

STANDARD TERMS AND CONDITIONS OF TRADE

1. DEFINITIONS

In these terms and conditions:-

- 1.1. "**AWB**" means a manual air waybill and/or an e-AWB;
- 1.2. "**BAC**" means BidAir Cargo (Proprietary) Limited, registration number 2004/019639/07 and any of its affiliates including EAS Kenya Limited, EAS Namibia Limited, EAS Tanzania Limited, EAS Uganda Limited, EAS Zambia Limited and EAS Zimbabwe Limited;
- 1.3. "**carrier**" means any person with whom BAC contracts for the provision of the actual carriage of the goods;
- 1.4. "**Customer**" means any person:
 - 1.4.1. at whose request or on whose behalf BAC renders the services; and/or
 - 1.4.2. who has completed an application for credit facilities and signed the declarations pertaining to the said application; and/or
 - 1.4.3. who completed the AWB as the shipper; and/or
 - 1.4.4. who is the owner of the goods;
- 1.5. "**e-AWB**" means an electronic airwaybill that evidences the contract of carriage in place of an AWB, the use of which has been agreed by the parties in writing;
- 1.6. "**goods**" means any items handled, transported or dealt with by BAC on behalf of or at the instance of, or which come under control of BAC or its agents, employees or nominees on the instructions of, the Customer, and include any container, transportable tank, flat pallet, package or any other form of covering, packaging, container or equipment used in connection with or in relation to such goods;
- 1.7. "**IATA**" means the International Air Transport Association.
- 1.8. "**owner**" means the owner/s of the goods in respect of which BAC renders the services under these terms and conditions and includes any person who has or acquires any interest in the goods;
- 1.9. "**perishable**" means any article, especially foodstuff, that can lose its usefulness and value, or be subject to decay, spoilage or destruction, if not appropriately stored or transported, or if not used within a particular period;
- 1.10. "**services**" means any services provided by BAC to the Customer as contemplated herein;
- 1.11. "**service guide**" means the guide to the services, a copy of which is available to the Customer upon request to BAC, as amended from time to time; and
- 1.12. "**ULD**" means any unit load device used as an aircraft pallet or container or combination thereof for the carriage of goods.

2. APPLICABILITY

- 2.1. These terms and conditions apply to the legal relationship between BAC and its Customers as regards the use of the services of BAC.
- 2.2. BAC may update these terms and conditions from time to time.
- 2.3. These terms and conditions constitute the entire agreement between BAC and the Customer relating to the use of BAC's services.

3. INTERNATIONAL CARRIAGE

Any international carriage is subject to the rules relating to liability established by the Montreal Convention, unless such carriage is not international carriage as defined in the Convention. Notwithstanding any other provision of these terms and conditions, in the case of carriage of goods involving an ultimate destination or stop in a country other than the country of departure, BAC will not be liable for any loss, damage, expenses or costs to the extent that the limitations of liability applicable to a carrier are contained in the IATA "Notice Concerning Carrier's Limitation of Liability" and which is deemed to be incorporated into these terms and conditions, and which will apply to any AWBs (including e-AWB's).

4. PAYMENT

- 4.1. It is recorded that BAC has granted credit facilities to certain Customers in respect of the payment terms for the Services rendered by BAC to the Customer.
- 4.2. Save where BAC has granted credit facilities to the Customer as contemplated in clause 4.1 above, the Customer shall pay to BAC the full amount due to BAC on presentation of BAC's invoice/s.
- 4.3. Payment of any amount due to BAC by the Customer shall be made in cash or by way of a bank guaranteed cheque, free of exchange or bank charges and without deduction or set-off, to the premises or such address as BAC may advise the Customer in writing from time to time. All payments shall be effected in the currency reflected on quotations or invoices.
- 4.4. All overdue amounts shall bear interest at the maximum rate of interest permissible in law unless otherwise agreed in writing. The aforesaid interest shall be compounded monthly in arrear and shall be paid together with the principal sum due.
- 4.5. In addition to interest as aforesaid, BAC will be entitled to recover from the Customer who fails to make payment of any amount on or before the due date for payment thereof, default administration costs and collection costs, including legal costs on the attorney and own client scale on a full indemnity basis.
- 4.6. BAC will deliver to the Customer a statement of account every month from the date that payment of any amounts due is delayed after the due date of such payment or portion thereof and the interest provisions of clause 4.4 enforced by BAC on such amount.
- 4.7. A Customer which has credit facilities with BAC may qualify for discounts as specified in the service guide and / or special rate agreements. In the event that the Customer fails to make any payment to BAC on due date, then, without prejudice to any other rights or remedies available to BAC, BAC shall be entitled to demand payment from the Customer of an amount equal to the sum of all discounts granted to the Customer during the period for which the payment due by the Customer remains outstanding, and the Customer shall forthwith pay such amount to BAC.
- 4.8. All and any monies received by BAC from the Customer shall be appropriated by BAC in its sole discretion in respect of any undisputed indebtedness owing by the Customer, notwithstanding that the Customer might seek to appropriate the payment to any particular debt or portion of debt.
- 4.9. A certificate signed by any director or manager of BAC showing the amount owing by the Customer at any time and reflecting the amount thereon as due and unpaid, shall be *prima facie* proof of the amount owing by the Customer for the purposes of any proceedings (whether for the purpose of provisional sentence, summary judgment or otherwise).

5. DEPOSIT

- 5.1. It is recorded that Customers who have been granted credit facilities in terms of clause 4.1 shall be required to pay a deposit as contemplated in this clause 5.
- 5.2. The Customer shall be obliged to pay to BAC a deposit or bank guarantee acceptable to BAC which is the equivalent of 2 (two) times the amount of the credit limit granted to the Customer by BAC in terms of its credit facilities which would be payable to BAC, prior to the provision of the Services by BAC, or as otherwise agreed between the parties in writing ("the deposit").
- 5.3. The Customer hereby irrevocably authorizes BAC at its discretion to invest the deposit in an interest bearing account with a financial institution.
- 5.4. If the Customer fails at any time to pay any amount due to BAC, BAC shall have the right to appropriate the whole or a part of the deposit and the interest to the amount due. The Customer will forthwith upon demand replenish the deposit upon it being appropriated as aforesaid.
- 5.5. BAC shall repay the deposit plus interest accrued, if any, if the Customer or BAC cancels this agreement in terms of the provisions hereof, provided that no amount is owed by the Customer to BAC.

