

## **Stella Containers (Pty) Ltd**

### **Standard Trading Terms and Conditions**

#### 1. Parties

1.1. Customer shall include the shipper, holder, endorsee, possessor, nominee, consignee, or merchant referred to in the bill of lading or any other party having an interest in the bill of lading container, the cargo or vessel or merchant.

1.2. "Merchant" means the firm or person (or any agent thereof) who ships, receives, own or forwards Goods or holds the bill of lading in respect of which the firm or person, whether as agent or principal has agreed to provide or procure services.

1.3. "The Company" means Stella Containers (Pty) Ltd herewith referred to singularly as "the company".

#### 2. Submission and Consent

The Customer hereby consents and submits to the jurisdiction of the High Court of South Africa, Durban Coastal Local Division, in terms of Section (3) (2) (c) of the Admiralty Jurisdiction Regulation Act 105 of 1983.

#### 3. Company's General Discretion

If events or circumstances come to the attention of the Company, its agents, servants or nominees which in the opinion of the Company, make it in whole or in part, impossible or impracticable for the Company to comply with a Customer's instructions the Company shall take reasonable steps to inform such Customer of such events or circumstances and to seek further instructions. If such further instructions are not timeously received by the Company in writing the Company shall, at its sole discretion be entitled to detain, return, store, sell, abandon, or destroy all or part of the goods concerned at the risk and expense of the Customer.

#### 4. Customer's Undertakings

The Customer warrants that:-

4.1 it is either the owner or the authorised agent of the owner of any goods in respect of which the Customer instructs the Company or receives a facilitation fee from the Company and that each such person is bound by these trading terms and conditions.

4.2 In authorising the Customer to enter into any contract with the Company and/or in accepting any document issued by the Company in connection with such contract, the parties are bound by these trading terms and conditions for itself and its agents and for any parties on whose behalf it or its agents may act, and in particular, but without prejudice to the generality of the foregoing, it accepts that the Company shall have the right to enforce against them, jointly and severally any liability of the Customer under these credit terms and conditions or to recover from them any sums to be paid by the Customer which upon proper demand have not been paid.

4.3 All information and instructions supplied and to be supplied by it to the Company is and shall be accurate, true and comprehensive, and in particular, without derogating from the generality of the foregoing, the Customer shall be deemed to be bound by and warrants the accuracy of all descriptions, values and other particulars furnished to the Company for customs, consular and other purposes, and the Customer warrants that it will not withhold any necessary or pertinent information and indemnifies the Company against all claims, losses, penalties, damages, expenses and fines whatsoever and howsoever arising as a result of a breach of the foregoing, whether negligently or otherwise including, without derogating from the generality of the foregoing, any assessment or reassessment.

#### 5. Recovery of Debts Due to the Company

The Company shall be entitled to recover any amounts due to it by the Customer in respect of instructions relating to or in terms of any contract in respect of particular goods from the Customer, or if the Customer acts as an agent for a disclosed or undisclosed principal from the Customer or the principal, as the Company in its absolute discretion deems fit.

#### 6. Warehousing

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

#### 7. The Acceptance of Delivery

If delivery of any goods is not accepted by the Customer, consignee or party nominated by the Customer at the appropriate time and place then the company shall be entitled to store the goods or any part thereof at no risk to the Company and at the expense of the Customer.

#### 8. Payment by the Customer

All and any moneys received by the Company from the Customer shall be appropriated by the Company in its sole and absolute discretion in respect of any indebtedness owing by the Customer to the company.

#### 9. Debiting Fees and Disbursements

The Company shall under no circumstances be precluded from raising a debit and obtaining payment in respect of any fee or disbursements due to it, notwithstanding the fact that a previous debit or debits whether excluding or partly excluding the item subsequently requiring to be charged or recovered, had been raised and whether or not any notice had been given that further debits were to follow.

#### 10. Variation of these Trading Terms and Conditions

No variation or alteration of these trading terms and conditions shall be binding on the Company unless embodied in a written document signed by a duly authorised director of the Company. Any purported variation or alteration of these trading terms and conditions otherwise than as set out above shall be of no force or effect, whether such purported variation or alteration is written or oral.

#### 11. Lien

All goods and documents relating to goods including bills of lading and import permits, as well as all refunds, repayments, claims and other recoveries shall be subject to a special and general lien and pledge either for monies due in respect of such goods cargo, vessel or TEUS or for other monies due to the Company from the Customer, shipper, sender, owner, consignee, importer or the holder of the bill of lading or their agents or any third party, if any. If any monies

due to the Company are not paid within 14 days after notice has been given to the person from whom the monies are due that such goods or documents are being detained, they may be sold by auction or otherwise or in some other way disposed of for value at the sole discretion of the Company and at the expense of such person , and the nett proceeds applied in or towards satisfaction of such indebtedness.

