



Standard Conditions of Carriage

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Transnet Freight Rail Conditions of Carriage

There are special Service Conditions for the packing, loading, acceptance, Transport and delivery of Dangerous Goods and/or, hazardous goods, explosives, perishable goods and abnormal loads carried in rail wagons or freight containers. Transnet Freight Rail must be notified in advance if a Customer/Consignor wishes it to consign any of the Goods in order that the special Service Conditions can be complied with.

Please take special note of Clause 24, 25 & 26, which relates to exclusion of liability, optional insurance and requires that insurance claims must be lodged within one hundred and eighty (180) days.

Table of Content

1.	Information	3
2.	Definitions and interpretation	3
3.	Diversion of Wagons En Route	8
4.	Availability of Capacity	9
5.	Maintenance of Infrastructure	10
6.	Transport Documents & Special Instruction	10
7.	Documentation Necessary for Goods Transported in Rail Wagons.....	10
8.	Things over which Transnet Freight Rail has no Reasonable Control	11
9.	Liberty to Deviate & Make Special Arrangements	11
10.	Packing, Loading & Securing Goods on Wagons.....	11
11.	Loading and Off-loading	11
12.	Inspection	12
13.	Containers & Rail Wagons.....	13
14.	Marking	13
15.	Free Time for loading and unloading/off loading	13
16.	Overloading and mass declared.....	13
17.	Non-utilisation and train cancellation charges	15
18.	Conditions Related to Containerized Traffic	15
19.	Goods Forwarded From Or Destined To Other Railways.....	18
20.	Agents	18
21.	Transnet Freight Rail Entitled to Act as Agent or Principal in Contracting with Third Parties.....	18
22.	Safety	18
23.	Statutory Requirements	18
24.	Risk to Goods and Rolling Stock	20
25.	Limitation of Liability, Indemnity.....	21
26.	Optional Insurance & Claims	21
27.	Claims Against the Servants & Employees of Transnet Freight Rail by the.....	22
28.	Account number	22
29.	Credit facilities and payment	22
30.	Unclaimed Goods	23
31.	Certificate	24
32.	Breach	24
33.	Cession and delegation.....	24
34.	Force Majeure	24
35.	Notices and Communications	25
36.	Miscellaneous	26
37.	Laws and Jurisdiction	26
38.	Dispute Resolution	26
39.	Confidentiality	27
40.	Termination.....	27
41.	Execution.....	27
42.	Claim for Costs arising out of tippler unavailability.....	28
43.	Warranties and Covenants.....	28

Transnet Freight Rail Conditions of Carriage

1. Information

1.1 If, prior to the Transport of any traffic, the Customer requires any clarification on any of the terms of these Standard Conditions of Carriage or more information, please telephone the contact person named in or to be set out in a Schedule. The must note that any such clarification is for information only.

2. Definitions and interpretation

2.1 Definitions

In these Transnet Freight Rail Standard Conditions of Carriage (including the recitals if any), unless the contrary intention appears, the following words and expressions shall have the following meanings when such words and expressions are used with a capitalised first letter and cognate expressions shall have corresponding meanings, except where the context otherwise requires:

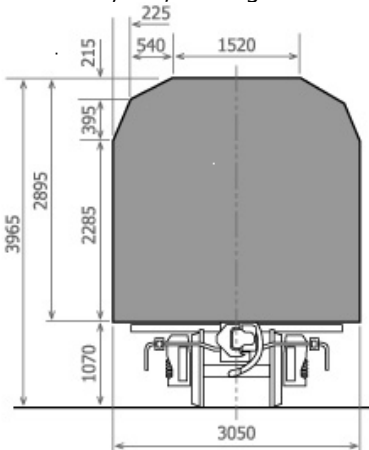
2.1.1 "Additional Costs" -means those costs arising additional to the railage price and charges for Transport payable by the Customer some of which are included in a Schedule and if not, as reasonably determined by Transnet Freight Rail;

2.1.2 "Agreement" -means a written Rail Transport Agreement document.

2.1.3 "Available Capacity" -means the availability of Transnet Freight Rail's locomotives, rail wagons of the type required by the Customer as set out or to be set out in a Schedule and Transnet Freight Rail's associated resources which, without limitation, includes Transnet Freight Rail's personnel for Transport of the Goods;

2.1.4 "Abnormal freight container" - means a freight container or tank container which has dimensions exceeding the standard size determined by the International Standards Organisation, or in the case of an open top container, where the load protrudes above the freight container, whether of standard size or not.

2.1.5 "Abnormal loads" - in relation to those carried by rail, means goods having outside dimensions which exceed those on the load profile diagram below, and/or weigh more than eighteen metric tons per package or unit. In relation to goods to be carried by road, loads are abnormal if they exceed the dimensions of a standard freight container and/or the axle mass load limit is exceeded, and/or the gross mass exceeds 24 000 kg.



2.1.6 "Best Industry Practice" - means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced supplier or professional seeking in good faith to comply with its contractual obligations, complying with all guideline documents, codes of practice and Laws and engaged in the same type of undertaking or industry and under the same or similar circumstances and conditions as those envisaged by these Transnet Freight Rail Standard Conditions of Carriage in accordance with Industry best practices;

2.1.7 "Business Day" - means any Day other than a Saturday, Sunday or any day that is a public holiday in terms of the Public Holiday Act 36 of 1994;

2.1.8 "Business" - means all and any business undertaken, including any advice, information or service provided, whether gratuitously or not, by Transnet Freight Rail.

2.1.9 "Change in Control" means any change whatsoever in Control whether effected directly or indirectly;

2.1.10 "Claim" - means any claim, demand, proceedings or liability;

2.1.10 "Combined Consignment Note & Wagon Label/ Release Pro Forma" - means the written notification from the Customer to Transnet Freight Rail in the form stipulated by Transnet Freight Rail containing;

2.1.10.1 the wagon number of each rail wagon identifying the rail wagon;

2.1.10.2 the total number of rail wagons when loaded;

2.1.10.3 the mass of each loaded rail wagon;

2.1.10.4 the Contract Number and the Consignment Number allocated to the Customer confirmation that the rail wagon has been loaded or off-loaded by the Customer, is ready for collection by Transnet Freight Rail and all requirements in terms of Best Industry Practice and of any Relevant Authority with which the Customer is obliged to comply whether in terms of these Transnet Freight Rail Standard Conditions of Carriage or otherwise have been complied with;

2.1.11 "Consignment Number" - means the system generated number allocated to a particular consignment for Transport that has been requested by the Customer and approved and confirmed by Transnet Freight Rail;

"Contract Number" - means the number that is issued by Transnet Freight Rail as being the number for the Agreement which is set out or to be set out in a Schedule;

2.1.13

"Control" means in relation to any entity, the ability directly or indirectly to direct or cause the direction of the votes attaching to the majority of its issued shares or interests carrying voting rights, or to appoint or remove or cause the appointment or removal of any directors (or equivalent officials) or those of its

Transnet Freight Rail Conditions of Carriage

directors (or equivalent officials) holding the majority of the voting rights on its board of directors (or equivalent body); and/or control of the whole or any part of the Equity and/or the member's loans.

"Customer" - means a party contracting with Transnet Freight Rail for the provision of rail and related services;

2.1.14 "Consignment" - means goods conveyed under a single Transport document in rail wagons in relation to such wagonloads, or goods conveyed in one freight container in relation to containerised goods.

2.1.15 "Consignee" - means the person or company nominated by the Consignor to take delivery of the goods, and in the absence of any such nomination means the person or company representing itself/himself, and reasonably accepted by Transnet Freight Rail, to be duly authorised to accept delivery on behalf of the Consignee.

2.1.16 "Consignor" - means a Customer or any person/company duly authorised by the Customer requesting Transnet Freight Rail to convey the consignment, including his agent, and whose signature appears on the consignment documents issued by Transnet Freight Rail and completed by the Consignor for a particular consignment. In Electronic Data Interchange transactions, and other instances where normal Transport documents are not issued, the Consignor is the person who requests Transnet Freight Rail to convey goods.

2.1.17 "Customer Siding Arrival Wagon Checklist" - means the check list of items which will be inspected to determine whether there is any damage to rolling stock upon the arrival of the wagons in the exchange yard or Customer siding and before any loading or offloading can take place.;

2.1.18 "Customer Siding Departure Wagon Checklist" - means the check list of items which will be inspected to determine whether there is any damage to rolling stock upon the departure of the wagons in the exchange yard or Customer siding and after any loading or offloading has taken place.;

2.1.19 "Dangerous Goods" - means Goods, including those Goods defined as Hazardous Substances, which have the potential to cause harm to persons, property or the environment or the potential to cause pollution or degradation of the environment as contemplated in the National Environmental Management Act 107 of 1998 ("NEMA") including such goods defined as such by the South African Bureau of Standards 0228 and the International Maritime Dangerous Goods ("*IMDG*") Code.;

2.1.20 "Day" - means a calendar day;

2.1.21 "Demurrage" refers to Wagon Delay Charges which Transnet Freight Rail is entitled to charge in terms of clauses 10.4, 11.3, 15.4 and 16.8 of the Terms as well as Clause 15 of the Schedule.;

2.1.22 "Equity" means the entire issued share capital (including share premiums) of the Customer;

2.1.23 "Explosives" - means the materials listed in the Explosives Act No 26 of 1956, including any amendment thereto or replacing legislation, and South African Bureau of Standards 0228 and the International Maritime Dangerous Goods ("*IMDG*") Code.

2.1.24 "Free Time" - means the time period, set out in or to be set out in a Schedule, calculated from the time when either:

2.1.24.1 the rail wagon is Placed at the Point of Placing; or

2.1.24.2 from the time when the rail wagon is in a position to be Placed but the Point of Placing cannot accommodate the rail wagon,

2.1.24.3 and is calculated without taking into account Non-Working Days unless provided otherwise in or to be set out in a Schedule;

2.1.25 "Electronic Data Interchange Transactions" – means the transfer of data from one computer system to another;

2.1.26 "Force Majeure" - means the occurrence after the Transport Agreement (Schedule) comes into effect of:

2.1.26.1 an event the occurrence of which could not have been reasonably foreseen by the Parties at the time the Transport Agreement (Schedule) came into effect; and

2.1.26.2 includes, but is not limited to:

(a) war, whether declared or not, revolution, riot, insurrection, civil commotion, invasion, armed conflict, a hostile act of a foreign enemy, act of terrorism, sabotage, radiation or chemical contamination, ionising radiation, Act of God, explosions, lightning, floods, storm, fire, earthquake, vis major or casus fortuitous, plague or other serious epidemic;

(b) a national, provincial or regional shortage of diesel and/or electricity or any delay, interruption or failure in the supply thereof which is not attributable to the party seeking to rely on such shortage, interruption or failure in supply;

(c) governmental restraint, Act of Parliament or other legislation, regulation, directive by any sphere of government or by any court, authority or regulatory body having jurisdiction over 1 or more of the parties which has the force of and/or which precludes a party from exercising any of its rights and/or performing any of its duties, functions or obligations in terms of this Agreement.

(d) any strike, lockout or industrial action by workers or employees of any party, provided that the party seeking to rely upon such an event has taken steps to mitigate the effect of such strike, lockout or industrial action and

2.1.26.3 which causes either of the Parties to be unable to comply with all or a material part of its obligations or to exercise all or a material part of its rights under this Agreement.

2.1.26 "Freight Container" - means any article of Transport equipment constructed in accordance with the specifications of the International Standards Organisation designed for multimodal Transport, and the term includes an abnormal freight container.

2.1.27 "Global Train Plan" - means Transnet Freight Rail's planned Transport Annually, Quarterly, Monthly and Weekly;

2.1.27 "Goods" - means any article, commodity, product or raw material tendered to or coming under the control of Transnet Freight Rail on behalf of any consignor or consignee, which Transnet Freight Rail has agreed to Transport and shall include any container, transportable tank, bolster, pallet, package, tarpaulin or other covering not supplied by or on behalf of Transnet Freight Rail as well as Dangerous Goods, explosives and hazardous substances.

2.1.28 "Hand Over Point" - means an agreed place at a siding, station, exchange yard or an area in the Port or a road address in the case of containers on a road vehicle trailer where the Customer will Place empty or loaded wagons/containers for collection by Transnet Freight Rail;

2.1.29 "Hazardous Substance" – means any Goods that have been designated as a Group I, II, III or IV hazardous substance or a grouped hazardous substance by the relevant minister in terms of the Hazardous Substances Act 15 of 1973;

Transnet Freight Rail Conditions of Carriage

2.1.30 "Law" means the common law; all applicable statutes, statutory instruments, proclamations, by-laws, regulations, orders, rules and other subsidiary legislation, treaties, directives and codes of practice having the force of law in the Republic and all localities within which Transnet Freight Rail operates; all other judicial or other decisions, determinations, notifications, rulings, findings and all similar directives that are binding on or applicable to Transnet Freight Rail; and any levies, charges, surcharges, imposts, taxes, fees and the like introduced, levied or imposed by any competent authority on Transnet Freight Rail and which are wholly or partly attributable and/or which relate directly or indirectly to Transnet Freight Rail's operations whether or not in connection with general freight;

2.1.31 "Loading Profile" - means the specifications and procedures set out or to be set out in a Schedule setting out the manner and the parameters within which the Goods must be loaded and off-loaded and includes the loaded profile of the Goods;

2.1.32 "Loss" - means any loss, damage, costs, charges, damages or expenses (including legal and other professional charges and expenses) but excludes all consequential and/or indirect damages unless stated otherwise in these Transnet Freight Rail Standard Conditions of Carriage;

2.1.33 "Mass Measuring Fee" - means a fee set out or to be set out in a Schedule to the Transnet Freight Rail Standard Conditions of Carriage;

2.1.34 "Month" - means a calendar month and "monthly" shall have a corresponding meaning;

2.1.35 "Non-Working Days" - means any Day or Days that the Customer and Transnet Freight Rail have agreed on as a non-working day (a day on which the Customer will not require Transnet Freight Rail's services) set out or to be set out in a Schedule.

2.1.36 "Parties" - means the Customer and Transnet Freight Rail and "Party" shall mean either of them as the context requires;

2.1.37 "Perishable goods" - means any goods which, by their nature, rot, wither or deteriorate over a period of time.

2.1.38 "Placed" - means that rail wagons or road vehicle trailers with containers, empty or loaded, have been placed at the Point of Placing for loading, or off-loading and the locomotive/road vehicle has been uncoupled and "Place" shall have a corresponding meaning;

2.1.39 "Point of Placing" - means an agreed place at a siding, station, exchange yard or an area in the Port or a road address in the case of containers on a road vehicle trailer where Transnet Freight Rail will Place empty or loaded wagons/containers for the Customer to load or off-load rail wagons/containers;

2.1.40 "Port" - means the land that is specifically designated as such at a South African Harbour;

2.1.41 "Prime Rate" - means the nominal, compounded monthly in arrear prime overdraft rate of interest from time to time publicly quoted as such by Standard Bank of South Africa Limited calculated on a 365 Day factor, irrespective of whether or not the year is a leap year. If such rate quoted by the Standard Bank of South Africa Limited is at any time exceeded by the inter-bank re-purchase rate as quoted by the South African Reserve Bank ("**the Repo Rate**") then the Prime Rate shall for so long as it is at any time exceeded by the Repo Rate, be deemed to be equal to the Repo Rate. A certificate issued under the hand of any manager (whose authority and appointment it shall not be necessary to prove) of the Standard Bank of South Africa Limited as to the Prime Rate or the Repo Rate from time to time shall, in the absence of manifest error, be final and binding on the Parties;

2.1.42 "Private Siding" - means the Customer's private siding, which is a railway line in private use and/or ownership which is connected to Transnet Freight Rail's railway line by means of a Turnout and includes, without limitation, any shunting yard, marshalling yard, siding extension or any section of a railway line which, either directly or indirectly, provides access to Transnet Freight Rail's railway lines and any premises owned / leased / or in respect of which the Customer has a right of use.

2.1.43 "Quarter" - means a period of 3 consecutive calendar months and "Quarterly" shall have a corresponding meaning;

2.1.44 "Rand" or "R" - means the lawful currency of the Republic of South Africa from time to time;

2.1.45 "Relevant Authority" - means the Republic, any ministry, department, agency, authority or body of the Republic or any other public authority, body, entity or person having jurisdiction under the Laws of the Republic over any matter arising from or in any way connected with the Transport of the Goods;

2.1.46 "Republic" - means the Republic of South Africa;

2.1.47 "Rolling Forecast" - means the annual, Quarterly, Monthly or weekly forecast of Tonnes required to be Transported by the Customer and which is updated by the Customer Quarterly, Monthly or weekly as the case may be;

2.1.48 "Safety Permit" - means a permit required in terms of section 22 of the National Railway Safety Regulator Act as issued by the chief executive officer of the Regulator in terms of sections 23 and 24 of the Act;

2.1.49 "SARA Rate" - means the monthly exchange rate of the Southern African Railways Association Rate (SARA Rate) applied by all SARA members when a Customer has been quoted rates in foreign currency, which needs to be converted to Rand and vice versa for invoicing purposes;

2.1.50 "Schedule" - means any document which Transnet Freight Rail has compiled that contains rates, prices, charges, levies, Additional costs, Service Conditions, or any other information related to this document;

2.1.51 "Service Conditions" - means the special instructions available from Transnet Freight Rail and/or any relevant Competent Authority requirement as stipulated by applicable legislation upon request relating to loading methods for general, dangerous and/or hazardous goods, and the packaging, acceptance, Transport and delivery of those goods, when conveyed in freight containers, rail wagons and road vehicles.