6. FAILURE BY CUSTOMER TO PAY AMOUNTS DUE

- 6.1. BAC shall have a general and a special lien over the goods as security for any amounts due to BAC in respect of these goods or any past debt. If the Customer is acting as agent for the owner of the goods, the Customer undertakes to notify the owner of the goods of the aforesaid lien.
- 6.2. BAC shall have the right, without any notice to the Customer to open and examine the goods or any part thereof.
- 6.3. In the event of non-payment of any monies due by the Customer to BAC, BAC may, at its option, after the expiry of a reasonable notice to the Customer requiring the Customer to remedy the breach and the Customer's failure to do so within the period stipulated in the notice, sell the goods and apply the proceeds of any such sale, after deducting all expenses thereof, in payment of or towards any amount due by the Customer to BAC. Any surplus held by BAC after the sale of the goods as aforesaid shall be paid to the Customer without interest within a reasonable time after such sale, or in the event of BAC being unaware of the address of the Customer, on the application of the Customer within 3 (three) months from the date of the sale, failing which, BAC will be released from all liability whatsoever in respect of the goods or any such surplus held by BAC.
- 6.4. Where BAC has sold only part of the goods and the proceeds of such sales are sufficient to pay BAC all monies due to it by the Customer, the Customer shall take delivery of the remainder of the goods.
- 6.5. BAC shall have the right to charge a reasonable sum for the storage of any goods in respect of which delivery has not yet been taken by the Customer or consignee and, to recover any such sum from the Customer.
- 6.6. In the event of non-payment of any monies due by the Customer to BAC, BAC shall have the right, in addition to its rights already specified in this clause 6, and on written notice to the Customer, to suspend the carrying out of any of its then uncompleted obligations until full payment is made.
- 6.7. The exercise by BAC of any of the rights granted to it by this clause 6 shall be without prejudice to any other rights it may have under this agreement or at common law.

7. CUSTOMER'S RISK

- 7.1. All services are rendered at the Customer's risk.

- 7.2. BAC will nevertheless endeavour to ensure that all handling, packing, loading, unloading, warehousing and transporting of the goods by BAC or its sub-contractors or agents are performed.
- 7.3. The Customer hereby acknowledges that it shall have no claim against BAC of any nature whatsoever arising out of the foregoing, save as provided for in clause 197.1 .
- 7.4. Any documents, items or any material sent to BAC through the post will be sent at the sole risk of the Customer and until they are actually received by BAC. Cheques or any form of payment must not be posted to BAC.

8. COMPLIANCE WITH LAW

If BAC is obliged, in the execution of any of its duties and/or responsibilities to comply with any applicable law or regulation ("the law") in any jurisdiction where the services are rendered or the carriage is performed, then BAC, its sub-contractors or agents by complying therewith, shall not be deemed to waive nor abandon any of its rights in terms of these terms and conditions. In complying with the law, BAC, its sub-contractors or agents shall not be deemed to have assumed any onus, obligation, responsibility, or liability in favour of the Customer.

9. CUSTOMER'S WARRANTEE

The Customer warrants that -

- 9.1. it is the owner or the duly authorised agent of the owner of the goods which are the subject of the Customer's instructions to BAC;
- 9.2. if the Customer is the authorised agent of the owner, that such owner is bound by this agreement, the Customer warranting that it has notified the owner in writing of this agreement;
- 9.3. by authorising the Customer to enter into any contract with BAC, the owner, sender or consignee of the goods is bound by this agreement and any other person on behalf of whom such owner, sender or consignee is acting is bound by this agreement and, in particular, without derogating from the generality of the foregoing, the owner, sender or consignee accepts that it shall be jointly and severally liable with the Customer for the due performance by the Customer of all its obligations under this agreement;
- 9.4. it has complied with all laws and has all the necessary permits, clearances and permission of any relevant authority that may be required in respect of the goods;
- 9.5. all descriptions, values, marks, brands, weights, numbers, contents quality and other particulars in respect of the goods furnished by it to BAC are accurate, and accordingly the Customer indemnifies BAC against all claims, losses, penalties, damages, expenses and fines whatsoever which BAC may suffer or sustain arising out of or in connection with the breach of this warranty, whether negligently or otherwise;
- 9.6. all goods subject to this agreement shall be properly, adequately and appropriately prepared and packed, stowed, labelled and marked and such goods are capable of withstanding the normal hazards inherent in the implementation of this agreement;
- 9.7. where goods are carried in or on containers, trailers, flats, tilts, railway wagons, tanks, igloos or any other unit load devices specifically constructed for the carriage of goods by land, sea or air, (each such device hereinafter individually referred to as "the transport unit") then, save where BAC has been given and has accepted specific written instructions to load the transport unit –
 - 9.7.1. the transport unit has been properly and competently loaded; and
 - 9.7.2. the goods involved are suitable for carriage in or on the transport unit and the transport unit is itself in a suitable condition to carry the goods

loaded therein and complies with the requirements of all relevant transport authorities and laws.

10. THE CUSTOMER'S OBLIGATIONS

- 10.1. The Customer shall deliver the goods to be transported to the premises of BAC and arrange for collection of the goods on arrival of the goods at the airport of destination, unless the parties have expressly agreed otherwise.
- 10.2. The Customer shall complete and sign an AWB or courier waybill in respect of the goods to be transported.
- 10.3. The Customer must ensure that the Consignee will do all things necessary and will take delivery promptly on arrival of the goods at destination.
- 10.4. The Customer acknowledges that it is important for safety as well as the preservation of assets, to ensure that any ULD is handled with care. The Customer accepts receipt of any ULD in good order (and may reject the ULD if it is not in good order) and must ensure that the ULD is turned in by the Consignee in the same good order and condition and within the time period stipulated by BAC. The Customer indemnifies BAC in full against any damages howsoever arising from the Customer's failure to comply with this clause.

