



**STANDARD TERMS & CONDITIONS OF CARRIAGE OF GOODS  
BY ROAD IN RESPECT OF JCB TRANSPORT (PTY) LTD t/a CJ  
PARTNERS – CJPP2.2 SF03 REV2**

**1. DEFINITIONS**

In these conditions the following words and/or terms bear the meaning ascribed herein:

- 1.1 **"Carrier"** means JCB TRANSPORT (PTY) LTD t/a CJ PARTNERS and includes the Carrier's servants and agents and any person or persons carrying any goods forming the subject matter of this contract under and in terms of a subcontract with the Carrier.
- 1.2 **"Consignor"** means the owner of the goods or the person having lawful title to the goods or possession thereof and the duly authorised agent of the consignor.
- 1.3 **"Consignment"** means the goods forming the subject matter of this carriage agreement and includes any article, including any container, pallet or similar article for transport or packaging supplied by the Customer which is accepted by the Carrier for transport.
- 1.4 **"Consignee"** means the person to whom or in the event of no name being given by the consignor, the address at which the goods are to be delivered. In the absence of the person named by the consignor as the consignee, then any person representing himself to be duly authorised to accept delivery on behalf of the consignee and having the appearance of being a person authorised by the consignor or the consignee to accept delivery on behalf of the consignee.
- 1.5 **"Customer"** means and shall refer to any person, firm, close corporation, legal entity and/or association on whose behalf the Carrier undertakes any business or service including the Customer's servants and/or agents as referred to in the relevant credit application.
- 1.6 **"Dangerous goods"** includes good described as such in terms of Section 54 read with Regulation 237A of the National Road Traffic Act 93 of 1996 with those classified as such by Spoornet, the Marine Division of the Department of Transport or those which are in the sole and absolute discretion of the Carrier considered to be dangerous.
- 1.7 **"Handling of goods"** includes goods being handled, warehoused, held, controlled, loaded or unloaded, carried or otherwise possessed by the Carrier for any purpose whatsoever.
- 1.8 **"Commencement date"** means the date of approval of the Credit Application.
- 1.9 **"Container"** means any container (other than a vehicle) in which the goods are conveyed and/or stored.
- 1.10 **"Day"** means the period of 24 consecutive hours from one midnight to the next.

- 1.11 **"Delivery"** means the conveyance of one load of goods pursuant to this agreement in the dedicated vehicle from the load point to the off loading point.
- 1.12 **"Freight charges"** means the Carrier's standard charges for transportation services or such other consideration payable to the Carrier by the Customer in terms of this agreement.
- 1.13 **"Loading point"** means the premises of the Customer or the Customer's appointed or nominated supplier of goods as specified by the Customer in writing.
- 1.14 **"Month"** means a calendar month.
- 1.15 **"Off loading point"** means the consignee's premises as specified by the Customer in writing.
- 1.16 **"Vehicle"** means any vehicle used by the Carrier in connection with this agreement upon which or in which the goods and/or containers are conveyed.
- 1.17 **"Week"** means the period of seven consecutive days commencing on Monday and expiring on the following Sunday.
- 1.18 **"Year"** means each period of 12 months commencing on the commencement date and each anniversary thereof.

## **2. NO VARIATION OF CONDITIONS**

The handling of goods shall be subject to the conditions stated herein unless specifically varied by the Carrier in writing, and these conditions shall at all times take precedence over any terms, conditions or stipulations in any of the Customer's documentation. Should the Customer in any way purport to attach any conditions which vary, amend or are in conflict with the conditions set forth herein, then, notwithstanding anything to the contrary stipulated by the Customer, the conditions set forth herein shall prevail and be of full force and effect unless specifically varied in writing which specific reference to the Customer's contrary documentation.

