

## Kargo Website Terms of Use and Notices

### 1 Website terms and conditions of use

- 1.1. This document sets out the terms and conditions ("Terms") of **The Kargo Group of Companies (hereinafter referred to as "Kargo")** pertaining to the access and use of the information, products, services and functions provided on [www.kargo.co.za](http://www.kargo.co.za) ("Website").
- 1.2. The Kargo Group of Companies includes the following companies:
  - 1.2.1. Kargo Finance (Pty) Ltd (1998/013523/07)
  - 1.2.2. Kargo Industrial Park (Pty) Ltd (1934/006111/07)
  - 1.2.3. Kargo International Logistics (Pty) Ltd (1996/008812/07)
  - 1.2.4. Kargo Long Distance (Pty) Ltd (1996/007820/07)
  - 1.2.5. Kargo National (Pty) Ltd (2001/011893/07)
- 1.3. The Kargo group is services orientated group performing services in transport, national distribution, logistics, warehousing and Full Maintenance Leasing (FML) contracts.
- 1.4. Kargo endeavours to provide the highest standard of service satisfaction to their customers. They have a continuing duty to maintain professional knowledge and skill at a level required to ensure that customers receive the advantage of a competent professional service based on up-to-date developments in practice, legislation and techniques.
- 1.5. Should any person that accesses the Website you ("you" or "user") disagree with any of the Terms, you must refrain from accessing the Website and/or using our services.
- 1.6. If you are under the age of 18, you must obtain your parents' or legal guardians' advance authorization, permission and consent to be bound by these Terms before entering in to any online agreement or purchasing any services.
- 1.7. Kargo reserves the right, in its sole discretion, to amend and/or replace any of, or the whole of, the Terms. Such amendments shall supersede and replace any previous Terms and shall be made available on the Website. Each time a user accesses the Website and/or uses the services, the user shall be deemed to have consented, by such access and/or use, to the Terms, as amended and/or replaced by Kargo from time to time. If you are not satisfied with the amended Terms, you should refrain from using the Website.
- 1.8. We will however give you prior notice where we have collected personal information from you and the purpose for which we collected that information, is affected by the intended amendment.
- 1.9. If there is anything in these Terms that you do not understand then please contact us as soon as possible -see clause 11 below for contact details. Please note that calls to us are charged at national rates and may be monitored for training, security and quality assurance purposes.

### 2 Content of the website

- 2.1. Kargo reserves the right to make improvements, to change or to discontinue, without notice, any aspect or feature of the Website and any information or content on the Website.
- 2.2. Kargo reserves the right to change and amend the products, prices and rates quoted on this Website from time to time without notice.
- 2.3. Kargo may use the services of third parties to provide information on the Website. Kargo has no control over this information and makes no representations or warranties of any nature as to its accuracy, appropriateness or correctness. The user agrees that such information is provided "as is" and that Kargo and its online partners shall not be liable for any losses or damages that may arise from the user's reliance on it, howsoever these may arise.
- 2.4. Kargo makes no representations or warranties, whether express or implied, as to the accuracy, completeness or reliability of any information, data and/or content on the Website, including without limitation:
  - 2.4.1. Kargo does not warrant that the Website or information or downloads shall be error-free or that they shall meet any particular criteria of performance or quality. Kargo expressly disclaims all implied warranties, including without limitation, warranties of merchantability, fit-ness for a particular purpose, non-infringement, compatibility, security and accuracy;

- 2.4.2. whilst Kargo has taken reasonable measures to ensure the integrity of the Website and its contents, no warranty, whether express or implied, is given that any files, downloads or applications available via this Website are free of viruses, or any other data or code which has the ability to corrupt, damage or affect the operation of the user's system; and
- 2.4.3. Kargo disclaims any responsibility for the verification of any claims. Information published on this Website may be done so in the format in which Kargo receives it and statements from external parties are accepted as fact.