11. EXAMINATION OF GOODS

Any goods delivered by the Customer may be examined by BAC either manually, or such other means as may be stipulated before transport of such goods to attempt to ensure that no dangerous goods as referred to below or goods requiring a special arrangement with BAC are to be transported. BAC, its agents or sub-contractors, shall be entitled to inspect the goods at any time, and for such purposes shall be entitled to open any packaging or transport unit within which the goods are contained. Any goods delivered by the Customer must comply with the Civil Aviation Regulations, issued in terms of the Civil Aviation Act No.13 of 2009.

12. DANGEROUS GOODS

- 12.1. The Customer shall obtain in advance BAC's specific written consent to accept into its possession or control or into the possession or control of any of its servants, agents, sub-contractors or employees any goods, including without limitation, radio-active materials, which may be or become dangerous, potentially inflammable or noxious, or which by their nature may injure, damage, taint or contaminate, or in any way whatsoever adversely affect or cause damage to any person or property, including without limitation, goods likely to harbour or attract vermin or other pests. The goods referred to above shall include, without limiting the generality of the foregoing, all goods falling within the definitions of hazardous and/or dangerous goods as specified by the IATA Dangerous Goods Regulations (published by IATA from time to time), Civil Aviation Regulation (CAR) 92.00.8, the International Maritime Dangerous Goods Code (IMDG Code) and any other applicable law or regulations governing the transport or movement of dangerous and hazardous cargo.
- 12.2. The Customer hereby warrants and undertakes to and in favour of BAC that, save as notified to BAC in writing prior to the delivery of the goods to BAC, that the goods do not include any such dangerous goods.
- 12.3. The Customer warrants that it, all shippers, packers, shipper's agents will comply in all respects with the policies of the South African Civil Aviation Authority regarding dangerous goods, or in respect of "Known Cargo" or "Known Consignors" or "Regulated Agents".
- 12.4. The Customer warrants that such dangerous goods, or where applicable, the ULD, crate, box, drum, canister, tank, flat, pallet, package or other holder or covering of such dangerous goods will comply with any applicable laws, regulations, or requirements of any authority or carrier and that the nature and characteristics of such goods and all other data required by such laws,

regulations or requirements will be prominently and clearly marked on the outside packaging of such goods.

- 12.5. If any such dangerous goods are delivered to BAC, such goods may in the discretion of BAC (including, without limitation, where there is risk to other goods, property, life or health) be destroyed, disposed of, abandoned or rendered harmless or otherwise dealt with at the risk and expense of the Customer and without BAC being liable for any compensation to the Customer or any other party, and without prejudice to BAC rights to recover its charges and/or fees including the costs of such destruction, disposal, abandonment or rendering harmless or other dealing with the goods.
- 12.6. The Customer hereby indemnifies and holds BAC and any carrier (including any air carrier) involved in the carriage of the goods harmless against all loss, liability or damage caused to the carrier or BAC or any other person as a result of the carriage, any spill or contamination or the delivery of dangerous goods to BAC, including any clean up or legal costs on a full indemnity basis.

13. PERISHABLE GOODS

- 13.1. Unless contractually agreed to by the airline, perishable shipments will not be accepted if the AWB contains unreasonable instructions or specific conditions such as "keep under refrigeration at all times" and "maintain at below 5 (five) degrees Celsius".
- 13.2. The Customer hereby indemnifies BAC and their affiliates and respective directors, officers, employees, agents and representatives which shall not be responsible or liable for the loss or destruction of or damage to any property, whether arising from fire, theft or any other cause whatsoever and by whomsoever caused or arising from the negligence or wrongful acts or omissions of BAC, specifically in regard to BAC's failure to comply with the provisions of clause 13.1. The Customer accordingly hereby irrevocably and unconditionally indemnifies and agrees to hold harmless BAC in respect of any responsibility and/or liability as aforesaid.

14. LIVE ANIMALS

- 14.1. BAC at its sole discretion operates a pet lounge and service for the transport of animals and birds as cargo on certain routes subject to clause 15 below and such special terms and conditions that may apply from time to time.
- 14.2. It is the Customer's responsibility to make sure all necessary documentation of any animal is available before travel, such as their health certificate (certified by the Customer's veterinarian that the animal is healthy and fit to fly) and identification or pet passport. BAC is not responsible for verifying that the animal is fit and healthy to fly.
- 14.3. BAC may refuse to transport an animal if in BAC's opinion, the animal will not be permitted entry at the place of destination.
- 14.4. All animals must be packed in a suitable container approved by a vet and in accordance with IATA standards that may apply to the animal. The container must have ventilation openings, be of an adequate size and suitable design and of sufficient strength to prevent escape. For the animal's wellbeing BAC reserves the right to refuse carriage for any animal if the container is too small or is deemed inadequate.
- 14.5. The Customer must supply sufficient and suitable food and water for the animal in the travelling container or kennel.
- 14.6. The transport of the animal is at the Customer's risk and BAC is not liable for any loss, damages, costs, claims or expenses, including any claim for death, illness or injury, suffered by the animal and/or the Customer and/or any other person from or in connection with the transport of the animal by BAC.

15. GOODS REQUIRING SPECIAL ARRANGEMENTS

- 15.1. Save in accordance with special arrangements previously made in writing with a senior manager of BAC (being a branch manager, the general manager or managing director of BAC) BAC will not accept or deal with bullion, coins, bank notes and other currency, precious stones, jewellery, valuables, antiques, pictures or plants.
- 15.2. Should the Customer deliver any such goods to BAC or cause BAC to handle or deal with any such goods otherwise than in accordance with special arrangements previously made in writing, BAC shall incur no liability whatsoever in respect of such goods.
- 15.3. The Customer hereby indemnifies and holds BAC harmless against all loss, liability or damage suffered by BAC or any other person as a result of the breach by the Customer of the provisions of clauses 15.1 or 15.2, unless agreed otherwise between BAC and the Customer in writing prior to the Services being rendered by BAC to the Customer.