2.1.52 "Terms" or "Transnet Freight Rail Standard Conditions of Carriage" - means this document, and any Schedules, annexures and Service Level Agreements that are intended to govern the relationship between Transnet Freight Rail and the Customer with regard to the transport of Goods by rail;

2.1.53 "Time of Placing" - means the time at which the wagons have been Placed;

2.1.54 "Ton" or "Tonnes" - means a metric ton or tonnes;

2.1.55 "Transport" - means the conveyance of Goods by rail from the Point of Placing to the Hand over Point and vice versa;

2.1.56 "Turnout" - means the place or places where the Private Siding and any siding extension branches off from Transnet Freight Rail's railway line.

2.1.57 "Transnet Freight Rail" or "TFR" - means a division of the state owned company **Transnet SOC Ltd [1990/000900/30]** providing rail transport services.

Transnet Freight Rail Conditions of Carriage

2.1.58 "Transport Documents" - means a combined consignment note and wagon label, freight transit order, driver's instruction for road vehicles, container terminal order, container list, packing declaration for Dangerous Goods, Transport emergency cards ("*tremcards*") and the communication sent to Transnet Freight Rail in relation to Electronic Data Interchange transactions.

2.1.59 "Value Added Tax" or "VAT" - means Value Added Tax in terms of the Value Added Tax Act 89 of 1999. All amounts and prices are exclusive of such Value Added Tax;

2.1.60 "Verified Mass Measuring Device" - means a mass measuring device that has been verified and approved by an SANS certificate Officer or Inspector in accordance with the provisions of the Trade Metrology Act 42 of 1994 ("The Trade Metrology Act");

2.1.61 "Writing" - means any handwritten, typewritten, or printed communication, including any facsimile transmission or electronic mail (email); and Written shall have a corresponding meaning; and

2.1.62 "Wagon/Containers Delay Charges" - means the charges set out or to be set out in a Schedule which will be raised by Transnet Freight Rail and calculated from the expiry of the Free Time until the time of collection of the rail wagons/containers by Transnet Freight Rail, or the time that Transnet Freight Rail is notified by the Customer that the rail wagons/containers are ready to be collected, whichever is the earlier, or where Wagons are delayed or detained in terms of **clause 18.11.2**.

2.2 Interpretation

2.2.1 Unless the contrary intention appears, words importing:

2.2.1.1 the singular shall also include the plural and vice versa;

2.2.1.2 one gender shall also include the others; and

2.2.1.3 natural persons shall include artificial persons whether incorporated or not.

2.2.2 Headings of the clauses of these Transnet Freight Rail Standard Conditions of Carriage are for convenience only and shall not affect the interpretation or construction of these Transnet Freight Rail Standard Conditions of Carriage nor be deemed to be a part of these Transnet Freight Rail Standard Conditions of Carriage.

2.2.3 Except where the context requires otherwise, references to clauses, sub-clauses, sections, paragraphs, Schedules and annexures are references to clauses, sections, paragraphs, Schedules and annexures of these Transnet Freight Rail Standard Conditions of Carriage.

2.2.4 Reference to any person shall include the legal successors and permitted assigns of such person irrespective of whether such succession or assignment occurred before or after the coming into effect of these Transnet Freight Rail Standard Conditions of Carriage.

2.2.5 Reference in these Transnet Freight Rail Standard Conditions of Carriage to a party in respect of any obligations or liabilities of that party, shall, unless expressly otherwise provided, include agents, employees and authorised representatives of that party and its permitted subcontractors.

2.2.6 References to agreements, documents or other instruments include (subject to any relevant approvals) a reference to that agreement, document or instrument as amended, supplemented, substituted, ceded or assigned.

2.2.7 References to any statute, statutory instrument or accounting standard or any of their provisions is to be construed as a reference to that statute, statutory instrument or accounting standard or such provision as the same may have been or may from time to time after these Transnet Freight Rail Standard Conditions of Carriage comes into effect be amended, replaced or re-enacted, unless specified otherwise.

2.2.8 References to any amount of money to be paid by any party shall be deemed to be exclusive of VAT and VAT is payable at the applicable rate in respect of the goods or services to which the payment relates unless expressly stated to the contrary in these Transnet Freight Rail Standard Conditions of Carriage. The party obliged to make the payment shall add the amount of any applicable VAT to the payment.

2.2.9 Terms such as "including", "includes" and "included" when following a general statement or terms mean "including but not limited to".

2.2.10 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the agreement.

2.2.11 Expressions defined in these Terms shall bear the same meanings in Schedules or annexures to these Terms where such Schedules and annexures do not contain their own definitions.

2.2.12 Where any term is defined within the context of any particular clause in these Transnet Freight Rail Standard Conditions of Carriage the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of these Transnet Freight Rail Standard Conditions of Carriage, notwithstanding that that term has not been defined in this interpretation clause.

2.2.13 Terms, acronyms abbreviations and phrases not defined in these Transnet Freight Rail Standard Conditions of Carriage but known or used in the railway industry shall be given the meaning given to them in that industry.

2.2.14 When any number of Days is prescribed in these Transnet Freight Rail Standard Conditions of Carriage the same shall be calculated by excluding the first Day and including the last Day, unless the last Day is not a Business Day. Where the last Day is not a Business Day, the time shall be calculated by excluding the first Day, excluding the Day that is not a Business Day and including the next Business Day.

2.3 English Language

All notices, correspondence, documentation or communications of whatsoever nature, drawings, reports, certificates and specifications which are to be given, submitted or prepared under or in connection with these Transnet Freight Rail Standard Conditions of Carriage shall be in the English language.

2.4 Applicability of these Standard Conditions of Carriage & Other Provisions

2.4.1 Business is undertaken by Transnet Freight Rail subject to these Standard Conditions of Carriage which shall be deemed to be incorporated in and be a part of any agreement between Transnet Freight Rail and the Consignee or Consignor, particularly

Transnet Freight Rail Conditions of Carriage

where there is a sale of goods agreement between Consignor and Consignee which expressly or impliedly contemplates that the goods will be carried by Transnet Freight Rail. In the event that the Customer has signed an Agreement with Transnet Freight Rail then, in the event of an irreconcilable conflict between any of the terms of the Agreement and these Standard Conditions of Carriage then the terms of the Agreements shall prevail.

2.4.2 Transnet Freight Rail shall not be deemed a common carrier nor a public carrier and deals with goods only on the basis set out in these Standard Conditions of Carriage.

2.4.3 No agent or employee of Transnet Freight Rail, other than a director or an individual authorised thereto by the board of directors, has Transnet Freight Rail's authority to alter or vary Standard Conditions of Carriage nor shall any act or omission of Transnet Freight Rail be construed as a variation or waiver of any of these Standard Conditions of Carriage.

2.4.4 The Consignor warrants that it has the requisite authority of the Consignee and any other party who may have an interest in the goods to engage the services of Transnet Freight Rail and to contract on the basis of these Standard Conditions of Carriage.

2.4.5 The person representing the Consignor contracting with Transnet Freight Rail warrants that he is duly authorised to do so.

2.4.6 If any legislation is compulsorily applicable to any business undertaken by Transnet Freight Rail then these Standard Conditions of Carriage shall, in relation to that business, be read as subject to such legislation which shall be incorporated herein and if any part of these Standard Conditions of Carriage be repugnant to such legislation such part shall, in relation to that business, be void to that extent only and no further.

2.4.7 If, and to the extent that, Transnet Freight Rail in fulfilling its obligations to a particular person is, or becomes, bound by contractual or other rights and obligations to rail service providers in countries other than South Africa, then such rights or obligations shall be incorporated in these Standard Conditions of Carriage, whether or not inconsistent with these Standard Conditions of Carriage and/or any other terms and conditions agreed to by Transnet Freight Rail.

2.4.8 Each and every provision contained in these Standard Conditions of Carriage and any other terms and/or conditions agreed between Transnet Freight Rail and any other person shall be capable of independent enforcement, thus enabling any Court or other competent tribunal to enforce the remaining provision if it adjudges one or more provisions to be wholly or partially invalid.

2.4.9 These Standard Conditions of Carriage shall also govern any further or additional work or service which may not initially have been contemplated but is nevertheless performed by Transnet Freight Rail.

Transnet Freight Rail will endeavour to provide the transportation and adhere to the Global Train Plan of which the Customer has been informed by way of confirmation of Next Week Business. However, this will be subject to Available Capacity and is not a guarantee that the Transport will be provided.

2.4.10 Transnet Freight Rail is entitled to amend and supplement these Standard Conditions of Carriage from time-to-time, but no changes will be retrospective.

2.5. Charges and Quotations

2.5.1 Transnet Freight Rail shall be entitled to charge for all services rendered and goods supplied by it.

2.5.2 Where Transnet Freight Rail has made a specific quotation for its charges based on the incorrect information furnished to it by the Consignor about the characteristics, dimensions and weight of those goods then Transnet Freight Rail shall be entitled to alter its price to reflect the true position, and to levy extra charges. In particular Transnet Freight Rail may charge up to double the applicable rate where there is an under declaration of weight by more than two (2) tons because such a declaration is dangerous and can lead to derailment.

2.5.3 All reference to tonnage in a quotation shall be deemed to be metric tonnes unless otherwise expressly stated.

2.5.4 A percentage of the prices (the "levy component" of the price) in respect of traffic on Transnet Freight Rail lines will furthermore be subjected to the raising of a rail charge levy based on the diesel fuel price increase/decreases, electricity price increases as well as levies related to foreign currency exchange exposure and steel price increases in respect of maintenance to and capital investment in Transnet Freight Rail' assets which may occur during the period 1 April to 31 March of each year as well as to price adjustments related to statutory enactments. The rail charge levy determination shall be as reflected on the website www.Transnetfreightrail.co.za menu: Freight Business and submenu Rail Charge Levy. The levy component of the price shall be subject to an annual review.

2.5.5 All charges and quotations are subject to the provisions of clause 2.4.9.

2.6 Notices, Consents, Approvals, Certificates and Determinations

2.6.1 Wherever in these Transnet Freight Rail Standard Conditions of Carriage provision is made for the giving or issuing of any notice, consent, permission, approval, certificate or determination by any person, then, unless otherwise specified, such notice, consent, approval, certificate or determination shall be in Writing and the words "notify", "certify", "consent", "permit", "approve" or "determine" shall be construed accordingly.

2.6.2 Save where these Transnet Freight Rail Standard Conditions of Carriage expressly provides otherwise any such notice, consent, permission, approval, certificate or determination shall not be unreasonably withheld or delayed. Save where these Transnet Freight Rail Standard Conditions of Carriage expressly provides otherwise Transnet Freight Rail shall exercise its rights to give, grant or refuse any notice, consent, permission, approval, certificate or determination fairly and reasonably.

2.7 Acceptance

2.7.1 Should any of the terms of these Transnet Rail Freight Standard Conditions of Carriage not be acceptable to the Customer, the Customer may not commence using Transnet Freight Rail's Transport services, and must advise the contact person named or to be named in a Schedule in Writing to such effect.

2.7.3 Under no circumstances will Transnet Freight Rail entertain any Claim to adjust railage prices or charges (or Additional Costs where applicable and determined) or to deviate from these Terms for any Goods railed by the Customer.

2.7.4 Should the Customer commence railing Goods without signing the Agreement, and/or if Goods are Transported at any time when no written agreement has been signed between the Parties (including an agreement on railage prices, charges and

Transnet Freight Rail Conditions of Carriage

Additional Costs where applicable and determined), for whatever reason, the Goods will be Transported at Transnet Freight Rail's railage prices, charges (and Additional Costs where applicable and determined) calculated by Transnet Freight Rail for Transport of the relevant Goods and the Transport will be subject to these Terms and which shall be conclusively deemed to have been accepted by the Customer and shall apply from the date of Transport of any Goods for the Customer. Under no circumstances will Transnet Freight Rail entertain any Claim to adjust railage prices, charges (and Additional Costs where applicable and determined) or to deviate from these Terms. The terms of clauses 28 and 29 of these Terms will apply in respect of payment.

2.8 Amendments

2.8.1 No addition to, variation of or agreed cancellation of these Transnet Freight Rail Standard Conditions of Carriage including any addition to, variation of or agreed cancellation of this clause shall be of any force or effect unless in Writing and signed by the duly authorised representative of each of the Parties named in a Schedule and then such addition, variation or agreed cancellation shall be effective only in the specific instance and only for the purpose and to the extent for which made or given.

2.9 Delivery

2.9.1 When the Customer, the consignor or consignee receives Goods at the Point of Placing, the Customer, the consignor or consignee undertakes to supply Transnet Freight Rail with proof of delivery from the Customer or the consignee in one of the following formats:

2.9.1.1 Rail wagon labels signed on the reverse side; or

2.9.1.2 A letter from the Customer, consignor or consignee reflecting details of all rail wagons with the Consignment Number allocated by Transnet Freight Rail to the consignor; or

2.9.1.3 other documentary proof acceptable to Transnet Freight Rail, as confirmation of delivery of the Goods

2.9.2 Should the Customer or consignor fail to provide the proof of delivery within seven (7) Days, the provisions of clause 2.9.3 below shall apply.

2.9.3 If delivery cannot be established in terms of clause 2.9.2 due to a failure or refusal on the part of the Customer/consignor or that of the consignee to supply the proof of delivery, delivery shall be deemed to have been effected at the Point of Placing at the time of Placing at which time risk in the Goods shall pass to the consignor or the consignee as the case may be.

2.9.4 If the Customer is the consignor, Transnet Freight Rail will, on request, make reasonable efforts to supply the Customer/consignor with proof of delivery to the consignee in one of the formats stipulated in clause 2.9.1 above but if Transnet Freight Rail is not able to do so Transnet Freight Rail will not be liable for any Claim the Customer/consignor/consignee may have or Loss the Customer/consignor/consignee may suffer as a result and the provisions of clause 2.9.2 shall apply.

2.9.5 Transnet Freight Rail will employ reasonable measures to collect and deliver rail wagons at the times and on the dates specified in or to be specified in a Schedule from and to the Hand over Point and the Point of Placing but Transnet Freight Rail is not responsible for any Claim the Customer/consignor/consignee may have or Loss that the Customer/consignor/consignee may suffer as a result of any failure on the part of Transnet Freight Rail to do so save to the extent, if any, set out or to be set out to the contrary in a Schedule. The times and dates for delivery will depend on the Customer's/Consignor's choice of the relevant Transnet Freight Rail service offering from Transnet Freight Rail's available service offerings set out in a Schedule.

2.9.6 If the Customer/consignor/consignee fails or refuses to take delivery of the Goods and/or comply with their obligations in terms of clause 11 within the Free Time, Transnet Freight Rail shall be entitled, and without prejudice to Transnet Freight Rail's rights in terms of clause 15.4, with notice to the Customer/consignor/consignee, if the rail wagons have not been off-loaded after the Free Time for a period in excess of the time set out or to be set out in a Schedule, to dispose of the Goods by auction and to apply the proceeds to satisfy the railage price, charges and any Additional Costs.

3. Diversion of Wagons En Route

3.1 If the Customer/consignor requests Transnet Freight Rail to divert loaded wagons en route to destination, Transnet Freight Rail will endeavor (but without obligation) to execute the request subject to the following:

3.1.1 The request must be in Writing and will be deemed conclusively to include;

3.1.1.1 an undertaking by the Customer/Consignor indemnifying Transnet Freight Rail against any Loss to, or Claim from the original Consignee or any other third party resulting from such diversion by completing the relevant "Declaration of Indemnity" form; and

3.1.1.2 an undertaking to pay the Additional Costs for railage prices, diversion and adjustments submitted to the Customer/consignor in Writing;

3.1.2 the railage prices for the Transport of the Goods diverted, from the Loading Point to the final Point of Placing will be calculated by Transnet Freight Rail based on the actual distance Transported, including any part of the Transport performed en route to the original Point of Placing before the diversion;

3.1.3 Transnet Freight Rail not having entered into an agreement with any of Transnet Freight Rail's other clients which would render the diversion of the Goods impossible or expose Transnet Freight Rail to any Claims;

3.1.4 the Customer not being in breach of any of the terms of these Transnet Freight Rail Standard Conditions of Carriage.

3.2 Transnet Freight Rail shall not be responsible for any malfunction, degradation, damage or passing of any "sell by date" of any Goods caused by or resulting directly or indirectly from any diversion or attempted diversion of any Goods.

