



FPT GROUP (PTY) LTD.
Reg no. 1986/001611/07

STANDARD TRADING CONDITIONS

1. DEFINITIONS AND INTERPRETATION

- 1.1 The headings and sub-headings in these Standard Trading Conditions are inserted for convenience only and are not relevant for the purposes of interpretation
- 1.2 Any particular gender shall include the other gender.
- 1.3 The singular shall include the plural and vice versa.
- 1.4 Where an expression has been defined and such definition contains a provision conferring rights or imposing obligations on any Party, effect shall be given to that provision as if it were a substantive provision contained in the body of this agreement.
- 1.5 A reference to any statutory enactment shall be construed as a reference to that enactment as at the signature date and as amended or re-enacted from time to time thereafter.
- 1.6 In this Agreement, unless inconsistent with the context, the following words and expressions shall bear the following meanings assigned thereto:

"Affected Goods" being produce tainted, decayed, affected or infested with disease, virus, spores, fungus, bacteria, inherent vice, insects or contamination, of whatsoever nature or degree which renders it unfit or unacceptable for human consumption and/or export and/or marketing purposes for whatsoever reason, irrespective of when such condition may have arisen, and shall include Goods in transit and/or in bond in terms of any Act, Statute, Proclamation, Phyto - sanitary Requirements or lawful directive being issued by any relevant authority, and includes Goods having been treated with chemicals unacceptable to the country of destination;

"Agreement" means this Agreement between the parties contained in this document, including the Credit Application;

"Company" means FPT GROUP (PTY) LTD, a company constituted and duly incorporated as such in terms of the Companies Act (71 of 2008)

with registration number 1986/001611/07;

- "Credit Application" means the written application for credit signed by the Applicant or its representative, in terms whereof credit facilities were applied for and granted by the Company in favour of the Applicant;
- "Customer" means the Applicant referred to in the Credit Application, in terms whereof the Applicant applied to the Company for credit facilities in relation to the Services to be rendered by the Company as stipulated herein;
- "Due Date" Means the date specified on the invoice issued by the Company to the Customer from time to time;
- "Goods" means all Goods, including but not limited to Perishable Goods and break bulk cargo and products of any description delivered to the Company for or in relation to the Services, and includes any container, transportable tank, flat pallet, package or any other form of covering, packaging, container, or equipment handled, transported, or dealt with by or on behalf of or at the instance of the Customer, and used in connection with or in relation to such Goods and Perishable Goods in respect whereof the Customer transacts with the Company to render Services;
- "Perishable Goods" means any perishable, fragile goods or any other goods which requires special handling and care;
- "Parties" means the parties to this Agreement, being the Company and the Customer;

"Services"

Insofar as it relates to the Perishable Goods means:

1. the handling, transporting, receipt, transfer, storage or warehousing of Goods, and includes;
the receipt, transfer and storage of Goods at ambient or specified controlled temperatures; and
the handling of Goods according to specified protocols and or written instructions of the Customer, or in the absence thereof, according to the guidelines issued by the Perishable Products Export Control Board (PPECB) or the Company's reasonable discretion, and/or the eventual transfer and stowing thereof upon a vessel; and
2. all such actions and conduct leading up to and including the delivery of the Goods to any third party; and
3. the compliance with any other reasonable written instructions by the Customer; and
4. the provision of controlled atmospheric storage; together with all ancillary actions relative to the above
5. Insofar as it relates to all other Goods (including break bulk cargo):
 - 5.1 any operation or service specified or referred to herein and provided or performed by the Company in connection with the receiving, handling, transporting, loading, transfer, storage, warehousing or discharging the Goods, containers, transportable tank, flat pallet or package;

"SOLAS"

means International Convention for the Safety of Life at Sea Convention, enforced in South Africa via the Merchant Shipping Act (No 57 of 1951).

2. APPLICATION OF STANDARD TRADING CONDITIONS

- 2.1 All and any business undertaken or advise, information or Services provided by the Company, whether gratuitous or not, is undertaken or provided in terms of these Standard Trading Conditions.
- 2.2 Notwithstanding the provisions of Clause 22.2 below, the Company reserves the right to amend these Standard Trading Conditions as and when required in its sole and absolute discretion by giving prior written notice of such amendment to the Customer.