## **3. PRICING**

- 3.1 Quotations shall be given on the basis of immediate acceptance and shall be subject to withdrawal and/or revision by the Carrier as set out hereinunder.
- 3.2 Company price lists shall be regarded merely as guidelines and the company has the right from time to time, without notice to Customer, to change the price of its services with particular reference to base rate and fluctuating fuel rates.
- 3.4 The parties shall meet annually on the anniversary date of this agreement to review and renegotiate the contract pricing going forward and failing such agreement, and notwithstanding anything else contained herein, the Carrier shall have the right to summarily cancel this agreement.
- 3.3 The Carrier is entitled to the benefits of any discounts obtained and to retain and be paid all brokerage allowances, commissions and all other remuneration of whatsoever nature and kind and shall not be obliged to disclose or account to its Customers or principals for any such remuneration received by it.
- 3.4 Charges quoted are valid only for the services set out in the quotation.

#### **4. INCREASE IN QUOTATIONS**

- 4.1 In the event of the Carrier being obliged to incur reasonable additional costs in the execution of its obligation in that it has to purchase and / or hire additional services, equipment or materials, including licenses or permits, to enable the Carrier to deliver a consignment, with or without prior notification to the consignor, then in such event the client agrees that it will be liable for such additional costs not initially quoted on and which amounts will be invoiced to the client along with the initially quoted charge. The Carrier will be entitled to recover the additional charges incurred in this matter.
- 4.2 The Carrier will furthermore be entitled to increase the remuneration specified in the quotation in the event of the client altering the quantity of the consignment to be carried in proportion to such increase or decrease.
- 4.3 In the event of the Carrier being obliged to deviate from the route selected by it, or to carry the consignment over another route, for any reason necessitating such detour, including but not limited to the following: adverse weather conditions, impassable or dangerous roads, bridges, pontoons and ferries, the Carrier will be entitled to charge an additional sum over and above the quoted amount as a result of extra distance travelled including but not limited to tolls, liability cover or charges levied by lawful authorities.
- 4.4 The consignor or consignee will be liable for storage charges and/or fines incurred by the Carrier or its agent in respect of the safekeeping of the consignment at any border post or other area nominated by the Carrier which amount will be payable upon collection / delivery of the consignment against the Carrier's invoice.

#### **5. PAYMENT OF CARRIERS REMUNERATION**

Unless specifically agreed upon between the parties, the Carrier's remuneration will be payable in terms of the terms and conditions as contained in the Credit Application.

#### **6. CARRIERS LIEN**

- 6.1 The Carrier shall have a lien over all consignments carried and in the event of non-payment of any portion of monies due by the consignor to the Carrier determined by the Financial Controller. The Carrier's lien shall come in existence as soon as the Carrier takes possession and control of the consignor's goods and the lien will persist until all amounts owing to the Carrier from time to time have been paid in full, whether or not the costs relate to the goods in the Carrier's possession at the time. It is specifically agreed that all goods in the Carrier's possession shall serve as security for payment of all and any amounts that may be owed by the consignor to the Carrier. The Carrier's lien shall further endure until such a time that all amounts have been paid and the lien shall not lapse as a result of delivery of any goods to a consignee. The Carrier shall be entitled to retrieve the goods from a consignee in the event of the consignor defaulting on any payment obligations to the Carrier.
- 6.2 If the consignor does not affect payment of any amounts owing to the Carrier, the Carrier shall in addition to its lien, specified in clause 6.1 above, be entitled to charge the consignor storage in respect of all goods in the Carrier's possession, forming part of the Carrier's lien, which storage charges shall be market related and be calculated on a day to day basis.

- 6.3 If the monies owing to the Carrier are not paid by the Customer within thirty (30) days after they have become due, the Carrier shall be entitled without further notice:
- 6.3.1 to open and examine the goods;
  - 6.3.2 to sell the whole or any parts of the goods in such a manner and on such terms and conditions as it deems fit;
  - 6.3.3 to apply the proceeds of any such sale after deducting all expenses thereof in payment or deduction of any amount due by the Customer to the Carrier (including storage charges) providing that any surplus shall be paid over to the Customer without interest immediately after the sale and in the event of the Customer's address not being known, within ninety (90) days of demand having been made for such payment.
- 6.4 The Carrier shall not be liable for loss, damage or deterioration of such goods attributable to the implementation of this clause.
- 6.5 The Carrier's rights under this clause are not exhaustive and are in addition to any other rights which it may have against its Customers under common law.