16. GOODS DELIVERED AT DESTINATION AIRPORT

- 16.1. Goods delivered at the destination airport and in the care, custody or control of BAC or its representative, may, at the Customer's expense be disposed of or sold in accordance with the provisions of clause 6, at the option of BAC, if:
 - 16.1.1. such goods are insufficiently addressed or otherwise marked so as to identify the Customer or consignee;
 - 16.1.2. the Customer, owner or consignee of such goods cannot be identified or located after BAC has taken reasonable steps to so identify or locate the said persons;
 - 16.1.3. such goods have begun to deteriorate or are likely to deteriorate; or
 - 16.1.4. such goods have not been collected by the Customer or any other person within 72 (seventy two) hours from the time that the goods were delivered at the destination airport and after BAC has advised the Customer or the consignee, telephonically or in writing, that the goods are ready for collection.
- 16.2. Notwithstanding the provisions of clause 16.1, BAC shall be entitled, in the circumstances referred to in clause 16.1.4, to store such goods and at the expense of the Customer.

17. DISCRETION OF BAC

- 17.1. In the absence of specific instructions on the AWB completed by the Customer or given timeously in writing by the Customer to BAC, which instructions must be accepted in writing by a duly authorised representative of BAC for them to be binding:
 - 17.1.1. BAC shall be entitled to decide, in its reasonable discretion, at what time to perform or to procure the performance of any or all of the services it has agreed to perform; and
 - 17.1.2. BAC shall have an absolute discretion to determine the means, route and procedure to be followed by it in performing all or any of the services it has agreed to perform.
- 17.2. 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 any other person, it shall be in the discretion of BAC as to what declaration, if any, shall be made, and what liability, if any, shall be imposed on the carrier, warehouseman, underwriter or other person, and the Customer shall be bound by the election made by BAC.

- 17.3. Should BAC deem it to be in the interests of the Customer or in the public interest to depart from any of the instructions of the Customer, BAC shall be entitled to do so, shall take reasonable steps to advise the Customer accordingly and shall not incur any liability whatsoever as a result thereof.
- 17.4. Should it, in the opinion of BAC, be impossible or impractical for BAC to comply with the Customer's instructions in whole or in part, BAC undertakes to take reasonable steps to inform the Customer of the circumstances giving rise to such impossibility or impracticability and the Customer shall furnish BAC with further instructions.

18. INSURANCE

BAC shall not provide or procure any insurance in respect of the goods or in respect of any liability arising from or connected to the goods.

19. LIABILITY OF BAC

- 19.1. It is hereby agreed that BAC is neither a common carrier nor a public carrier in relation to the carriage of goods in terms of this agreement.
- 19.2. Notwithstanding any other provision of this agreement, BAC shall not be liable for any claims for loss of profit, or any other indirect, special or consequential damages of any nature howsoever caused.
- 19.3. Save where such liability arises as a result of its wilful default or gross negligence, BAC shall not be liable to the Customer or the Customer's shareholders, officers, directors, employees, agents or subcontractors or any other person, for any loss, damage, expenses or costs of any nature arising from:
 - 19.3.1. the transport, storage or handling of any goods by BAC; and/or
 - 19.3.2. loss of or damage to any goods; and/or
 - 19.3.3. loss or non-delivery of any separate package forming part of a consignment or loss from a package or an unpacked consignment or for damage or mis-delivery; and/or
 - 19.3.4. any act, omission or statement by BAC, or its employee agents or representatives; and/or
 - 19.3.5. any act, or omission or statement of the Customer or the agent of the Customer with whom BAC deals; and/or
 - 19.3.6. the marking, labelling, numbering, non-delivery, mis-delivery or late delivery of any goods; and/or
 - 19.3.7. or in any way connected with the weight, measurements, contents, quality, inherent vice, defect or description of any of the goods; and/or
 - 19.3.8. BAC failing to notify the consignee or receiver of the goods to collect the goods from BAC (whether or not the Customer requested that BAC do so); and/or
 - 19.3.9. any circumstances beyond BAC's control including, without limiting the generality of foregoing, fire, flood, earthquake, wind, storm, inclement weather, or other natural disaster, act of God, strike, lock-out; riot, war and acts of State; and/or
 - 19.3.10. damage or injury suffered by the Customer or any person whatsoever as a result of BAC's execution or attempted execution of its obligations to the Customer and/or the Customer's requirements or mandate; and/or
 - 19.3.11. any failure of BAC to comply with the terms of this contract.
- 19.4. If, notwithstanding the provisions of clause 19.3, the Customer alleges that BAC is liable for loss or damage suffered by it, the Customer shall notify BAC

thereof by completing the loss/damage form attached to the service guide and delivering same to BAC (it being the obligation of the Customer to ensure that BAC receives the loss/damage form), together with supporting documentation, including any proof of delivery relating to the claim, within the time periods referred to in clause 19.5, failing which the Customer shall have no claim against BAC. BAC shall accept or reject liability for the loss or damage within a reasonable time after receiving the duly completed loss/damage form.

- 19.5. Notwithstanding any other provision hereof, the Customer shall have no claim of any nature against BAC in respect of –
- 19.5.1. visible damage to the goods, unless a claim is made immediately upon same coming to the notice of the person receiving the goods and in any event within 7 (seven) days of the goods passing from the possession of BAC;
 - 19.5.2. non-visible damage to the goods, unless a claim is made within 14 (fourteen) days of the goods passing from the possession of BAC;
 - 19.5.3. delay in delivery of the goods, unless a claim is made within 21 (twenty one) days of the date upon which the goods were placed at the disposal of the person entitled to accept delivery;
 - 19.5.4. loss or non-delivery of the goods, unless a claim is made within 120 (one hundred and twenty) days of the date of issue of the applicable air waybill or the date of the shipment record, whichever is applicable; and
 - 19.5.5. partial loss, unless a claim is made within 14 (fourteen) days of the goods passing from the possession of BAC.
- 19.6. The Customer shall, in the case of alleged damaged goods, make such goods available for inspection by BAC or its representative.
- 19.7. BAC 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 not limited to, indirect and consequential loss arising from any cybercrime or cyber security breaches or incidents.
- 19.8. The Customer hereby indemnifies and holds BAC harmless against any claim of any nature which is made against BAC in respect of the goods, which, if brought by the Customer, would be excluded in terms of this agreement.