3. **TERMS AND CONDITIONS OF AGENTS AND SUBCONTRACTORS**

Notwithstanding anything to the contrary contained herein the Customer agrees that all Goods shall be dealt with by the Company on the terms and conditions, whether or not inconsistent with these trading terms and conditions, stipulated by the carriers, warehouseman, government departments, and all other parties (whether acting as agents or subcontractors to the Company or not) into whose possession or custody the goods may pass, or subject to whose authority they may be at any time.

4. **OWNERS RISK**

All handling, packing, loading, unloading, palletizing, de-palletizing, warehousing, storage of the Goods by or on behalf of or at request of the Company, are effected at the sole risk of the Customer. The Customer indemnifies the Company accordingly and the Customer waives any claims which it may have against the Company in respect of or pursuant to all or any of these Services or any matter relating thereto.

5. **INSURANCE**

The Customer acknowledges that the Company has not and does not assume, the responsibility for insuring the Goods at its own instance or on behalf of the Customer and it is further recorded that any quoted price or rate bears reference to and does not include any insurance premiums.

6. **PAYMENT TERMS**

The Parties agree that:

- 6.1 charges for all Services rendered by the Company to the Customer shall be as agreed between the Parties; or
- 6.2 be that price or rate as quoted by the Company for a specific service, as accepted by the Customer;
- 6.3 all payments shall be made within the period stated on the invoice presented to the Customer by the Company for payment ("the Due Date");
- 6.4 the amount due and payable to the Company may be determined and proven by a certificate issued and signed by any senior manager of the Company whose appointment and capacity shall not be required to be proved. Such certificate shall be binding and be *prima facie* proof of the indebtedness of the Customer.

7. INTEREST

The Customer shall be liable to pay interest as follows:

- 7.1 In the event of any invoice rendered not having been paid within the period stated on the invoice ("the Due Date"), the Customer shall pay interest calculated at 5% (five per centum) above prevailing prime rate applied by Standard Bank of South Africa, and which shall be computed and capitalised monthly in advance from the date of the rendition of the said account, up to and including date of payment, both dates inclusive;
- 7.2 In the event of any dispute with regard to the prevailing prime rate of interest, or in the event of legal action having been taken against the Customer to recover amounts due in terms hereof, then and in such event a certificate issued by any Manager of Standard Bank of South Africa, Cape Town, shall be *prima facie* proof and evidence of such prime rate and of the date or period of application thereof.

8. WARRANTIES AND REPRESENTATIONS BY THE COMPANY

The Company makes no warranties and representations to the Customer save as may be specifically provided herein or as notified in writing by the Company to the Customer from time to time. The Customer acknowledges that the Company is not in any way bound by any oral statement, representation, guarantee, promise, undertaking, inducement or otherwise which may have been made at any time by any salesman, employee, representative or any person acting or purporting to act for and on behalf of the Company, whether negligently or otherwise, unless such statements representations, guarantees, promises, undertakings, warranties or inducements are supplied or made in writing by an employee duly authorized by written resolution of the board of directors of the Company in response to a written enquiry specifying accurately and in complete detail what information is required.

9. PACKAGING (EXCLUDING DRY BULK)

The Customer shall deliver the Goods palletised and/or unitised and shall ensure that the packaging and securing mechanism complies with all relevant statutory and/or practical handling requirements.

Packaging and securing mechanism shall be sufficiently robust, which would meet handling and/or export requirements, and which would limit any exposure of its contents to damage in transit.

All packaging and Goods shall bear sufficient identifying marks, information and/or data, in order that the Company may identify, manage and administer same and also its contents

10. **WAREHOUSING**

Pending forwarding or delivery, the Goods may be warehoused or otherwise held at the risk of the Customer at any place on the premises as determined by Company in its absolute discretion at the Customer's risk and expense.

If the Goods are so warehoused or stored, the Customer shall bear the entire risk thereof and the Company shall not be liable for any damage to or loss of all or any of the Goods so warehoused or stored.

11. **FIRE RISK**

The Customer acknowledges that the Company maintains an active fire control system at its premises where Goods are stored. In instances or premises where there is no sprinkler system installed as part of that fire control system, the Company will apply other reasonable precautionary measures as part of its fire control system so as to combat the outbreak and/or spreading of fire.