12.1 The Company shall have a lien over all Goods for which warehousing, haulage and other related charges are due, as well as the documents relating to Goods, including Bills of Lading and import permits, and in the event of non payment of all monies due by the Customer or his agent to the Company within 3 days after they become due, the Company shall be entitled without prejudice to any other rights which the Company may have, and without further notice to the Customer or Consignee.

12.1.1 To open and examine any part of the consignment, and

12.1.2 At the option of the Company, the whole or any part of the consignment may be sold either by public auction or by private treaty, and to apply the proceeds of any such sale, after deducting all the expenses thereof, in payment of or towards any sum due by the Customer to the Company and shall otherwise be released from all liability whatsoever in respect of the consignment.

12.2 The Customer indemnifies the Company against any claims which may be instituted against the Company arising out of or as a result of an sale in terms of this contract.

### 13. Indemnity by the Customer

Without prejudice to any of the Company's rights and securities under these trading and conditions, the Customer indemnifies and holds harmless the Company against all liabilities, damages, costs and expenses whatsoever incurred or suffered by the Company arising directly or indirectly from or in connection with the Customers express or implied instructions or their implementation by or on behalf of or at the instance of the Company in relation to any goods and in particular, but without limitation of the foregoing, in respect of any liability whatsoever which may be incurred:-

13.1 to any hauler, 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 any consignor, consignee or owner of such goods or by any person having an interest in such goods or by any other person whatsoever;

and/or

13.2 to any owner or consignee of such goods who is not the Customer of the Company where the Company performs the service of a deconsolidation agent, or any other service; and

/or

13.3 to any carrier of the goods if the Company is the consignor or consignee of the goods.

#### 14. General Average

The Customer indemnifies and holds harmless the Company in respect of any claims of a General Average nature which may be made against the Company and the Customer shall provide such a security as may be required by the Company in this connection.

#### 15. Statements of Account

15.1 The contents of any statement of account rendered by the Company to the Customer shall be deemed to true and correct, unless disputed in writing received by the Company within 30 days after the date of posting of the statement to the Customer

15.2 Payments shall be made by the Customer, free of exchange, to the Company the Company's address set out on the front page of this document or at such other address as the Company may from time to time so direct.

#### 16. Conditions of payment

In the event of the Company referring any dispute between it and the Customer, or any amount due for collection from the Customer to it, to its Attorneys, the Applicant shall be liable to and

hereby indemnifies the Company against all costs, charges and expenses incurred on Attorney and own client scale on a full indemnity basis and such indemnity shall extend to and include collection commission as may be lawfully charged to the Company by its Attorneys.

## 17. Signatories / Surety

17.1.1 "Signatory" shall mean the person or persons signing as Customer or on behalf of Company, partnership or association of any kind whatsoever

17.1.2 The Signatory warrants that he has authority to contract with the Company in accordance herewith and the signatory hereby expressly indemnifies the Company and holds the Company harmless in respect of all or any claims which may be against the Company by all or any persons whoever arising out of the Companies fulfilling its obligations in terms of this agreement.

17.1.3 In the event of the signatory signing on behalf of a company, partnership, firm, or the Customer on the reverse side hereof, expressly also binds himself personally as surety and co-principal debtor in solidum in favour of the Company in respect of this agreement. In this regard the person so signing, hereby expressly renounces the benefits of exclusion and division, and of the exceptions "de duobus vel pluribus reis debendi", and "non numerate pecuniae" with which the person signing on behalf of the Customer acknowledges himself to be fully acquainted. For

all purposes of this suretyship, the person chooses as domicilium citandi executandi for all notices and processes the physical address as selected.

17.2 The Company shall be entitled, without prejudice to its rights, to levy and to recover from the Applicant, interest on all outstanding amounts at a rate 2% per month (referring to Section 103 of National Credit Act)

18. The Customer warrants that it has full authority to engage the services of the Company and to contract on these terms and it hereby indemnifies the Company against any claim by the true owner of any goods or any other party with an interest therein in respect of which the Company is so contracted to deal. Furthermore, the person representing, the Customer in contracting with the Company warrants that he is duly authorised to do so.

19. The Customer shall be deemed to be bound by and to warrant the accuracy of all descriptions, values and other particulars furnished to the Company for customs, consular and other purposes and shall be deemed to have indemnified the Company against all claims, losses, penalties, damages, expenses and fines whatsoever arising from any inaccuracy or omission, even if such inaccuracy or omission is not due to any negligence.