20. MONETARY LIMITATION OF LIABILITY OF BIDAIR CARGO

In those cases where BAC is liable to the Customer notwithstanding the provisions of clause 19 or any other provision of these terms, any liability shall not exceed the lesser of:

- 20.1. the value of the goods evidenced by the relevant documentation or declared by the Customer for customs purposes or for any purpose connected with their transportation, or
- 20.2. US\$20 per kilogram.

21. LIABILITY OF THE CARRIER

- 21.1. For the purposes of this clause "carrier" shall mean any air carrier involved in the carriage of air cargo on behalf of BAC, and "in-flight accident" shall mean, in respect of an aircraft, any occurrence associated with the operation of an aircraft which results in any property or person being injured, lost or damaged, during the period beginning from when power is applied for the aircraft to take off until the aircraft completes its landing roll. For the purposes of this clause **211**, BAC is the authorized agent of the carrier.
- 21.2. Notwithstanding any other provision of this agreement, the liability of the carrier in respect of international carriage of goods shall be limited as defined in the

Convention for the Unification of Certain Rules for the International Carriage by Air ("the Montreal Convention").

21.3. It is recorded that where the goods are transported by the carrier in terms of this agreement, the carrier shall not be liable to the Customer or any other person for:

21.3.1. loss, damage or delay arising out of the carriage of the goods or other services performed by the carrier incidental thereto, unless such loss or damage or delay is occasioned by an in-flight accident; excluding in-flight accidents caused or occasioned by the gross negligence or willful misconduct of BAC;

21.3.2. any indirect or consequential damages of any nature or any loss of profit or other special damages of any nature which the Customer may suffer as a result of an in-flight accident;

21.3.3. the delay or loss of market attributable to, or associated with, the transport of livestock and perishables;

21.3.4. any inherent vice or defect (whether latent or apparent) in the air cargo or the goods conveyed by the carrier;

21.3.5. any act or omission of any of the carrier's agents, contractors or third parties required to perform any services for and on behalf of the carrier.

21.4. Without in any way limiting the provisions of clauses 21.2 or 21.3:

21.4.1. the liability of the carrier for any damages sustained by the Customer arising from any in-flight accident shall be limited to the maximum amount stipulated in clause 20;

21.4.2. the carrier shall not be liable for any claim for in-flight accidents made by the Customer or any other third party unless such a claim is made in writing within 6 (six) months after the claim arises.

22. **SUBCONTRACTING**

22.1. Any services to be rendered by BAC in terms of this agreement may, in the absolute discretion of BAC, be fulfilled by BAC itself or by BAC sub-contracting such services to third parties.

22.2. When BAC employs third parties to perform all or any of the functions which it has agreed to perform, the Customer agrees that BAC shall have no responsibility or liability to the Customer for any act or omission of such third party; but BAC shall upon being requested to do so cede to the Customer any right of action which it may have against such third party.

22.3. Notwithstanding anything to the contrary contained herein, the Customer agrees that the goods may be dealt with by BAC on the terms and conditions of this Agreement, whether or not consistent with these terms and conditions, stipulated by the third parties in question.

23. **COLLECTION OF EXPENSES**

23.1. When goods are accepted or dealt with by BAC upon instructions to collect freight duties, charges or other expenses from the consignee or any other person, the Customer shall remain responsible therefor if such expenses are not paid by such consignee or any other person immediately when due.

23.2. The Customer shall be liable for any duties, taxes, imposts, levies, deposits, or out-lays of whatsoever nature levied or payable to the authorities, intermediaries, or other parties at any port or place for or in connection with the transport of the goods and whether at the time of entry and/or at any subsequent time, and for any payments, fines, penalties, expenses, loss or damage or whatsoever incurred or sustained by BAC in connection therewith or arising therefrom.

- 23.3. The Customer shall be liable for all applicable storage, terminal handling and other charges applicable to the provision of services by BAC, as well as any other charges specified in the service guide.
- 23.4. BAC shall bear no liability in consequence of the fact that there may be a change in the exchange rate, the rate of duty, wharfage, freight, railage or cartage, or any other tariff, before or after the performance by BAC of any act involving a less favourable rate or tariff or by virtue of the fact that a saving might have been effected in some other way had any act been performed at a different time.

24. QUOTATIONS

- 24.1. Any instruction given to BAC based on any quotation furnished by BAC to the Customer shall be deemed to be an offer by the Customer to BAC to conclude a contract between the Customer and BAC based on such instructions and quotation. BAC shall not be bound by any instructions or quotations unless it has notified the Customer in writing of its acceptance.
- 24.2. Quotations are given on the basis of costs, information given by the customer in terms of weight and dimensions, and exchange rates prevailing at the date of the quotation. Should BAC's costs including, without limitation, rates of freight, insurance premiums, equipment rental and labour and any other charges applicable to the services, increase thereafter for any reason beyond the reasonable control of BAC, BAC shall be entitled to increase its charges to the Customer to the extent necessary to recoup such additional costs. BAC expressly reserves the right to levy a reasonable administration fee on such increased or additional charges.
- 24.3. If the Customer disputes any increase in BAC charges provided for above, the dispute shall be determined by BAC' auditors for the time being acting as experts and not as arbitrators and their decision shall be final and binding upon BAC and upon the Customer.

25. RATES

BAC shall be entitled at any time by reasonable notice to the Customer to cancel or resile from any published rate in circumstances where it becomes impractical or uneconomical for BAC to carry out the agreement at the published rate and the Customer shall have no claim whatsoever against BAC for any loss that the Customer might incur as a result of BAC cancelling or resiling from the published rate.