12. **LIEN**

The Customer hereby acknowledges that the Company holds a lien over the Customer's Goods in its possession in respect of any amount owing, whether overdue or otherwise. Should the Customer owe any monies to the Company which are overdue, and whilst holding its Goods, the Company may inform the Customer that it intends to exercise its lien over such Goods. If the Customer, in such event, nevertheless fails to pay such monies due, (in which event all monies due shall be deemed to be immediately payable without notice) then the Customer hereby irrevocably nominates, constitutes and appoints the Company as its lawful agent and representative to sell on its behalf such Goods as advantageously as possible, and then to retain such amounts owing by the Customer. Any excess amount shall, however, be paid to the Customer after deduction of monies due and charges plus interest and the costs of such sale. In the event of such sale, the Company is furthermore hereby authorized to deliver the Goods and ownership therein to the purchaser and then to issue a valid receipt for the proceeds of such sale.

13. **AFFECTED GOODS**

Should it be discovered at any time that Goods are Affected Goods, the Company may in its absolute discretion, refuse to accept and/or retain in its terminals such Goods, in

which circumstance the Company may in its sole and absolute discretion deal with or dispose of the Goods in such manner as it deems appropriate having regard to the prevailing circumstances. In such event the Company shall not incur any liability for such action, and the Customer shall thereupon at its own expense summarily cause such Affected Goods to be returned and/or removed. Alternatively the Company may remove or cause the removal thereof if the Customer does not remove the Affected Goods within 3 days after having been requested in writing to do so by the Company. the Customer shall immediately pay upon written demand such costs and disbursements incurred by the Company in removing or causing to remove such Affected Goods The Customer assumes such liability whether or not the Customer was aware of such inherent vice or condition. With regard to the recovery of any of such amounts the following provisions shall apply:

- 13.1 The Customer now irrevocably indemnifies the Company against any claims and/or any damages which it may suffer, as a result of it having received into its terminals any such Affected Goods;
- 13.2 It shall however be incumbent upon the Parties who detect such condition to immediately notify the other Party thereof by facsimile or email.

The Customer acknowledges that it is of material to the Company that no such Affected Goods be received in its terminals by virtue of the fact it may affect and contaminate and/or taint other Goods in the Company Terminals, and that the business of the Company may be adversely affected it is therefore pertinently recorded that all the provisions in this Agreement, and specifically those relating to Affected Goods, go to the root of this contract.

Goods which has been subjected to chemical or other treatment which is unacceptable to the protocol and/or legislation of the country of destination shall be deemed to be Affected Goods.

14. **SUBCONTRACTING**

Any business entrusted by the Customer to the Company may, in the absolute discretion of the Company, be fulfilled by the Company itself, by its own servants performing part of all the relevant Services, or by the Company employing, or entrusting the Goods or Services to third parties on such conditions as may be stipulated by, or negotiated with, such third parties for the purposes of such Services, or such part thereof as they may be employed to carry out.

Where the Company employs third parties to perform all or any of the functions which it has agreed to perform the Customer agrees that the Company shall have no responsibility or

liability to its Customer for any act or omission of such third party, even though the Company may be responsible for the payment of such third party's charges.

The Company shall, if it has in its reasonable discretion, been suitably indemnified against all costs (including attorney and client costs) which may be incurred or awarded against the Customer and has been provided with adequate security in that regard, take such action against the third party or alternatively, may cede to the Customer any claim or right or cause of action which the Company may have against the third party in that regard.

15. NO CLAIMS AGAINST COMPANY DIRECTORS AND EMPLOYEES

The Customer undertakes that no claim shall be made against any director, servant or employee of the Company which imposes or attempts to impose upon him/her any liability in connection with the rendering of any services which are the subject of these trading terms and conditions and hereby waives all and any such claims provided that this clause shall not be applicable where the director, servant or employee of the Company was grossly negligent.

