

STANDARD TERMS AND CONDITIONS FOR LOGISTIC, WAREHOUSING
SERVICES AND CONTAINER DEPOT SERVICES

1 INTERPRETATION

- 1.1 The headings to the clauses contained in these Conditions are included for reference purposes only and shall not aid in the interpretation of the clauses to which they relate;
- 1.2 Unless the context clearly indicates the contrary, words importing any one gender include the other two genders, the singular includes the plural and vice versa, and natural persons include created entities and (corporate and unincorporated) and vice versa;
- 1.3 The following words and terms shall have the meanings assigned to them hereunder:
- 1.3.1 "Authority" shall mean any state or governmental ministry, department, organisation, agency or person, whether legal or natural, having ostensible or actual jurisdiction over JFM, the Customer, any Container or Goods.
- 1.3.2 "Conditions" shall mean these standard trading terms and conditions, as amended from time to time.
- 1.3.3 "Container" shall mean any box, canister, case, crate, container, flexitank, package, trailer, transportable tank, flat, skid or pallet or any other article of transport used to consolidate goods, as well as any equipment of or connected thereto, constructed to ISO standards and recommendations or those of a similar recognised classification.
- 1.3.4 "Container Depot" means JFM's Container Depot where the Container Depot Services are to be rendered.
- 1.3.5 "Container Depot Services" shall mean the storage, cleaning, maintenance

and repair of Containers at the Container Depot, as further detailed in clause 11 hereof.

- 1.3.6 "Customer" shall mean the any person at whose request or on whose behalf JFM undertakes any business or provides any advice, information or Service, whether gratuitously or not, and shall be deemed to include the owner, shipper, consignor and/or consignee of the Goods as hereinafter defined and any Person claiming any right to or in respect of any such Goods and anyone acting on their behalf.
- 1.3.7 "Day" shall mean the twenty-four hour period from midnight to midnight.
- 1.3.8 "Dangerous Goods" shall mean Goods which by reason of their nature, quantity or mode of stowage either singularly or collectively are liable, in JFM'S sole opinion, to endanger the lives or the health of persons or any property including but not restricted to containers, ships, rolling stock, vehicles, buildings and lifting equipment, as well as all Goods defined as dangerous in any relevant IMO Regulations including the IMDG Code or any Statutes, Statutory Instrument or Order in the Regulations made by any Governmental or other Public Authority or by any Local By Law relating to the handling, storage or carriage of Goods;
- 1.3.9 "Goods" shall mean any Goods in respect of or in relation to which Services as defined herein, are requested and/or rendered by or on behalf of JFM and which come under the control or into the custody of JFM or its agents, servants or nominees on the instructions of the Customer, and includes any Container or any other form of covering, packaging, or equipment used in connection with or in relation to such Goods, and any vehicle;
- 1.3.10 JFM shall mean JFM Logistics (Pty) Ltd, registration number 2017/131851/07 of 607 Chevrolet Street, Markman Industrial, Port Elizabeth
- 1.3.11 "Person" shall mean natural person, statutory body, sole proprietorship, firm, partnership, company, close corporation, trust, association or any other

legal persona;

1.3.12 "Service" or "Services" shall mean all activities undertaken by JFM pertaining to the Logistic, Warehousing or Container Depot Services Goods including but not limited to handling, cleaning, repairing, packing, unpacking and/or storage of Goods and or Containers.

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1.3.13 "Vehicle" shall mean any motor vehicle (including but not limited to any forklift, lorry, stacker, van, truck, trailer, or car) in respect of or by which JFM performs or is requested to perform any Service or which enters JFM'S Warehouse or the Container Depot in connection with such Service.

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1.3.14 "Warehouse" means a warehouse operated by JFM and includes the premises on which the Warehouse building is situated.

2. APPLICATION OF TRADING TERMS AND CONDITIONS

2.1 These Conditions shall apply to any Service rendered by JFM in respect of the Goods and or Containers and to every Customer or other person for or on whose behalf JFM performs or renders the Services, whether for reward or gratuitously, and to any further or additional work carried out by JFM for the Customer or other person;

2.2 The Customer warrants that it is either the owner of the Goods or that it is the authorised agent, contractor and/or sub-contractor of the owner of the Goods and that accordingly, it is authorised to accept and has accepted these conditions not only for itself, but also as agent for and on behalf of the owner of the Goods;

3. AMENDMENTS TO THESE CONDITIONS

Both Parties hereby agree and accept that no variation of these Conditions shall be of any force and/or effect and/or binding on either Party unless such variation is reduced to writing and signed by both Parties.