26. NEGOTIABLE INSTRUMENTS

No negotiable instrument received by BAC from a Customer shall constitute a novation of the debt for which it is given and the Customer waives presentment, notice of dishonour and protest where applicable. No negotiable instrument, document or notice shall be deemed to have been received by BAC until same has been actually delivered to BAC at its principal place of business.

27. BENEFIT OF DISCOUNTS

BAC is entitled to the benefit of any discounts obtained and to retain and be paid all brokerages, commission, allowances and other remunerations of whatsoever nature and kind and shall not be obliged to disclose or account to the Customer for any such amounts received or receivable by it.

28. ENCUMBRANCE

The Customer shall not be entitled to effect, or allow to be effected any security in respect of the goods or the documents relating to the goods, including without limitation, any general or special notarial bond, pledge, hypothec, right of retention, or lien and pledge, without the prior written consent of BAC.

29. GENERAL INDEMNITY BY THE CUSTOMER

Without prejudice to any rights and securities which BAC may have under this agreement, the Customer indemnifies and holds BAC harmless against all liabilities, damages, fines, penalties, taxes, costs (including legal costs on a full indemnity basis) and expenses whatsoever incurred or suffered by BAC or any other person arising directly or indirectly from or in connection with the Customer's express or implied instructions or their implementation by or on behalf of or at the instance of BAC in relation to any goods in particular, but without limitation of the foregoing, in respect of any liability whatsoever which may be incurred –

- 29.1. as a result of any breach of the Customer's warrantee; and/or
- 29.2. to any haulier, carrier, warehouseman or other person whatsoever at any time involved with such goods arising out of any claim made directly or indirectly against any such person by the Customer or by consignor, consignee or owner or such goods or by any person having an interest in such goods or by any other person whatsoever; and/or
- 29.3. to any owner or consignee of such goods who is not the Customer of BAC, who performs the service of a deconsolidation agent, or any other service; and/or
- 29.4. to any carrier of the goods if BAC is the consignor or consignee of the goods.

30. REPRESENTATIONS BY BAC

BAC makes no warranties and save as recorded herein no representations to the Customer.

31. SEVERABILITY

If any provision of this agreement is unenforceable, BAC shall be entitled to elect (which election may be made at any time) that such provision shall be severed from the remaining provisions of this agreement which shall not be affected and shall remain of full force and effect.

32. BREACH

- 32.1. Subject to the provisions of clause 32.2 and in the event of a party breaching any of its obligations under this agreement ("the defaulting party") and failing to remedy such breach within 7 (seven) days of receiving written notice from the other party requiring it to do so, the other party may, without prejudice to any other right which it may in law, including the right to claim damages, in the case of:
 - 32.1.1. a material breach, which breach is not capable of being remedied, cancel this agreement; or
 - 32.1.2. any other breach, claim specific performance or cancel this agreement.
- 32.2. BAC shall be entitled to cancel this agreement and rescind the credit facility and any discounts granted to the Customer immediately:
 - 32.2.1. upon BAC ascertaining that any information supplied by the Customer in the credit application form is false, and/or
 - 32.2.2. if the Customer fails to comply with any of the conditions contained herein, and/or
 - 32.2.3. if the Customer is placed under provisional or final liquidation, judicial management or sequestration or commits an act of insolvency in terms of applicable law, or ceases to carry on business, and/or
 - 32.2.4. if the Customer fails to adhere to any condition of payment contained herein and/or in any other subsequent agreement reached between BAC and the Customer; and/or

32.2.5. if the Customer fails to pay any amount due in terms hereof or any other agreement subsequently reached between BAC and the Customer; and/or

32.2.6. if the Customer takes any action which, in the reasonable opinion of BAC, may prejudice BAC's rights in any way.

32.3. In the event that BAC cancels this agreement in terms of this clause 32, all amounts payable by the Customer shall immediately fall due and payable.

33. DISPUTES

33.1. In the event of any dispute or difference arising between the parties hereto relating to or arising out of this agreement, including the implementation, execution, interpretation, rectification, termination or cancellation of this agreement, the parties shall forthwith meet to attempt to settle such dispute or difference, and failing such settlement within a period of 14 (fourteen) days, the said dispute or difference shall on written demand by any party to the dispute be submitted to arbitration in Johannesburg in accordance with the rules of the Arbitration Foundation of Southern Africa or its successor ("the Foundation") by an arbitrator or arbitrators appointed by the Foundation and agreed to by the parties.

33.2. Should the parties fail to agree on an arbitrator within 10 (ten) days after arbitration has been demanded, the arbitrator shall be nominated at the request of any party to the dispute by the Foundation.

33.3. The parties irrevocably agree that the submission to arbitration in terms of this clause is subject to the parties' rights of appeal set out hereunder.

33.3.1. Any party to the arbitration may appeal the decision of the arbitrator within a period of 21 (twenty one) days after the arbitrator's ruling has been handed down by giving written notice to that effect to the other party or parties to the arbitration. The appeal shall be dealt with in accordance with the rules of the Foundation by a panel of 3 (three) arbitrators appointed by the Foundation.

33.3.2. The decision of the arbitrator shall be final and binding on the parties to the arbitration after the expiry of the period of 21 (twenty one) days from the date of the arbitrator's ruling if no appeal has been lodged by any party. A decision which becomes final and binding in terms of this clause 33.3.2 may be made an order of court at the instance of any party to the arbitration.

33.4. Nothing herein contained shall be deemed to prevent or prohibit either party from applying to the appropriate Court for urgent relief or for judgement in respect of a claim for liquidated damages.

33.5. The parties undertake to keep the arbitration, including the subject matter of and evidence heard during the arbitration, confidential and not to disclose same to any other entity save for the purpose of any Court proceedings.

34. COST OF PROCEEDINGS

In the event that BAC institutes legal proceedings against the Customer in terms hereof or for any reason whatsoever and if successful, the Customer shall pay all costs incurred by BAC including collection commission and legal costs on an attorney-and-own client scale on a full indemnity basis.

35. LAW & JURISDICTION

35.1 Where the carriage is within South Africa or to or from a destination in South Africa, this agreement is governed by and shall be construed in accordance with the law of South Africa and the Customer consents to the jurisdiction of the South African Courts.