### 3 **Linked third party websites and third party content**

- 3.1. Kargo may provide links to third party websites on the Website. These links are provided to the user for convenience purposes only and Kargo does not endorse, nor does the inclusion of any link imply Kargo's endorsement of, such websites, their owners, licensees or administrators or such websites' content or security practices and operations.
- 3.2. While Kargo tries to provide links only to reputable websites or online partners, Kargo cannot accept responsibility or liability for the information provided on other websites. Linked websites or pages are not under, nor subject to, the control of Kargo. Kargo is not responsible for and gives no warranties or makes any representations in respect of the privacy policies or practices of linked or any third party or advertised websites on the Website.
- 3.3. You agree that Kargo shall not be held liable, directly or indirectly, in any way for the content, the use or inability to use or access any linked website or any link(s) contained in a linked website, nor for any loss or damage of any sort incurred as a result of any dealings with, or as the result of the presence of such third party linked websites on the Website.

### 4 **Usage restrictions**

The user hereby agrees that it shall not itself, nor through a third party:

- 4.1. copy (other than for backup, archival or disaster recovery purposes), reproduce, translate, adapt, vary, modify, lease, licence, sub-licence, encumber or in any other way deal with any part of the Website for any reason and in any manner, unless it is consistent with the intent and purpose of these Terms;
- 4.2. decompile, disassemble or reverse engineer any portion of the Website;
- 4.3. write and/or develop any derivative of the Website or any other software program based on the Website;
- 4.4. without Kargo's prior written consent, provide, disclose, divulge or make available to or permit the use of or give access to the Website by persons other than the user;
- 4.5. remove any identification, trademark, copyright or other notices from the Website;
- 4.6. post or transmit, by means of reviews, comments, suggestions, ideas, questions or other information through the Website, any content which is unlawful, harmful, threatening, abusive, harassing, defamatory, vulgar, ob-scene, sexually-explicit, profane or hateful, or racially, ethnically or otherwise objectionable content of any kind; and/or
- 4.7. notwithstanding anything contained to the contrary in these Terms, use the Website for any purpose other than commercial and information purposes.

### 5 **Security**

- 5.1. In order to ensure the security and reliable operation of the services to all Kargo's users, Kargo hereby reserves the right to take whatever action it may deem necessary to preserve the security, integrity and reliability of its network and back-office applications.
- 5.2. You may not utilise the Website in any manner which may compromise the security of Kargo's networks or tamper with the Website in any manner whatsoever, which shall include without limitation, gaining or attempting to gain unauthorised access to the Website, or delivering or attempting to deliver any unauthorised, damaging or malicious code to the Website, all of which is expressly prohibited. Any person or

entity which does so, or attempts to do so, shall be held criminally liable. Further, should Kargo suffer any damage or loss, civil damages shall be claimed by Kargo against the user.

- 5.3. Any user who commits any of the offences detailed in Chapter 13 of the Electronic Communications and Transactions Act 25 of 2002 ("ECTA") (specifically sections 85 to 88 (inclusive)) shall, notwithstanding criminal prosecution, be liable for all resulting liability, loss or damages suffered and/or incurred by Kargo and its affiliates, agents and/or partners.

## 6 Intellectual property rights

- 6.1. For the purpose of this clause, the following words shall have the following meanings ascribed to them:

- 6.1.1. "Intellectual property rights" means all and any of the rights in and to intellectual property of any nature whatsoever owned and/or controlled directly or under licence by Kargo, now or in the future, including without limitation, Kargo's rights, title and interest in and to all technology, source code/s, trade secrets, logos, systems, methods, trademarks, trade names, styles, insignia, designs, patents and copyright, and all similar proprietary rights which may subsist in any part of the world, whether registered or not.
- 6.1.2. All copyright and other intellectual property rights in all content, trademarks, software, data, material, including logos, databases, text, graphics, icons, hyperlinks, confidential information, designs, agreements, and multimedia works, published on or via the Website ("proprietary material"), are the property of, or are licensed to, Kargo and as such are protected from infringement by local and international legislation and treaties.
- 6.1.3. By submitting reviews, comments and/or any other content (other than your personal information) to Kargo for posting on the Website, you automatically grant Kargo and its affiliates a non-exclusive, royalty-free, perpetual, irrevocable right and licence to use, reproduce, publish, translate, sub-license, copy and distribute such content in whole or in part worldwide, and to incorporate it in other works in any form, media, or technology now known or hereinafter developed, for the full term of any copyright that may exist in such content. Subject to this licence, you retain any and all rights that may exist in such content.
- 6.1.4. All rights not expressly granted are reserved and no right, title or interest in any proprietary material or information contained in this Website is granted to you.
- 6.1.5. Except with Kargo's express written permission, no proprietary material from this Website may be copied or retransmitted.
- 6.1.6. Irrespective of the existence of copyright, the user acknowledges that Kargo is the proprietor of all material on the Website (except where a third party is indicated as the proprietor), whether it constitutes confidential information or not, and that the user has no right, title or interest in any such material.
- 6.1.7. Kargo authorises you only to view, copy, temporarily download to a local drive and to print the content of this Website, or any part thereof, provided that such content is used for commercial purposes and for information purposes only.

## 7 Risk, limitation of liability and indemnity

- 7.1. The user's use of this website and the information contained on the website is entirely at the user's own risk and the user assumes full responsibility and risk of loss resulting from the use thereof.
- 7.2. The transmission of information via the internet, including without limitation e-mail, is susceptible to monitoring and interception. The user bears all risk of transmitting information in this manner. Under no circumstances shall Kargo be liable for any loss, harm, or damage suffered by the user as a result thereof. Kargo reserves the right to request independent verification of any information transmitted via e-mail and the user consents to such verification should Kargo deem it necessary.
- 7.3. To the extent permissible by law:

- 7.3.1. Neither Kargo, its affiliates, shareholders, agents, consultants or employees shall be liable for any damages whatsoever, including without limitation any direct, indirect, special, incidental, consequential or punitive damages, howsoever arising (whether in an action arising out of contract, statute, delict or otherwise) related to the use of, or the inability to access or use the content of the website or any functionality thereof, or the information contained on the website, or of any linked website, even if Kargo knows or should reasonably have known or is expressly advised thereof.
- 7.3.2. The liability of Kargo for faulty execution of the website as well as all damages suffered by the user, whether direct or indirect, as a result of the malfunctioning of the website shall be limited to Kargo rectifying the malfunction, within a reasonable time and free of charge, provided that Kargo is notified immediately of the damage or faulty execution of the website. This liability shall fall away and be expressly excluded if the user attempts to correct or allows third parties to correct or attempt to correct the website without the prior written approval of Kargo. However in no event shall Kargo be liable to the user for loss of profits or for special, incidental, consequential or punitive losses or damages arising out of or in connection with the website or its use or the delivery, installation, servicing, performance or use of it in combination with other computer software.
- 7.3.3. You hereby unconditionally and irrevocably indemnify Kargo and agree to hold Kargo free from all loss, damages, claims and/or costs, of whatsoever nature suffered or incurred by Kargo or instituted against Kargo as a direct or indirect result of:
- 7.3.3.1. your use of the website;
  - 7.3.3.2. software, programs and support services supplied by, obtained by or modified by you or any third party without the consent or knowledge of Kargo;
  - 7.3.3.3. your failure to comply with any of the terms or any other requirements which Kargo may impose from time to time;
  - 7.3.3.4. the actions or requirements of any telecommunications authority or a supplier of telecommunications services or software; or
  - 7.3.3.5. any unavailability of, or interruption in, the service which is beyond the control of Kargo.
- 7.4. Kargo makes no warranty or representation as to the availability, accuracy or completeness of the content of the website. You expressly waive and renounce all your rights of whatever nature that you may have against Kargo for any LOSS suffered by you, as a result of information supplied by Kargo being incorrect, incomplete or inaccurate.