20. Where the Company employs independent third parties to perform all or any of the functions required of the Company, the Company shall have no responsibility or liability to its Customers for any act or omission of such third party, even though the Company may be responsible for the payment of such third parties charges; but the Company may, if suitably and indemnified against all costs, including Attorney and client costs, take such action against the third party on its Customers behalf as its Customer may direct.

## 21. Insurance

21.1. The company shall have no obligation whatsoever to obtain any form of insurance cover on behalf of the Customer or in respect of the Goods.

21.2. However, and subject to the provisions of this clause, the company may, on written request from the Customer, at its absolute discretion and to the extent that the Law shall allow, endeavour to facilitate insurance cover for the Goods. Such insurance will be subject to all terms, exceptions and conditions as may be imposed by the company and the insurance company taking the risk and the company shall not be obliged to obtain separate cover for any risk excluded.

21.3. Should any insurer dispute its liability in terms of any insurance policy effected in terms of clause 21.2, the Customer concerned shall have recourse against such insurance company only and the company shall not have any responsibility or liability whatsoever in relation thereto.

21.4. Notwithstanding anything to the contrary contained in these STCs, the company shall in no circumstance be liable for any consequences or any failure to obtain any insurance cover or any appropriate insurance cover, or otherwise, and any liability of the company in respect of any

claim brought against the company arising out of or connected with the provisions of this clause 12 shall be regulated and determined in accordance with the provisions of these STCs.

21.5. Notwithstanding the provisions of clause 21.1 the company may, acting as bailee, and in its sole discretion taking into account the nature of the Goods, arrange for appropriate insurance cover in which case the provisions of Clause 21.1 to 21.4 inclusive shall also apply mutatis mutandis.

22. Perishable in the care, custody or control of the Company which have begun or are likely to deteriorate or which are insufficiently addressed or marked or otherwise not readily identifiable, may be sold or otherwise disposed of without any notice to the Customer, sender, owner or consignee and payment or tender of the nett proceeds of any sale after deduction of charges and expresses shall be equivalent to delivery. All charges and expenses arising in connection with the sale or disposal of the goods shall be for the account of the Customer and may be deducted.

23. The Company shall be entitled to sell or dispose of all non perishable goods in any circumstances:-

23.1 Where a Customer cannot be identified.

23.2 Where the goods cannot be delivered because they are insufficiently addressed

23.3 Where the goods have not been collected or accepted by the Customer or any other person. Where the Company has an address for the Customer then such sale or disposal shall be effected only after the expiration of 21 days from the posting to that address of written notice so to do.

All charges and expenses arising in connection with the storage and sale or disposal of the goods shall be for the account of the Customer. A communication from any agent or correspondent of the Company or from any third party to the effect that the goods cannot be delivered for any reason shall be conclusive evidence of that fact.

24. The Customer shall indemnify the Company and hold it harmless for any liability for any duties, taxes, imposts, levies, deposits, or outlays of whatsoever nature levied by the authorities in respect of the goods and for any payments, fines, expenses, loss, or damage whatsoever incurred or sustained by the Company in connection therewith.

25. Unless otherwise specifically agreed by the Company, all sums shall be paid to the Company immediately upon presentation of account without deduction and payment shall not be withheld or deferred on account of any claim, counterclaim or set off.

In the event of the company becoming aware of customer experiencing financial difficulties, any credit facility granted by the company shall be immediately revoked and all sums owing to the company by the customer shall forthwith become immediately payable.

26. In addition to and without prejudice to the foregoing conditions, the Customer shall be deemed to have indemnified the Company against all liabilities whatsoever suffered or incurred by the Company arising directly or indirectly from or in connection with the Customers instructions of their implementation in relation to the goods and in particular, but without limiting foregoing, in respect of any liability whatsoever to:-

26.1 any employee, agent, or sub-contractor or any haulier, carrier, warehouseman or other person whatsoever at any time involved with the goods arising out of any claim made directly or indirectly against any party by the Customer or by any merchant, consignee, or owner of the goods or by any person interested in the goods or by any other person whatsoever, or

26.2 any owner or consignee of the goods who is not the Customer of the Company where the Company performs a service of a deconsolidation agent, any other service or

26.3 any carrier of the goods if the Company is the consignor or consignee of the goods

27. No act, omissions, course of dealing, forbearance, delay or indulgence by the company in enforcing any of these conditions or any of its rights and terms thereof or any granting of time by the Company shall prejudice or effect the rights and remedies of the Company under these conditions and no such matter shall be treated as any evidence of waiver of the Company's right thereunder nor shall any waiver of a breach by a Customer of any one or more of these conditions operate as a waiver of any subsequent breach thereof. The Company shall at times and without notice be entitled to insist on the strict application and enforcement of these conditions.

