

Terms & Conditions

For the purposes of this agreement, Electronic Signature will have the meaning ascribed to it in terms of the Electronic Communications and Transactions Act 25 of 2002 ("ECTA"). By accepting this agreement through pressing the "I accept" button, or by any other means, you are signing this agreement electronically. You agree that the Electronic Signature is the legal equivalent of your manual authorised signature on this agreement. By accepting this agreement aforesaid, you consent to be legally bound by this agreement's terms and conditions. You further agree that your use of a key pad, mouse or other device to select an item, button, icon or similar act/action, constitutes your signature, acceptance and agreement as if actually signed by you in writing. You further agree that no certification authority or other third party verification is necessary to validate your Electronic Signature and that the lack of such certification of third party verification will not in any way affect the enforceability of your Electronic Signature or any resulting contract between us and you. The person accepting these terms represents and warrants that he/she is authorised to enter into this agreement, in particular the credit application, for all persons who are authorised to access your accounts and that such persons will be bound by the terms of this agreement. The person accepting these terms further represent and warrant that the information furnished herein is true and correct and that the person has read, understood and accepted the standard trading conditions of Kargo on behalf of the customer. It is recommended that you print a copy of this agreement for future reference.

TERMS AND CONDITIONS

- 1 These terms and conditions of credit and transport related services ("agreement") together with any other terms and conditions contained on the website, www.kargo.co.ca and any quotation, delivery note or suretyship agreement (jointly referred to as "the agreements" and which terms and conditions the customer warrants it read and is acquainted with) are the terms and conditions by which Kargo will provide and customer will receive any or all of the services and/or goods provided by Kargo. Each application form and any quotations, invoices, delivery notes and receipts submitted, accepted and/or executed by either party is hereby incorporated by reference herein.

TERMS AND CONDITIONS - CREDIT

- 2 Upon approval of an application by the customer for credit ("credit facility") and following a creditworthiness assessment of the customer, Kargo, in its sole discretion, will grant the customer a maximum credit facility and shall have the right to increase, decrease or terminate the customer's credit facility under this agreement upon prior written notice to the customer without having to give reasons therefore and subject always to applicable laws. Kargo may require, as a condition to the extension or continuation of the credit facility to the customer under this agreement, the execution and delivery of an unconditional guarantee, or a letter of credit (in a form reasonably acceptable to the Kargo), or such other instrument as Kargo in its sole discretion may deem necessary, to guarantee the customer's payment obligations to Kargo hereunder and the customer agrees to so execute and deliver any such document.
- 3 All payments will be made in Z.A.R. Rands without exchange or deduction, free of demand or set-off. Notwithstanding anything to the contrary in the agreements, Kargo expressly reserves the right to alter, change or amend its billing practices including prices and payment facilities in its sole discretion.
- 4 In respect of customers with an approved credit facility ("retail customer"), if any payment is not received within thirty (30) calendar days of the invoice date or such other date as agreed to in writing ("payment default"), Kargo may immediately institute legal action against retail customer, subject to the terms of the agreements and permissible interest in terms of legislation as amended from time to time may be claimed. Retail customer shall also pay to Kargo all expenses incurred by Kargo in exercising any of its rights under the agreements or applicable law with respect to a payment default or other breach by retail customer, including but not limited to attorneys fees on an attorney own client scale, permissible collection charges and costs and the fees of any collection agency retained by Kargo.
- 5 Kargo is a registered VAT Vendor and all payments due to Kargo shall include permissible VAT as amended from time to time.
- 6 The agreements, especially this agreement concluded between Kargo and customer/retail customer is not a credit agreement/facility in that Kargo did not undertake to defer the customer/retail customer's obligation to pay any part of the cost of the services rendered or to repay to Kargo any part of an amount in respect of the services rendered, nor did the parties agree that any charges, fee or interest would be claimed in respect of any amount owing, and therefore the National Credit Act No. 34 of 2005 ("NCA") is not applicable to the agreements.
- 7 To the extent that this agreement is subject to the NCA then, if any provision of this agreement which conflicts with any provision of the NCA, the provision of the NCA will apply. To the extent that this agreement is subject to the Consumer Protection Act ("CPA") then, if any provision of this agreement which conflicts with any provision of the CPA, the provision of the CPA will apply.
- 8 The customer/retail customer hereby acknowledges and agrees that Kargo may perform a credit search on customer/retail customer's credit record with any registered Credit Bureau and monitor the customer/retail customer's payment behaviour by researching its credit record at any registered Credit Bureau and use new information and data obtained from any Credit Bureau in respect of the customer/retail customer's future payment terms.
- 9 The terms and conditions of this agreement shall apply solely to the services and/or goods selected by the customer on the application form and additional services accepted by Kargo. Any services not selected, or any services not listed in the application form, or that fails to meet the requirements of this agreement shall not be accepted by Kargo and shall not be within the scope of Kargo's responsibilities under the agreements. Without limiting the foregoing, the customer acknowledges that Kargo is not providing any investment advice or financial service or insurance advice or retirement advice or securities service to the customer and that the customer is responsible for the management, decision making and investment of its assets and business. Kargo is not a Financial Institution as defined in the Financial Services Board Act No. 97 of 1990. Kargo is an Authorised Financial Services Provider however Kargo does not render "advice" as defined in the Financial Advisory and Intermediary Services Act No. 37 of 2002 and only acts as an intermediary between the customer and insurer.