3.3 If the Goods have reached their original Point of Placing and been Placed for off-loading such Goods will be regarded as having been delivered and any request for movement to another Point of Placing will be regarded as a new order.

3.4 If the Customer or consignor requests Transnet Freight Rail to divert the consignment (no diversion of freight containers will be entertained) destined for export to other African countries Transnet Freight Rail will endeavour to do so provided the rail wagon is still on Transnet Freight Rail's lines. In such an event and if Transnet Freight Rail is successful in stopping the rail wagon, the Customer/consignor will be responsible to lodge a voucher of correction with the Department of Customs & Excise, supplying Transnet Freight Rail with a copy of such document, duly processed by the Department of Customs and Excise together

Transnet Freight Rail Conditions of Carriage

with all other documentation required in terms of clause 7.2 and 7.3 before Transnet Freight Rail commences to move the rail wagon to the new Point of Placing.

3.5 Notwithstanding the terms of this clause 3 above, Transnet Freight Rail will not intercept and/or divert import traffic destined for the Customer/consignor as the consignee.

4. Availability of Capacity

4.1 The Transport of Goods will be provided to the Customer in terms of the categories set out in or to be set out in the Schedule relating to Mega Rail, Flexi Rail, Access Rail and Dual Route Rail as determined by Transnet Freight Rail based on the Customer requirements for Transport.

4.2 The Customer must provide a Rolling Forecast of his Transport requirements on the times and dates set out in or to be set out in a Schedule.

4.3 Transnet Freight Rail will on receipt of the weekly Rolling Forecasts (in terms of the ordering processes set out in or to be set out in a Schedule) incorporate the Customer's requirements into the design of the Global Train Plan for the next week and the Customer will be advised as soon as practical whether Transnet Freight Rail will be able (but without obligation unless stated otherwise) to meet the requirements of the Customer's forecasts subject to the category of Transport.

4.4 Subject to clause 4.1, Transnet Freight Rail will endeavor to adhere to the Global Train Plan subject to the Available Capacity.

4.4.1 Transnet Freight Rail shall endeavor to supply wagons that are suitable for the Transport of the Goods being offered for Transport by the Customer in terms of this Agreement.

4.5 Mega Rail

4.5.1 Any prices offered to the Customer, may not be used by the Customer to undermine or destabilise Transnet Freight Rail's business with Transnet Freight Rail's other customers.

4.5.2 In terms of this category of Transport the Customer guarantees to offer for Transport the tonnes of Goods reflected in the Customer Forecast and commitment as stated in a Schedule to be Transported for the duration of the Agreement on a 'take or pay' basis, that is to say the Customer shall be liable to pay the railage prices, charges and Additional Costs irrespective of whether the Customer Transports Goods or not, and subject to the provisions of clause 4.5.5 and 4.5.6.

4.5.3 Transnet Freight Rail will make available sufficient rail wagons to Transport the volume of Goods in clause 4.5.2 for the relevant Quarter. The Available Capacity is subject to the Rolling Forecast to be provided by the Customer annually, Quarterly, Monthly and weekly. The rail wagons will be made available to the Customer at the dates and times agreed for Transport on the routes as set out or to be set out in a Schedule.

4.5.4 The provision of Transport in terms of Mega Rail will be on a fixed train plan and will not be changed unless advance notice is received by Transnet Freight Rail at least 1 Month prior to commencement of the Quarter and Transnet Freight Rail has agreed to such change. Transportation will be on fixed Days and times set out or to be set out in a Schedule hereto.

4.5.5 The Customer acknowledges and accepts that notwithstanding the ordering process, Transport under this category is on a "take or pay" basis with the locomotives and rail wagons being committed well in advance.

4.5.6 The Customer shall on a Tuesday preceding a week on which the rail wagons are required, notify Transnet Freight Rail of the Customer's weekly request for Transport.

4.5.7 On the Friday preceding a week during which the rail wagons are required, Transnet Freight Rail will confirm its intention to supply the rail wagons for the coming week by telefax, e-mail or other media in Writing detailing the Consignment Number, dates and times for collection and delivery of the Transport to be provided to the Customer for the coming week.

4.5.8 A failure to place an order as set out in clause 4.5.6 to clause 4.5.7 will result in the Transport not being undertaken but the Customer will still be liable for eighty (80) percent of the railage price of the Transport under the 'take or pay' principle.

4.5.9 If Transnet Freight Rail fails to supply the rail wagons as per the Customer's request the following shall take place:

4.5.9.1 Transnet Freight Rail shall use best endeavours to take steps to eliminate within 2 months any backlog in the Transport of Goods that has arisen due to Transnet Freight Rail's failure to supply the rail wagons as per the Customer's order.

4.5.10 Transnet Freight Rail shall be entitled to use for other purposes any rail wagons, which the Customer has failed to use.

4.6 Flexi Rail

4.6.1 Any prices offered to the Customer, shall not be used by the Customer to undermine or destabilise Transnet Freight Rail's business.

4.6.2 Transnet Freight Rail shall endeavour (but without obligation) based on Available Capacity from time to time to provide Transport to the Customer.

4.6.3 The Customer must notify Transnet Freight Rail of the Customer's Rolling Forecasts for Transport. The weekly Forecast shall be provided on the Tuesday of the preceding week.

4.6.4 The Rolling Forecasts are for Transnet Freight Rail's planning purposes only, Transnet Freight Rail do not guarantee Available Capacity for Transport and shall not be bound to collect or deliver on any particular Day. Time is not of the essence.

4.6.5 Transnet Freight Rail will endeavour to make available to the Customer the number of rail wagons required according to the Customer's request.

4.6.6 The Customer must comply with the ordering procedure set out in a Schedule to confirm the Transport the Customer requires.

4.7 Access Rail

4.7.1 Any prices offered to the Customer, shall not be used by the Customer to undermine or destabilise Transnet Freight Rail's business.

4.7.2 Transnet Freight Rail shall endeavour (without obligation) as and when Transnet Freight Rail has Available Capacity to provide rail wagons on an ad hoc basis to the Customer for Transport of the Goods.

4.7.3 The Customer must notify Transnet Freight Rail of the Customer's Rolling Forecasts for Transport. The weekly Forecast shall be provided on the Tuesday of the preceding week.

4.7.4 The Rolling Forecasts are for Transnet Freight Rail's planning purposes only, Transnet Freight Rail does not guarantee availability of Transport and shall not be bound to collect or deliver on any particular Day.

Transnet Freight Rail Conditions of Carriage

4.7.5 Transnet Freight Rail will endeavour to make available to the Customer the number of rail wagons required according to the Customer's request.

4.7.6 The Customer must comply with the ordering procedure set out in a schedule to confirm the Transport the Customer requires.

4.8 Dual Route

4.8.1 The supply of rail wagons is dependant on the loading by another party, or the Customer's consignee or a new consignor (collectively "**the New Consignor**") as the case may be, of the Customer's rail wagons to be Placed at the Customer's Point of Placing.

4.8.2 The Customer and the New Consignor must communicate the Customer's Rolling Forecasts both to each other and to Transnet Freight Rail and ensure that the Customer and the New Consignor shall be able to meet the commitment in clause 4.8.

4.8.3 The Customer's weekly Forecasts must be provided on the Tuesday of the preceding week. The Rolling Forecasts are for Transnet Freight Rail's planning purposes only, Transnet Freight Rail does not guarantee availability of Transport and shall not be bound to collect or deliver on any particular Day. Time is not of the essence. The Customer and the New Consignor must comply with the ordering procedure as set out in a Schedule.

4.8.4 For the purposes of this category of Transport it shall be the responsibility of the Customer and the New Consignor to ensure that the rail wagons are Placed at the Point of Placing for the use of the other party, either the Customer or the New Consignor as the case may be, will be made available at least by the end of Free Time.

4.8.5 The Customer and the New Consignor shall individually and collectively comply with, and agree that they are jointly and severally bound by the Agreement, both in respect of their relationship with Transnet Freight Rail and with each other, where applicable.

Notwithstanding the provisions of clause 24 and 25 of the Terms, the Customer and The New Consignor agree to indemnify Transnet Freight Rail for any loss or liability suffered by the other or by any third party caused due to delays by the other.

5. Maintenance of Infrastructure

5.1 The rail Transport services that Transnet Freight Rail undertakes in terms of this Agreement may be either: (i) scaled down (ii) re-scheduled, (iii) temporarily suspended or (iv) interrupted by scheduled or unscheduled maintenance that is required to be performed on its rail infrastructure in order to ensure that the infrastructure is in a condition that is suitable for rail operations to be conducted on it. Transnet Freight Rail will use its best endeavours to ensure that there is a minimal impact on the Customer's orders.

5.2 Where Transnet Freight Rail requires scheduled maintenance, it will notify the Customer at least ten (10) working days in advance of such scheduled maintenance. The Customer acknowledges that such maintenance may result in planned Transport being delayed or rescheduled. Each instance of scheduled maintenance ("scheduled occupation") shall not be longer than twenty (20) days, and Transnet Freight Rail may require up to three (3) scheduled occupations per annum.

5.3 In the event of unscheduled maintenance having to be undertaken due to unforeseen circumstances that have given rise to such unscheduled maintenance being required, then Transnet Freight Rail shall notify the Customer either when it commences with such unscheduled maintenance in the event of an emergency, or as soon as it is reasonably possible prior to undertaking the unscheduled maintenance in all other circumstances.

6. Transport Documents & Special Instruction

6.1 Transnet Freight Rail shall only accept goods for Transport if it has been timeously furnished with fully completed Transport documents, or the relevant Electronic Data Interchange information, by the Consignor who warrants that all information reflected on the Transport documents is accurate in all respects, and especially for Customs and Consular purposes.

6.2 The Consignor shall indemnify Transnet Freight Rail and hold it harmless against all losses, damages, expenses and fines arising from any inaccuracy or omission made by the Consignor in the Transport documents.

6.3 Wherever it is necessary, for the purpose of these conditions or any other purpose whatever, for special instructions such as stoppage or diversion (which will only be accepted in the case of wagon load traffic) of goods to be given to Transnet Freight Rail, such instructions shall only be recognised by Transnet Freight Rail as valid if they are timeously given and agreed to by Transnet Freight Rail.

6.4 In addition, in order to render such special instructions valid, they shall either be given in writing by the Consignor or, if owing to the urgency of the situation it is not practicable to give same in writing and if this is agreed to by Transnet Freight Rail, they may be given orally and thereafter confirmed in writing as soon as reasonably practicable.

6.5 Transnet Freight Rail shall supply wagons that are suitable for the Transport of the Goods being offered for Transport by the Customer in terms of this Agreement.

7. Documentation Necessary for Goods Transported in Rail Wagons

7.1 Transport will commence on receipt of the standard Combined Consignment Note and Wagon Label/Release Pro Forma issued by Transnet Freight Rail, (or where the Customer uses its own Combined Consignment Note and Wagon Label/Release Pro Forma then this must be approved by Transnet Freight Rail), to release the loaded wagons reflecting the Customer as either the consignor or consignee (after completion of loading) and will end when the rail wagon is Placed at the Hand Over Point.

7.2 In terms of the Customs and Excise Act 91 of 1964 ("Customs and Excise Act"), the Transport of Goods for export/import over South African borders must be supported by the necessary customs clearance documentation.

7.3 Importers, exporters and manufacturers, or their agents on their behalf, are required to make "due entry" in terms of the Customs and Excise Act and produce these documents (SAD 500/Custom Release Notification/electronic "CUSDEC (Customs Declaration) which is then responded to via an electronic "CUSRES" (Customs Release) message by SARS (South African Revenue Services) to Transnet Freight Rail to effect the release of the Goods. The Customer must hand in a SARS CN1 document in respect of Containers traffic originating or destined for African Countries.

7.4 The validity of the above-mentioned documents is the responsibility of the importer, exporter, manufacturer or their appointed agents.

Transnet Freight Rail Conditions of Carriage

7.5 In terms of the Customs and Excise Act the parties are required to make suitable adjustments to SARS documentation without delay on discovering of any error made or any changes required to be made in respect of clearance documentation by virtue of a voucher of correction/amended CUSDEC (Customs Declaration).

7.6 The Customer shall be liable for all Additional Costs associated with failure to provide clearance documentation stipulated in clause 7.2 and 7.3 above and shall also be liable for wagon delay charges as set out in, or to be set out in the Schedule, and, if applicable, the costs related to the loading and the offloading of the consignment from the wagon.

7.7 Any Relevant Authority may find it necessary to stop and inspect Goods for export or import and Transnet Freight Rail shall adhere to such requests. Additional Costs resulting from such inspections will, however, be for the Customer's account and Transnet Freight Rail will not incur any liability arising out of such stoppages and inspections.

7.8 Transnet Freight Rail will not be held liable for any costs or any other liability arising from or connected with the Customer's failure to comply with the terms set out in clauses 7.2, 7.3, 7.5 and 7.6, the Customs and Excise Act and any regulations or the requirements of any Relevant Authority.

7.9 The Customer hereby indemnifies Transnet Freight Rail against all Losses incurred by or Claims made against Transnet Freight Rail as a result of the Customer's failure to comply with:

7.9.1 the terms of these Transnet Freight Rail Standard Conditions of Carriage; or

7.9.2 the provisions of the Customs and Excise Act, any regulations or the requirements of any Relevant Authority relating to the importation or exportation of Goods.

7.10 Notwithstanding any information furnished to the Customer by Transnet Freight Rail regarding any documentation required, Transnet Freight Rail will not be liable to the Customer or any third party for any Claim made or Loss suffered if such information is incorrect or incomplete in any respect. It is the Customer's entire and sole responsibility to arrange all documentation required.

7.11 The Customer shall ensure that the correct placard(s) is/are displayed on the relevant wagon or container as may be required by legislation. If the Customer is transporting dangerous Goods, it shall ensure that the "DECLARATION WITH REGARD TO THE TRANSPORT OF DANGEROUS GOODS" required by SANS 10405:2009 is filled in and displayed on the relevant wagon or container.

8 Things over which Transnet Freight Rail has no Reasonable Control

8.1 In the event of any situation or circumstance arising over which Transnet Freight Rail has no reasonable control and which renders the fulfilment of its obligations impracticable or impossible, then notwithstanding anything to the contrary in this Agreement Transnet Freight Rail shall consult with the Consignor or Consignee to make alternative arrangements. If no agreement is reached after those consultations Transnet Freight Rail shall be entitled to deliver the goods to the nearest reasonable destination or to make use of any reasonable alternative route to that initially commenced by or agreed to by Transnet Freight Rail.

9. Liberty to Deviate & Make Special Arrangements

9.1 If at any stage while it is conveying, or otherwise dealing with the goods Transnet Freight Rail, in its sole discretion, considers that it is in the interests of the Consignor, Consignee or other party who owns the goods, to depart from any special instructions, Transnet Freight Rail shall be entitled to do so with impunity.

9.2 Transnet Freight Rail shall have absolute discretion as to the means, route and procedure to be followed in performing the carriage of goods or other business.

9.3 In all cases where there is a choice of tariff rates or premiums offered by carriers, warehousemen, underwriters, or others depending upon the value declared or the extent of the liability assumed by the carrier, warehousemen, underwriter or other person, Transnet Freight Rail shall have absolute discretion and authority to determine what liability, if any, shall be imposed on the carrier, warehousemen, underwriter or other persons, and to declare the value of the goods, unless express instructions in writing are timeously given by the Consignor.

9.4 Transnet Freight Rail is not obliged to make any declaration for the purpose of any statute or convention or contract as to the nature of goods, nor as to any special interest in delivery or otherwise, nor to seek any special protection from any carrier unless expressly instructed by the Consignor in writing.

10. Packing, Loading & Securing Goods on Wagons

10.1 The Customer is responsible for ensuring that all Goods for Transport have, in accordance with Best Industry Practice and the requirements of all Relevant Authorities, been properly, lawfully and sufficiently packed, loaded, secured and prepared to:

10.1.1 withstand all modes of Transport applicable to the Transport contemplated;

10.1.2 prevent injury to any person or damage to Transnet Freight Rail's or any third party equipment.

10.2 Transnet Freight Rail may refuse to Transport any Goods that are not properly, lawfully and sufficiently packed, loaded, secured and prepared for Transport. The Customer will be liable for Wagon Delay Charges as set out in or to be set out in a Schedule if delays arise as a result of the aforementioned.

10.3 Inadequate packing may result in any Claim for damage being rejected by Transnet Freight Rail's and/or the Customer's insurers where that was the proximate cause of Loss.

10.4 The Customer will be liable for Additional Costs to correct any packaging or packing of the Customer's Goods on Transnet Freight Rail's rail wagons which creates any danger. The Customer will also be liable for Wagon Delay Charges as set out in or to be set out in a Schedule if such delays arise.

10.4.1 Guidelines for packaging, packing and loading methods are available from Transnet Freight Rail on request and/or from the Relevant Authorities as required in terms of applicable legislation.

10.4.2 If goods are likely to harbour or encourage vermin or other pests the Consignor must ensure that those goods are free from such creatures upon loading and are packaged appropriately.