## **7. RELEASE OF OBLIGATIONS**

In the event that the Carrier is unaware of the delivery address of the consignee or the address on the application is not correct, the Carrier will be released from all liability whatsoever in respect of the consignment. The Carrier shall be entitled to deliver the goods to the address of the consignee specified on the particular delivery documentation, alternatively the Carrier shall be entitled to deliver the goods and leave same at the closest branch of the South African Police Services, or Police Authorities should the consignment have been delivered outside the Border of the Republic of South Africa.

## **8. CONDITION OF CONSIGNMENT AT TIME OF DELIVERY TO CARRIER**

The onus of proving the quantity, type, physical properties, condition and composition of the goods/consignment and/or the condition of any container at the time of receipt thereof by the Carrier shall at all times remain with the Customer, and no delivery notes, receipt or other documents furnished or signed at such time by or on behalf of the Carrier shall constitute conclusive proof thereof.

## **9. LIABILITY FOR OR DAMAGE TO GOODS / CONSIGNMENT:**

- 9.1 The responsibility for the carriage of the goods, shall be from the time of loading to the time of off-loading, and if such loading and off-loading is done by the Customer or Consignor same shall be deemed to have been executed properly and in terms of normally accepted standards in the industry bearing the nature of the goods in mind. Failure by the Customer or Consignee to load the goods properly or within normally acceptable standards resulting in damages to the goods shall not render the Carrier liable for such loss or losses.
- 9.2 This exemption includes but is not limited to, any liability for direct and consequential loss or damages arising from loss of the goods/consignment, damage to the goods/consignment, failure to collect or deliver the goods/consignment timeously, adequately or at all or from or to the correct address or from any other cause howsoever arising whether any such liability, loss or damages caused by or arises from breach of

contract, negligence or gross negligence on the part of the Carrier, its servants, agents or employees or otherwise.

- 9.3 At all times the delivery note must be endorsed if there is any damage of any nature to the goods when either loading or off-loading same, such endorsement to be witnessed, recorded and signed by an independent witness and photographs taken if possible.

## **10. DISCLAIMER CONDITIONS**

- 10.1 The Carrier shall be advised by the client / consignor / consignee of any damages within a period of 24 (twenty four) hours from date of delivery of the consignment to the consignee and such damages shall be accurately recorded on the Proof of Delivery document presented to the consignee or its nominated Agent at the time of delivery. Such document to be co-signed by no less than one identifiable independent witness to the alleged damages. Photographs of such damage should be taken if at all possible.
- 10.2 In the event of the Carrier disclaiming liability in respect of any claim, any action or suit for review must be instituted within 3 months of said disclaimer.
- 10.3 Should the consignor not institute action within a three-month period, the consignor shall not be entitled to proceed for recovery of any amounts against the Carrier in respect of the specific load and shall have no claim in respect of any alleged damages under any circumstances whatsoever.
- 10.4 The Carrier will not accept liability for any personal effects and loose articles placed in the vehicle for transportation.
- 10.5 The Carrier will not accept liability for mechanical failures and electrical defects that a consignment may encounter whilst goods to be transported are driven under own power onto or off the Carrier vehicle.

## **11. ROUTE**

The consignment may be carried via any route at the sole discretion of the Carrier. It is recorded that the Carrier use predetermined routes and that all quotations are prepared in accordance with these standard routes. Should the Carrier however deviate from the route as a result of circumstances beyond its control, in its sole discretion, the Carrier shall be entitled to reasonable additional remuneration and expenses incurred as a result of the deviation, which the consignor agrees to pay immediately on presentation of an Invoice by the Carrier.