TERMS AND CONDITIONS - TRANSPORT SERVICES

- 10 For the purposes of this agreement the following words will have the following meanings:

- 10.1 "Goods" mean the goods forming the subject matter of the agreements, whether contained in one or more parcels or packages and whether consigned singly or in parcels or in bulk, to be transported by Kargo on the customer's behalf and includes any container, transportable tank, bolster, pallet, package or other covering not supplied by or on behalf of Kargo;
- 10.2 "Consignee" means the natural person or juristic entity to which the Goods are to be delivered. The Consignee and the customer may be the same entity;
- 10.3 "Vehicle" means any vehicle used by Kargo in connection with the agreements upon which or in which the Goods are conveyed;
- 10.4 "Services" means the transportation of the Goods;
- 10.5 "Dangerous Goods" includes those goods classified as such by Spoornet, the Marine Division of the Department of Transport, or goods which are considered by Kargo to be dangerous; and
- 10.6 "the handling of the Goods" includes the Goods being handled, warehoused, held, controlled, loaded and off-loaded, carried or otherwise possessed by Kargo for any purpose whatsoever.
- 11 The handling of the Goods will be subject to the conditions stated herein unless specifically varied by Kargo in writing, and these conditions will at all times take precedence over any terms, conditions or stipulations contained in any of the customer's documentation. Should the customer in any way purport to attach any conditions which vary, amend or are in conflict with the conditions set forth herein, then, notwithstanding anything to the contrary stipulated by the customer, the conditions set forth in the agreements will prevail and be of full force and effect unless specifically varied in writing with specific reference to the customer's contrary documentation.
- 12 Every undertaking to convey Goods is subject to the condition that Kargo shall have a suitable Vehicle available at the appropriate time.
- 13 The customer warrants that:
- 13.1 the Goods are the customer's sole property, alternatively that the customer is authorized by the person owning the Goods to enter into the agreements subject to these terms and conditions, and the customer hereby indemnifies Kargo against any claim of any nature made by the owner.
- 13.2 all Goods provided to Kargo are fit to be handled without special precautions being taken and are not dangerous.
- 13.3 the carriage of the Goods will not violate or infringe any Act, regulation or law or cause a breach of any agreements with any third parties or unreasonably interfere with Services rendered to other of Kargo's customers and the customer hereby indemnifies and holds Kargo harmless against any claims and/or damages which the customer or any third party may suffer by virtue of the customer's breach of this warranty.
- 13.4 the accuracy of all descriptions, values and particulars furnished to Kargo. The customer indemnifies Kargo against all expenses, claims or fines arising from any inaccuracy or omission of descriptions, values or other particulars (even if the inaccuracy or omission of descriptions, values or other particulars occurs without negligence).
- 13.5 all Goods have been properly and sufficiently packed and/or prepared for loading, transport, storage and off-loading.
- 13.6 the information provided by the customer on the credit application, order form and the agreements are correct in all respects.
- 13.7 The customer has provided Kargo with the correct Consignee and address, loading and off-loading point, type, mass/volume and quantity of the Goods.
- 13.8 there has been no unfair discrimination against the customer in any way whatsoever in the conclusion of the agreements and the customer has entered into the agreements of its own free will without any undue influence by Kargo.
- 14 The onus of proving the quantity, type, physical properties and composition and the condition of the Goods and/or the condition of any container at the time of receipt thereof by Kargo will at all times remain with the customer and no delivery note, receipt or other document furnished or signed at such time by or on behalf of Kargo will constitute conclusive proof thereof.
- 15 Kargo's obligations are:
- 15.1 Kargo will endeavor (not warrant) to deliver the Goods safely to the Consignee, within the specified time limit, or within a reasonable time thereafter.
- 15.2 Kargo will ensure that its Vehicles are roadworthy at all times.
- 15.3 Kargo will ensure that its drivers have the necessary licenses, training and experience to deliver the Goods safely.
- 15.4 Kargo will endeavour keep track of the progress of the delivery and inform the customer as soon as possible of any delays or accidents.
- 15.5 Kargo possess the legal right and ability to render the Services.