10.5 The Customer hereby indemnifies Transnet Freight Rail against any Claims of third parties arising from or connected with any inadequate, incorrect packaging or packing or securing of the Goods.

11. Loading and Off-loading

Transnet Freight Rail Conditions of Carriage

11.1 The Customer is responsible for the loading and off-loading of the Customer's Goods whether the Customer does so personally or arranges for a third party or instructs the Customer's Consignor or Consignee (whichever applies) to do so, unless specific alternative arrangements have been agreed in Writing (which includes e-mail) between the parties and as set out in a Schedule.

11.2 The Customer must schedule the loading and off-loading of wagons at each specific Hand Over Point and Point of Placing in such a manner that the number of rail wagons, to be loaded or off-loaded, are within the loading and off-loading capability at that Hand Over Point or Point of Placing as the case may be.

11.3 If the number of rail wagons requested by the Customer to be loaded or off-loaded at any Hand Over Point or Point of Placing on any Day, exceeds the handling capacity of such Hand Over Point or Point of Placing and 1 or more or all of the rail wagons dispatched to that Hand Over Point or Point of Placing is or are delayed beyond the Free Time the Customer will be liable for Wagon Delay Charges arising out of such delays and the Customer's account will be debited with the Wagon Delay Charges set out in or to be set out in a Schedule.

11.4 If a Schedule includes or refers to a Loading Profile the Customer is obliged to load the Goods on the rail wagon according to that Loading Profile and, if the Customer fails to do so, Transnet Freight Rail shall be entitled to require the Customer to re-load before Transnet Freight Rail accepts:

11.4.1 the Goods for Transport; or

11.4.2 a Combined Consignment Note and Wagon Label/Release Pro Forma

11.5 The Customer is liable for any Additional Costs incurred by Transnet Freight Rail and any Wagon Delay Charges incurred as a result of re-loading.

11.6 The Customer is responsible for off-loading of the rail wagons and must ensure that all rail wagons:

11.6.1 are fully off-loaded in terms of the requirements of any Relevant Authority and Best Industry Practice or Loading Profile; and

11.6.2 clean for re-loading, before any empty rail wagons are handed back to Transnet Freight Rail.

11.7 Transnet Freight Rail will be entitled to recover from the Customer all Additional Costs and Losses incurred by Transnet Freight Rail in loading and/or off-loading, fully or in part, any rail wagon and/or storage of the Goods for the Customer and/or the disposal of any debris.

11.8 The Consignor shall indemnify Transnet Freight Rail against all and any losses and/or damages sustained by the latter arising out of the Consignor loading goods onto a rail wagon and the Consignee unloading goods from rail wagons.

11.9 In instances where loaded or empty wagons are required to be staged en route due to the Customer or its service provider's fault/inability to receive these wagons at the destination, where the Customer requests Transnet Freight Rail to stage these wagons, or in the event where Transnet Freight Rail establishes that the Customer cannot receive these wagons at the destination (e.g. yard/siding blocked out, stock pile full, etc.) and Transnet Freight Rail has no other option other than to stage these wagons en route, Transnet Freight Rail will inform the Customer in writing of such instances, reflecting the time and dates where such wagons are staged. Transnet Freight Rail will be entitled to levy Wagon Delay Charges from the date and time that such wagons are staged until the date and time that these wagons are ready for onward railing to be Placed at the Point of Placing for off-loading or loading.

11.10 In the event of spillage during loading or filling operation which results in the contamination of the wagon or container, the Customer shall ensure that such wagons or containers are cleaned before they are moved. In addition to the Customer's obligations in terms of this Agreement with regard to loading and placarding, the Customer shall ensure that the provisions of any legislation with regard to the afore-mentioned are complied with.

12. Inspection

12.1 Transnet Freight Rail shall be entitled, if it has been ordered to do so by the Relevant Authorities in terms of a Court Order or if it has reason to believe that the nature and manner of packing or stowage endangers the employees, premises or equipment of Transnet Freight Rail in terms of safety legislation, to unpack any goods to inspect same in order to establish this. If, in the opinion of Transnet Freight Rail, the goods do so endanger its employees, premises or equipment then the actual cost of re-packing or re-stowing to the satisfaction of Transnet Freight Rail shall be borne by the Consignor.

12.2 Stopping of containers/wagons by Relevant Authority en route

12.2.1 Should the Transport of any containers/wagons be stopped at any point before, during or after transit and while still in the possession of Transnet Freight Rail, for inspection, search or seizure, by written order of any competent court or of any government official or other competent authority in the exercise of powers conferred by any law, Transnet Freight Rail shall be obliged to adhere to such order at the risk of the Customer.

12.2.2 Transnet Freight Rail shall notify the Customer of such order within a reasonable time.

12.2.3 The Customer will be responsible for compliance with such written order of a competent court or of any government official or other competent authority as shall be required, including but not limited to, lodgement of a correction voucher with such authority and a copy thereof to Transnet Freight Rail.

12.2.4 Whenever any containers/wagons on which railage has been prepaid have been stopped as aforesaid at any point short of the destination, and to be offloaded or the contents unpacked, Transnet Freight Rail shall refund to the Customer the difference between the railage paid and the railage up to the point where the containers were stopped, less any miscellaneous charges which may have been incurred. The Customer shall be liable for the railage up to that point, plus any miscellaneous charges. If, however, any authorised government official or other competent authority should direct that the said containers be transported to some place other than that at which the containers were stopped for purposes of examination or otherwise, Transnet Freight Rail shall comply with such direction. In that case the Customer shall be liable to pay to Transnet Freight Rail all additional railage and miscellaneous amounts which may have been incurred by reason of Transnet Freight Rail compliance with such direction.

12.2.5 Notwithstanding the above, it is hereby recorded that all Transnet Freight Rail's container terminals are only approved to allow for "Tailboard Inspections" by such authority, i.e. no contents of any container can be unpacked. Any request or directive to

Transnet Freight Rail Conditions of Carriage

unpack and inspect the contents of the containers will be conducted at a licensed container depot. All un-cleared or "in bond" containers stopped in a Transnet Freight Rail container terminal for inspection, must be removed to a licensed container depot by the authorised official of such government authority ("approved Removal in Bond") for inspection, within 24 hours.

12.2.6 All Additional Costs resulting from such stopping/inspections will, be for the Customer's account and Transnet Freight Rail will not incur any liabilities arising out of such stoppages and inspections.

12.2.7 Transnet Freight Rail will not be held liable for any costs or any other liabilities arising from or connected with the Customer's failure to comply with the terms set out in any regulations or the requirements of any Relevant Authority.

13. Containers & Rail Wagons

13.1 The Consignor warrants the suitability and safety of all containers and freight containers supplied by it, and that it shall take reasonable steps to ensure that any freight containers or rail wagons supplied by Transnet Freight Rail are in suitable condition for the conveyance of the goods concerned.

14. Marking

14.1 The Consignor warrants that all goods have been properly, lawfully and sufficiently marked for identification and labelled and shall indemnify Transnet Freight Rail against all losses, damages, expenses and fines arising from any inaccuracy or omission in that respect.

15. Free Time for loading and unloading/off loading

15.1 The Free Time will commence:

15.1.1 when the rail wagon is Placed at the Hand Over Point or Point of Placing as the case may be;

15.1.2 when the rail wagon was available to be Placed if the Customer or consignor or consignee were not in a position or failed to receive it;

whichever occurs first;

15.1.3 Wagon delay charges will apply from expiry of the Free Time until the wagon is cleared from the Hand Over Point or Point of Placing or the time when the Customer or the Customer's consignor/consignee offers the rail wagons for clearance whichever occurs first.

15.1.4 If placement takes place on a non-working day, the relevant free time shall commence at 08:00 on the next business day.

15.2 If the Customer, Consignor or Consignee, whichever is applicable, is unable to load or off-load in the Free Time, Transnet Freight Rail will calculate the applicable Wagon Delay Charges and levy them against the Customer.

15.3 The Customer must take the necessary steps to load or off-load the wagons within the Free Time.

15.4 Transnet Freight Rail is entitled to charge the Wagon Delay Charges after the expiry of the free time stipulated in clause 15.8 below, in relation to the equipment specified unless otherwise agreed as set out in or to be set out in a Schedule for any rail wagon/container released after Free Time.

15.5 At the completion of loading the Customer must provide Transnet Freight Rail with the completed Combined Consignment Note and Wagon Label/Release Pro Forma.

15.6 If Transnet Freight Rail has not received a Combined Consignment Note and Wagon Label/Pro Forma Note after the expiry of the Free Time then collection of the rail wagons will in such circumstances be dependent on Available Capacity.

15.7 If the Customer is importing or exporting Goods in shipload quantities or the Customer has limited capacity in any Private Siding where the Goods are to be loaded or off-loaded, the provisions of clauses 11.2 to 11.10 and 15.1 to 15.6 will apply, unless the Customer has made prior Written arrangements with Transnet Freight Rail to accommodate possible rail wagon delays caused by loading or off-loading Goods in shipload quantities or at such Private Siding with limited capacity.

15.8	The time limits for the various types of equipment are as follows: -	
15.8.1	rail wagons only	18 hours
15.8.2	freight containers on rail wagons	12 hours
15.8.3	freight containers and tank containers measuring 6 metres or more in length collected/delivered by road	4 hours
15.8.4	freight containers and tank containers measuring 3 metres in length collected/delivered by road	2 hours
15.8.5	if the cartage driver is in attendance upon request of consignor or consignee	15 minutes

15.9 Transnet Freight Rail has implemented a "Wagon Performance Management System" ("WPMS") which is a system that will enable monitoring, recording and sign-off of wagon delays, thereby creating a means of generating evidence of the occurrence of wagon delays in instances where these occur. Both parties will therefore have a means of viewing information about, and evidence of wagon delays. The information and evidence generated by the WPMS shall be used by TFR in support of claims for Wagon Delay Charges.

16. Overloading and mass declared

16.1 The Customer shall not:

16.1.1 overload wagons (i.e. load wagons in excess of their carrying capacity or modified/amended carrying capacity as prescribed for lines with axle load restrictions); nor

under-declare the net mass per wagon (i.e. declare a nett mass per wagon that is less than the actual mass of the Goods loaded on the wagon). The Customer is responsible to ensure compliance with this clause by the Customer's Consignor, loader or transport coordinator if applicable.

16.2 The Customer will be liable for Losses (including but not limited to any damage to Transnet Freight Rail's rolling stock and infrastructure and any environmental liability, notwithstanding any other term of these Terms) caused directly or indirectly by such overloading or under-declaration. The Customer must, in order to avoid overloading, load the rail wagons in accordance with the Loading Profile, if any, set out in or to be set out in a Schedule.

Transnet Freight Rail Conditions of Carriage

16.3 Overloading

16.3.1 Overloading and/or improper loading of wagons are not permissible and the Customer is prohibited from doing so. Overloading and improper loading are safety risks and may directly lead to, or may be a contributing factor in a rail incident such as a derailment. Transnet Freight Rail reserves all of its rights in terms of this Agreement and the relevant Laws to, inter alia refuse to Transport the overloaded wagons or require the Customer to offload the excess goods/product from the wagon.

16.3.2 Should overloading of a rail wagon in excess of its carrying capacity or amended carrying capacity be detected during or after Transport, the charges calculated on the actual mass conveyed in the rail wagon as determined below, will furthermore be subject to a surcharge as listed below plus a Mass Measuring and an Adjustment Fee:

Surcharge in respect of overloaded wagons:	Percentage (%) of total railage charge per wagon
Wagons overloaded up to 2 tons	35%
Wagons overloaded with more than 2 tons and up to 3 tons	50%
Wagons overloaded with more than 3 tons and up to 4 tons	75%
Wagons overloaded with more than 4 tons	100%

16.3.2.1 if a per ton railage price applies, the railage price payable will be calculated on the actual mass;

16.3.2.2 if a per rail wagon railage price applies, the railage price payable will be increased by a factor derived by dividing the actual mass Transported in the rail wagon by the carrying capacity or the amended carrying capacity of the rail wagon.

16.4 In the event that there are any provisions in this clause which may qualify as a penalty in terms of the Conventional Penalties Act, 15 of 1962 in relation to any act or omission by the Customer such provision shall not be deemed to preclude Transnet Freight Rail from recovering damages *in lieu* of the relevant penalty.

16.5 Under-declaration

The Customer must declare or, if the Customer is not the Consignor, ensure that the Consignor declares the correct net mass of the Goods per rail wagon on the Combined Consignment Note and Wagon Label/Release Pro Forma. Transnet Freight Rail is entitled to verify the mass declared by Mass Measuring each rail wagon prior to, during or after Transport of the Goods. Should Transnet Freight Rail find that the mass per rail wagon has been under declared the amount payable by the Customer will be as set out in clause 16.5.1.

16.5.1 In the event of an under-declaration of mass but the wagon is not overloaded in terms of clause 16.1 above, the following will apply:

16.5.1.1 If the under-declaration is 2 tons or less, the amount payable will be calculated on the measured mass subject to the minimum mass per rail wagon stipulated in a Schedule;

16.5.1.2 If the under-declaration is more than 2 tons and the measured mass is in excess of the minimum mass per rail wagon stipulated in a Schedule or if the under-declaration is more than 2 tons and no minimum mass per rail wagon applies (i.e. where the full holding capacity or actual mass condition applies) the amount payable will be calculated on:

- The measured mass plus 35% (thirty five percent) surcharge; plus
- A Mass Measuring Fee per rail wagon as set out in a Schedule; plus
- An Adjustment Fee per consignment as set out in a Schedule.

16.6 Where the Customer provides Transnet Freight Rail voluntarily with the actual mass measurement of the wagon (i.e. weighbridge slips) the Mass Measuring and Adjustment Fee in terms of clauses 16.3 and 16.5 will not apply provided the Customer takes the necessary steps to curtail overloading.

16.7 If Transnet Freight Rail finds that mass has been under declared or that a rail wagon is overloaded, Transnet Freight Rail will raise the necessary charges and penalties and furnish the Customer or the Customer and the Consignor, on their request and where applicable, with a report of the results with the view to discussing the causes thereof with the Customer.

16.8 Transnet Freight Rail reserves the right to hold back at any time a rail wagon found to be overloaded or improperly loaded (either at the Hand over Point or en route) and Transnet Freight Rail may require the Customer to off-load or arrange to off-load sufficient quantity of the Goods to bring the mass of the rail wagon within the carrying capacity of the rail wagon and or require the Customer to re-arrange the improperly loaded Goods. Wagon Delay Charges as set out in or to be set out in a Schedule, Mass Measuring Fee and all other charges and Additional Costs reasonably attributable to or arising out of the holding back of the rail wagon will be for the Customer's account. Transnet Freight Rail will not be liable for any claims arising out of delays due to overloading or improper loading by the Customer.

16.9 If the Customer wishes to load the excess mass of Goods into another rail wagon, subject to Available Capacity, the applicable railage price stipulated in or to be set out in a Schedule will apply but the carrying capacity of the rail wagon will be used as a minimum.

16.10 In the event that Transnet Freight Rail does not have Available Capacity to accommodate the excess mass of Goods, Transnet Freight Rail shall not be liable for any Loss incurred by the Customer.

16.11 It is advisable for the Customer to have a Verified Mass Measuring Device in the Customer's siding to ensure accurate weighing of the goods to be transported by Transnet Freight Rail. Transnet Freight Rail shall also have its own Mass Measuring Devices installed at specified points. In the event of Transnet Freight Rail measuring the mass of the consignment, the mass measurements from Transnet's Mass Measuring Devices shall prevail.

16.11.1 Weigh bridge slips must be provided, to TFR, in the following manner:

- i) where the data on the weigh bridge slip has been printed directly from the Verified Mass Measuring Device (i.e. the Verified Mass Measuring Device has a built in printer) then the slip of paper that is printed out must be provided to TFR
- ii) where the data on the weigh bridge slip has been transmitted directly to a computer from the Verified Mass Measuring Device and has been printed out from the aforementioned computer then such print out must clearly indicate that the data has been received directly from the Verified Mass Measuring Device and printed out.

Transnet Freight Rail Conditions of Carriage

- iii) where the data on the weigh bridge slip has been captured directly from the Verified Mass Measuring Device using any other electronic means, then any print out, resulting from this method, must clearly indicate that the data has been received directly from the Verified Mass Measuring Device.
- iv) where the data on the weigh bridge slip has been captured manually from the Verified Mass Measuring Device (i.e. a person records the readings on paper) then such document containing hand-written data: (a) must be signed off by the person recording such data; their full names, designation and name of the company at which they are employed must be clearly stated on the weigh bridge slip and (b) must include a confirmation from such person that the data has been captured directly from the Verified Mass Measuring Device.

16.12 If the Customer disputes the accuracy of TFR's Verified Mass Measuring Device, the Customer may require the accuracy of TFR's device to be verified in accordance with the provisions of the Trade Metrology Act 77 of 1973, and the cost of such verification shall be borne by the Customer.

