditors has no duty to inquire into the accuracy, sufficiency, or completeness of any documents or information and in no instance shall be charged with information that Customer fails to give in writing. Expeditors may rely on all documents and information furnished to Expeditors. If Customer fails to perform any obligation, Expeditors may use its judgment in connection with the goods.

(d) Customer represents, warrants and covenants that it is and will remain in compliance with all applicable Laws, including anti-corruption Laws such as the U.S. Foreign Corrupt Practices Act (“FCPA”); the U.K. Bribery Act (“UKBA”); the R.S.A. Prevention and Combating of Corrupt Activities Act 12 of 2004; the U.S. Export Administration Regulations (“EAR”) administered by the U.S. Commerce Department’s Bureau of Industry and Security (“BIS”); the International Traffic in Arms Regulations (“ITAR”) administered by the U.S. State Department’s Directorate of Defense Trade Controls (“DDTC”); the U.S. Anti-Boycott regulations, and the various U.S. economic sanctions programs administered by the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”), and that the information the Customer provides to Expeditors in connection with Customer’s compliance with all such applicable Laws is true and complete. Customer shall also comply with all applicable Laws of any country or other jurisdiction to, from, through, over or in which any goods may be carried, including all applicable Laws relating to the marking, packing, carriage, storage, clearance or delivery of the

goods. Customer represents, warrants and covenants that the export jurisdiction and classification of all goods is correct and that it shall immediately notify Expeditors in writing of any changes to such information. Customer further represents, warrants and covenants that all goods are properly marked, addressed, and packaged to withstand ocean transport, air transport, and ground transport. Expeditors is not liable to Customer for loss, damage, expense or delay due to the Customer's failure to comply with these Terms and Conditions. Customer shall indemnify and hold Expeditors harmless against any and all claims, losses, or damages arising from the conduct of Customer or any of its officers, directors, employees, agents, owners or other Persons working for or with Customer under these Terms and Conditions that constitutes a violation of the Customer's obligations, representations, warranties and covenants contained herein.

(e) Unless otherwise agreed, Customer shall pay all duties and other Customs charges by electronic funds transfer.

(f) Unless otherwise agreed, Expeditors has no obligation to take any pre- or post-Customs release action, including obtaining binding rulings, advising of liquidations, filing of petitions and/or protests, etc.

(g) Where Expeditors prepares and/or issues a Transport Document or Storage Document, Expeditors has no obligation to specify thereon the number of pieces, packages and/or cartons, etc., or the condition of the goods.

## **6. Insurance.**

Unless Expeditors otherwise agrees, Expeditors has no obligation to procure insurance. If Expeditors agrees to procure insurance, Expeditors has the right to

select the insurance companies and underwriters. The insured shall have recourse against the insurer only and not against Expeditors. Customer is responsible for all insurance premiums and for Expeditors' charges to arrange for insurance.

## **7. Limitation of Liability for Loss, Damage, Expense or Delay.**

(a) Expeditors has no obligations other than those set forth in these Terms and Conditions or in any Transport Document or Storage Document issued by Expeditors. Except as specifically set forth in these Terms and Conditions, Expeditors makes no express or implied warranties in connection with its services.

(b) In the absence of proven negligence or other fault by Expeditors while the goods are in the physical custody of Expeditors, Expeditors has no liability whatsoever for any loss, damage, expense or delay.

(c) Subject to the further limitations of liability in subparagraphs (d) and (e), Expeditors' liability for any loss, damage, expense or delay resulting from the proven negligence or other fault of Expeditors is limited as follows: (1) if the claim arises from Expeditors' Customs brokerage services, the lesser of fifty dollars (US) (\$50) per entry or the amount of brokerage fees paid to Expeditors for the entry; (2) if the claim relates to transportation services covered by a Transport Document or storage, distribution or handling services covered by a Storage Document issued by Expeditors, the monetary limits on Expeditors' liability provided for in the Transport Document or Storage Document; or (3) if clauses (1) and (2) do not apply, the lesser of fifty dollars (US) (\$50) per shipment or the commercial invoice value of the shipment. However, the applicable amount of any partial loss, damage, expense or delay shall be adjusted pro rata.

(d) Customer acknowledges that Expeditors and third parties to whom goods are entrusted limit their liability for loss, damage, expense, or delay. Customer may obtain an increase in the liability of Expeditors above the limits set forth in subparagraph (c) if Expeditors agrees to the request before it renders any services and the agreement sets forth the limit of Expeditors' liability and the additional compensation received or paid for the added liability. Otherwise, any valuation that Customer places on the goods shall be considered for export or customs purposes only.