15.6 Rendering of the Services and related matters are Our ordinary business.

16 Kargo is neither a public transporter nor a common law public carrier, but a freight forwarder. The Goods will be carried at the customer's sole risk (or owner). The customer hereby exempts Kargo from, and indemnifies Kargo against all liability of whatsoever nature, arising directly or indirectly from the handling of the Goods. This exemption and indemnity includes, but is not restricted to, any liability from direct and/or consequential loss or damages arising from loss of the Goods, damage to the Goods, the failure to collect or deliver the Goods timeously, adequately or at all, or from or to the correct address, or from any other cause arising, whether any such liability, loss or damage is caused by or arises from breach of contract, negligence or gross negligence, on Kargo's part, Kargo's employees or agents or otherwise. Kargo will not accept or deal with bullion, coin, money, bank and/or treasury notes, securities, stamps, precious stones, jewellery, watches, valuables, antiques, pictures, works of art, human remains, livestock, plants, patterns, manuscripts, plans, designs, explosives, perishables, bulk cargoes or the like and Kargo reserves the right, within Kargo's sole discretion to accept or reject any Goods provided to Kargo. The customer may request Kargo in writing to transport any of the aforementioned Goods, which request Kargo in its sole discretion may grant or deny. If Kargo accepts the customer's request it will be subject to further terms and conditions.

17 Kargo will not be bound by any estimate which has not been accepted by the customer within 30 days. All estimates are subject to amendment until such time as loading has actually commenced. In the event of Kargo being obliged to take out or obtain any licenses or permits, or to comply with the requirements of any lawful authority, Kargo will be entitled to make an additional charge to cover any expenses resulting there from not already included in the estimate. Kargo will furthermore be entitled to increase the agreed remuneration fixed by the estimate in the event of the customer increasing the quantity of the Goods to be carried in proportion to such increase. In the event of Kargo being obliged to deviate from the route selected by Kargo, or to carry the Goods over another route, for any reason whatsoever including but not limited to adverse weather conditions, impassable or dangerous roads, bridges, pontoons and ferries, or the instructions of any competent authority, Kargo will be entitled to increase the agreed remuneration fixed by the estimate in proportion to the resulting extra distance travelled.