16.13 In the event where the Customer weigh the empty wagon prior to loading as well as the loaded wagon Transnet Freight Rail will accept the measured masses reflected on the weigh bridge slips and will use these masses to determine the railage as well as any applicable surcharges for overloading.

17. Non-utilisation and train cancellation charges

If the Customer only notifies Transnet Freight Rail in writing that wagons will not be used after placement, Transnet Freight Rail shall be entitled to levy non-utilisation charges set out or to be set out in the Schedule.

17.1.1 before rail wagons are Placed;

17.1.2 before the time when rail wagons were available to be Placed, if the Customer is not going to utilize all or some of the rail wagons ordered.

17.2 Non-utilisation charges:

If the Customer fails to notify Transnet Freight Rail in writing of the cancellation of an order at least seventy two (72) hours before the scheduled time of Placing, Transnet Freight Rail shall be entitled to levy the charges set out in or to be set out in a Schedule

17.3 Train Cancellation charges:

If the Customer fails to notify Transnet Freight Rail in writing of the cancellation of an order at least seventy two (72) hours before the scheduled time of Placing, Transnet Freight Rail shall be entitled to levy the charges set out in or to be set out in a Schedule.

18. Conditions Related to Containerized Traffic

18.1 Only containers that conform to the requirements of the International Standards Organisation (ISO) will be conveyed under this Agreement except as detailed in clause 18.15.

18.2 The under-mentioned international codes indicate the size of the various ISO containers (ISO containers are containers that conform to the requirements of the International Standards Organisation):

CODE	OUTER LENGTH OF CONTAINER	OUTER WIDTH OF CONTAINER	OUTER HEIGHT OF CONTAINER	MAXIMUM GROSS MASS
*IA	12 meter	2,438 meter	2,43 meter	30 480 kg
*IAA	12 meter	2,438 meter	2,591 meter	30 480 kg
*IC	6 meter	2,438 meter	2,438 meter	24 000 kg
*ICC	6 meter	2,438 meter	2,591 meter	24 000 kg
**IC	6 meter	2,438 meter	2,438 meter	20 320 kg
**ICC	6 meter	2,438 meter	2,591 meter	20 320 kg
***ICCC	6,2 meter	2,600 meter	2,800 meter	24 000 kg
*ID	3 meter	2,438 meter	2,438 meter	10 160 kg
**ID	3 meter	2,438 meter	2,438 meter	10 160 kg

Notes:

* Private ISO containers with the maximum gross mass as stipulated above.

** Transnet Freight Rail containers and tank containers with the maximum gross mass stipulated above.

*** Transnet Freight Rail containers that are palette friendly containers numbered in the series SARU 167000 onwards.

The stencilled gross mass, if less than stipulated above, may not be exceeded.

18.3 Containers, conveyed under the terms and conditions of this Agreement will be priced according to the actual nett mass loaded based on the following mass intervals:

REF	CONTAINER SIZE	MASS INTERVAL (NETT KILOGRAMS)	RELEVANT PRICE
A MASS INTERVAL 1 (ONE) (EMPTY CONTAINERS):			
(i)	3, 6 and 12 metre empty containers	Empty containers	Priced on mass indicated as 0 (zero) kilograms (empty containers). Note: The conveyance of empty Transnet Freight Rail containers will be subject to a discount of 100% (i.e. conveyed to loading

Transnet Freight Rail Conditions of Carriage

			points free of charge).
B MASS INTERVAL 2 (TWO) (3 M NORMAL AND 6 TO 12 M LIGHT):			
(i)	3 metre containers	1 to 9 000 kilograms	Priced on masses 1 to 9 000 kilograms
(ii)	6 metre containers	1 to 13 000 kilograms	Priced on masses 1 to 13 000 kilograms
(iii)	12 metre containers	1 to 26 000 kilograms	Priced on masses 1 to 26 000 kilograms.
C MASS INTERVAL 3 (THREE) (3 M OVER MASS AND 6 TO 12 M HEAVY):			
(i)	3 metre containers	> 9 000 kilograms	Conditions of clause 18.13.2 applicable. Double the relevant price for 1 to 9 000 kilograms
(ii) (a)	6 metre heavy container prices	13 001 to 22 000 kilograms	Priced on masses 13 001 to 22 000 kilograms
(ii) (b)	6 metre extra heavy container prices	22 001 to 27 500 kilograms	Priced on masses 22 001 to 27 500 kilograms <u>Note: This option is only applicable on specific agreed routes</u>
(iii)	12 Metre containers	26 001 to 29 400 kilograms	Priced on masses 26 001 to 29 400 kilograms.
D MASS INTERVAL 4 (FOUR) (6 TO 12 M OVER MASS):			
(i) (a)	6 metre heavy containers	> 22 000 kilograms	Conditions of clause 18.13.2 applicable. Double the relevant price for 13 001 to 22 000 kilograms
(i) (b)	6 metre extra heavy containers	> 27 500 kilograms	Double the price applicable for the 6 metre extra heavy containers 22 001 to 27 500 kilograms <u>Note: This option is only applicable on specific agreed routes</u>
(ii)	12 metre containers	> 29 400 kilograms	Conditions of clause 18.13.2 applicable. Double the relevant price for 26 001 to 29 400 kilograms

NOTE:

(i) For ease of reference and for clarity the previously known Light and Heavy containers will now fall under Mass Interval 2 (light) and 3 (heavy).

(ii) Containers must not exceed the maximum gross mass as stipulated in clause 18.2 above.

18.4 Packing/filling/loading and unpacking/decanting/off-loading of containers

18.4.1 The Customer will be responsible for:

18.4.1.1 packing and unpacking of containers/ filling and decanting of tank containers placed in a Private Siding or at a station or placed at the Customer's premises by cartage vehicle; and

18.4.1.2 loading and off-loading of containers from the cartage trailer or rail wagon unless this service is rendered by Transnet Freight Rail, in which event such service will be provided for in a Schedule;

whether the Customer does so personally or arranges for a third party or instructs the Customer's consignor or consignee (whichever applies) to do so unless specific arrangements have been agreed upon between the Parties.

18.5 Free time where containers are delivered/collected by cartage vehicle.

18.5.1 packing/unpacking of 6 and 12 metre containers and filling/decanting of 6 metre tank container: **4 hours**.

18.5.2 packing/filling or unpacking/decanting of a 3 metre container/tank container: **2 hours**

18.5.3 Filling/decanting of tank container with dangerous/hazardous goods (cartage driver in attendance on request of consignor/consignee): **15 minutes**

18.6 Containers delayed beyond the free times allowed above will be subject to delay charges stipulated in a Schedule.

18.7 Cartage haulage vehicles that are delayed.

18.7.1 The cartage haulage vehicle used for the delivery/collection of containers is allowed 15 minutes free period for placing/removal/ packing/un-packing/loading/off-loading of containers.

18.7.2 Delay charge for cartage haulage vehicles delayed beyond the free time allowed will be raised at the price stipulated in a Schedule.

18.8 Transnet Freight Rail containers ordered and delivered but not utilised will be subject to the applicable cartage charges and non-utilisation charges for such delivery.

18.8.1 Cartage charges applicable to the relevant container for futile trips will be raised should a container not be ready when the driver calls and the cartage haulage vehicle returns, after expiry of the free period allowed, without a load to the container depot/terminal.

18.9 Free time where containers are delivered/collected by rail in Private Siding or station: **12 working hours**.

18.9.1 Where the free time is exceeded in respect of:

18.9.1.1. Private containers a delay charge will be raised **only** in respect of the rail wagon as stipulated in a Schedule;

18.9.1.2 Transnet Freight Rail containers: a delay charge will be raised in respect of the container including the rail wagon as stipulated in a Schedule.

18.9.2 Free time referred to in clause 18.9 will commence at the actual time of placing of containers in the siding or the Customer's premises or the time when the containers were available to be placed but the Customer or the Customer's consignor or consignee were not in a position to receive them. Please note: Where more than one container is delivered to a consignor/consignee at the same time, the free time in terms of clause 18.9 will apply simultaneously to all containers.

18.9.3 In the event of the Customer, the Customer's consignor or consignee, whichever is applicable, being unable to keep to the agreed loading and off-loading times, Transnet Freight Rail will record such events with the view to discuss the causes thereof with the Customer, who undertakes to take the necessary steps to overcome the problems giving rise to such inability to keep to

Transnet Freight Rail Conditions of Carriage

the agreed loading and unloading time, failing which, Transnet Freight Rail reserves the right to claim from the Customer the delay charges stipulated in clause 18.9, unless such problems were caused by Transnet Freight Rail.

18.10 In the event of the Customer being unable to accept containers where:

18.10.1 the Customer has insufficient capacity at the Customer's premises to receive or despatch the number of containers involved; or

18.10.2 containers need to be staged prior to delivery; or

18.10.3 a container for whatever reason is refused prior to delivery;

18.10.4 the provisions of clause 18.9 will apply, unless the Customer has made prior written arrangements with Transnet Freight Rail to accommodate possible delays caused by receiving or despatching containers.

18.11 Export containers

18.11.1 Where export containers arrive at a Port container terminal or conventional berth, prior to the stack opening date or after the stack closing date, for the nominated vessel, rail wagon delay charges as stipulated in a Schedule shall be levied from the date the rail wagon is received at the harbour up to and including the date the stack opens.

18.11.2 Where empty or packed export containers are despatched to a Port container terminal or conventional berth, prior to the stack opening date for the nominated vessel, and such containers are held back en-route, rail Wagon Delay Charges as stipulated in a Schedule, shall be levied from the date the rail wagon (s) is/are released by the consignor/exporter up to and including the date prior to the date of departure of the train conveying the containers to arrive on the date the stack opens.

18.12 Non utilisation

18.12.1 The Customer must cancel an order or part of an order four working hours before containers/rail wagons are placed, if the Customer is not going to utilize all the containers/rail wagons ordered.

18.12.2 A non-utilisation charge, plus cartage charges where applicable, if the order is not cancelled within the time stipulated in clause 18.12.1 before the containers/rail wagons are placed will be raised as stipulated in a Schedule.

18.13 Overloading and mass declared

18.13.1 The Customer must ensure that containers are not loaded in excess of their total nett mass, as per clause 18.3 above, and instruct the Customer's consignor or consignee, whichever is applicable, to adhere to the Customer's instruction, as in either case this may result in derailment or damage to infrastructure and equipment which the Customer will be liable for.

18.13.2 Should overloading of a container in excess of its applicable nett mass as per clauses 18.3 above or any other maximum load agreed to for 6 Meter extra heavy containers, be detected prior to transit, and such containers are accepted for conveyance, or during or after transit, such container will be regarded as over mass and the price for that container will be levied at double the applicable mass interval price (i.e. double the applicable railage for the specific container).

18.13.3 Instances where the nett mass of a container is under-declared by more than 1 000 kilograms the following additional charges will also apply:

18.13.3.1 Relevant rail price for the mass as measured; plus

18.13.3.2 Mass measuring charge; plus

18.13.3.3 Adjustment fee; plus

18.13.3.4 Following surcharge:

18.13.3.4.1 Container not loaded in excess of its attainable total nett mass will be subject to a surcharge equal to fifty percent of the relevant rail price.

18.13.3.4.2 Containers loaded in excess of its attainable total nett mass will be subject to a surcharge as stipulated in clause 18.13.2 above.

18.13.4 The Customer will declare, or where the Customer is not the consignor, ensure that the consignor declares the actual or estimated nett mass of the container on the freight transit/ orders/container terminal order. Transnet Freight Rail may verify the mass declared by mass measuring each container prior to, during or after transportation thereof. Should Transnet Freight Rail find that the mass per container has been over loaded/under-/over declared, the Customer or both the Customer and the consignor, where applicable, will be furnished with a written report of the results and the charges payable by the Customer will be calculated in terms of this clause 18.13.

18.14 Non standard containers:

18.14.1 Please note containers containing dangerous/hazardous goods (Classification in accordance with Section 5 of the General Introduction to the International Maritime Dangerous Goods Code (IMDG code), i.e. IMCO classes 2.1, 3.1, 3.2, 4.1, 4.2, 4.3, 5.1, 5.2, 6.1, 6.2, 7.1, 7.2, 7.3 and 8) will be conveyed at the applicable contract price plus the extra charges stipulated in a Schedule.

18.14.2 Containers of which the dimensions exceed the ISO standard dimensions will be dealt with in terms of the conditions applicable to abnormal containers, which will be provided by Transnet Freight Rail where applicable.

18.14.2.1 Containers which, when loaded on SHLJ-13 rail wagons, are within the loading gauge applicable to such rail wagon, are regarded as normal containerised traffic, however, a surcharge equal to 10 (ten) per cent of the applicable contract price as stipulated in a Schedule, shall be leviable.

18.14.2.2 Containers of which the dimensions are outside the ISO standard dimensions but do not exceed 2 900 mm (high) x 2 438 mm (wide) or 2 800 mm (high) x 2 600 mm (wide) and conveyed on standard container rail wagons (maximum height 1065 mm) shall be regarded as normal containers when conveyed on specific routes only.

18.15 Containers transported only under special arrangement:

18.15.1 Please note that Transnet Freight Rail will not in terms of this Agreement transport, without special arrangement,

18.15.1.1 containers of which the mass, nature or dimensions of the load require special transport arrangements; and

18.15.1.2 containers containing dangerous/hazardous goods (Classification in accordance with section 5 of the General Introduction to the International Maritime Dangerous Goods Code (IMDG code), i.e. IMCO classes 1.1 to 1.6.

Transnet Freight Rail Conditions of Carriage

In instances where dangerous/hazardous products (i.e. IMCO classes 1.1 to 1.6) are conveyed, it is a safety requirement to use empty containers as blockers to prevent access to containers containing dangerous/hazardous products. In these instances the fee for the conveyance of the blocker containers as stipulated in a Schedule will apply.

19 Goods Forwarded From or Destined To Other Railways

19.1 If Goods having a Point of Placing on other railways are dispatched from points on Transnet Freight Rail lines, all costs and charges levied by the other railways will be for the Customer's account. With regard to the routing of traffic it is recorded that Transnet Freight Rail has specific arrangements with the other railways for the conveyance of Goods over specified routes depending on the origin and destination of the traffic, and Transnet Freight Rail will not be allowed to deviate from these arrangements under any circumstances.

19.2 The Transport of Goods over the lines of other railways will be subject to the terms of the railways concerned at time of dispatch while the Goods are in their (i.e. the other railway's) possession.

19.3 Prices, charges (and Additional Costs where applicable and determined) for the Transport of Goods to or from Hand Over Points on other railways will be quoted to the Customer prior to the Transport of such Goods. If these quotations are acceptable to the Customer they will be included in the railage price charged by Transnet Freight Rail, and if the Customer declines to accept the quotation Transnet Freight Rail will not be under an obligation to Transport such Goods.

19.4 The provisions of clause 7 above (Documentation) shall apply to the Transport provided in terms of this clause insofar as they are applicable.

20 Agents

20.1 If the Customer, at any time, engages the services of an agent to perform their obligations or exercise their rights in terms of the Agreement with Transnet Freight Rail, Transnet Freight Rail shall be entitled to require a copy of the Customer's agreement with any agent to be furnished to Transnet Freight Rail prior to the Customer's agent so performing or exercising any obligations or rights, subject to any confidentiality provisions in the Agreement between the Customer and its Agent. The Customer shall not enter into an agreement with any agent on terms and conditions that are substantially different from, or conflict with, or frustrate the spirit, purport and intent of the Agreement.

20.2 The agreement between the Customer and the agent must specify that the agent acts on the Customer's behalf and that the Customer is liable for any act or omission of the Customer's agent.

20.3 The Customer indemnifies Transnet Freight Rail against any Claim against Transnet Freight Rail or Loss Transnet Freight Rail may suffer as a result of any action or omission of the Customer's agent.

20.4 If the Customer acts as agent for an undisclosed principal the Customer indemnifies Transnet Freight Rail against any Loss Transnet Freight Rail may suffer as a result of any action or omission of the Customer's undisclosed principal.

20.5 Where applicable and relevant, the Customer acknowledges the role of the Customer's supplier in the ordering of the Goods. In the event of a conflict between the Customer's order and that of the Customer's supplier, the Customer accepts as per the industry practice that the Customer's order shall be superseded by the order of the Customer's supplier.

20.5.1 Should the Customer persist with an order in conflict with the order placed by the Customer's supplier, Transnet Freight Rail shall as per industry practice not place wagons on the Customer's behalf and shall not be liable for any damages arising as a result of the conflicting orders.

21. Transnet Freight Rail Entitled to Act as Agent or Principal in Contracting with Third Parties

21.1 Unless otherwise agreed in writing, Transnet Freight Rail shall, in procuring the carriage, storage, packaging or handling of the goods, be entitled to subcontract all or any of those duties.

21.2 Transnet Freight Rail shall be entitled to act as the agent of the Consignor, Consignee or other person having risk in and title to the goods, in dealing with rail service providers in countries other than South Africa.