(e) AS A FURTHER LIMITATION ON EXPEDITORS' LIABILITY, CUSTOMER AGREES THAT THE MAXIMUM AGGREGATE OF EXPEDITORS' LIABILITY TO CUSTOMER FOR ANY CHARGES, CLAIMS, DAMAGES, LIABILITIES, JUDGMENTS, COSTS, EXPENSES, PAYMENTS OR LOSSES OF ANY KIND DURING ANY CALENDAR YEAR THAT ARE NOT ALREADY LIMITED BY OTHER PROVISIONS OF THIS PARAGRAPH 7, WHETHER OR NOT THE SAME ARISE OUT OF OR RELATE TO SERVICES PERFORMED BY EXPEDITORS, SHALL BE NO MORE THAN THE LESSER OF THE FOLLOWING: (i) TEN THOUSAND DOLLARS (US) (\$10,000); (ii) ACTUAL, DIRECT DAMAGES; OR (iii) THE AGGREGATE SERVICE CHARGES PAID BY CUSTOMER TO EXPEDITORS DURING THE SAME PERIOD.

(f) AS A FURTHER LIMITATION ON EXPEDITORS' LIABILITY, CUSTOMER AGREES THAT EXPEDITORS SHALL IN NO EVENT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, STATUTORY OR SPECIAL DAMAGES, INCLUDING LOST



PROFITS, INCOME OR OPPORTUNITY, EVEN IF EXPEDITORS IS ON NOTICE OF THE POSSIBILITY OF ANY SUCH DAMAGES OR FOR THE ACTS OR OMISSIONS OF ANY OTHER PERSON AND HOWEVER ARISING, INCLUDING FOR BREACH OF CONTRACT, TORT, NEGLIGENCE, WILLFUL OR INTENTIONAL ACTS OR OMISSIONS.

(g) THE LIMITATIONS AND EXCLUSIONS IN THIS PARAGRAPH 7 APPLY EVEN IF THEY CAUSE ANY REMEDY OTHERWISE AVAILABLE TO FAIL OF ITS ESSENTIAL PURPOSE AND WITHOUT REGARD TO EXPEDITORS' PERFORMANCE OF FAILURE OR DELAY OF PERFORMANCE.

(h) Customer hereby waives all rights and remedies under the Carmack Amendment, if applicable.

(i) Goods may be entrusted to third parties subject to all conditions as to limitations of liability for loss, damage, expense or delay and to all rules, regulations, requirements and conditions appearing in Transport Documents, Storage Documents, receipts, tariffs, or other documents issued by such Persons. Expeditors has no liability for any loss, damage, expense, or delay caused by the acts or omissions of third parties.

## **8. Limitation of Actions.**

(a) With respect to any act or omission by Expeditors, Customer must present to Expeditors at Expeditors office (1) a preliminary notice of claim within fourteen (14) days after the loss or incident giving rise to the claim and (2) a formal written sworn proof of claim within one hundred eighty (180) days from the date of loss or

incident giving rise to the claim. Failure to satisfy these requirements is a complete defense and bar to any suit or action by Customer, to the extent applicable Law does not mandatorily provide otherwise.

(b) As an additional requirement, any suit to recover on a claim against Expeditors must be commenced within one (1) year after the date of delivery or release of the goods, the date when the goods should have been delivered or released, or the date when any other loss, damage, expense, or delay first arose, failing which it shall be deemed to be extinguished for all purposes.

## **9. Payment and Credit Terms.**

Expeditors' standard payment terms require receipt of cash before performance of services. Expeditors may in its sole discretion extend credit to Customer. The amount and terms of credit are subject to Expeditors' periodic review. Expeditors may in its sole discretion increase, decrease, suspend or revoke credit at any time for any reason and without advance notice, in which event all amounts owed to Expeditors by the Customer shall become immediately due and payable. Except to the extent Expeditors otherwise agrees, Expeditors has no obligation to make or incur any expense, guarantee or advance for any purpose.