28. The Customer warrants that it has full authority to engage the services of the Company and to contract on these terms and it hereby intensifies the Company against any claim by the true owner of any Goods or any other party with an interest therein in respect of which the Company is so contracted to deal. Furthermore, the person representing the Customer in contracting with the Company warrants that he is duly authorised to do so.

## 29. Liability and Insurance

### Limitation of Liability

29.1. The company shall not be liable for any claim of whatsoever nature and howsoever arising (whether in contract or in delict or arising out of the provision of the Services or not or for damages or otherwise) unless such claim arises from a grossly negligent act or omission on the part of the company, its employees or subcontractors.

29.2. Without limiting the generality of the limitations or exclusions of the company's liability, the company is specifically not liable for:

29.2.1. any shortage, loss of or damage to Goods, unless it occurs at a time when the Goods in question is in the actual care, custody and control of the company, its employees or subcontractors;

29.2.2. any shortage, loss of or defect in Goods in the company's warehouse which does not exceed 0.5% of the quantity of the Goods as evidenced by the warehouse receipts; or

29.2.3. any shortage, loss of or damage to Goods dispatched directly from a Vessel to the Customer's nominated transporter.

29.3. Notwithstanding anything to the contrary contained in these STCs or elsewhere, the company shall not be liable to the Customer for any indirect loss, including but not limited to: consequential, incidental or remote loss; special or speculative damages; or loss of profit, business or production.

29.4. If the company is liable to the customer in terms of these STCs or otherwise, in no case whatsoever shall any liability of the company, howsoever arising, exceed:

29.4.1. Where the Claim relates to the loss or damage to Goods in storage, the lesser of the fair market value of the lost or damaged Goods in respect of which the Claim arose as at the time and place of their loss or damage, or R100,000.00 (One Hundred Thousand Rand), per occurrence giving rise to liability, regardless of the nature, number and amount of claims arising out of the occurrence;

29.4.2. Where the Claim relates to the loss or damage to Goods in transit, the lesser of the fair market value of the lost or damaged Goods in respect of which the Claim arose as at the time and place of their loss or damage, or R500,000.00 (Five Hundred Thousand Rand), per conveyance giving rise to liability, regardless of the nature, number and amount of claims arising out of the occurrence;

29.4.3. Where the Claim relates to the loss or damage to a Vessel, vehicle or Transport Unit, the lesser of the fair market value of the lost or damaged Vessel, conveyance, vehicle or Transport Unit as at the time and place of their loss or damage, or the cost of the reasonable cost of repairs to the Vessel, vehicle conveyance or Transport Unit, or R100,000.00 (One Hundred Thousand Rand), per occurrence giving rise to liability, regardless of the nature, number and amount of claims arising out of the occurrence;

29.4.4. Where the Claim relates to a Service that did not result in the loss of or damage to Goods or other property, then the lesser of double the amount of the fees raised by the Company for its services in connection with the Goods (but excluding any amount payable to sub-contractors, agents and third parties) or R100,000.00 (One Hundred Thousand Rand), per occurrence giving rise to liability, regardless of the nature, number and amount of claims arising out of the occurrence;

29.4.5. In any event, R100,000.00 (One Hundred Thousand Rand) per occurrence and R500,000.00 (Five Hundred Thousand Rand) in respect of all occurrences (whether relating to Goods or Services) giving rise to liability in any 12 (twelve) month period, regardless of the nature, number and amount of claims arising.

29.5. The company agrees that no claim shall be made against any director, employee or employee of the company in his personal capacity which imposes or attempts to impose any liability upon him in connection with the provision of the Services, and the company waives all and any such claims.

### 30. Claims

30.1. Without prejudice to any other provisions in these STCs, no Claim may be brought against the company or any of its Directors or Employees, unless the Customer:

30.1.1. has given Notice of the Claim to the company either at the time of the removal of the Goods from the custody of the company, or within 7 (seven) days of the date when the loss or damage occurred, or of the Customer reasonably becoming aware thereof, whichever is the later; and

30.1.2. has provided the company with a fully documented claim setting out the precise nature and quantum of the claim within 3 (three) months of the date of the Notice of the Claim required in clause 30.1.1.

30.2. In addition to clause 30.1 it is agreed that the company shall in any event be discharged from all liability whatsoever and howsoever arising unless summons or other process initiating legal proceedings is issued and served on the company within 9 (nine) months after the cause of action in respect of any such alleged liability arose and immediate Notice is given to the company of such legal proceedings having been brought

31. These conditions and all agreements made by the Company with its Customers, wherever made shall be governed and construed according to the laws of the Republic of South Africa and shall be subject to the exclusive jurisdiction of the South African Courts.