22. Safety

22.1 If the Hand Over Point or the Point of Placing is a Private Siding the Customer must ensure that there is safe and proper access at the Points. The Customer accepts all responsibility for any Loss of or damage to the Goods or Transnet Freight Rail's rolling stock due to any unsuitability of the access to the Hand Over Point or the Point of Placing and the Customer indemnifies Transnet Freight Rail against any Claims arising from damage to property or injury or death to persons arising directly or indirectly as a result of the Customer's failure to provide proper and safe access.

22.2 Transnet Freight Rail and the Customer agrees that all persons, whether employed by or subcontracted by Transnet Freight Rail or the Customer, to undertake shunting of rolling stock within a Private Siding or an exchange yard are trained in terms of and will comply with and adhere to the Best Industry Practice while performing their services.

22.3 The Customer must keep walkways in the Customer's siding clear of obstruction to ensure safety for Transnet Freight Rail's train marshalling crew. Transnet Freight Rail reserves the right not to shunt where Transnet Freight Rail considers the siding unsafe. The provisions of the National Rail Safety Regulator Act 16 of 2002 ("National Railway Safety Regulator Act") shall be complied with.

23. Statutory Requirements

23.1 Each of the Parties shall comply with all Laws and requirements of all Relevant Authorities applicable to the performance of their obligations in terms of these Transnet Freight Rail Standard Conditions of Carriage.

23.2 Without derogating from the provisions of this clause each of the Parties will with regard to employees of the other conducting work in the vicinity of the Hand Over Point or the Point of Placing comply, and without limitation, with the provisions of the Occupational Health and Safety Act 85 of 1993, the Compensation for Occupational Injuries and Diseases Act 130 of 1993, and the Minerals and Petroleum Resources Development Act 28 of 2002, Mine Health and Safety Act 29 of 1996 and the regulations in the Parties' places of work respectively.

23.3 Transnet Freight Rail is, and the Customer may be, regulated by the provisions of the National Railway Safety Regulator Act, which provides that to ensure that railway operations are conducted safely, Transnet Freight Rail must adhere to strict safety requirements in the manner in which Goods are Transported by rail. The Parties:

23.3.1 undertake that they are familiar with the provisions of the National Railway Safety Regulator Act;

Transnet Freight Rail Conditions of Carriage

- 23.3.2** undertake not to act or omit to act in any manner that will result in contravening the provisions of the National Railway Safety Regulator Act in Transporting Goods;
- 23.3.3** will comply with all requirements of any Relevant Authority and Best Industry Practice;
The Customer:
- 23.3.4** indemnifies Transnet Freight Rail against any Claim against Transnet Freight Rail arising out of a breach by the Customer of this clause 23.
- 23.3.5** undertakes that its agent, Consignor and/or Consignee shall be bound by the undertakings in clauses in 23.3.1 to 23.3.4 above.
- 23.4** The Private Siding, is for purposes of the Occupational Health and Safety Act, No. 85 of 1993, a workplace and shall be deemed at all times to be under the complete control of the Customer.
- 23.4.1** The Customer shall, if subject to the National Railway Safety Regulator Act, at all times, be in possession of a valid Safety Permit.
- 23.4.2** It is recorded that:
- 23.4.2.1** Transnet Freight Rail has access to the Private Siding;
- 23.4.2.2** the Customer either owns, leases or has the right of use of the Private Siding; and
- 23.4.2.3** where applicable, the Customer is at all times responsible for the maintenance of the Private Siding at its own cost and expense.
- 23.5** The Customer hereby indemnifies and holds Transnet Freight Rail harmless against all actions, claims, injuries, loss or damage of whatsoever nature and howsoever arising which may be suffered by Transnet Freight Rail or any third party and which arises from the construction, use or operation of the Private Siding and shall, without limitation, include any accident or incident which may occur at any place where the Private Siding crosses a public street or road, provided that this indemnity shall not apply in any case where the event that gives rise to any such action, claim, injury, loss or damage is attributable to the gross negligence or wilful misconduct of Transnet Freight Rail or its officials or employees.
- 23.6** The Parties must comply, without limitation, with the provisions of the National Railway Safety Regulator Act, Occupational Health and Safety Act, Hazardous Substances Act, National Environmental Management Act, the National Water Act 36 of 1998 ("The National Water Act") specific environment management Acts ("SEMAS") and any requirement of any other Relevant Authority in the Transportation of Goods.
- 23.7** In compliance with the requirements of any Law, Relevant Authority and Best Industry Practice, Transnet Freight Rail requires the Customer to abide by Transnet Freight Rail's guidelines on loading. Transnet Freight Rail is not liable for any Claim or Loss arising from or connected with non-compliance by the Customer with such guidelines, requirements of any Relevant Authority and Best Industry Practice. The Customer must advise Transnet Freight Rail of any improvements or enhancements to such guidelines that the Customer may consider desirable but Transnet Freight Rail is not obliged to adopt any suggestions by the Customer.
- 23.8** Transnet Freight Rail will not Transport Dangerous Goods in terms of these Transnet Freight Rail Standard Conditions of Carriage save to the extent and on the terms set out in or to be set out in a Schedule and the other terms of these Transnet Freight Rail Standard Conditions of Carriage.
- 23.9** The Customer will be responsible for:
- 23.9.1** using and completing the correct rail documentation for the Transport of Dangerous Goods, including the Material Safety Data Sheets ("MSDS");
- 23.9.2** signing the declaration on the reverse of the above documentation which states that *"I hereby declare that the contents of this consignment are fully and accurately described by the proper shipping name and are correctly classified, packed, marked and labelled/placarded, loaded according to the required profile and are in all respects in proper condition for Transport according to applicable international and national governmental regulations."*;
- 23.9.3** loading and off-loading of Dangerous Goods to be Transported;
- 23.9.3.1** ensuring that Dangerous Goods have been properly and sufficiently secured to withstand loading, Transportation by rail and off-loading;
- 23.9.3.2** observing and implementing Best Industry Practice;
- 23.9.3.3** the requirements of Law or any Relevant Authority, in the packaging, loading, securing and off-loading of any such Dangerous Goods.
- 23.10** Transnet Freight Rail may refuse to Transport any Dangerous Goods that are not properly, lawfully and sufficiently packed, loaded, secured and prepared for Transport in accordance with any requirements of any Relevant Authority, Best Industry Practice and Transnet Freight Rail's guidelines.
- 23.11** National Environmental Management Act, 107 of 1998 ("NEMA").
- 23.11.1** The Parties undertake to comply with all the provisions of the NEMA.
- 23.11.2** The Customer hereby indemnifies Transnet Freight Rail against any liability including any penalties, damages, fines or any other forms of compensation for which Transnet Freight Rail is held liable in terms of the NEMA, arising out of any acts or omissions by the Customer.
- 23.11.3** The Customer also indemnifies Transnet Freight Rail in the event of any other obligation or obligations being imposed on Transnet Freight Rail in terms of any of the provisions of the NEMA, arising out of any acts or omissions by the Customer.
- 23.11.4** Should the Customer fail to comply with any provisions of the NEMA, and any penalties, damages, fines or any other forms of compensation are imposed on Transnet Freight Rail as a result thereof, the Customer undertakes to refund the full amount of such penalties, damages, fines or compensation to Transnet Freight Rail within seven (7) days after written notice to that effect has been made or given by Transnet Freight Rail to the Customer.
- 23.12** National Environmental Management: Air Quality Act 39 of 2004 ("Air Quality Act")
- 23.12.1** The Parties undertake to comply with all the provisions of the Air Quality Act.

Transnet Freight Rail Conditions of Carriage

23.12.2 The Customer hereby indemnifies Transnet Freight Rail against any liability including any penalties, damages, fines or any other forms of compensation for which Transnet Freight Rail is held liable in terms of the Air Quality Act, or in terms of section 34 of the NEMA read with Air Quality Act, arising out of any acts or omissions by the Customer.

23.12.3 The Customer also indemnifies Transnet Freight Rail in the event of any other obligation or obligations being imposed on Transnet Freight Rail in terms of any of the provisions of the Air Quality Act, arising out of any acts or omissions by the Customer.

23.12.4 Should the Customer fail to comply with any provisions of the Air Quality Act, and any penalties, damages, fines or any other forms of compensation are imposed on Transnet Freight Rail as a result thereof, the Customer undertakes to refund the full amount of such penalties, damages, fines or compensation to Transnet Freight Rail within seven (7) days after written notice to that effect has been made or given by Transnet Freight Rail to the Customer.

23.13 National Water Act 36 of 1998 ("National Water Act")

The Parties undertake to comply with all the conditions laid down in terms of the above-mentioned National Water Act. Should the Customer fail to comply with any such conditions and penalties are imposed on Transnet Freight Rail as a result thereof, the Customer undertakes to refund the full amount of such penalties to Transnet Freight Rail within seven (7) days after written notice to that effect has been made or given by Transnet Freight Rail to the Customer.

23.14 Conservation of Agricultural Resources Act 43 of 1983 ("Conservation of Agricultural Resources Act")

23.14.1 The Parties undertake to comply with all the provisions of the Conservation of Agricultural Resources Act.

23.14.2 The Customer hereby indemnifies Transnet Freight Rail against any liability including any penalties, damages, fines or any other forms of compensation for which Transnet Freight Rail is held liable in terms of the Conservation of Agricultural Resources Act, or in terms of section 34 of the NEMA read with section 6 and 7 of the Conservation of Agricultural Resources Act, arising out of any acts or omissions by the Customer.

23.14.3 The Customer also indemnifies Transnet Freight Rail in the event of any other obligation or obligations being imposed on Transnet Freight Rail in terms of any of the provisions of the Conservation of Agricultural Resources Act, arising out of any acts or omissions by the Customer.

23.14.4 Should the Customer fail to comply with any provisions of the Conservation of Agricultural Resources Act, and any penalties, damages, fines or any other forms of compensation are imposed on Transnet Freight Rail as a result thereof, the Customer undertakes to refund the full amount of such penalties, damages, fines or compensation to Transnet Freight Rail within seven (7) days after written notice to that effect has been made or given by Transnet Freight Rail to the Customer.

Compliance with other legislation: Specific mention of the above legislation is to draw the Customer's attention thereto, and shall not derogate from, or diminish the Customer's general obligation to comply with all other laws in force at all times during this Agreement.

23.15 Enterprise Development

23.15.1 The Customer shall comply with all Broad Based Black Economic Empowerment (BBBEE) codes. As an Established Organisation (EO) in terms of the aforementioned codes, it must have a relationship and/or agreement with a Developing Organisation (DO). The Customer shall provide Transnet Freight Rail with a list of the DO's it has agreements/relationships with. This will be provided on an annual basis.

23.15.2 In terms of the code series 2600:

A relationship agreement of co-operation and assistance has to be in place between the established organization (EO) and developing organisation (DO).

- (a) The EO may not have an equity holding larger than 20% in the DO, either directly or through a flow through calculation.
- (b) The DO that can qualify for Enterprise Development must:
 - (i) be a legal entity compliant with South African Revenue Service requirements;
 - (ii) be an employer of at least three other permanently employed personnel and not merely a one person operation with temporary employees; and
 - (iii) must be fifty percent (50%) or more black owned or thirty percent (30%) or more black women owned.

24 Transport of Goods at Owner's Risk and Loss or Damage to Rolling Stock

24.1 Transnet Freight Rail transports and deals with all Goods at the risk of the owner of the Goods, or any other person in whom the risk of Loss of or damage to the Goods lies at any relevant time. Unless stated otherwise in a Schedule Transnet Freight Rail is not liable for:

24.1.1 any Loss of, or damage to the Goods whatsoever, whether due in whole or in part to any negligence or breach of contract on Transnet Freight Rail's part save, in the case of either a breach of the terms of these Transnet Freight Rail Standard Conditions of Carriage or Transnet Freight Rail's gross negligence in either case causing Loss, for an amount not exceeding that stated in or to be set out in a Schedule;

24.1.2 any consequential or economic loss whatsoever, including but not limited to loss of production or profit, whether arising out of such Loss or not;

24.1.3 any direct or indirect, incidental, special or consequential damages, loss of revenue, incurred by the Customer or any third party, even if Transnet Freight Rail have been advised of the possibility of such damages.

24.2 The Customer indemnifies Transnet Freight Rail against all Claims made against Transnet Freight Rail by any third party arising out of Loss of or damage to the Goods if the Customer is not the owner or the person in whom the risk of Loss of or damage to the Goods lies at the relevant time.

24.3 If the Customer wishes to proceed with any Claim against Transnet Freight Rail the Customer must report any Loss to the person named in, or to be set out in a Schedule and obtain an incident number from Transnet Freight Rail.

24.4 Insurance related claims must be lodged with the person named in, or to be set out in a Schedule within one hundred and eighty (180) Days from the date the Goods arrived, or ought to have arrived at their final destination, failing which the Claim will not be honoured by Transnet' insurers, i.e. irrevocably lapse and be of no further force or effect.

Transnet Freight Rail Conditions of Carriage

24.5 The risk of loss or damage to Transnet Freight Rail's rolling stock will pass to the Customer at the Point Of Placing and will pass back to Transnet Freight Rail at the time the rail wagons are coupled back to Transnet Freight Rail's locomotive for dispatch.

24.6 The Customer:

24.6.1 must take reasonable care to ensure safe operations when shunting wagons in the Private Siding or exchange yard;

24.6.2 must notify Transnet Freight Rail immediately of any derailment of any wagons in the siding or any damage to wagons in the Private Siding or at any other place where the wagons are in the possession of, or under the control of the Customer, or any damage to the wagons in the afore-mentioned places; and

24.6.3 must under no circumstances attempt to re-rail a derailed wagon without Transnet Freight Rail's technical personnel being involved.

24.6.4 In the event of any damage caused to Transnet Freight Rail's rolling stock by the Customer, the Customer shall be liable for all such damages, including all costs of repair and transport of the rolling stock to a Transnet Freight Rail repair facility.

24.6.5 The repair costs mentioned in clause 24.6.4 above will be an estimate from the Transnet Engineering Department.

24.6.6 In order to record any damage to Transnet Freight Rail rolling stock, the Customer must ensure the presence of a Customer representative at the Customer Siding or exchange yard who will alongside a Transnet Freight Rail employee, jointly inspect the rolling stock as follows:

24.6.6.1 Upon arrival of the wagons, the Customer representative and Transnet Freight Rail employee must sign the Customer Siding Arrival Wagon Checklist.

24.6.6.2 Upon departure of the wagons, once the inspection is complete, the Customer representative and Transnet Freight Rail employee must sign the Customer Departure Wagon Checklist.

25. Limitation of Liability, Indemnity

25.1 Transnet Freight Rail shall not be liable to the Customer, whether in terms of any indemnity or otherwise, for any Loss arising in whole or in part from any act or omission of the Customer.

25.2 The Customer indemnifies and holds Transnet Freight Rail harmless against any Loss suffered by or Claims made against Transnet Freight Rail as a result of or in connection with any act or omission of the Customer and/or any of the Customer's responsible persons (including any default or failure by the Customer to comply with any of the Customer's obligations under the Agreement

25.3 For the purposes of this clause 25, "responsible persons" means any subcontractor, agent, servant, officer or employee of the party concerned.

25.4 If any legal action is brought or Claim is made against Transnet Freight Rail and Transnet Freight Rail is entitled to be indemnified pursuant to this clause 25, the Customer shall be entitled at his own expense to defend, have conduct of, or settle any such action or Claim and Transnet Freight Rail shall notify the Customer promptly of any such Claims or any such threatened Claims and take such action as the Customer reasonably directs. Transnet Freight Rail shall be entitled to engage its own legal counsel and the Customer shall co-ordinate their defence with Transnet Freight Rail. If the Customer fails to defend, deal with or negotiate any such action or Claim diligently, Transnet Freight Rail may proceed to defend or settle the Claim without the Customer's consent after first giving the Customer reasonable notice. However, this shall not relieve the Customer of the obligation to indemnify Transnet Freight Rail as provided in sub-clause 25.2.

25.5 Insofar as the performance of any obligation or duty by either of the Parties in terms of the Agreement is performed by any of the Parties' respective responsible persons, clauses limiting and/or excluding the liability of Transnet Freight Rail are stipulated for the benefit of such responsible persons as well, and their liability shall be limited and/or excluded and they shall be indemnified accordingly.

25.6 Notwithstanding anything to the contrary contained in the Agreement, Transnet Freight Rail's liability to the Customer in terms of clause 24 where specifically undertaken in the Agreement or for any other cause under the Agreement is limited to the amount set out or to be set out in a Schedule. If such Schedule has not been signed by the Customer, or if such Schedule does not stipulate an amount for the limitation of liability, then Transnet Freight Rail shall have no liability, save in the case of wilful misconduct or gross negligence on the part of Transnet Freight Rail, in either case causing loss.