## **10. Indemnification.**

Customer shall indemnify Expeditors and hold Expeditors harmless from and against all charges, claims, damages, liabilities, judgments, costs, expenses, payments or losses of any kind (including for purchase price, freight, storage, demurrage, detention, duties, taxes, fines, penalties, incidental, indirect, consequential or exemplary damages, and Expeditors' litigation expenses and

reasonable expenses, including attorneys' fees) arising from or related to any one or more of the following: (a) any breach of any representation, warranty, covenant, agreement, undertaking, consent, or waiver by Customer; (b) any failure of Customer to pay or perform when due its obligations to Expeditors or to any other Person (including any Governmental Unit, carrier, vendor, holder or assignee of any Transport Document, Storage Document, or other commercial document); (c) Customer's violation of any Law or failure to disclose, correct, or complete any entry, export, security or other data or documents; (d) any other claim by any such other Person, in each case, even if not due to any negligence or other fault of Customer. If any action, claim, suit or proceeding is brought against Expeditors, Expeditors shall give notice in writing to the Customer by mail to the address on file with Expeditors. At Customer's expense Expeditors may employ attorneys and other professionals of its own choice in connection with any indemnified matter. Customer's indemnity obligation in this paragraph shall not apply to the extent a court of competent jurisdiction enters a final, non-appealable judgment, specifically finding that the charge, claim, damage, liability, judgment, cost, expense, payment or loss was directly and proximately caused by Expeditors' gross negligence or willful misconduct.

## **11. Sale of Perishable Goods.**

Perishable goods or live animals for which Customer gives no instructions for disposition may be sold or otherwise disposed of without any notice to the Customer, owner, or consignee, and payment or tender of the net proceeds of any sale after deduction of charges is equivalent to delivery of the goods. If for any reason a shipment is refused or remains unclaimed at any place or is returned, the Customer

must still pay Expeditors for all charges and expenses in connection with the goods. Nothing obligates Expeditors to forward, enter or clear the goods or arrange for their disposal.

## **12. General Lien on any Property.**

Expeditors has a general lien on any and all property (and documents relating thereto) now or hereafter in Expeditors' possession, custody or control or en route as security for all existing and future indebtedness and obligations of Customer to Expeditors, whether related to such property or not. This lien is in addition to any other rights and remedies Expeditors may have under other agreements or applicable Law, and shall survive delivery or release of any property. Expeditors has the right to withhold delivery or release of any property if Customer is in breach of any indebtedness or obligation to Expeditors, even if not related to such property. If any such indebtedness or obligation is unsatisfied, Expeditors may, in addition to all other rights and remedies under other agreements and/or applicable Law, exercise all of the rights and remedies of a secured party under the Uniform Commercial Code, if applicable, and/or sell the property by public auction or by private sale or otherwise dispose of the property after giving notice to the Customer. Any notice required to be given of a sale or other disposition made at least ten (10) days before a proposed action constitutes fair and reasonable, agreed notice. Any surplus from the sale or other disposition, after deduction for all sums owed to Expeditors, shall be transmitted to Customer, and Customer shall be liable for any deficiency.

## **13. Compensation of Expeditors.**

The compensation of Expeditors for its services and advances shall be included with and is in addition to the rates and charges of all third parties to handle, transport, load, unload, store, clear, enter, deliver, distribute or otherwise deal with the goods, and shall be exclusive of any brokerage, commissions, dividends or other revenue received by Expeditors from insurers or other Persons which Expeditors shall be entitled to retain for its own benefit. Customer shall pay all costs, expenses and fees (including reasonable attorneys' fees) incurred by Expeditors in connection with (a) the enforcement of payment or performance of any indebtedness or obligation of Customer (including by any action or participation in, or in connection with, a bankruptcy or insolvency proceeding, wherever pending) or (b) any dispute between Expeditors and Customer or any other Person. All amounts owed to Expeditors must be paid in the lawful currency specified in Expeditors' invoices in immediately available funds, without abatement, counterclaim, set-off, recoupment, and free and clear of, and without any deduction or withholding for, any taxes, duties, confiscation, detention, or other matters. If any amount is not paid when due, it shall accrue interest until paid at one and one-half percent (1.5%) per month (19.72% per annum) or if that rate is in excess of the maximum rate of interest permitted by Law, at the maximum rate permitted by Law.