Dangerous / Hazardous Goods

18.1 Unless otherwise agreed in writing, the customer warrants that all Goods handled are fit to be so handled in the ordinary way and are not dangerous. Kargo will not handle any dangerous, corrosive, noxious, hazardous, inflammable or explosive Goods or any Goods, which in Kargo's opinion are likely to cause damage. The customer will be liable for all losses or damage caused to Kargo and/or third parties by all Goods handled and hereby indemnifies Kargo against all claims arising in connection therewith.

18.2 If in Kargo's opinion any Goods (whether they have been declared as dangerous or not) become a danger to any person or property, Kargo will be entitled immediately and without notice to the customer to dispose of the Goods in question or take such other steps as Kargo in its sole discretion deems prudent to avert danger. In such event, Kargo will:

18.2.1 not be liable under any circumstances for the value of the Goods or for any other loss or damage whether direct or consequential sustained by the customer or owner as a result of such disposal or other steps; and

18.2.2 still be entitled to recover from the customer, Kargo's remuneration for the handling of the Goods together with any costs incurred by Kargo in disposing of them or taking other steps

18.3 Goods which are likely to harbor or encourage vermin or other pests will be deemed to be Dangerous Goods.

19 Perishable Goods which are not taken up immediately upon arrival at their destination or which are insufficiently marked or otherwise not identifiable may be disposed of without notice to the customer and the payment or tender to the customer of the net proceeds of any disposition (after deduction of all charges incurred by Kargo) will be equivalent to delivery.

20 If any permit, consent or approval to handle Goods is required under any law, by-law or regulation, none of Kargo's obligations or duties will take effect unless and until Kargo obtains the relevant permit, consent or approval. The customer will provide all assistance and information required by Kargo for the purpose of applying for or obtaining any such permit, consent or approval.

21 When carrying Goods, Kargo will in its sole discretion decide which route to follow.

22 Loading and off loading

22.1 All loading and off-loading will be carried out by the customer and the customer's employees.

22.2 The customer will ensure that:

22.2.1 the Goods will be ready for loading on the specified date;

22.2.2 all documentation necessary in connection with the Goods and the transportation thereof will be fully and correctly prepared;

22.2.3 at all places where Kargo has to collect and off-load the Goods there will be safe, suitable and adequate access and loading and off-loading facilities and that it is possible for Kargo to do so by means of ordinary staircases and/or doorways, without need for any special or additional tackle, plant, power, labour or equipment;

22.2.4 the Goods will be sufficiently packed and prepared for carriage;

22.2.5 The customer will sign such certificates and receipts on loading and off-loading as Kargo may require.

22.3 Kargo will not be under any obligation to provide any plant, power or labour which in addition to Kargo's Vehicle's crew is required for the loading or off-loading of any Goods. Any assistance given by Kargo in such loading or off-loading will be at the customer's sole risk.