16. LIMITATION OF COMPANY'S LIABILITY

Subject to negligence on the part of the Company, the Company shall not be liable for any claim of whatsoever nature (whether in contract or in delict) and whether for damages or otherwise, howsoever arising including but without limiting the generality of the aforesaid:

- 16.1 any negligent act or omission or statement by the Company or its servants, agents and nominee; and/or
- 16.2 Any act or omission of the Customer or agent of the Customer with whom the Company deals; and/or
- 16.3 any loss, damage or expense arising from or in any way connected with the marking, labelling, numbering, non-delivery or mis-delivery of any goods; and/or
- 16.4 any loss, damage or expense arising from or in any way connected with the weight (as per SOLAS requirements), measurements, contents, quality, inherent vice, defect or description of any goods; and/or
- 16.5 any loss, damage or expense arising from or in any way connected with any circumstance, cause or event beyond the reasonable control of the Company, including but without limiting the generality of the aforesaid, strike, lock-out, stoppage, boycott or work stoppage; and/or
- 16.6 any loss, damage or expense arising from or in any way connected with war, whether declared or not, civil war, civil violence, riots and revolutions, acts of piracy, acts of sabotage; and/or

- 16.7 any loss, damage or expense arising from or in any way connected with any natural disaster including but without limiting the generality of the aforesaid violent storms, cyclones, earthquakes, tidal waves, floods, destruction by lightning, or fire; and/or
- 16.8 any loss, damage or expense arising from or in any way connected with a deliberate or unintentional interruption in the supply of electricity or other utility as result of load shedding or other interruption of supply by either the local authority or nominated Government service provider; and/or
- 16.9 damages arising from loss of market or attributable to delay in forwarding or in transit of failure to carry out any instructions given to the Company; and/or
- 16.10 loss or non-delivery of any separate package forming part of a consignment or for loss from a package of an unpacked consignment or for damage or mis-delivery; and/or
- 16.11 damage or injury suffered by the Customer or any person whatsoever arising out of any cause whatsoever as a result of the Company's execution or attempted execution of its obligations to the Customer and/or the Customer's requirements or mandate; and/or
- 16.12 and loss, damage or expense occasioned to Goods while stored at the Company's premises caused by fire for any reason whatsoever, including failure or proper functioning of any fire control equipment installed at the premises; unless:
- (a) such claim arises from a grossly negligent act or omission on the part of the Company or its servants; and
 - (b) such claims arises at a time when the goods in question are in the actual custody of the Company and under its actual control; and
 - (c) in the instance provided in clause 16.1.7 above, the Company receives a written notice within 5 days after the end of the transit where the transit ends in the Republic of South Africa or within 14 days after the end of transmit where the transit ends at any place outside the Republic of South Africa.

Notwithstanding anything to the contrary contained in these trading terms and conditions, the Customer must submit a notice of claim followed by a priced claim for loss or damage caused by the Company or its agent or servant or nominees. The Company shall be obliged to acknowledge receipt and process the claim accordingly should it be legally liable for the loss or damage. The Company shall not be held liable for any indirect or consequential loss following an incident.

17. **FORCE MAJEURE**

Performance of the obligations of either Party hereto in terms of this Agreement shall be

excused for as long as and to the extent that it is unable to do so because of any cause beyond its control which, shall include, without limitation, an act of God or State or war (whether declared or not) or sabotage, fire, drought, flood, excessive rainfall, disease, epidemic, civil commotion, riot, strike, lock-out or change in the law and/or in any statutory licence or permission affecting the performance of such obligations (but excluding any such cause for which the Party claiming such inability is responsible or should have been able to avert had reasonable care been taken), provided that:-

- 17.1 the Party claiming such inability:
 - 17.1.1 shall, when that Party knows that it is likely to occur and when it occurs, immediately give notice to the other Party (which shall be confirmed in writing as soon thereafter as is possible) detailing the circumstances on which it relies and an estimate of the likely duration of such inability;
 - 17.1.2 shall, when that Party knows that it is likely to terminate and when it terminates, immediately give notice thereof to the other Party, which shall be confirmed in writing as soon thereafter as is possible;
- 17.2 that the Parties hereto shall co-operate together and use all reasonable efforts to overcome, or failing which, to minimise the effect of such inability; and
- 17.1.3 that neither Party hereto shall be obliged to subsequently perform any obligation hereunder not performed as a consequence of and during any such inability, and the duration of this Agreement shall not be extended as a consequence of any such inability.