- 35.2 In respect of domestic carriage, should any disputes arise out of or in connection with this Agreement, the Customer consents to the jurisdiction of the Magistrate's Court in respect of any action or proceedings which may be brought against it, notwithstanding the quantum of BAC's claim. BAC is however entitled to bring any action or proceedings against the Customer or Carrier in any other appropriate court having jurisdiction.
- 35.3 In respect of any other international carriage, should any disputes arise out of or in connection with this Agreement, the Plaintiff will institute action or proceedings, a) before the court in the place of domicile of the relevant affiliate of BAC or of its principal place of business, or b) where it has a place of business through which the contract has been made, or c) before the court at the place of destination."

36. DOMICILIUM CITANDI ET EXECUTANDI

- 36.1. The parties choose their *domicilia citandi et executandi* for the purpose of giving any notice, the serving of any process or for any purpose arising from this agreement at the addresses reflected on the first page of the credit application form. In the event that no credit application form has been completed, then the address of the Customer shall be that reflected as the address of the shipper on the AWB.
- 36.2. Each of the parties shall be entitled from time to time, by giving written notice to the other, to vary the chosen *domicilium* to any other address in the Republic which is not a post office box or post restante, provided that such change shall become effective on the 7th (seventh) day after the receipt of such notice by the other party.
- 36.3. The Customer shall give notice to BAC at BAC's *domicilium* of any change of address or in the form of legal entity or name or ownership under which the account and credit facilities are being used within 7 (seven) days from the date that such change takes effect.

37. GENERAL

BAC and the Customer agree that the terms and conditions contained herein embody the entire agreement between them and confirm that:

- 37.1. none of the terms and conditions of this agreement is capable of being waived, amended, added to or deleted, unless such waiver, amendment, addition or deletion is reduced to writing and is signed by the parties;
- 37.2. no representations or warranties have been made by either of the parties, save as are expressed herein;
- 37.3. no indulgence granted by a party shall constitute a waiver or abandonment of any of that party's rights hereunder: Accordingly, that party shall not be precluded, as a consequence of having granted that indulgence, from exercising any rights against the other party which may have arisen in the past or which may arise in the future.

38. SPECIAL CONDITIONS RELATED TO ELECTRONIC DATA

- 38.1. Notwithstanding the provisions of any legislation or other law regulating electronic communications and transactions, BAC shall only be deemed to have received electronic data and/or messages when such electronic data and/or messages have been retrieved, processed and read by the addressee.
- 38.2. Under no circumstances whatsoever and howsoever arising (including negligence on the part of BAC or its employees) shall BAC be liable for any loss or damage arising from or consequent upon the provision by BAC to the Customer in whatever manner and/or form, of incorrect information, including electronically communicated information or data, where such incorrect information or data has been generated by and provided to BAC by any person with whom BAC conducts business, and/or any other third party.

38.3. BAC shall furthermore under no circumstances whatsoever be liable for any loss or damage arising from or consequent upon any failure and/or malfunction, for whatever reason, and regardless of negligence in whatever degree on the part of BAC, of BAC's computer systems and/or software programmes, provided and/or operated by BAC and/or by any person with whom BAC conducts business, and/or any third party, and which systems shall include the Company's electronic automated information service provided to its Customers.

SIGNED at on

For and on behalf of (Full Name Customer):

Company registration number/CK number:

(sign) _____
who warrants that he/she is duly authorised

Full Name (Signatory):

Designation:

NOTICE: Resolution 600b shall be effective on 17 March 2008; and simultaneously Resolution 600b(II) shall be deemed rescinded on 17 March 2008.

RESOLUTION 600b

AIR WAYBILL – CONDITIONS OF CONTRACT

CSC(29) 600b

Expiry: Indefinite
Type: B

RESOLVED that:

The following Conditions of Contract and Notices be included on an Air Waybill.

I. NOTICE APPEARING ON THE FACE OF THE AIR WAYBILL

It is agreed that the goods described herein are accepted in apparent good order and condition (except as noted) for carriage SUBJECT TO THE CONDITIONS OF CONTRACT ON THE REVERSE HEREOF. ALL GOODS MAY BE CARRIED BY ANY OTHER MEANS INCLUDING ROAD OR ANY OTHER CARRIER UNLESS SPECIFIC CONTRARY INSTRUCTIONS ARE GIVEN HEREON BY THE SHIPPER, AND SHIPPER AGREES THAT THE SHIPMENT MAY BE CARRIED VIA INTERMEDIATE STOPPING PLACES WHICH THE CARRIER DEEMS APPROPRIATE. THE SHIPPER'S ATTENTION IS DRAWN TO THE NOTICE CONCERNING CARRIER'S LIMITATION OF LIABILITY. Shipper may increase such limitation of liability by declaring a higher value for carriage and paying a supplemental charge if required.

II. CONDITIONS OF CONTRACT ON REVERSE SIDE OF THE AIR WAYBILL

NOTICE CONCERNING CARRIERS' LIMITATION OF LIABILITY

If the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention or the Montreal Convention may be applicable and in most cases limit the liability of the Carrier in respect of loss of, damage or delay to cargo. Depending on the applicable regime, and unless a higher value is declared, liability of the Carrier may be limited to 19 Special Drawing Rights per kilogram or 250 French gold francs per kilogram, converted into national currency under applicable law. Carrier will treat 250 French gold francs to be the conversion equivalent of 19 Special Drawing Rights unless a greater amount is specified in the Carrier's conditions of carriage.

* This Resolution is in the hands of all IATA Cargo Agents.

CONDITIONS OF CONTRACT

1. In this contract and the Notices appearing hereon:

CARRIER includes the air carrier issuing this air waybill and all carriers that carry or undertake to carry the cargo or perform any other services related to such carriage.

SPECIAL DRAWING RIGHT (SDR) is a Special Drawing Right as defined by the International Monetary Fund.