- 22.4 The customer or the owner will conduct any packing or other operation or activity in any area or premises provided by Kargo, at the customer's own risk and the customer indemnifies Kargo against all claims or losses arising out of the customer's presence in such area or premises.
- 23 Kargo will not be liable for any delay occasioned by compliance with any instructions issued by Police or any other competent authority, but any extra cost incurred by Kargo as a result of compliance with any such instructions will be added to the customer's charges. Kargo's records will be deemed to be correct unless the customer proves otherwise.
- 24 Kargo reserves the right to retain any of the customer's Goods, related documents or repayments, refunds, claims or recoveries in Kargo's possession, pending payment in full of any fees or disbursements due to Kargo, notwithstanding that credit may have been granted. If the customer does not make payment or arrangements to pay, which are acceptable to Kargo, Kargo reserves the right to sell the customer's Goods and to apply the proceeds of the sale to arrear payments and expenses. Kargo will not be liable for any loss, damage or deterioration of such Goods attributable to the implementation of this clause. Kargo's rights under this clause are not exhaustive and are in addition to any other rights Kargo may have against the customer.
- 25 In the event of any occurrence over which Kargo has no control, or act of God rendering (in Kargo's sole opinion) Services which Kargo has agreed to provide either dangerous or impossible, Kargo will have the right to cancel the transaction concerned with impunity.
- 26 Kargo will not be liable for demurrage or storage charges of any nature whatsoever and howsoever arising. Where any such demurrage and/or storage charges are paid by Kargo, such charges will be refunded to Kargo by the customer on demand. The customer hereby appoints Kargo irrevocably and in rem suam as the customer's agent and in the customer's name, place and stead, to contract for the storage of the Goods upon such terms and conditions as Kargo may, in its sole discretion elect, and without any liability whatsoever attaching to Kargo to attend to such storage.
- 27 Kargo reserves the right to employ subcontractors or agents to act for Kargo. Where Kargo employs independent third parties to perform all or any of the functions required of Kargo, Kargo will have no responsibility or liability to the customer for any acts or omissions of such third parties, even although Kargo may be responsible for the payment of their charges. However, if Kargo are suitably indemnified against all costs (including attorney and own-client costs), Kargo will take such action against the third party concerned on the customer's behalf as the customer may direct.
- 28 Each incident of transportation of Goods pursuant to the terms and conditions of this agreement will be evidenced by a written receipt in a form agreed to by the parties, signed by Kargo, the Consignor and the Consignee (or the customer where applicable), showing the kind and quantity of commodities received and delivered by Kargo at the loading and off-loading points, respectively. Such receipts will be evidence of receipt of such commodities by Kargo in good order and condition unless such commodities are not readily observable or as may be otherwise noted on the face of such receipt. To the extent that any term or condition on such receipt conflicts in any way with any term or condition of the agreements, the agreements will take precedence and control the resolution of disputes. Our duties and responsibilities under the agreements and for the shipment evidenced by such receipt will commence at, but not before, execution of such receipt by Kargo.
- 29 Kargo will not be obliged to make any declaration for the purpose of any statute or convention or contract as to the nature of the Goods or as to any special interest in delivery or otherwise unless expressly instructed by the customer in writing. In particular, Kargo will be under no obligation, without written instructions being timeously given to Kargo, to make any declaration or to seek any special protection as cover from Transnet Limited, or from any other carrier in respect of any Goods which are, or fall within the definition of that body of "dangerous goods" or "goods liable to be stored in the open".
- 30 Insurance
- 30.1 Kargo will arrange for insurance cover of the Goods up to a maximum of R1 000-00, such cover being subject to the terms, conditions and exceptions of the underwriters concerned.
- 30.2 Any additional insurance cover will be arranged and paid for by the customer: Provided that if the customer indicates on the waybill, prior to the Goods passing into Kargo's care and control, that the customer wishes and authorises Kargo to arrange additional cover to a maximum of R50 000-00 for any one consignment for, on behalf and at the customer's expense, subject to the relevant underwriter's approving the risk and the relevant legislation permitting this. Any additional insurance will be subject to the terms, conditions and exceptions of the underwriters concerned.
- 30.3 Kargo will not be liable for the underwriters or insurers failing or refusing to provide cover and/or to pay any claim in full or at all, whether such claim arises under the cover of R1 000-00 or any additional cover requested.
- 30.4 In the event of Goods not being insured and Kargo is notified in writing at the time or expected time of delivery of damage to or loss of the Goods Kargo's liability per consignment, if gross negligence is proven, will be limited to R50-00.
- 30.5 In so far as Kargo arranges any insurance, Kargo acts solely as an intermediary for and on behalf of the customer. Should the insurer dispute its liability in terms of any insurance policy in respect of the Goods, the customer shall only have recourse against the insurer and Kargo shall not incur any responsibility or liability whatsoever notwithstanding that the premium paid on such policy may differ from the amount paid by the consignee or the consignor to Kargo in respect thereof.
- 30.6 Kindly note that the customer has 90 days (not less than) from date of rejection in which to make representation to insurers regarding the decision to reject this claim. Any recourse steps to challenge the rejection or any queries may be addressed directly to the insurer. The customer should liaise with Kargo directly and Kargo will refer the matter to the insurer.

