**STANDARD TERMS & CONDITIONS**

[Insert Company Name and registration number]

**SCHEDULE 1 – GENERAL TERMS**

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| 1. **DURATION AND TERMINATION**
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| Duration | This Agreement shall commence on the Start Date and shall endure indefinitely, until this Agreement is terminated or cancelled by either Party in terms of this Agreement. |
| Termination on Notice | This Agreement may be terminated by either Party by way of written notice to the other Party of not less than 2 months. |
| Termination due to Breach or Force Majeure | This Agreement may be terminated in accordance with the provisions of clauses 11 or 12 of this Agreement. |
| Effect of Termination | Upon valid termination of this Agreement, the Client shall, forthwith and without prejudice to any other rights which the Company may have, cease the Delivery of Stock and ensure the timeous Collection of all outstanding Stock. |
| 1. **PAYMENTS AND INVOICES**
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| Monthly Storage Statement | The full amount reflected on the Monthly Storage Invoice is due and payable on **within 30 days of receipt of statement**. The Parties agree that all outstanding charges owed by you shall become immediately due and payable upon receipt of notice of your intention to terminate this Agreement. |
| General Payment Note | All payments to be made under or arising from this Agreement will be made by way of an electronic transfer of immediately available and freely transferable funds, free of any deductions or set‑off whatsoever. |

**SCHEDULE 2 – NOTICES AND DOMICILIA**

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| --- | --- | --- | --- |
| Company Name (referred to as the Client) |  | Company Name (referred to as the Company) |  |
| Physical Address |  | Physical Address  |  |
| Email Address |  | Email Address  |  |
| Nominated addressee |  | Nominated addressee |  |
| **Change of domicilium / address**  | Either Party may change its *domicilium* or its address for the purposes of delivery and receipt of notices to any other **physical address** or **email address** by written notice to the other Party to that effect. Such change of address will be effective 5 business days after receipt of the notice of the change. |
| **Giving notice in terms of this Agreement** | All notices to be given in terms of this Agreement will be given in writing and will: |
| 1. be delivered by hand or sent by email;
 |
| 1. if **delivered by hand** **during business hours**, be presumed to have been received on the date of delivery. Any notice delivered after business hours or on a day which is not a business day will be presumed to have been received on the following business day; and
 |
| 1. if **sent by email during business hours**, be presumed to have been received on the date of successful transmission of the email. Any email sent after business hours or on a day which is not a business day will be presumed to have been received on the following business day.
 |
| Notwithstanding the above, any notice given in writing, and actually received by the Party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with the provisions 1, 2 or 3 of this Schedule 2.  |

**SCHEDULE 3 – KEY DEFINITIONS AND INTERPRETATION**

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| 1. **DEFINITIONS**
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| **Affiliate** | means all subsidiaries of such Party or entities within the same group of such Party; or service providers or agents of such Party. |
| **Agreement** | means the agreement contained in this document.  |
| **Case** | means a container such as a box, carton, crate, drum, bucket or case in which product is packaged and which can be located on a Pallet. |
| **Case Picking** | means the process whereby a box, carton or case is picked from the Pallet on which it was originally received by the Company. |
| **Collection / Collected** | means the transfer of possession of the Stock from the Company or its Affiliates to the Client or its Affiliates. |
| **Confidential Information** | means all proprietary information as set out in clause 14.3 below. |
| **Delivery / Delivered** | means the receipt of Stock from the Client or its Affiliates to the Company for the purposes of storage.  |
| **Excess Volumes** | means, in the case where service fees are based on a fixed volume, where the number of pallets in your account at the start of each week, plus the number of Pallets received into your account during the course of a given week, exceeds your agreed stock storage volumes, this excess will be billed at an excess volume rate. |
| **Facility** | means the refrigerated warehouse operated by the Company.  |
| **Overtime** | means hours which fall outside 08h00 to 17h00 South African Standard Time on any business day, and all hours South African Standard Time on any Saturday, Sunday or Public Holiday. |
| **Pallets** | means the unit of storage used in the Facility, being 4-way entry, 1m by 1.2m pallets with a total height acceptable to the Company, with all product fitting entirely within the dimensions of the pallet without any overhang beyond the boundaries of the pallet. |
| **Parties** | means the parties to this Agreement, and Party means either one of them. |
| **Services** | means the services to be provided by the Company to the Client in terms of this Agreement. |
| **Start Date** | means the signature date of this agreement set out at clause 15 below. |
| **Stock** | means any article which is Delivered by the Client and accepted by the Company for handling and storage in the Facility. |
| 1. **KEY INTERPRETATION**
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| **business day** | means any day other than a Saturday, Sunday or public holiday in South Africa or as gazetted by the government of the Republic of South Africa from time to time.  |
| **business hours** | means the standard business day trading hours of the relevant Party. |
| **days** | means any calendar day. |
| **week** | means the working calendar week, starting on Monday and ending on Friday. |
| **writing / written** | means legible writing in English and includes any form of electronic communication including emails and facsimiles, however this excludes any form of electronic communication over WhatsApp or any social media platform.  |
| 1. **GENERAL INTERPRETATION**
 |
| **Interpretation of this Agreement** | Unless otherwise provided, defined terms appearing in this Agreement in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning. |
| **Calculation of days** | Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day. |
| **Due dates for performance** | If the due date for performance of any obligation in terms of this Agreement is a day which is not a business day then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately succeeding business day. |
| **Equal treatment**  | The rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting of this Agreement, shall not apply. |