4. QUOTATIONS, RATES AND PAYMENT

- 4.1 Any quotation given by JFM to the Customer for the Services is valid for acceptance for a period of 7 (seven) Days only calculated from the date on which the quotation is transmitted to the Customer.
- 4.2 The Services subject to the quotation shall always be subject to the terms of these Conditions and in the event of any dispute between the provisions of a quotation and the Conditions, the provisions of the Conditions shall prevail.
- 4.3 The Customer hereby acknowledges that the quotation provided to it by JFM is calculated at the costs for providing the Service requested at the time and subject to the information provided by the Customer upon which the quotation from JFM has been based.
- 4.4 The Customer hereby agrees, notwithstanding, the fact that it may have accepted the quotation provided by JFM, should the cost to JFM in providing the Services increase due to circumstances which are beyond the control of JFM or if the basis of the information upon which the quotation is based is incorrect, JFM will be entitled, at its sole discretion, to increase the quoted amount in order to make provision for the said increase and shall, notwithstanding, that the Customer has already accept the quotation on the lesser amount, and prior to providing the Services at the increased cost, give the Customer notice of the increased quotation in order that the Customer may accept the increased quotation or not. In the event that the Customer elects not to accept the increased quotation, JFM will not be obligated to perform the Services on the lesser amount as per the accepted quotation and the accepted quotation on the lesser amount shall be cancelled and JFM shall no liability to the Customer for such cancellation.
- 4.5 The Customer hereby agrees, in the event that JFM is, in addition to the Services for which the quotation was produced and accepted, required or obliged to provide additional Services to those quoted, JFM will be entitled at its discretion to increase the quoted amount in order to make provision for the additional Services and shall, notwithstanding, that the Customer has already accept the quotation on the lesser amount, and prior to providing the additional Services as per the accepted

quotation, give the Customer notice of the increased quotation in order that the Customer may accept the increased quotation or not. In the event that the Customer elects not to accept the increased quotation, JFM will not be obligated to perform the additional Services as per the accepted quotation and the accepted quotation on the lesser amount shall be cancelled and JFM shall have no liability to the Customer for such cancellation.

- 4.6 Unless the Customer has entered into a 30 Day Payment Facility Agreement with JFM, in which case the payment provisions shall be governed by such 30 Day Payment Facility Agreement, the Customer undertakes to pay the invoiced amount due to JFM for the Services immediately on receipt of the invoice but not later than the 7th day from the date of the invoice.
- 4.7 The Customer hereby acknowledges that any and all payments due by it to JFM will not be subject to the principle of set-off against any debt which JFM may owe to the Customer for whatever reason and the Customer will not be entitled to make any set-off, deduction from and/or deferment against any amount which it may owe to JFM.
- 4.8 The Customer hereby agrees, acknowledges, and accepts that JFM, in its sole discretion, will be entitled to allocate a payment received from the Customer against any other amount which the Customer may owe to JFM, whatsoever arising with it being specifically agreed that such amounts may not be related to the Services subject to the quotation provided by JFM, in which event, the Customer will remain indebted to JFM for the balance of the amount then owing by the Customer to JFM for the rendering of the Services or otherwise.
- 4.9 The Customer hereby acknowledges that JFM will be entitled to charge interest on any and all arrear amounts owing to it by the Customer and, that the interest so charged will be calculated at the maximum interest rate charged by JFM's bankers on a business overdraft facility at the time of the arrears being paid plus 2% (two percent) and that interest at the agreed rate shall commence from the due date of payment until the date payment is actually received by JFM. The Customer shall in addition to the interest charges be liable for any and all costs incurred by JFM in

respect of the provision of the Services, legal costs in the collecting of the amounts due as well as any other costs incurred by JFM as a result of the Customer's default.

- 4.10 The Customer hereby acknowledges that it is obliged to reimburse JFM for any and all costs incurred by it in complying with any and all statutory requirements and regulations, notices and any requirements of an Authority relating to the storage of the Customer's Goods and, including but not limited to, the movement, permanent removal or destruction of dangerous, infested or contaminated Goods or the treatment of any employee, agent or representative of JFM or its Warehouse, premises or any other persons or premises as a result of any infestation or contamination arising from the Customer's Goods;
- 4.11 The Customer hereby agrees and acknowledges that in the event that JFM is, for whatever reasons, required to pay demurrage costs same will be payable by the Customer.
- 4.12 The Customer hereby agrees and acknowledges that in the event that JFM is, for whatever reasons, collect freight charges, duties, or other expenses from any Person other than the Customer, the Customer will nevertheless be responsible and liable for payment of such charges, duties or other expenses to JFM in the event that JFM provides the Customer with evidence of the demands made by it on such other Person and confirmation by JFM in writing that notwithstanding such demand, the other Person has failed alternatively, refused alternatively, neglected to make the payment so due for whatever reason.