#### **14. Intellectual Property.**

Expeditors' intellectual property provided, demonstrated or used in connection with any services, including databases, software, web pages, programs, processes and procedures, reports, manuals, presentations, patents, trademarks, copyrights, trade secrets, service marks, know-how and any other similar rights or intangible assets recognized under applicable Law (all of the foregoing, including

source codes and similar information, “Intellectual Property”), was developed and maintained at great expense, is of great value to Expeditors, is confidential and proprietary, and shall remain the sole and exclusive property of Expeditors at all times. Without Expeditors’ prior written consent, Customer shall neither directly nor indirectly attempt to or actually disclose, use, re-create, duplicate, decode, alter, change, disassemble, decompile, or reverse engineer any Intellectual Property. Customer acknowledges and agrees that a violation of any of the foregoing shall cause irreparable harm to Expeditors.

## **15. Data Privacy.**

Customer represents, warrants and covenants that it complies with all applicable privacy and data protection Laws with respect to information (“Customer Data”) about contacts or clients of Customer or about other Persons that Customer provides to Expeditors to enable Expeditors to perform services. With respect to Customer Data, Customer acts as a “data controller” or similar term under applicable Law. Customer further represents, warrants and covenants that it has obtained the proper consent from all data subjects to the disclosure and transfer of Customer Data to Expeditors. In providing services to Customer, Expeditors may be required to share Customer Data with Governmental Units and may process Customer Data and thus act as a “data processor”, “responsible party” or similar term under applicable Law with respect to such data and will process Customer Data in accordance with lawful instructions from Customer. Expeditors may use Customer Data as part of its Customer account opening, general administration process (e.g., in order to carry out compliance, financial checks, invoicing, or debt recovery), and otherwise in performing services. The information may be transferred to or accessible from

Expeditors' offices around the world.

## **16. Force Majeure.**

Expeditors is not liable for loss, damage, expense, delay, or nonperformance resulting in whole or in part from circumstances beyond the control of Expeditors, including: (i) acts of God, including flood, earthquake, storm, hurricane, power failure or other natural disaster; (ii) war, hijacking, robbery, theft or terrorist activities; (iii) incidents or deteriorations to means of transportation; (iv) embargoes; (v) civil commotions or riots; (vi) defects, nature or inherent vice of the goods; (vii) acts, breaches of contract, or omissions by Customer or any other Person who may have an interest in the goods; (viii) acts by any Governmental Unit, including denial or cancellation of any import, export or other necessary license; or (ix) strikes, lockouts, slowdowns or other labor conflicts.

## **17. Governing Law; Consent to Jurisdiction and Venue.**

These Terms and Conditions shall be construed according to the Laws of the Republic of South Africa, without regard to conflict of law principles. Customer irrevocably consents to non-exclusive jurisdiction and venue for all proceedings related to disputes involving Customer and Expeditors in the Gauteng Local Division of the High Court of South Africa, Johannesburg. Customer irrevocably consents to the commencement and transfer of all proceedings to such courts. Customer also irrevocably consents to the commencement and to the transfer of venue in any action to any other venue in which Expeditors is party to an action brought by itself or another Person. Customer waives all defenses based on inconvenience of forum in all actions commenced in or transferred to the venues

agreed to above.

## **18. Miscellaneous.**

Notwithstanding any course of dealing, course of conduct, course of performance, or usage of trade, (a) whenever reference is made to the Expeditors' agreement, acceptance, approval or consent, even if not specifically so stated such agreement, acceptance, approval or consent is not effective unless in writing and signed by a duly authorized officer of Expeditors, (b) neither failure nor delay by Expeditors to exercise any right, remedy, power, or privilege operates as a waiver, (c) no single or partial exercise of any right, remedy, power, or privilege by Expeditors precludes any other or further exercise thereof or the exercise of that or any other right, remedy, power, or privilege, (d) no amendment, modification, rescission, waiver or release of all or part of these Terms and Conditions, any Transport Document, or any Storage Document is effective without the Expeditors' specific prior written approval. Expeditors may from time to time change these Terms and Conditions. The applicable Terms and Conditions can be found on Expeditors' website, [www.expeditors.com](http://www.expeditors.com), are effective fifteen (15) days after such publication, and may differ from the pre-printed terms. In the event of a conflict between these Terms and Conditions and the updated version on Expeditors' website in effect on the date that Expeditors commences services, the updated version controls.

For customs brokerage on shipments to the United States of America, the following notice required is to be given pursuant to 19 CFR part 111.29(b)(1): If you are the importer of record, payments to the broker will not relieve you of liability for customs charge in the event the charges are not paid by the broker. Therefore, if you



pay by check, customs charges may be paid with a separate check payable to the “U.S. Customs Service” which shall be delivered to Customs by the broker.