## **12. LIMITATION OF CARRIERS LIABILITY RESULTING FROM INCORRECT ADDRESS OF CONSIGNEE OR FAILURE OF CONSIGNEE TO TAKE DELIVERY OF THE CONSIGNMENT**

The onus is upon the consignor to supply full delivery details to the Carrier in terms of its administration requirements. The Carrier will not be responsible for any loss or damage in respect of incorrect delivery of the consignment due to incomplete or incorrect delivery details being supplied to the Carrier and, in the absence of gross negligence, the Carrier will not be liable for any loss or damage incurred as a result of the consignee, or his duly authorised agent, not being present to receive the consignment.

**13. LIMITATION OF CARRIER'S LIABILITY IN RELATION TO TIME OF DELIVERY**

The Carrier will deliver the consignment in terms of the times and dates of delivery as specified on the delivery documentation provided. The Carrier will not be liable for any delays in delivery of the consignment, including but not limited to the detention thereof by any Border post Authority or Traffic authority, carried or for any loss, damage or detention arising therefrom if the Carrier's inability to delivery as a result of circumstances beyond its control.

**14. STORAGE CHARGES ON FAILURE BY CONSIGNOR OR CONSIGNEE TO TAKE DELIVERY**

The Carrier will be entitled to charge the consignor storage charges at a reasonable rate (it will be presumed that the Carrier's charges are reasonable until the contrary is proved by the consignor) in respect of any period during which the Carrier is obliged to store the goods carried by reason of the failure of the consignor or the consignee to take delivery thereof, when tendered by the Carrier or in the event of the Carrier being unable to deliver the said consignment due to the fault of the consignor or consignee.

**15. SPECIAL LIMITATION OF THE CARRIER'S LIABILITY**

Notwithstanding the terms of this agreement, the Carrier will not be liable for:

- 15.1 The loss of a particular market;
- 15.2 Indirect or consequential damages;
- 15.3 Loss of value of consignment goods after repairs and
- 15.4 Loss or damage arising from riots, civil commotion, strikes, lockouts or stoppage of work from whatever cause, whether partial or general.

**16. DANGEROUS GOODS**

- 16.1 Unless otherwise agreed in writing, the Customer warrants that all goods handled by the Carrier are fit to be so handled in an ordinary way and are not dangerous.
- 16.2 Unless otherwise agreed in writing, the Carrier will not handle any dangerous, corrosive, noxious, hazardous, inflammable or explosive goods or any goods which in its opinion are likely to cause damage or may be harmful.
- 16.3 The Customer shall be liable for all losses or damage caused to the Carrier and/or a third party of all goods handled and hereby indemnifies the Carrier against any claims arising in connection therewith.
- 16.4 Should the Carrier agree to handle any dangerous goods for any purpose:
  - 16.4.1 the Customer shall together with goods furnish a written declaration detailing the trade name; and
  - 16.4.2 chemical composition and characteristics of the goods; and

- 16.4.3 the Customer shall insure that the goods bear the warning labels and declaration required in terms of the laws and regulations applicable to the transportation of dangerous goods.
- 16.5 If in the opinion of the Carrier any goods (whether they have been declared as dangerous or not) became a danger to any person or property, the Carrier shall be entitled immediately and without notice to the Customer to dispose of the goods in question or take such other steps as it in its sole discretion deems prudent to avert danger. In such event the Carrier shall:
- 16.5.1 not be liable under any circumstances for the value of the goods or for any other loss or damage whether direct or consequential, sustained by the Customer or the owner as a result of such disposal, or other steps and
- 16.5.2 still be entitled to recover from the Customer its remuneration for the handling of the goods together with any costs incurred by it in disposing thereof or taking other steps as envisaged herein.
- 16.6 Unless written instructions given to the Carrier, it shall be under no obligation to make any declaration or seek any special protection or cover from Spoornet in respect of any goods falling within a definition by that body:
- 16.6.1 of dangerous or hazardous goods; or
- 16.6.2 of goods liable to be or capable of being stored in the open.