5. CONDITIONS APPLICABLE TO THE SERVICES

- 5.1 The Customer hereby agrees to deliver the Goods tendered by it for storage and/or handling at the Warehouse facility or Container Depot identified by JFM in its quotation;
- 5.2 The Customer undertakes as follows in respect of the Goods on delivery thereof as set out in clause 5.1 above:

- 5.2.1 that the Goods are properly marked and packed according to the industry standard applicable for the packing of that type and nature of Goods.
- 5.2.2 to provide JFM with a manifest in respect of the Goods so delivered detailing marks, brands, weights, measurements, characteristics, and such other description of the Goods as JFM may reasonably require for the purpose of handling such Goods and confirming that the Goods do not constitute Dangerous Goods.
- 5.3 The Customer acknowledging that JFM shall at all times and for any purpose whatsoever be entitled to rely on the particulars and information furnished by the Customer regarding the Goods, herewith guarantees unto JFM the accuracy of:
 - 5.3.1 marks, brands, weights, measurements, characteristics, and such other description of the Goods as may be reasonably be required by JFM; and,
 - 5.3.2 marks, numbers and weights and any other information shown on any container and any documentation pertaining to such container and, the marks, numbers, weights, description of Goods and packing, shown on all shipping and other documents in respect of any Goods
- 5.4 Notwithstanding, that the Customer shall have delivered the Goods in compliance with the provisions of clause 5.1 above, the Goods will be deemed to have been received by JFM only at the later of the following
 - 5.4.1 when the Goods enter through the Warehouse or Depot gates; alternatively,
 - 5.4.2 when the process of off-loading the Goods from the Vehicle at the Warehouse has been completed.
- 5.5 Notwithstanding, that the Customer has, in compliance with provisions of clause 5.1 delivered the Goods and, that JFM has received the Goods as per the provisions of clause 5.3 above, the Goods will only be deemed to have been

delivered to JFM by the Customer when they are delivered to the Person in possession of a delivery release order together with the manifest referred to in clause 5.2.2 herein above and as such, are placed under the control and, at the disposal of the Person appointed by JFM at its Warehouse or Depot to accept delivery of the Goods on its behalf.

- 5.6 The Customer hereby agrees and acknowledges that acknowledgment by JFM on receipt of the Goods once delivered as provided for in clause 5.4 above shall not constitute an acknowledgement or admission by JFM as to the state, condition, quality or quantity of the Goods nor, as to the correctness of any statement made by JFM and/or its employees and/or representatives on any documentation.
- 5.7 The Customer hereby confirms that it is aware of the fact that it is entitled to appoint a surveyor to monitor the loading and off-loading of Goods at the Warehouse or the Depot and, that in fact, it is preferred by JFM that the Customer in fact appoints the said surveyor and, that the Customer may be required, where it chooses not to appoint a surveyor as aforesaid, that it will be presented with a notice of waiver by JFM in which it records that it is aware of the fact that it is entitled to appoint a surveyor to monitor the loading and off- loading of the Goods and waives this entitlement;
- 5.8 The Customer hereby acknowledges that JFM accepts responsibility and/or risk and/or liability relating to the handling, loading, unloading, securing and/or lashing of goods and/or containers and/or other vehicles used for the purposes of handling, loading, unloading, securing and/or lashing of Goods and/or Containers only to the extent that the Customer is able to prove that the loss or damage claimed arises out of the gross negligence on the part of JFM, its employees, agents, or sub-contractors.
- 5.9 The Customer hereby acknowledges and accepts that in the event of delivery of the Goods not being accepted by the Customer at the time and place as per agreed between the Parties, JFM will be entitled but not obligated to continue to store the Goods, or any part thereof, at a place convenient to it at the risk and expense of the Customer and on the same terms as contained in these Conditions.