- 30.7 Kargo may in the discharge of the services to the customer delegate the performance of any services to third parties including suitable sub-contractors or professionals ("third party vendor/s") within Kargo's sole discretion unless otherwise notified. Kargo may assign this agreement in whole or in part. Neither Kargo nor any third party vendor makes any representations or warranties, express or implied, regarding any third party services. The customer expressly acknowledges and agrees that the use of third party services is at the customer's sole risk. To the maximum extent permitted by applicable law, neither Kargo nor any third party vendor will be legally responsible for any damages, whether direct, indirect, or consequential, arising from the use or inability to use any third party services.

GENERAL TERMS AND CONDITIONS

- 31 In addition to any other rights it may have under the agreements or applicable law, Kargo may immediately terminate this agreement or suspend services at its sole discretion, effective with or without notice, in the event of (i) payment default, or (ii) customer's breach or failure to comply with any other obligation of the customer under the agreements. The customer may terminate this agreement if Kargo breaches any material term or condition of the agreement and fails to cure such breach within ten (10) business days after receipt of written notice of same. If the agreements are terminated by Kargo under this Clause 31 all remaining monthly recurring and other charges specified on the applicable application form or outstanding invoices shall immediately become due, owing and payable. All payment terms agreed upon with retail customers shall be suspended with immediate effect. Kargo reserves the right to after termination in terms of Clause 31 institute legal action if necessary for the recovery of any arrear fees and disbursements or damages.
- 32 All Kargo employees and representatives providing services and/or goods to the customer will be deemed for purposes of all compensation and employee benefits to be Kargo's employees or representatives and not employees or representatives of the customer.
- 33 (a) customer represents and warrants that: (i) customer is at least eighteen (18) years of age; (ii) customer possess the legal right and ability to enter into the agreements, (iii) all information submitted on the application form is correct in every respect, and (iv) the performance of its obligations and use of the goods provided (by customer, its customers, staff and users) will not violate any applicable laws, regulations or cause a breach of any agreements with any third parties or unreasonably interfere with other Kargo customer's use of Kargo services and/or goods, customer assumes all risks related to processing of transactions related to electronic commerce. (b) In the event of any breach of any of the foregoing warranties, in addition to any other remedies available at law or in equity, Kargo will have the right, in its sole discretion, to suspend or terminate immediately any services.
- 34 If an individual enters into the agreements as an agent or trustee of or for the benefit of a legal entity not yet formed which is to be the customer, whether the party be described as trustee or as agent for the said legal entity or not, then: (a) if proof satisfactory to Kargo has not been submitted to Kargo within thirty (30) business days of the date of first signature of this agreement or the application form whichever is signed first, that the legal entity has been formed (registered) and has effectively ratified and adopted the agreements, or lawfully accepted the agreements as binding on it, the person who signed this agreement shall be personally liable hereunder as the customer; (b) until the legal entity has become the customer hereunder the person who signed this agreement shall be liable for all obligations imposed on the customer in terms of the agreements.
- 35 In addition and subject to any indemnities contained in the agreements, the customer agrees to indemnify and hold Kargo harmless against any losses, costs, expenses, claims, damages, liabilities, penalties, actions, proceedings or judgments, resulting from any claim, suit, action, application or any proceeding brought by any third party against the customers or its affiliates related to or arising out of the agreements or the use of the services and/or goods, provided that Kargo or its employees, agents, representatives have not been negligent or committed any willful act or omission.
- 36 In terms of Section 45 of the Magistrate's Court Act No. 32 of 1944, the customer consents to the jurisdiction of the Magistrate's Court otherwise having jurisdiction in respect of any action to be instituted against the customer by Kargo in terms hereof irrespective of the amount of any claim. It shall nevertheless be entirely within the discretion of Kargo as to whether to proceed against the customer in such Magistrate's Court or any other court having jurisdiction.
- 37 Kargo may provide a certificate from any manager, whose position it will not be necessary to prove, showing the amount that is due to Kargo. It is agreed that Kargo may take any judgment or order that Kargo is entitled to in law, based on the facts contained in the certificate, or such amount as a Court may find to be owed by the customer, unless the customer disagrees with such amount and is able to satisfy the Court that the amount in the certificate is incorrect.
- 38 Every natural person signing on behalf of any juristic person personally warrants that the signing of this agreement by the natural person on behalf of the juristic person concerned, is within the scope of its powers, objects and authority, does not contravene any provisions of any relevant legislation, all necessary steps have been taken by the juristic person to give the signatory the power to execute this agreement on behalf of the juristic person. If any juristic person intended to be bound by this agreement is not bound by this agreement for any reason whatsoever then the person signing on behalf of that juristic person shall be bound as Surety in the place of such juristic person and he shall conclusively be deemed to have signed this agreement in his personal capacity.
- 39 The parties select as their respective domicilia citandi et executandi (service address) the physical addresses set out on the application form or this agreement. Likewise the parties choose all the addresses set on the application form or this agreement for the purposes of giving or sending any other notice provided for or required hereunder, or such other physical address or fax number or e-mail address as may be substituted by notice given as herein required. Unless the contrary is proved, any notice to be given by any party to another shall be deemed to have been duly received by the other party (a) if delivered to the addressee's domicilium by hand during business hours on a business day, on the date of delivery thereof, (b) if sent per registered mail on the day the registered mail was sent, & (c) if sent per fax or e-mail to the addressee on the date of transmission, provided that it has been transmitted on a business day during normal business hours.
- 40 The customer agrees to advise Kargo in writing of any change in status of the customer, or of any change in information given in the application form, the notification to reach Kargo within 7 business days of the customer becoming aware of the change.