## **17. PERISHABLE GOODS AND LIVESTOCK**

- 17.1 Perishable goods and livestock which are not taken up immediately upon arrival at their destination or which are insufficiently marked or otherwise not identifiable may be disposed of without notice to the Customer and the payment per tender to the Customer of the net proceeds of any disposition (after deduction of all charges incurred by the Carrier) shall be equivalent to delivery.
- 17.2 If a specific dedicated arrival time at any market or auction is part of the transportation instruction, the Carrier shall not be liable for damages for late arrival if late arrival is due, *inter alia* but not limited to any Act of God, any Mechanical failure of the transporting unit or an accident en route.

## **18. LOADING AND OFF LOADING**

- 18.1 The Customer shall ensure that:
- 18.1.1 the goods shall be ready for loading on the date specified;
- 18.1.2 all documentation necessary in connection with the goods and the transportation thereof shall be fully and correctly prepared;
- 18.1.3 at all places where the Carrier is to collect and off-load the goods there will be safe, suitable and adequate access and loading and off-loading facilities, and that it is possible for the Carrier to do so without need for any special or additional tackle, plant power, labour or equipment;
- 18.1.4 the goods will be properly packed or prepared for carriage;

- 18.1.5 the Customer shall sign the certificates and receipt on loading and off-loading as the carrier may require;
- 18.2 The Carrier shall not be under any obligation to provide any plant, power or labour which, in addition to its vehicle or crew, is required for the loading and off-loading of any goods. Any assistance given by the Carrier in such loading and off-loading shall be at the sole and absolute risk of the Customer.
- 18.3 Any Customer (or owner) conducting any packing or other operation or activity in any area or premises provided by the Carrier shall do so at its own risk, and the Customer indemnifies the Carrier against all claims or losses arising out of the presence of the Customer in such area or premises.
- 18.4 The carrier allows 4 (four) hours for loading to take place, but in the event of late loading (outside the allotted 4 hours) the carrier shall be entitled to charge a reasonable fee for such wasted time in its sole and absolute discretion which fees the customer / consignor shall accept without right to debate or dispute same such rights being unconditionally and irrevocably waived herewith.

## **19. SUB-CONTRACTORS**

The Carrier reserves the right to employ subcontractors or agents to act for it. Where the Carrier employs independent third parties to perform all or any of the functions required of the Carrier, the Carrier shall have no responsibility or liability to the Customer of any acts or omissions of such third parties, even although the Carrier may be responsible for the payment of their charges. However, if the Carrier is suitably indemnified against all costs (including attorney and own client costs) the Carrier shall take such action against the third party concerned on the Customer's behalf as the carrier may in its sole and absolute discretion elect.

## **20. DEMURRAGE**

The Carrier shall not be liable for demurrage or storage charges of any nature whatsoever and howsoever arising. Where any such demurrage and/or storage charges are paid by the Carrier, such charges shall be refunded to the Carrier by the Customer on demand. The Customer hereby appoints the Carrier irrevocably and in *rem suam* as its agent and its name, place and stead to contract for the storage of the goods upon such terms and conditions as the Carrier may, in its sole discretion deem fit, and without any liability whatsoever attaching to the Carrier to attend to such storage.

## **21. INSURANCE**

- 21.1 It is recorded that the carrier has Goods in Transit insurance (GIT insurance) to the value of R1.5 million in respect of each consignment carried. The Parties hereto agree that in the event that the customer requires GIT insurance in excess of R1.5 million it is the sole and absolute responsibility of the Customer to request same in writing from the Carrier whereupon the Carrier shall secure a quotation for such excess GIT insurance, submit the quotation to the Customer and upon written acceptance thereof, the Customer shall be responsible and liable for such increased premium in respect of each and every such increased GIT insurance cover.
- 21.2 The aforementioned GIT insurance policy is hereby deemed to have been read by the Customer and is further available for perusal by the customer upon request



of the customer and such insurance shall be subject to the usual exceptions and conditions of the policy of the insurer or underwriter assuming responsibility for the risk.

- 21.3 The Parties further agree that should the insurer dispute liability for any reason whatsoever, the Customer or owner shall have recourse against the insurer only and the Carrier shall not be under any liability in relation thereto.