- 5.10 The Customer hereby agrees and acknowledges that carriage of the Goods either to the point of receipt by JFM for the purpose of storing the Goods on the terms and conditions as provided in these Conditions and/or to the point of delivery either by JFM or a carrier appointed by it alternatively, by a carrier appointed by the Customer for this purpose is not deemed to be a Service for the purpose of these Conditions and the Customer will, in the event of it requesting JFM to attend to the carriage of the Goods, be required to conclude an agreement for the carriage of the Goods and in terms whereof the Customer appoints the carrier of the Goods.
- 5.11 The Customer hereby acknowledges and agrees that it will be liable to JFM for any and all costs, charges, expenses, liabilities and/or damages of whatsoever nature and howsoever incurred or suffered by JFM and arising out of or incidental to the failure of particular Goods to comply with these Conditions.
- 5.12 The Customer, furthermore, hereby undertakes to ensure that Goods delivered to JFM are,
- 5.12.1 clearly marked so as to avoid any discrepancy between the Goods and the shipping and other documents relating to the Goods and so as to render the Goods identifiable with the shipping and other documents;
- 5.12.2 securely packaged and sufficiently protected to withstand mechanical and/or human handling, containerisation, transport, storage, and delivery; and
- 5.12.3 marked in compliance with the relevant International Maritime Organization (IMO) and International Maritime Dangerous Goods (IMDG) codes regulations.
- 5.13 The Customer hereby agrees and acknowledges that in the event that it fails to comply with any or all of the above insofar as relates to the Good being delivered to JFM, JFM will incur no liability arising from the Services rendered in respect of Goods and the Goods will be handled by JFM entirely at the Customer's sole risk

and in this respect, the Customer indemnifies JFM and holds it harmless for any and all claims of whatsoever nature and howsoever arising as a result of the Customer's failure to comply with the provisions of this clause. The Customer hereby undertakes to ensure that its Containers are clearly marked so as to be readily identifiable with the Customer's Container manifest, or any other document by which such Container is intended to be identified.

- 5.14 The Customer acknowledges that JFM will, at all times, be entitled but not obliged to inspect any Goods, and shall be entitled to refuse to accept any Goods which in its sole discretion appear in any way to be damaged or unsafe for handling, storage or carriage.
- 5.15 The Customer warrants to and in favour of JFM the suitability and safety of all Goods delivered to JFM by or on behalf of such Customer.
- 5.16 The Customer warrants to and in favour of JFM, that all Goods shall at all times be carried on, lifted by and stored in vehicles, ships, lifting equipment and warehouses which will be entirely suitable for the safe, adequate and sufficient carriage, lifting and storage thereof and indemnifies JFM against all and any claims for the loss of or damage to the Goods, property or injury to persons arising from the carriage, lifting or storage of such Goods in breach of such warranty.
- 5.17 The Customer acknowledges that where Goods delivered to JFM are enclosed in packaging or in a Container, and JFM is for a valid reason relating to the Customer or at the direction of an order of court or Authority obliged in order to ascertain the contents thereof, or for the purpose of ensuring that the contents are securely and sufficiently packaged, required to open the package or Container as the case may be and subsequently, to repack the Goods and/or Container the cost of repacking the Goods and/or Containers shall be borne by the Customer and the Customer hereby assumes all risk in this regard.
- 5.18 Notwithstanding the foregoing and whenever JFM conducts an external visual inspection of the Container or Goods, JFM shall not be under any liability in respect of loss or damage resulting from any fact or state of affairs not reasonably

ascertainable as a result of such external visual inspection.

- 5.19 Unless otherwise previously agreed in writing, the Customer undertakes that no Goods or Containers requiring temperature control will be delivered to JFM and that JFM shall not be required to deal with or handle such Goods and no liability shall in any event attach to JFM in respect of such Goods or Containers under any circumstances.
- 5.20 In the event the JFM agrees with the Customer in writing to handle Goods which require temperature control, then, and in such an event, the Customer undertakes to give written notice of the nature of the Goods and a particular temperature range to be maintained and shall warrant that the Container has been properly pre-cooled or pre-heated as appropriate, that the Goods have been properly stuffed in the Container and that its thermostatic controls have been properly set and that the refrigeration unit on the Container is functioning correctly and is able to maintain the stipulated temperature within the Container. JFM shall not be liable for any loss or damage to the said Goods and all Services provided in respect of such Goods are at the sole risk of the owner of the Goods.
- 5.21 In the event, notwithstanding the provisions of clause 5.19 and 5.20 herein above, the Customer, without prior written notice, delivers Goods to JFM which require temperature control or, having given prior written notice, fails to comply with its undertaking as per the provisions of clause 5.20, JFM may refuse receipt of the Goods or, if already received, call on the Customer to immediately remove the Goods and failing to do so within 2 (two) Days of it having requested the Customer to do so, JFM will be entitled to remove the Goods or deal with them in any other manner it deems appropriate, without any liability for any loss or damage to such Goods attaching to JFM and at the sole risk and expense of the Customer.
- 5.22 The Customer hereby acknowledges and accepts that in the event of any Goods belonging to the Customer and delivered to JFM in terms hereof and as such in the care, custody or control of JFM, begin to deteriorate or which are likely to deteriorate (whether perishable or otherwise) JFM shall at its discretion, be entitled to give the Customer 24 (twenty-four) hour notice of the fact that the Goods have