1. INTRODUCTION
	1. The Company provides storage services and refrigerated warehouse operation services at its Facility.
	2. The Client requires the Company to render the Services to the Client and the Company accepts that it will render the Services to the Client per the terms of this Agreement.
2. APPOINTMENT AS SERVICE PROVIDER
	1. With effect from the Start Date, the Client hereby appoints the Company, who accepts such appointment, to render the Services to the Client subject to the terms of this Agreement. No partnership, joint venture or formal entity is created hereby.
3. OWNERSHIP AND RISK
	1. Ownership of all Stock Delivered to the Company in terms of this Agreement shall at all times remain with the Client. The risk attaching to all Stock for which Delivery is effected shall remain with the Client.
4. STORAGE orderS
	1. **Delivery**: The Client shall notify the Company in writing, **not less than** **24 hours** prior to the required delivery time and date, of the Stock required to be stored by the Company per the terms of this Agreement
	(**Storage Notice**). The Storage Notice shall:
		1. be addressed to the receiving department of the Company and set out the date and time at which the Delivery will take place;
		2. set out the type (e.g. frozen, chilled, ambient), mass / volume and quality of the Stock to be Delivered by the Client or its Affiliate;
		3. set out the specific batch number applicable to the Stock; and
		4. set out any reasonable special arrangements required by the Client from the Company in respect of the Stock.
	2. **Collection**: the Client shall notify the Company in writing, **not less than 24 hours** prior to the required Collection time and date, of the Stock required to be Collected by the Client (**Collection Notice**). The Collection Notice shall:
		1. be addressed to the despatch department of the Company and set out the date and time at which the Collection will take place;
		2. set out the type (e.g. frozen, chilled, ambient), mass / volume of the Stock to be Collected by the Client or its Affiliate; and
		3. set out any reasonable special arrangements required by the Client in respect of the Stock.
	3. Should the Client and the Company agree to the Delivery or Collection of any Stock, as set out at clauses 4.1 and 4.2 respectively, outside of business hours, the Company will be entitled to charge reasonable overtime fees.
	4. The Company shall take all reasonable efforts to be ready for any Delivery of Stock by the Client or release of Stock for Collection by the Client per the Storage Notice or Collection Notice. However, The Company will not be liable for any loss or damage suffered by the Client or its Affiliates as a result of any reasonable delay regarding the Delivery or Collection of Stock.
5. DELIVERY OR COLLECTION OF STOCK
	1. The Company will upon each respective Delivery or Collection of Stock, furnish to the Client a Stock Receipt, which includes the following:
		1. the date on which the Delivery or Collection is effected and the details of the Stock Delivered or Collected;
		2. the license plate number of the vehicle making the Delivery;
		3. the quantity / mass / volume of the Stock Delivered or Collected; and
		4. any other pertinent details as may be agreed between the parties, such as product descriptions or identifying marks (**Stock Receipt**).
	2. Should either Party dispute the accuracy of the Stock Receipt, such dispute must be conveyed by way of a written notice to the other Party within 7 business days of the Stock Receipt being issued (**Stock Dispute Notice**). In the absence of either party issuing a Stock Dispute Notice, the contents of the Stock Receipt will serve as *prima facie* proof of the Delivery or Collection of the Stock.
6. OBLIGATIONS OF THE COMPANY

The Company shall:

* 1. provide and execute the Services in accordance with this Agreement;
	2. procure that the Services are performed and rendered in accordance with all laws in the Republic of South Africa and generally accepted professional standards that apply to the Services from time to time;
	3. abide by all laws and health and safety protocols, which may require the Company to exercise its sole discretion to remove or dispose of any Stock, as permitted by law, which poses a threat or becomes hazardous to the Company, its employees, its Affiliates or any of its Facilities;
	4. obtain and maintain all the required licenses and permits required under the laws of South Africa prior to rendering the Services and shall maintain such licenses and permits for the duration of this Agreement; and
	5. carry out its duties and functions under this Agreement with due care, skill and diligence, in a professional manner, in accordance with the standards set out in this Agreement.
1. OBLIGATIONS OF The Client
	1. The Client warrants in favour of the Company:
		1. that the integrity of all Stock Delivered to the Company in terms of this Agreement, has at all times prior to the delivery of the Stock to the Company, been maintained at a temperature of industry standard practices dependent on the type of stock for frozen, chilled and/or ambient stock.
		2. that the Stock handled and stored by the Company in terms of this Agreement is fit to be so stored and handled, and is not hazardous or dangerous;
		3. that the Client is the lawful owner of the Stock which is not subject to any lien or security right owed to another party;
		4. that all descriptions, values and other particulars furnished by the Client, or any of its Affiliates, directors, employees or subcontractors to the Company, are accurate and correct; and
		5. that the delivery of Stock in terms of this Agreement by the Client to the Company will not violate any laws.
	2. The Client hereby indemnifies the Company against any and all expenses, claims, fines, damages and fees which the Company may suffer as a result of a breach of any of the warranties set out at clauses 7.1.1 to 7.1.5 above.
2. INSURANCE
	1. The Client shall use its reasonable efforts to secure insurance with a reputable insurer for the entire duration of this Agreement Such insurance (which insurance shall include cover against public liability and all risks) should cover any and all risks to which the Client may be subject arising out of or in connection with (**i**) all Stock; (**ii**) and for performance, defective performance or non-performance of its obligations in terms of this Agreement.
	2. The Client hereby acknowledges that the Company does not and shall not be required to obtain or maintain insurance for the duration of this Agreement, in respect of any Stock.
3. LIMITATION OF LIABILITY AND INDEMNITY
	1. **Limitation of Liability |** The Company shall not be liable for any loss, damage, shortage, delay, (**Damage**) regardless of its cause, save where the Client is able to prove that such Damage was entirely as a result of the Company’s gross negligence or wilful misconduct. The Client therefore exempts the Company from any liability or damages as a result of the Company’s negligent conduct related directly or indirectly to the provision of the Services by the Company in terms of this Agreement.
	2. **Indemnification of the Company |** The Client hereby indemnifies the Company and holds the Company harmless against all and any claims which may at any time be made against the Company in respect of any loss, claim or damage which the Client may incur as a result of the Client’s conduct or omission, whether negligent, grossly negligent or intentional.
4. LIEN OVER STOCK
	1. The Company shall have a general warehouse lien against all Stock and on any proceeds thereof for: (**i**) all fees, charges and rates in terms of this Agreement; (**ii**) insurance; (**iii**) legal fees; (**iv**) labour and other charges present or future with respect to the Stock; (**v**) any advances or loans made by the Company in relation to the Stock; (**vi**) expenses necessary for the preservation of the Stock; and (**vii**) fees or costs reasonably incurred in the sale of the Stock permitted by law.
	2. The Company reserves the right to require advance payment of all charges or fees in terms of this Agreement prior to releasing any Stock regardless of applicable payment terms or any business rescue or liquidation proceedings which the Client may be subject to.
5. breach and DISPUTE RESOLUTION
	1. If a Party (**Defaulting Party**) commits any breach of this Agreement the following provisions apply:
		1. The Defaulting Party must remedy such breach within 14 (fourteen) business days (**Notice Period**) of written notice given by the innocent party (**Aggrieved Party**) requiring the breach to be remedied by the Defaulting Party (**1st Tier**);
		2. should the Defaulting Party fail to remedy the breach within the Notice Period, contemplated in the 1st Tier, then the Aggrieved Party will be entitled to require a senior member of each Party to meet within 14 business days, by delivering to the Defaulting Party written notice of such meeting, detailing the time and place of the meeting (**Meeting Notice**) in order to resolve the dispute within a reasonable time relative to the severity and substance of the dispute (**2nd Tier**);
	2. Should the Parties not be able to resolve the dispute notwithstanding exhausting the 1st Tier and the 2nd Tier, the Aggrieved Party will be entitled to:
		1. claim immediate specific performance of any of the Defaulting Party's obligations under this Agreement, with or without claiming damages, whether or not such obligation has fallen due for performance and to require the Defaulting Party to provide security to the satisfaction of the Aggrieved Party for the Defaulting Party's obligations; or
		2. to cancel this Agreement, with or without claiming damages, in which case written notice of the cancellation shall be given to the Defaulting Party (**Cancellation Notice**), and the cancellation shall take effect on the delivery of the Cancellation Notice.
	3. Neither Party shall be entitled to cancel this Agreement unless the breach is a material breach.
	A breach will be deemed to be a material breach if:‑