**22. PERMITS AND CONSENTS**

If any permits, consents or approval to handle goods is required under any law, by-law or any regulations, none of the Carrier's obligations or duties shall take effect unless and until it obtains the relevant permit, consent or approval. The Customer shall provide all assistance and information required by the Carrier for the purpose of applying for or obtaining any such permit, consent or approval.

**23. DELAY – COMPLIANCE WITH INSTRUCTION**

The Carrier shall not be liable for any delay occasioned by compliance with any instructions issued by the police or any other professed or ostensible authority, whether acting legally or illegally, but any extra costs incurred by the Carrier as a result of compliance with any such instruction shall be added to its charges.

**24. SOLE AGREEMENT**

This agreement constitutes the sole record of the agreement between the parties. The Carrier shall not be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.

**25. VARIATION**

No addition to, variation of or agreed cancellation of this agreement shall be of any force or effect unless recorded in writing and accepted by the Carrier in writing.

**26. INDULGENCE AND WAIVER**

No relaxation or indulgence which the Carrier may grant to the Customer shall constitute the waiver of the right of the Carrier and shall not preclude the Carrier from exercising any of its rights which may have arisen in the past or which might arise in the future.

**27. APPLICABLE LAW**

The Governing law of this agreement is the law of the Republic of South Africa, and accordingly any dispute about this agreement, including any dispute about its validity, existence, interpretation, rectification, breach or termination or any dispute about any matter arising out of this agreement, its avoidance, interpretation, rectifications, breach or termination shall be determined according to the law of the Republic of South Africa.

**28. DOMICILIUM AND NOTICES**

- 28.1 The parties choose the address set out in this agreement as their domicilium citandi et executandi (domicilium) for all purposes under this agreement, whether for serving any court process or documents, giving any notice or making any other communication of whatsoever nature and for any other purpose arising from this agreement.
- 28.2 Either party shall have the right to change its domicilium by giving to the other party written notice of such change of address.

**29. PRESUMPTIONS AS TO NOTICES**

- 29.1 Any notice or communication required permitted to be given in terms of this agreement shall be valid and effective only if in writing.
- 29.2 Any notice to a party contained in a correctly addressed envelope and:
- 29.2.1 sent by pre-paid registered post to it at its chosen address;
  - 29.2.2 delivered by hand to a responsible person during ordinary business hours at its chosen address, shall be deemed to have been received, in the case of Clause 29.2.1, on the 7<sup>th</sup> business day after posting (unless the contrary is proved) and, in the case of Clause 29.2.2 on the day of delivery.
- 29.3 Any notice transmitted electronically or by telefax to the party at the email address or telefax number serving that party's chosen domicilium, shall be deemed, unless the contrary is proved to have been received within 24 (twenty four) hours of transmission thereof, provided transmission takes place during ordinary business hours and such transmission is verified by a written transmission report in respect of all the pages of the document of the document containing such notice.
- 29.4 Notwithstanding anything to the contrary herein contained, written notice or communication actually received by one of the parties from the other, shall be an adequate written notice or communication to such party, notwithstanding that it was not sent or delivered to its chosen domicilium.

**30. BREACH**

- 30.1 The Customer agrees and acknowledges that in the event of:
- 30.1.1 the Customer breaching any of the terms of this agreement;
  - 30.1.2 the Customer failing to pay any amount due and payable on the due date thereof;
  - 30.1.3 the Customer having any civil judgment taken or entered against it;
  - 30.1.4 the Customer's estate being placed under any order or provisional or final liquidation or sequestration, winding up or judicial management, as the case may be then the entire amount owing by the Customer to the Carrier shall immediately become due and payable, and the Carrier shall without detracting from any other remedies which may be available to it, be entitled to summarily cancel this agreement and any order accepted in terms of this agreement without notice to the Customer, or to claim specific performance of all the

Customer's obligations whether or not otherwise then due for performance, in either event without prejudice to the Carriers rights to claim damages.

**31. NATIONAL CREDIT ACT**

The Customer acknowledges that if it is a juristic person as defined in Section 4 of the National Credit Act, the National Credit Act does not apply to this agreement.

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