- 41 For the purposes of this clause, Personal Information will have the meaning ascribed to it in the Protection of Personal Information Act 4 of 2013 ("POPI"). The customer acknowledges that the completion of the credit application form and the acceptance of these terms and conditions, will result in Kargo obtaining Personal Information from the customer. Kargo undertakes to process the customer's Personal Information in terms of the conditions contained in Chapter 3 of POPI. The customer will have the rights as contained in section 5 of POPI. For further information regarding Kargo's privacy policies, please view the terms of use of the website contained on this website.
- 42 In this agreement: (a) words importing the singular include the plural and vice versa, (b) words importing any one gender include the other gender, (c) reference to a natural person include artificial persons and vice versa, (d) if any word or phrase is defined in any clause, that word or phrase shall bear the same meaning wherever used in this agreement, (e) the rule of construction that the contract shall be interpreted against the party responsible for the drafting or preparation of the agreement, shall not apply.
- 43 **Invalidity:** If any provision of this agreement is judged to be invalid, the validity of any other provision shall not be affected and the invalid provision shall be deemed to be deleted; provided however that the parties shall use their reasonable endeavors to achieve the purpose of the invalid or unenforceable provision by a new legally valid provision. **Entire Agreement:** This agreement sets forth the entire understanding of the parties with regard to the subject matter hereof and supersedes all prior discussions, memoranda of understanding, protocols of intent and similar writings with regard hereto. The parties waive the right to rely on any alleged express provision not contained in this agreement. **No Representations:** None of the parties may rely on any representation which allegedly induced that party to enter into this agreement, unless that representation is recorded in this agreement. **Variation, termination and waiver:** No contract varying, adding to, deleting from or cancelling this agreement, and no waiver of any right under this agreement, shall be effective unless reduced to writing and signed by or on behalf of all the parties. **Indulgences:** No indulgence granted by a party nor the partial exercise by any party of any power, right or privilege shall constitute a waiver or abandonment of any party's powers, rights or privileges under this agreement and that party accordingly shall not be precluded, as a consequence of having granted that indulgence or partially exercised any power, right or privilege, from the exercise of that, or any other power, right or privilege, which may have arisen in the past or which may arise in the future. **Cession and delegation:** The customer may not cede its rights nor delegate its obligations without the prior written consent of Kargo, which consent shall not be unreasonably withheld. **Applicable Law:** The interpretation, construction and effect of this agreement and the rights and obligations of the parties hereto shall be governed by the laws of the Republic of South Africa. **Survival of terms:** The expiration or termination of this agreement shall not affect such of the provisions of this agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clause themselves do not expressly provide for this. **Counterparts:** This agreement may be executed by the parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. **Prevailing terms:** If there is any conflict between these terms and conditions and the application form, these terms and conditions shall prevail. **Independent:** the parties are independent contractors and this agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between them. **Successors and Assigns:** Except as otherwise provided herein, this agreement shall bind and endure to the benefit of and be enforceable by the parties and their successors and assigns.