26. Optional Insurance & Claims

26.1 Transnet Freight Rail shall endeavour to effect any insurance the Consignor or Consignee validly instructs Transnet Freight Rail to effect over a particular consignment of goods and/or a freight container not owned by Transnet Freight Rail before despatch of same, or attachment of risk, whichever happens earlier. Instructions may validly be given in any of the following ways:-

26.1.1 indicating in the appropriate space on the transport documents that insurance is required; or

26.1.2 an indication to the Transnet Freight Rail employee making telephonic bookings that insurance is required; or

26.1.3 notification on the relevant Electronic Data Interchange communication with Transnet Freight Rail that insurance is required.

26.2 Any of the above valid indications by the Consignor that insurance is required shall be deemed to be made for and on behalf of the person bearing the risk in the goods at the time they are lost or damaged.

26.3 The Consignor shall be liable to pay the insurance premium, unless and until it has been paid by another person. If the premium is not paid by the due date there will be no insurance cover.

26.4 Any insurance affected shall be subject to such exceptions and conditions as may be imposed by the insurance company or underwriters taking the risk. In particular the insurance shall be limited to physical loss or damage to the goods themselves, including all packing materials, labels and the like when necessary for commercial purposes, and/or a freight container not owned by Transnet Freight Rail together with a refund of railage in proportion to the loss if included in the insured value of the goods.

26.5 Transnet Freight Rail shall not be obliged to obtain separate cover for any risks so excluded.

26.6 Transnet Freight Rail shall not be under any obligation to obtain separate cover for individual consignments but may insure all or any of such consignments under any open or general policy held by Transnet Freight Rail from time to time, and in particular Transnet Freight Rail shall be entitled should it so wish to declare the goods on any open or general insurance policy.

Transnet Freight Rail Conditions of Carriage

26.7 Should any insurer dispute its liability, whether in whole or in part, under any insurance policy in respect of any goods, the consignor or consignee concerned shall have recourse against such insurer only, and Transnet Freight Rail shall not have any responsibility or liability whatsoever in relation thereto notwithstanding that the premium paid on such policy may differ from the amount paid by the consignee or consignor to Transnet Freight Rail in respect thereof.

26.8 In so far as Transnet Freight Rail agrees to arrange insurance, Transnet Freight Rail acts solely as agent for and on behalf of the Consignor, and/or any other person bearing the risk in the goods at the time they are lost or damaged.

26.9 Documentary proof of the insurance concerned may be inspected or obtained during business hours from the relevant Transnet Freight Rail Manager involved in arranging the insurance.

26.10 Claims: - Any claim brought against the insurers may be lodged during business hours with Transnet Freight Rail's Account/Customer Manager, who will accept notification of the claim in the capacity as agent of the insurers or underwriters.

26.11 It will be in the interests of any claimant to *IMMEDIATELY* report any discrepancy, loss or damage to Transnet Freight Rail telephonically in order to arrange inspection of the goods, and to obtain an incident number from Transnet Freight Rail.

26.12 A Claim Form (Obtainable from Transnet Freight Rail) must be lodged with the Transnet Freight Rail Account/Customer Manager within 180 (One Hundred and Eighty) calendar days from the date the goods reached, or ought to have reached, their final destination, failing which the claim will irrevocably lapse and be of no force and effect.

26.13 If the claim is rejected, summons may be served on Transnet Ltd at following addresses:

Enterprise Risk Management, 4th floor, table 4/37, Inyanda House 2, 13-15 Girton Road, Parktown, Johannesburg

27. Claims against the Servants & Employees of Transnet Freight Rail by the Consignor, Consignee or Third Party

27.1 The Consignor and Consignee undertake that no claim shall be made by either of them, nor any party, against any servant or employee of Transnet Freight Rail personally for any loss or damage caused by such persons while acting in the course and scope of their employment.

28. Account number

28.1 If Transnet Freight Rail has granted credit facilities to the Customer, Transnet Freight Rail will allocate an account number to the Customer ("the Customer's account") set out or to be set out in a Schedule. The account number must be quoted on all orders and payments.

28.2 For avoidance of doubt invoicing will take place as follows:

28.2.1 Traffic in rail wagons (non-containerised traffic):

28.2.1.1 Domestic traffic railed within the Republic:

Transnet Freight Rail will invoice and raise the price and other charges applicable on the date the release instruction from the consignor is received telephonically or in writing.

28.2.1.2 Export Traffic (to foreign railways):

Transnet Freight Rail will invoice and raise the price and other charges applicable on the date the release instruction from the consignor is received telephonically or in writing.

28.2.1.3 Import Traffic (from foreign railways):

Transnet Freight Rail will invoice and raise the price and other charges applicable on the date reflected on the rail invoice received from foreign railways.

28.2.2 Traffic in Containers:

Due to the need to also raise feeder service charges for containerised traffic Transnet Freight Rail will invoice containerised traffic as follows:

28.2.2.1 Import containerised Traffic (from foreign railways):

Transnet Freight Rail will invoice and raise the price and other charges applicable on the date reflected on the rail invoice received from foreign railways.

28.2.2.2 Import containerised Traffic ex RSA Harbours:

Transnet Freight Rail will invoice and raise the price and other charges applicable on the date of the SAPO date stamp on the CTO container list.

28.2.2.3 Other containerised Traffic (Domestic, Sea exports and foreign railway exports):

Transnet Freight Rail will invoice and raise the price and other charges applicable on the date when the consignment note (requesting the service) is captured on Transnet Freight Rail's system.

28.2.2.4 Other miscellaneous charges raised on containerised Traffic which were not raised on the original order/consignment:

Transnet Freight Rail will invoice and raise these miscellaneous charges applicable on the date when the original consignment note (requesting the service) is captured on Transnet Freight Rail's system.

29. Credit facilities and payment

29.1 Unless otherwise agreed between duly authorised representatives of Transnet Freight Rail and the Consignor respectively, the terms of payment to Transnet Freight Rail shall be by means of a cash deposit into Transnet Freight Rail's Bank Account, in advance of conveyance. The granting, amendment, extension or withdrawal of credit facilities will be subject to the Customer providing Transnet Freight Rail with an appropriate bank guarantee in terms of this clause 29.1. In order to ensure that the Customer's obligations to Transnet Freight Rail can be fulfilled, the Customer must furnish Transnet Freight Rail with such a guarantee within seven (7) Days of the request in the amount requested by Transnet Freight Rail. It is recorded that the granting of credit shall be at Transnet Freight Rail's sole discretion. If:

29.1.1 the guarantee is at any time withdrawn according to its terms or is held to be unenforceable for any reason; or

29.1.2 the Customer fails to provide the bank guarantee as requested; or

29.1.3 the Customer fails to make alternative arrangements satisfactory to Transnet Freight Rail,

29.1.4. the Customer is in business rescue in terms of Chapter 6 of the Companies Act 71 of 2008.

Transnet Freight Rail Conditions of Carriage

then, notwithstanding any other clause in this Agreement, Transnet Freight Rail will be entitled to terminate this Agreement in terms of clause 32 (Breach) below with immediate effect upon notice to the Customer, and/or, suspend all Transport of consignments.

29.2 The Customer will be invoiced and be held liable for all amounts which Transnet Freight Rail may pay on the Customer's behalf to other Railway administrations, hauliers or other persons.

29.3 If the Customer's authorized credit limit on such an account is exceeded, the Customer must make an immediate interim payment in order to bring the account within the authorized credit limit failing which Transnet Freight Rail shall be entitled to suspend all Transport of consignments.

29.4 Transnet Freight Rail will render a weekly tax invoice to the Customer, which will serve as an account for consignments transported by Transnet Freight Rail including Wagon Delay Charges. Any other amounts due to Transnet Freight Rail by the Customer in terms of these Transnet Freight Rail Standard Conditions of Carriage such as interest charges will appear on the monthly statement, which serves as a summary of all transactions on the Customer's account. The weekly tax invoice and the monthly credit account statements are available on Transnet Freight Rail's website at www.transnetfreightrail.co.za. The weekly tax invoice will furthermore also be:

29.5 a VAT invoice; and

29.5.1 proof of the VAT payable.

29.6 Amounts debited to the Customer's account during any particular month must be paid by the Customer on or before the 25th Day of the month following the month in which the debits were raised. Payments must be made into such account as Transnet Freight Rail may from time to time notify the Customer. When the 25th is not a Business Day payment is required on the last Business Day prior to the 25th.

29.7 If any railage prices are quoted in a foreign currency, the prevailing monthly SARA exchange rate for the month during which specific consignments were transported, will be applied in converting the foreign currency to Rand for invoicing purposes.

29.8 Unless otherwise agreed by Transnet Freight Rail and permitted by the South African Reserve Bank invoices and accounts will be:

29.8.1 Rand based; and

29.8.2 be payable in Rand.

29.9 Overdue amounts shall bear interest at a rate above the published prime overdraft rate of the Standard Bank of South Africa Limited (e.g. prime rate 17% plus 4% above = 21%) based on the Customer's credit worthiness evaluated by Transnet Freight Rail and as set out or to be set out in a Schedule, as applicable from time to time calculated daily and compounded monthly in arrears. Any change in the prime overdraft interest rate will be applied from the first Day of the next month.

29.10 The Customer may query any invoice in Writing within ninety (90) Days of the invoice date, if no query is received in the said period the invoice will be:

29.10.1 deemed to be correct; and

29.10.2 final and binding on all parties.

29.11 If any amount is erroneously debited to the Customer's account due to a mistake on the part of the Customer or their agent and the Customer subsequently requests Transnet Freight Rail to transfer the debit to another account, such transfer will not be done without the prior written consent of the account holder concerned. The Customer will be liable to compensate Transnet Freight Rail for any adjustment fees arising out of the correction of any such errors. Interest will also be payable by the Customer from the date of first debit as if the amount had been originally included to the correct account number. No request for the transfer of debits lodged ninety (90) Days or more after the date of the statement will be entertained, save in the circumstances of an error by a Transnet Freight Rail employee.

29.12 Transnet Freight Rail is entitled to refuse to Transport any consignment for the Customer (whether on a "cash" in advance basis or not) if any amount due by the Customer to Transnet Freight Rail is overdue for payment.

29.13 The Customer is not entitled to:

29.13.1 withhold payment of any amount due by the Customer for services because of any Loss or Claim of the Customer; or

29.13.2 set off any amounts due by the Customer to Transnet Freight Rail against any amount due to or alleged to be due to the Customer by Transnet Freight Rail.

29.14 The Customer must furnish Transnet Freight Rail on request with such information and references relating to the Customer's financial position as Transnet Freight Rail may from time to time require.

29.15 If at any time during the term of the Agreement, and after an evaluation of the Customer's financial position in terms of clause 29.14, Transnet Freight Rail requires an additional bank guarantee on the same terms as clause 29.1 in order to ensure that the Customer's obligations to Transnet Freight Rail can be fulfilled, the Customer must furnish Transnet Freight Rail with such a guarantee within thirty (30) Days of that request in the amount requested.

29.16 Transnet Freight Rail may at any time in Transnet Freight Rail's sole discretion amend, vary or revoke the Customer's credit facilities and/or suspend Transport for or on behalf of the Customer if its account is unpaid or if the Customer has not provided the bank guarantees required by Transnet Freight Rail or if the guarantees, having been provided, are withdrawn for whatever reason.

29.17 The terms of the Agreement are without prejudice to Transnet Freight Rail's rights to exercise a lien over the Customer's consignments in Transnet Freight Rail's possession for unpaid storage, railage and other charges and Additional Costs and the Customer agrees that Transnet Freight Rail may exercise such a lien whether or not the unpaid amounts relate to the consignments in question.

29.18 The Customer may authorise anyone to despatch goods for the debit of the Customer's account, provided the Customer has advised Transnet Freight Rail in Writing prior to granting such authorisation. The Customer may withdraw any such authorisation on fourteen (14) Days' written notice to Transnet Freight Rail. The Customer will remain liable before the lapse of such notice period for all debits against the Customer's account in terms of the authorisation.

30. Unclaimed Goods

Transnet Freight Rail Conditions of Carriage

- 30.1** Transnet Freight Rail shall be entitled to sell or dispose of any goods where:
- 30.1.1** a Consignee cannot be identified; or
- 30.1.2** the goods cannot be delivered because they are insufficiently or incorrectly addressed; or
- 30.1.3** where the goods have not been collected or accepted by the Consignee or any other person within 7 (*SEVEN*) days of their having arrived or being tendered for delivery by Transnet Freight Rail, as the case may be. Provided that where Transnet Freight Rail has an address for the Consignee (or in the case of a freight container, the container operator) then sale or disposal shall be effected only after the expiration of thirty (30) days from the posting of a written notice of its intention to do so to that address by registered mail.
- 30.2** Perishable Goods: - Notwithstanding anything to the contrary in this Agreement, if perishable goods arrive at their destination in such a condition that they will, in the opinion of Transnet Freight Rail, become worthless if the owner or person entitled to claim them has not claimed them, or refuses to claim them, Transnet Freight Rail may, after reasonable attempts to obtain disposal instructions from the Consignor and Consignee, immediately sell such goods in any manner, or if the goods have in fact become worthless, to destroy them or arrange for their disposal.
- 30.3** Transnet Freight Rail shall be entitled, without prejudice to any other rights, which it may have, and without further notice to the Consignor or Consignee –
- 30.3.1** to open and examine any part of the consignment, and
- 30.3.2** at the option of Transnet Freight Rail, to sell the whole or any part of the consignment, 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 Consignor or Consignee, to Transnet Freight Rail.
- 30.4** Transnet Freight Rail shall pay over the surplus (if any) of the proceeds of such sale under this clause to the Consignor, but shall otherwise be released from all liability whatsoever in respect of the consignment.
- 30.5** The Consignor and Consignee jointly and severally indemnify Transnet Freight Rail against any claims or fines which may be instituted or levied against Transnet Freight Rail arising out of or as a result of any sale under this Agreement.

31. Certificate

The Customer agrees that any certificate given under the signature of any credit manager of Transnet Freight Rail (whose signature and capacity it shall not be necessary to prove) shall be *prima facie* evidence of: any amount owing by the Customer to Transnet Freight Rail, whether liquid, liquidated or illiquid, including any interest and the rate thereof; the reasonableness or normality of any charge raised by Transnet Freight Rail against the Customer.

32. Breach

32.1 Subject to clause 32.2 should either of the Parties ("the defaulting party") commit a breach of a term of the Agreement, then the other of the Parties ("the aggrieved party") shall be entitled to give the defaulting party notice to remedy such breach within thirty (30) Days of receipt of such notice and, if the defaulting party fails to comply with the notice, the aggrieved party shall be entitled, but not obliged, without prejudice to any other rights or remedies which it may have, including the right to claim damages:

32.1.1 cancel the Agreement; or

32.1.2 claim specific performance.

32.2 The aggrieved party shall not be entitled to exercise the rights granted to it in terms of this clause 32 until such time as the aggrieved party shall first have given the defaulting party notice as contemplated in sub-clause 32.1 above and the defaulting party shall have failed to comply therewith within a period of thirty (30) Days reckoned from the date upon which the defaulting party received such notice.

32.3 The Agreement may be terminated forthwith by either of the Parties if the other is Placed under liquidation (provisional or final) or business rescue in terms Chapter 6 of the Companies Act 71 of 2008.

32.4 Notwithstanding any other provisions in these Terms Transnet Freight Rail reserves a right, on seven (7) Days Written notice, to terminate the Agreement if the Customer's account is in arrears in excess of thirty (30) Days.

32.5 The termination of the Agreement shall have the effect of terminating the Parties respective rights and obligations save for the rights of either of the Parties that have already accrued prior to the event giving rise to the termination, the Confidentiality and Dispute Resolution provisions of these Standard Conditions of Carriage.

33. Cession, delegation and Change in Control

33.1 Neither of the Parties shall be entitled to cede any of their rights or delegate any of their obligations in terms of the Agreement save with the prior written approval of the other Party which approval in the case of a cession shall not be unreasonably withheld.

33.2 The Customer shall ensure that there is no Change in Control, whether in a single or a series of transactions, in aggregate in the Customer (or in any company of which the Customer is a subsidiary) without the prior written notice to Transnet Freight Rail.

33.3 Notwithstanding any other provision of these Standard Conditions of Carriage, the Customer shall ensure that there is no sale, assignment, cession, transfer, exchange, renunciation or other disposal of the whole or any part of the Equity and/or the member's loans, nor any dilution of the Equity, without the prior written notice to Transnet Freight Rail.

34. Force Majeure

34.1 Notice of Force Majeure

Version 14.

Standard Conditions of Carriage 2016/17

Page 24 of 28

Transnet Freight Rail Conditions of Carriage

Each of the Parties shall promptly notify the other of the occurrence of a perceived or actual event of Force Majeure and when such event has ceased.

Continuation of performance

34.1.1 Each of the Parties shall take all reasonable steps to prevent, limit and minimise the effect of events of Force Majeure on the performance of its obligations in terms of the Agreement.

34.1.2 Any decisions taken by the Parties during an event of Force Majeure shall be directed toward the execution of the respective Party's obligations to the extent possible in terms of this Agreement.