18. **DISPUTE RESOLUTION**

- 18.1 In the event of any disagreement arising out of these standard trading terms or the interpretation thereof, while in force or after its termination and the Parties being unable to reach agreement, the matter will be referred to the Executive Management of each of the Parties who shall endeavour to settle the dispute through bona fide negotiations.
- 18.2 In the event that the Parties are still unable to reach agreement through the process referred to in Clause 17.1 above, it is hereby agreed that a dispute shall be submitted to and decided by arbitration in accordance with the rules of the arbitration Foundation of Southern Africa (“AFSA”), by an arbitrator agreed upon between the Parties or, failing agreement, appointed by the AFSA;
- 18.3 Each Party is entitled to give notice of arbitration, provided that such notice shall be given within 7 (seven) days and not later than 30 (thirty) days from the date that the Chief Executive Officer of the Parties or their nominees first met as contemplated in Clause 18.1; unless the Parties agree to extend the time periods referred to herein;

- 18.4 Unless otherwise agreed by the Parties in writing the arbitration shall be held in Cape Town, in the Republic of South Africa;
- 18.5 Only the Parties and their legal representatives or persons agreed to shall attend the arbitration proceedings;
- 18.6 The Parties shall use their best endeavours to expedite the arbitration process;
- 18.7 Subject to the other provisions of this clause, arbitration shall be held in accordance with the provisions of the Arbitration act, Act No 42 of 1965, as amended.

19. CONFIDENTIALITY

The Parties undertake to keep confidential the contents of this document including, generally, all matters relating to any operations undertaken by either of them pursuant hereto and not to disclose such information to any third party save with the written consent of each other or otherwise where such disclosure is expressly required by law or for the purpose of the audit of any of the accounts of either of the Parties or for purposes of making such reports as may be required to be made to any authority including any other person vested under law with any of the powers and authorities of the aforementioned authority, in relation to the subject matter hereof.

20. ANTI BRIBERY AND ANTI-CORRUPTION

The Parties are committed to sustainable and ethical business practices and to this end, the Company warrants and represents that when rendering the Services to the Customer, it shall not:

- 20.1 offer, promise, give or receive any improper financial payment and/or other improper advantage to or from any person, customer or supplier; or
- 20.2 make or offer, directly, any payment, gift or other advantage to a public official or any other person with the intention of influencing them and obtaining or retaining an advantage in the conduct of business.

21. COMPLIANCE WITH LAWS AND POLICIES

The Parties shall at all times:

- 21.1 comply with all international codes and conventions, national legislation, regulations and/or any other statutory or regulatory directives, bylaws and consents including but not limited to codes, conventions, laws and regulations concerning the protection of the environment, transportation, labour and social responsibility;
- 21.2 ensure that it is in possession of and that it observed the terms and conditions of all relevant

permits, licences and approvals of public authorities in relation to the activities carried out by it under these Standard Trading Conditions;

- 21.3 observe the provisions of any written collective agreement that may become binding on either of the Parties, its respective employees and a registered trade union;
- 21.4 ensure compliance with SOLAS Chapter VI and the relevant IMO guidelines relating to the mandatory verification of the gross weight of containers prior to loading same on vessels, which came into effect on 1 July 2016; and
- 21.5 save for the above, ensure compliance with all applicable regulatory requirements applicable to its respective business.

22. **GENERAL**

The Company to the Customer, shall be deemed in any way to effect, prejudice or derogate from the rights under this Agreement, nor shall it in any way be regarded as a waiver of any rights hereunder, or as a novation of the terms hereof.

In the implementation of the provisions of this Agreement, the Parties undertake to observe the utmost good faith and they warrant that in their dealings with each other they shall neither do anything nor refrain from doing anything which might prejudice or detract from the rights, assets or interests of each other.

Should it at any time appear that any other proviso, agreement or arrangement be in conflict with the terms and conditions of this Agreement, then and in such event such conflicting proviso, arrangement or agreement shall be null and void and *pro non scripto*, unless such be recorded in writing, duly signed by both Parties and have the specific intention to vary or amend such conflicting provision in this Agreement. This proviso shall not be verbally revoked.