DISCLOSURES REQUIRED IN TERMS OF THE FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT 37 OF 2002

- 44.1 **Status of Financial Services Provider in terms of the FAIS Act**
Kargo National (Pty) Ltd "Kargo" is an authorised Financial Services Provider - License number 26855 - Kargo - 2001/011893/07
- 44.2 **Head office contact details**
M2 West Onramp Denver Ext 7 Johannesburg 2094
Telephone number: 08611 KARGO (52746) Facsimile no: +27 086 636 5667
- 44.3 **Independent Status of Kargo**
Kargo has an agreement with Guardrisk Insurance Company Limited and is authorised to place business with them. Kargo has a financial interest in this product supplier but emphasizes the need for the customer to have the freedom of choice.
- 44.4 **Authorisation**
Kargo is not authorised to give you advice on the insurance product but can give intermediary services on the following products: Short-Term Insurance.
- 44.5 **Conflict of interest.**
Kargo has a comprehensive Conflict of Interest Policy in place, a copy of which is available on request. There are no conflicts in terms of the FAIS Act identified at present in any of the following areas of our operations, other than the interest disclosed in terms of the insurer above.
• Associated Companies; • Third Party relationships; • Ownership interest within these relationships; • Financial interest or immaterial financial interests paid or received from any of the listed entities; • Our staff remuneration policies.
- 44.6 **Complaints Procedures.**
Should you have a complaint, please contact the Complaints Manager at Kargo. Please note that in terms of the FAIS Act, all complaints must be addressed to Kargo in writing and may be hand delivered to Kargo's head office. Should Kargo not be able to address the concerns to your satisfaction, you may wish to lodge a complaint with any of the ombudsmen whose details appear below, but in particular with the FAIS ombud. If you wish to learn more about our complaints policy and procedure, please contact the Complaints Manager
- 44.7 **Amitofo Complaints department**
The Complaints Manager: Samantha Williamson, Telephone number: 086 115 2746, Fax number: 086 6330 378, e-mail: email@kargo.co.za
- 44.8 **Compliance Officer's Details: Bronwen Allen of Moonstone Compliance (Pty) Ltd**
Postal Address: P.O. Box 12662, Die Boord, Stellenbosch, 7613, South Africa
Physical Address: 25 Quantum Street, Technopark, Stellenbosch, South Africa
Telephone no.: 021 883 8000 Facsimile: 086 601 9872 e-mail: ballan@moonstonecompliance.co.za
- 44.9 **Insurance Company Details:**
Guardrisk Insurance Company Ltd, Financial Service Provider No. 26/10/75, 115 West Sreet, Johannesburg, 2146 P O Box 786015, Sandton, 2147, Telephone no.: 011 669 1000 Facsimile: 011 699 2740

44.10 Short term Ombudsman details:

27 Owl Street, Mill Park, 2042. P O Box 32334 Braamfontein, 2017
Telephone no.: 011 726 8900 Facsimile no.: 011 726 5501 E-Mail: info@osti.co.za

44.11 FAIS Ombudsman Details:

The Consumer Contact Division, The FAIS Ombudsman, Eastwood Office Park, Lynwood, Pretoria
P O Box 74571 Lynnwood Ridge, 0040 Telephone no: (012) 470-9080