		1. it is capable of being remedied, but is not remedied subsequent to the exhausting the 1st Tier and the 2nd Tier; or
		2. only after the 1st Tier is exhausted, the breach is **practically incapable of being remedied** and payment in money would be sufficient compensation for such breach and such payment was not forthcoming.
	4. The Aggrieved Party's remedies in terms of this clause are without prejudice to any other remedies to which the Aggrieved Party may be entitled to in law.
6. FORCE MAJEURE
	1. No Party shall be liable to the other for its failure to perform, the defective performance or any delay in performing any obligation in terms of this Agreement in the event and to the extent that such failure or delay is caused by *force majeure*.
	2. For the purpose of this Agreement "*force majeure*" shall mean any circumstance which is beyond the reasonable control of the Party giving notice of *force majeure* (the **Affected Party**") and for which it is not responsible.
	3. A "*force majeure*" event shall include but is not limited to any law which comes into operation subsequent to the signature of this Agreement (which law critically affects any aspect or matter or issue contained in this Agreement), strikes (whether legal, illegal or in sympathy) on the part of all or any employees of either Party (or their respective sub-contractors if applicable), all war (whether declared or not), revolution, invasion, insurrection, riot, civil commotion, mob violence, sabotage, blockade, embargo, boycott, the exercise of military or usurped power, fire, explosion, theft, storm, flood, rain, drought, wind, lightning, or any other adverse weather condition, loss of electric supply from the national, state, municipal, or Eskom power grid, loss of water supply from national, state, or municipal supply lines, epidemic, quarantine, major accident, acts or restraints of government imposition, or restrictions or embargos on imports or exports.
	4. Notwithstanding the provisions of clause 12.2, the inability to meet any payment obligation of this Agreement due to a lack of funds shall in no circumstances be treated as an event of *force majeure*.
	5. In the event of a *force majeure* event*,* the Affected Party shall, subject to clauses 12.1 and 12.6 –
		1. give notice thereof to the other immediately upon the occurrence of an event of *force majeure;*
		2. in such notice specify the nature, extent, effect and likely duration of the event or circumstance; and keep the notified Party updated as may be reasonably required by the notified Party;
		3. take all commercially reasonable action to remedy or minimise the consequences of such event (and report to the other Party); and
		4. immediately resume performance of its obligations under this Agreement and notify the other Party when performance of the obligation becomes possible again.
	6. If either Party ("**Excused Party**") is excused by this clause 12 from the performance or punctual performance of any obligation for a **continuous period of 60 days**, the other Party may (but shall not be obliged to) at any time thereafter, and provided such performance or punctual performance is still excused, terminate this Agreement on 14 (fourteen) days written notice to the Excused Party. Should any dispute arise in connection with or as a result of such termination, such dispute shall be referred to dispute resolution in terms of clause 10.
7. applicable law and jurisdiction
	1. This Agreement will in all respects be governed by and construed under the laws of the Republic of South Africa.
	2. Subject to clause 10, the Parties hereby consent and submit to the non-exclusive jurisdiction of the applicable Magistrates’ Court or High Court of South Africa, as the case may be, in any dispute arising from or in connection with this Agreement.
8. GENERAL
	1. **Whole Agreement |** This Agreement constitutes the whole of the agreement between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on either of the Parties.
	2. **Variations to be in Writing |** No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of this Agreement will be of any force or effect unless in writing and signed by the Parties.
	3. **Confidential Information |** Proprietary information pertaining to a Party and its business, including but not limited to (**i**) all information that has commercial value and is not available to the public; (**ii**) all information marked "confidential" or which is otherwise notified or identified as being confidential at the time of disclosure; (**iii**) lists of all information relating to customers or prospective customers; (**iv**) lists of or information relating to suppliers or prospective suppliers; (**v**) information relating to the businesses of the other Party, including but not limited to administrative, financial, marketing and accounting activities, planning, operations, processes, strategies and business structures; (**vi**) contractual relationships between customers, suppliers, business associates and other persons, including financial relationships; (**vii**) markets or market areas within which the other Party operates or intends to operate; (**viii**) executive staff and employee details, including but not limited to numbers, terms of employment, remuneration and incentive schemes.
	4. **Provisions Severable |** All provisions and clauses of this Agreement are, notwithstanding the manner in which they are grouped together or linked grammatically, severable from each other. The Parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.
	5. **Continuing Effectiveness of Certain Provisions |** 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 clauses themselves do not expressly provide for this.
	6. **No Assignment |** Neither this Agreement nor any part, share or interest herein nor any rights or obligations hereunder may be ceded, delegated or assigned by either Party without the prior signed written consent of the other, save as otherwise provided herein.
9. SIGNATURE

I warrant that I am duly authorised to sign for and on behalf of the Client and that I have read all the terms and conditions mentioned above and agree to accept this offer and be bound by such terms and conditions.

|  |  |  |  |
| --- | --- | --- | --- |
| Signed at |  | DATE |  |
| Name and Surname |  | Signature |  |
| Designation |  |
| Client name |  |
| client registration number |  |