## 8 Kargo privacy and cookie policy

- 8.1. This clause 8 provides details about our Privacy and Cookie Policy, which Policy forms part of these Terms. Kargo takes your privacy seriously and is committed to protecting your personal information.
- 8.2. Kargo does not collect any personal information from the User when using the website, unless otherwise stated or when the user elects to provide the information to Kargo.
- 8.3. There is however, certain information that Kargo collects and stores automatically. This includes:
- 8.3.1. The internet Protocol (IP) address of the domain from which the user accesses the internet (e.g. 123.456.789.012) whether this belongs to the user individually or as a proxy by the users internet Service Provider ("ISP").
  - 8.3.2. The date and time which the user accesses the site.
  - 8.3.3. The internet address of the website which the user linked directly to the Kargo site.
- 8.4. **How we use your information**
- 8.4.1. Kargo uses the summary statistics to help Kargo make our site more useful to visitors, such as assessing what information is of most and least interest to visitors, and for other purposes such as determining the site's technical design specifications and identifying system performance or problem areas.

8.4.2. This information is not shared with anyone beyond the support staff to this Web site, except when required by law enforcement investigation, and is used only as a source of anonymous statistical information. (provide detail of purposes for which personal information is used, e.g. we may use your information to confirm that your orders have been received; to validate you as a customer when using our services and calling our [help desk]; to prevent and detect criminal activity, fraud and misuse of or damage to our services or networks; to prosecute those responsible and to contact you to invite you to form part of our consumer panel or various research groups, etc.)

8.5. **How long do we keep your information for?**

8.5.1. The time periods for which we keep your information may vary according to the use or purpose attached to the information. Unless there is a specific legal requirement requiring us to keep your information, however, we will not keep it for longer than necessary for the purpose for which the information was collected or for which it is to be processed.

8.6. **Disclosing your information to third parties**

8.6.1. We may provide aggregate statistics about our sales, customers, traffic patterns and other website information to third parties, but these statistics will not include any information that could identify you.

8.7. **When and where do we use cookies?**

8.7.1. we allocate cookies during the registration process for our services. These cookies will hold information collected during your registration and will allow us to recognise you as a customer and provide you with the services you require.

8.8. **How can you refuse or opt out of cookies?**

8.8.1. Most browsers are set by default to accept cookies automatically, but usually you can alter the settings of your browser to prevent automatic acceptance and to prompt you every time a cookie is sent to you or to allow you to choose not to receive cookies at all.

8.9. **How can you manage your privacy preferences?**

8.9.1. The User may visit the Website without providing any personal information. The Website servers will in such instances collect the IP address of the User computer, but not the e-mail address or any other distinguishing information. This information is aggregated to measure the number of visits, average time spent at the Website, pages viewed, etc. Kargo uses this information to determine use of the Website and to improve the Content thereon.

Commented [NvdB1]: Chris to confirm that this is in fact the procedure regarding cookies

9 **Confidentiality**

- 9.1. By subscribing as a user, you agree that you shall hold in the strictest confidence and not disclose to any third party information acquired in connection with any aspect of the products and/or services offered by Kargo. You shall notify Kargo should you discover any loss or unauthorised disclosure of the information.
- 9.2. Any information or material sent to Kargo will be deemed not to be confidential, unless otherwise agreed in writing by the user and Kargo.

10 **Breach or cancellation by Kargo**

- 10.1. Kargo is entitled without notice, in addition to any other remedy available to it at law or under these Terms, including obtaining an interdict, to cancel these Terms, limit or deny such user use of the Website and services, or to claim specific performance of any obligation whether or not the due date for performance has arrived, in either event without prejudice to Kargo's right to claim damages, should any user:
- 10.1.1. breach any of these Terms;
- 10.1.2. in the sole discretion of Kargo, use the Website in an unauthorised manner;
- or

- 10.1.3. infringe any statute, regulation, ordinance or law.
- 10.1.4. Breach of these Terms entitles Kargo to take legal action without prior notice to the user and the user agrees to reimburse the costs associated with such legal action to Kargo on an attorney and own client scale.