Should legal action be instituted against the Customer occasioned by its failure to perform and/or its breach of this Agreement and/or other agreement, the Customer shall in such event be liable to pay all such legal costs and expenses calculated on Attorney and Own Client scale.

The rule of interpretation that an agreement is to be interpreted against the party responsible for drafting and/or preparation of such agreement does not apply to these Standard Trading Conditions.

23. **NOTICES AND DOMICILIUM**

ADDRESSES: The Parties select as their respective *domicilia citandi et executandi* ("domicilium") and for the purpose of giving or sending any notice provided for or required in terms of these Standard Trading Terms the addresses as set out in the Credit Application or such other address or telefax number as may be substituted by notice given herein required.

NOTICES: Any notice addressed to a Party at its physical address shall be sent by prepaid registered post, or delivered by hand or sent by telefax.

DEEMED RECEIPT: Any notice shall be deemed to have been received: -

- 23.1 if posted by prepaid registered post, 7 (seven) days after the date of posting thereof,
- 23.2 if hand delivered, on the day of delivery,
- 23.3 if sent by telefax, on the date and time of sending of such telefax, as evidenced by a fax confirmation printout, provided that such notice shall be confirmed by prepaid registered post on the date of dispatch of such telefax, or should no postal facilities be available on that date, on the next business day.

The Parties record that, whilst they may correspond via e-mail during the currency of this Agreement for operational reasons, no formal notice required in terms of hereof, nor any amendment or variation hereof may be given or concluded via e-mail.

24. **DEFAULT**

In the event of the Customer failing to pay on Due Date all or any amounts payable hereunder, or should it be in default or breach of any other term or condition of this Agreement, the Company may, without prejudice to its other legal rights and remedies, including the right to claim payment of damages and/or exercise its lien over the Customer's Goods in its possession, be entitled either:

- 24.1 to cancel this Agreement by notice in writing to the Customer and to claim damages; and/or
- 24.2 to claim specific performance and/or payment of all the Purchaser's obligations in terms hereof; and/or
- 24.3 to claim damages which it may have suffered due to the Customer's breach of contract.

The Company shall, however, not be entitled to exercise the rights granted to it in terms hereof, unless the Customer received notice in writing to make the payment, or to

remedy such default or breach and the Customer failed to make the payment or to remedy the default or breach within a period of 24 (twenty four) hours reckoned from the time of receipt or deemed receipt of such notice.

25. **NON WAIVER**

No extension of time or waiver or relaxation of any of the trading terms and conditions shall operate as an estoppel against any party in respect of its rights under these trading terms and conditions, nor shall it operate so as to preclude such party thereafter from exercising its rights strictly in accordance with these trading terms and conditions.

26. **GOVERNING LAW**

These trading terms and conditions and all agreements entered into between the Company and the Customer pursuant thereto and on the terms thereof shall be governed by and construed in accordance with the laws of the Republic of South Africa.

27. **SUBMISSION TO JURISDICTION**

The Parties consent to the jurisdiction of the Magistrate's Court with jurisdiction in terms of Section 28 of the Magistrate's Court Act 1944, in regard to any legal proceedings instituted in connection with this Agreement; provided that any party shall be entitled to institute such proceedings in any division of the High Court of South Africa in which jurisdiction is vested in accordance with the jurisdictional laws of South Africa where such proceeding would, but for the foregoing, fall outside the jurisdiction of the Magistrate's Court.

28. **CESSION AND ASSIGNMENT**

The Company shall be entitled without the prior consent of the Customer to cede and/or assign or in any manner transfer its rights and/or obligations (in whole or in part) in terms of these standard trading terms and conditions to any third party provided that the terms and conditions of these standard trading terms are at all times adhered to.

29. **SEVERABILITY**

If any provision of these terms and conditions is unenforceable, then the Company shall be entitled to elect (which election may be made at any time) that such provision shall be severed from the remaining provisions of these terms and conditions which shall not be effected and shall remain in full force and effect.

30. **GOOD FAITH**

The Parties undertake to observe good faith in dealing with each other and in the implementation of the provisions of these Standard Trading Conditions.

SIGNED AT _____ ON THIS THE _____ DAY OF _____

SIGNATURE: _____

DATE: _____

WITNESSES: 1. _____

2. _____