WARSAW CONVENTION means whichever of the following instruments is applicable to the contract of carriage:

the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw, 12 October 1929;

that Convention as amended at The Hague on 28 September 1955;

that Convention as amended at The Hague 1955 and by Montreal Protocol No. 1, 2, or 4 (1975) as the case may be.

MONTREAL CONVENTION means the Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal on 28 May 1999.

2./2.1 Carriage is subject to the rules relating to liability established by the Warsaw Convention or the Montreal Convention unless such carriage is not "international carriage" as defined by the applicable Conventions.

2.2 To the extent not in conflict with the foregoing, carriage and other related services performed by each Carrier are subject to:

2.2.1 applicable laws and government regulations;

2.2.2 provisions contained in the air waybill, Carrier's conditions of carriage and related rules, regulations, and timetables (but not the times of departure and arrival stated therein) and applicable tariffs of such Carrier, which are made part hereof, and which may be inspected at any airports or other cargo sales offices from which it operates regular services. When carriage is to/from the USA, the shipper and the consignee are entitled, upon request, to receive a free copy of the Carrier's conditions of carriage. The Carrier's conditions of carriage include, but are not limited to:

2.2.2.1 limits on the Carrier's liability for loss, damage or delay of goods, including fragile or perishable goods;

2.2.2.2 claims restrictions, including time periods within which shippers or consignees must file a claim or bring an action against the Carrier for its acts or omissions, or those of its agents;

2.2.2.3 rights, if any, of the Carrier to change the terms of the contract;

2.2.2.4 rules about Carrier's right to refuse to carry;

2.2.2.5 rights of the Carrier and limitations concerning delay or failure to perform service, including schedule changes, substitution of alternate Carrier or aircraft and rerouting.

3. The agreed stopping places (which may be altered by Carrier in case of necessity) are those places, except the place of departure and place of destination, set forth on the face hereof

or shown in Carrier's timetables as scheduled stopping places for the route. Carriage to be performed hereunder by several successive Carriers is regarded as a single operation.

4. For carriage to which neither the Warsaw Convention nor the Montreal Convention applies, Carrier's liability limitation shall not be less than the per kilogram monetary limit set out in Carrier's tariffs or general conditions of carriage for cargo lost, damaged or delayed, provided that any such limitation of liability in an amount less than 17 SDR per kilogram will not apply for carriage to or from the United States.

5./5.1 Except when the Carrier has extended credit to the consignee without the written consent of the shipper, the shipper guarantees payment of all charges for the carriage due in accordance with Carrier's tariff, conditions of carriage and related regulations, applicable laws (including national laws implementing the Warsaw Convention and the Montreal Convention), government regulations, orders and requirements.

5.2 When no part of the consignment is delivered, a claim with respect to such consignment will be considered even though transportation charges thereon are unpaid.

6./6.1 For cargo accepted for carriage, the Warsaw Convention and the Montreal Convention permit shipper to increase the limitation of liability by declaring a higher value for carriage and paying a supplemental charge if required.

6.2 In carriage to which neither the Warsaw Convention nor the Montreal Convention applies Carrier shall, in accordance with the procedures set forth in its general conditions of carriage and applicable tariffs, permit shipper to increase the limitation of liability by declaring a higher value for carriage and paying a supplemental charge if so required.

7./7.1 In cases of loss of, damage or delay to part of the cargo, the weight to be taken into account in determining Carrier's limit of liability shall be only the weight of the package or packages concerned.

7.2 Notwithstanding any other provisions, for "foreign air transportation" as defined by the U.S. Transportation Code:

7.2.1 in the case of loss of, damage or delay to a shipment, the weight to be used in determining Carrier's limit of liability shall be the weight which is used to determine the charge for carriage of such shipment; and

7.2.2 in the case of loss of, damage or delay to a part of a shipment, the shipment weight in 7.2.1 shall be prorated to the packages covered by the same air waybill whose value is affected by the loss, damage or delay. The weight applicable in the case of loss or damage to one or more articles in a package shall be the weight of the entire package.

8. Any exclusion or limitation of liability applicable to Carrier shall apply to Carrier's agents, employees, and representatives and to any person whose aircraft or equipment is used by Carrier for carriage and such person's agents, employees and representatives.

9. Carrier undertakes to complete the carriage with reasonable dispatch. Where permitted by applicable laws, tariffs and government regulations, Carrier may use alternative carriers, aircraft or modes of transport without notice but with due regard to the interests of the shipper. Carrier is authorised by the shipper to select the routing and all intermediate stopping places that it deems appropriate or to change or deviate from the routing shown on the face hereof.

10. Receipt by the person entitled to delivery of the cargo without complaint shall be prima facie evidence that the cargo has been delivered in good condition and in accordance with the contract of carriage.

10.1 In the case of loss of, damage or delay to cargo a written complaint must be made to Carrier by the person entitled to delivery. Such complaint must be made:

10.1.1 in the case of damage to the cargo, immediately after discovery of the damage and at the latest within 14 days from the date of receipt of the cargo;

10.1.2 in the case of delay, within 21 days from the date on which the cargo was placed at the disposal of the person entitled to delivery.

10.1.3 in the case of non-delivery of the cargo, within 120 days from the date of issue of the air waybill, or if an air waybill has not been issued, within 120 days from the date of receipt of the cargo for transportation by the Carrier.

10.2 Such complaint may be made to the Carrier whose air waybill was used, or to the first Carrier or to the last Carrier or to the Carrier, which performed the carriage during which the loss, damage or delay took place.

10.3 Unless a written complaint is made within the time limits specified in 10.1 no action may be brought against Carrier.

10.4 Any rights to damages against Carrier shall be extinguished unless an action is brought within two years from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

11. Shipper shall comply with all applicable laws and government regulations of any country to or from which the cargo may be carried, including those relating to the packing, carriage or delivery of the cargo, and shall furnish such information and attach such documents to the air waybill as may be necessary to comply with such laws and regulations. Carrier is not liable to shipper and shipper shall indemnify Carrier for loss or expense due to shipper's failure to comply with this provision.

12. No agent, employee or representative of Carrier has authority to alter, modify or waive any provisions of this contract.