#### 11 Compliance with section 43(1) of ECT Act

In compliance with section 43(1) of the ECT Act, the following is noted:

- 11.1. Full name:
  - 11.1.1. Kargo Finance (Pty) Ltd (1998/013523/07)
  - 11.1.2. Kargo Industrial Park (Pty) Ltd (1934/006111/07)
  - 11.1.3. Kargo International Logistics (Pty) Ltd (1996/008812/07)
  - 11.1.4. Kargo Long Distance (Pty) Ltd (1996/007820/07)
  - 11.1.5. Kargo National (Pty) Ltd (2001/011893/07)
- 11.2. Physical address: M2 West Onramp Denver Ext 7 Johannesburg 2094
- 11.3. Fax number: +27 086 636 5667
- 11.4. Telephone number: +27 86 11 52746
- 11.5. Website address: [www.kargo.co.za](http://www.kargo.co.za)
- 11.6. E-mail address: [leigh@kargo.co.za](mailto:leigh@kargo.co.za)

#### 12 Compliance with laws

- 12.1. You shall comply with all applicable laws, statues, ordinances and regulations pertaining to your use of and access to this Website.

#### 13 Notices

- 13.1. Except as explicitly stated otherwise, any notices shall be given by email to [leigh@kargo.co.za](mailto:leigh@kargo.co.za) (in the case of Kargo) or to the e-mail address you have provided to Kargo (in your case), or such other address that has been specified.
- 13.2. Notice shall be deemed given 48 (forty-eight) hours after an email is sent, unless the sending party is notified that the email address is invalid. Alternatively, Kargo may give you notice by registered mail, postage prepaid and return receipt requested, to the address which you have provided to Kargo.
- 13.3. In such case, notice shall be deemed given 7 (seven) days after the date of mailing. You acknowledge that all agreements, notices or other communication required to be given in terms of the law or these Terms may be given via electronic means and that such communications shall be "in writing". Notwithstanding anything to the contrary, a written notice or communication actually received by a party shall be an adequate written notice or communication to it, notwithstanding that it was not sent to or delivered at its chosen address(es) for that purpose.

#### 14 General clauses

- 14.1. These Terms shall be governed in all respects by the laws of the Republic of South Africa as such laws are applied to agreements entered into and to be performed within South Africa.
- 14.2. This Website is controlled, operated and administered by Kargo from its offices within the Republic of South Africa. Kargo makes no representation that the content of the Website is appropriate or available for use outside of South Africa. Access to the Website from territories or countries where the content of the Website is illegal is prohibited. Users may not use this Website in violation of South African export laws and regulations. If the user accesses this Website from locations outside of South Africa, that user is responsible for compliance with all local laws.
- 14.3. Kargo does not guarantee continuous, uninterrupted or secure access to our services, as operation of our Website may be interfered with as a result of a number of factors which are outside of our control.
- 14.4. If any provision of these Terms is held to be illegal, invalid or unenforceable for any reason, such provision shall be struck out from these Terms and the remaining provisions shall be enforced to the full extent of the law.
- 14.5. Kargo's failure to act with respect to a breach by you or others does not constitute a waiver of our right to act with respect to subsequent or similar breaches.

- 14.6. You shall not be entitled to cede your rights or assign your rights or delegate your obligations in terms of these Terms to any third party without the prior written consent of Kargo.
- 14.7. No party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.
- 14.8. The head notes to the paragraphs to these Terms are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 14.9. Words importing the singular shall include the plural and vice versa, and words importing the masculine gender shall include females and words importing persons shall include partnerships and corporate and unincorporated entities.
- 14.10. These Terms set forth the entire understanding and agreement between Kargo and you with respect to the subject matter hereof.