34.1.3 A party affected by the occurrence of the Force Majeure shall be excused from performance of its obligations in terms of the Agreement to the extent that it is unable to perform those obligations as a result of such Force Majeure and neither of the Parties shall be entitled to:

34.1.3.1 terminate the Agreement on account of such occurrence other than in accordance with the terms of this clause; and/or

34.1.3.2 claim damages, penalties or other compensation from the other of the Parties as a result of such failure to perform.

34.2 Insured events of Force Majeure

To the extent that the consequences of an event of Force Majeure fall within any insurance cover then the party who is insured shall forthwith make the appropriate Claims thereunder and shall apply the proceeds in rectification of those consequences.

34.4 Consequences of Force Majeure

34.4.1 If Transnet Freight Rail agrees, or it is determined that an event of Force Majeure has occurred, Transnet Freight Rail shall promptly consult to agree a mutually satisfactory resolution to the changed circumstances resulting from the event of Force Majeure.

34.4.2 If an event of Force Majeure (or its consequences) continues for an aggregate of sixty (60) or more Days in any one hundred and eighty (180) Day period or one hundred and eighty (180) consecutive Days and the Parties have not reached a mutually satisfactory resolution to the changed circumstances and the effect of the Force Majeure is continuing, the Agreement may, upon fourteen (14) Days prior notice, be terminated by either of the Parties.

34.4.3 Neither of the Parties shall be obliged to counter-perform any obligation where performance of the other has not taken place as a result of Force Majeure.

35. Notices and Communications

35.1 The Parties choose as their respective *domicilia citandi et executandi* for all purposes in terms of the Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the addresses for Transnet Freight Rail stipulated in a Schedule or **Transnet Freight Rail, Table 52, Second Floor, 15 Girton Road, Parktown** and the Customer at its official address set out in a Schedule or the address appearing in the relevant transport document as the case may be.

35.2 Any notice or communication required or permitted in terms of the Agreement shall be valid and effective only if in Writing, but it shall be competent to give notice by facsimile or by electronic mail.

35.3 Either of the Parties may by notice to the other change the physical address chosen as their *domicilium citandi et executandi* to another physical address or change their postal address or their telefax number, or its email address, provided that the change shall become effective on the 20th Business Day from the receipt of the notice by the addressee.

35.4 Any notice to either of the Parties:

35.4.1 sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to the addressee at an address chosen as the *domicilium citandi et executandi* and to which post is delivered shall be deemed to have been received on the 14th Business Day after posting (unless the contrary is proved);

35.4.2. delivered by hand to a responsible person during ordinary Business hours at the physical address chosen as the *domicilium citandi et executandi* shall be deemed to have been received on the Day of delivery; or

35.4.3 sent by telefax to the chosen telefax number (011) 584-1372, or an electronic mail to the chosen electronic mail address stipulated in clause 35.1 above shall be deemed to have been received on the date of despatch if that Day is a Business Day and, if it is not a Business Day, on the next succeeding Business Day (unless the contrary is proved).

35.5 Notwithstanding anything to the contrary in the Agreement, a notice or communication actually received by one of the Parties shall be an adequate notice or communication notwithstanding that it was not sent to or delivered at the chosen *domicilium citandi et executandi*.

35.6 All communications, requests, notices, and any other queries in terms of this Agreement by the Customer shall be made only to the contact person nominated by Transnet Freight Rail in this Agreement, or to the contact person nominated by Transnet Freight Rail in any other written communication to the customer. Notwithstanding any other clause in this Agreement, a failure to do so shall give Transnet Freight Rail the right to claim confidentiality and/or privilege over information obtained from any source other than the contact person nominated by Transnet Freight Rail in this Agreement, to designate such information as improperly obtained, and to require the Customer to return or destroy such information. If Transnet Freight Rail claims confidentiality and/or privilege over any such improperly obtained information, the Customer shall not be entitled to use such information for the purposes of any claim or legal proceedings that it may contemplate lodging against Transnet Freight Rail.

35.7 Maintaining of Records and Provision of Information:

35.7.1. The Customer shall inform Transnet Freight Rail of any change to the following information relating to it within 7 (seven) days of occurrence of any such change, namely -

35.7.1.1: name;

35.7.1.2: business address and registered office;

35.7.1.3: directors and company secretary;

35.7.1.4: auditors;

35.7.1.5: trading name or names.

36. Miscellaneous

36.1 No approvals, comments, instructions, consents or advice from one of the Parties to the other in connection with the subject matter of the Agreement shall in anyway relieve the other from its obligations under the Agreement. No representations, warranties or undertakings not contained in this Agreement shall be valid and binding.

36.2 The Parties' respective rights and remedies under the Agreement are cumulative, may be exercised as often as either of the Parties consider appropriate and are, save where such rights are limited in terms of the Agreement in addition to the Parties' respective rights and remedies in Law.

36.3 The Parties' respective rights and remedies whether arising under the Agreement or in Law shall not be capable of being waived or varied otherwise than by an express waiver or variation in Writing duly executed by an authorised representative of the holder of such right or remedy.

36.4 The waiver by either of the Parties of any breach of the terms of the Agreement by the other shall not prejudice any remedy of the waiving party in respect of any continuing or other breach of the terms of the Agreement.

36.5 No failure, delay, relaxation or indulgence on the part of either of the Parties in exercising any power, right or remedy conferred on such Party under the Agreement or by Law shall operate as a waiver of such power, right or remedy whether of a like or different character nor shall any single or partial exercise of any such power, right or remedy preclude any other or further exercises of such power, right or remedy or the exercise of any other power, right or remedy of either of the Parties.

36.6 If any of the provisions in the Agreement is or becomes invalid, illegal or unenforceable in any respect under any Law the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired and:

36.6.1 that provision shall be deemed for all purposes to be severable from all the other provisions of the Agreement, which provisions shall continue in force unaffected;

36.6.2 The Agreement thus continuing shall (subject and without prejudice to any appeal to higher authority as to the status of that provision) exclude the offending provision but, if such deletion substantially affects or alters the commercial basis of the Agreement, then the Agreement, including such provision shall be amended in such manner as Transnet Freight Rail agrees which will, while not being void or unenforceable, most nearly achieve the object of the allegedly void or unenforceable provisions.

36.7 The Agreement shall be binding upon and inure to the benefit of each of the Parties and the Parties' respective successors, legal representatives and permitted assigns.

37. Laws and Jurisdiction

37.1 The Agreement shall be governed by and interpreted according to the Law of the Republic irrespective of where Goods are collected, or delivered and irrespective of where the Transport is carried out.

37.2 Subject to the provisions of clause 38 each of the Parties submits to the exclusive jurisdiction of the South African courts in respect of any matter arising from or in connection with the Agreement, including its termination. Each of the Parties further consents to the jurisdiction of the High Court of South Africa (**South Gauteng High Court (Johannesburg)**).

38. Dispute Resolution

38.1 Save for clause 29 above, or any other clause in the Agreement which provides for its own remedy, should any dispute arise between the Parties in respect of or pursuant to the Agreement, including, without limiting the generality of the afore-going, any dispute relating to:

38.1.1 The formation, existence or implementation of the Agreement;

38.1.2 the interpretation of the Agreement;

38.1.3 the performance of any of the terms of the Agreement;

38.1.4 any of the parties' rights and obligations;

38.1.5 any procedure to be followed;

38.1.6 the validity, enforceability, termination or cancellation or breach of the Agreement; or

38.1.7 the rectification or repudiation of the Agreement; then any Party may give the other Party written notice of such dispute, in which event the provisions below shall apply.

38.1.8 Any matter affecting the interest of the Parties in terms of this Agreement.

38.2 A Dispute shall:

38.2.1 in the first instance, be referred to the responsible account managers of each Party, who shall attempt to resolve the dispute amicably within five (5) Business Days of the date on which the dispute was referred to them; and

38.2.2 if not resolved, be referred to the responsible executive managers of each Party, who shall attempt to resolve the dispute amicably within five (5) Business Days of the date on which the dispute was referred to them; and

38.3 if not resolved as above within ten (10) business days, the Parties' General Managers shall meet in the spirit of goodwill and endeavour to resolve the dispute, failing which the Parties shall escalate the dispute to their respective Chief Executives to resolve the dispute. If the dispute is not resolved as above within twenty one (21) business days (and without prejudice to any other alternative dispute resolution to which the Parties may agree, either prior to or concurrently with arbitration) the provisions of clause 38.4 below shall apply.

38.4 If the Parties are unable to resolve the dispute within fourteen (14) days of the notice of the dispute (or such longer period as they may have agreed to in Writing), then either Party may, on written notice to the other Party, require that the dispute be submitted to and decided by arbitration, in terms of the Arbitration Act, 42 of 1965 of the Republic ("the Arbitration Act").

38.4.1 This clause 38 shall not preclude any Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator. The arbitration shall be held under the provisions of the Arbitration Act provided that the arbitration shall be:

38.4.2 at any place which the Parties agree, in Writing, to be mutually convenient; and

38.4.3 in accordance with such formalities and/or procedures as may be settled by the arbitrator and may be held in an informal and summary manner, on the basis that it shall not be necessary to observe or carry out the usual formalities of procedure, pleadings and/or discovery or respect rules of evidence.

Transnet Freight Rail Conditions of Carriage

38.5 If the arbitration is:

38.5.1 a legal matter, then the arbitrator shall be a practicing advocate or a practicing attorney of not less than fifteen (15) years' standing, or a retired High Court judge;

38.5.2 an accounting matter, then the arbitrator shall be a practicing chartered accountant of not less than fifteen (15) years' standing;

38.5.3 any other matter, then the arbitrator shall be any independent person agreed upon between the parties.

38.6 Should the Parties fail to agree on an arbitrator within fourteen (14) days after the arbitration has been demanded, then the arbitrator shall be nominated at the request of either of the Parties, by the President for the time being by the Arbitration Foundation of South Africa ("AFSA") Secretariat in terms of the rule of AFSA.

38.7 Should the Parties fail to agree whether the dispute is of a legal, accounting or other nature within seven (7) days after the arbitration has been demanded, then it shall be deemed to be a dispute of a legal nature.

38.8 The arbitrator may:-

38.8.1 investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with the dispute and for that purpose, shall have the widest powers of investigating all documents and records of any party having a bearing on the dispute;

38.8.2 interview and question under oath the parties of any of their representatives;

38.8.3 decide the dispute according to what he considers just and equitable in the circumstances; and

38.8.4 make such award, including an award for specific performance, damages or otherwise, as he in his discretion may deem fit and appropriate. The arbitration shall be held as quickly as possible after it is requested, with a view to it being completed within thirty (30) days after it has been so requested.

38.9 The arbitrator's decision and award shall be in Writing with reasons and shall be final and binding upon the Parties.

38.10 The arbitrator's award may, on application by either Party to a court of competent jurisdiction and after due notice is given to the other Party, be made an order of court.

38.11 Notwithstanding the provisions of clauses, 38.6, 38.7, 38.8, 38.9 above in the event of either Party having a claim against the other Party for a liquidated amount or an amount which arises from a liquid document(s), or for an interdict or other urgent relief, then the other Party having such a claim shall be entitled to institute action therefore in a court of law rather than in terms of the above clauses, notwithstanding the fact that the other Party may dispute the claim.

The provisions of this clause are severable from the rest of the Agreement and shall remain in effect even where the Agreement is terminated or cancelled for any reason.

39. CONFIDENTIALITY

39.1 The Parties acknowledge that the contents of this Agreement, and all information disclosed as a result of this Agreement is confidential business and technical information, data, documents or other information necessary or useful for the carrying on by a Party of its business, which shall include, but shall not be limited to operating procedures, quality control procedures, approximate operation personnel requirements, descriptions and trade names and trademarks, know-how, techniques, technology, information relating to clients, customers, suppliers, business associates, relevant authorities, copyright, trade secrets and all goodwill relating to the business and any other intellectual property rights, technical data and documents in whole or in part, used by a Party in respect of its business; all documents and records relating to, or emanating from any boards of enquiries undertaken by Transnet Freight Rail ("**Confidential Information**"), shall remain confidential and shall not be made known unless the disclosing Party has given written consent to do so.

39.2 The contents of this Agreement and the information provided by the disclosing Party in the context of this Agreement is Confidential Information of the disclosing Party and the receiving Party shall take all reasonable measures to keep the information confidential and will only use the Confidential Information for the purpose for which it was provided.

39.3 The Parties undertake not to disclose any such Confidential Information. However, there will be no obligation of confidentiality or restriction on use where:

39.3.1 the information is publicly available, or becomes publicly available otherwise than by action of the receiving Party; or

39.3.2 the information was already known to the receiving Party (as evidenced by its written records) prior to its receipt under this or any previous agreement between the Parties or their affiliates; or

39.3.3 The information was received from a third Party not in breach of an obligation of confidentiality.

39.4 The provisions of clause 39.3 are subject to the condition that any announcements made to the general public relating to the conclusion of an agreement with Transnet Freight Rail shall be given after due consultation with Transnet Freight Rail.

39.5 Neither Party shall during the term of this Agreement (save in this Agreement) or at any time after the expiry or termination of this Agreement for any reason disclose to any person (other than to its professional advisers subject to obtaining similar confidentiality undertakings to those contained in this Agreement in favour of the other Party) or otherwise make use of any Confidential Information including information relating to prices without the prior written approval of the either Party save for such information or documentation that is or becomes in the public domain (other than through the default of one of the Parties) and such information or documentation that is required by law to be delivered to any Relevant Authority, stock exchange, or any other person. Nothing in this clause shall preclude either Party from using such information and documents in enforcing its rights against the other.

40. Termination

40.1 Either Party may terminate this Agreement or any severable portion by giving notice of cancellation in Writing of six (6) Months.

40.2 Transnet Freight Rail may elect to regard this Agreement as cancelled if the Customer has not consigned any Goods to it for Transportation for the period set out or to be set out in a Schedule provided that Transnet Freight Rail has communicated that election to the Customer.

40.3 This Agreement may also be terminated by agreement in Writing setting out the terms of such termination.

Transnet Freight Rail Conditions of Carriage

40.4 The Confidentiality and Dispute Resolution provisions under these Standard Conditions of Carriage shall survive the termination of any agreement governed by these Standard Conditions of Carriage.

41 Execution

41.1 The Agreement may be executed in several counterparts, which shall each be deemed an original, but all of which shall constitute the same Agreement.

41.2 The signatories to the Agreement by their signature warrant their authority to enter into the Agreement and the capacity of their principal, if signing in a representative capacity, to enter into the Agreement.

42. Claim for costs arising out of tippler unavailability

42.1 The Customer acknowledges that fully functioning rail wagon tippers ("tipplers") are critical to TFR in terms of scheduling of rail resources, actual rail transport and associated operations. It is therefore essential that tipplers be fully functional at all times, and tippler maintenance be planned so that alternative tipplers are always available for continuous duty.

42.2 Non-functional tipplers have an adverse impact on TFR which results in wasted costs being incurred by TFR. It is for this reason that TFR shall have the right to invoice the Customer for wasted costs that it (TFR) has incurred as a result of non-functional tipplers of the Customer resulting in delays to, or cancellation of trains, with resultant tonnage losses.

42.3 In order to mitigate the risks mentioned above, the Customer undertakes to plan its tippler maintenance in such a manner that alternative tipplers are always available for continuous duty. A situation where a maintenance delay of a rail wagon tippler results in a delay or cancellation of trains should therefore not occur.

42.4 In the event of tipplers not being functional, resulting in TFR incurring wasted costs, TFR shall furnish the Customer as soon as practicably possible thereafter with a summary of the costs of its wasted resources, including, but not limited to:

- (i) Personnel costs: the total man-hours lost as a result of the cancellation of the scheduled trains;
- (ii) Cost of locomotive(s) and wagons lying idle;
- (iii) Cost of rescheduling train slots;
- (iv) Other costs associated with operational delays;
- (v) Revenue that has been lost due to lost volumes/tonnages.

42.5 Invoicing for the wasted costs shall be dealt with as follows: The costs of wasted resources as described above will be included as separately detailed line items in TFR's monthly invoice to the Customer.

42.6 Notwithstanding the provisions of the sub-clauses above, in the event of the Customer issuing a notice to TFR that it is unable to fulfil its obligations in terms of the originally planned transport due to tippler unavailability, TFR shall take all reasonable steps to mitigate any wasted costs by redeploying personnel, rolling-stock (locomotives and wagons) and other resources to other routes thereby limiting any wasted costs. The likelihood of TFR being able to mitigate its costs is greater if the Customer notifies TFR in writing (which shall include email communications) and in advance if it is unable to fulfil its obligations in terms of the originally planned transport and/or loading and offloading due to its (the Customer's) tipplers being unavailable, however this shall not exclude or limit TFR in any way from claiming wasted costs.

43. Warranties and Covenants

43.1. The Customer warrants to Transnet Freight Rail that—

43.1.1. no proceedings or any other steps have been taken or, to the best of the knowledge of the Customer having made all reasonable enquiries, threatened for the winding-up or liquidation (whether voluntary or involuntary, provisional or final), business rescue or deregistration of the Customer or for the appointment of a liquidator, business rescue practitioner or similar officer over it or over any of its assets.