begun to deteriorate or are likely to deteriorate, that the Customer is required at its costs to take such steps as may be necessary to ensure that the Goods are removed from the care, custody or control of JFM within the 24 (twenty-four) hour notice period failing which, JFM shall be entitled to remove the Goods to a suitable storage at a cost to the Customer. In the event that notwithstanding the notice as aforesaid, the Customer fails within the 24 (twenty-four) hour period to suitable remove the Goods from the care, custody, or control of JFM, JFM will be entitled at a cost to the Customer to arrange for the removal of the goods and alternative storage of the Goods.

- 5.23 The Customer hereby acknowledges that in the event that JFM procures from a third party the carriage of Goods by rail and any handling or storage connected therewith or for any other Services, it does so solely as an agent for the Customer and entirely at the Customer's risk and JFM shall have no liability for any act or omissions or such third party.
- 5.24 The Customer hereby agrees and acknowledges that where the carriage of Goods by rail and any handling or storage connected therewith or for any other Services are contracted by JFM acting as the agent for the Customer, JFM will be entitled, but not obliged to contract on the basis of that third party's own standard terms and conditions provided, that JFM only acts as the Customer's agent when providing Services in respect of or relating to customs requirements, taxes, licenses, consular documents, certificates of origin, inspection certificates and other similar services and the remuneration for such Service shall be payable by the Customer to JFM.
- 5.25 The Customer hereby agrees to defend, indemnify, and hold JFM harmless in respect of all liability, loss, damage, costs, or expenses arising howsoever out of or in relation to the procurement by JFM on behalf of the Customer for the carriage of the Customer's Goods by rail, any handling or storage connected therewith or any other Services.
- 5.26 In the event of a claim in respect of the Services procured by JFM on the Customer's behalf, JFM shall provide the Customer with particulars of the identity,

services, and charges of such third party,

6 INSURANCE

- 6.1 The Customer hereby confirms that it is aware that in terms of these Conditions, JFM is, except to the extent of an act of gross negligence on the part of JFM, excluded from any and all liability relating to the Customer's Goods and/or Containers and that to this end, the obligation rests on the Customer to effect appropriate and sufficient insurance cover for the Goods in order to protect same against the risk of any damage and/or loss. No insurance will be affected by JFM on the Customer's behalf other than upon the express written instruction given by the Customer to JFM to do so which shall include the value of the amount to be insured.
- 6.2 The Customer hereby acknowledges that in the event that it instructs JFM to affect insurance as referred to in clause 6.2 herein above, the policy will be subject to the usual exceptions and conditions of the policies of JFM or of underwriters providing the cover and, that the Customer will be liable for all premiums for any insurance effected by JFM on the Customer's behalf and will pay such premiums in addition to the charges for the Services on the same terms as the payment provisions herein contained.
- 6.3 The Customer hereby acknowledges that in the event that it instructs JFM to affect insurance as referred to in clause 6.2 herein above and unless otherwise agreed in writing, JFM shall not be under any obligation to affect separate insurance on each consignment, but may declare Goods on any open or general policy.
- 6.4 The Customer acknowledges that in the event of the insurers disputing its liability for any reason whatsoever, the Customer, as the insured party shall have recourse against the insurer only and that JFM shall not be deemed to have incurred any responsibility or liability in relation to the provision or the procurement of the insurance.

7. RIGHTS OF JFM

- 7.1 Notwithstanding, any provision to the contrary set out in these Conditions, JFM retains the right to at any time comply with an order or recommendations received from any Authority and/or Court of Law in the handling or storage of the Goods.
- 7.2 Any and all responsibility which JFM may have in terms of these Conditions and in respect of the Customer's Goods shall immediately cease on the happening of any one of the following events:
- 7.2.1 the delivery of the Goods to the carrier appointed by the Customer or, by JFM acting as the agent for the Customer.
 - 7.2.2 the disposition of the Goods in accordance with any order of Court and/or recommendation received from any Authority.
 - 7.2.3 where, JFM, has, in accordance with the provisions of these Conditions, sold or disposed of the Goods have begun to deteriorate or which are likely to deteriorate.
 - 7.2.4 where Dangerous Goods, infested, or contaminated Goods belonging to the Customer have been moved, removed or destroyed by or on the instruction of JFM.
 - 7.2.5 where the Customer has not collected or accepted delivery of the Goods after the expiration of 21 (twenty-one) days from the date on which JFM has given the Customer written notice to collect or accept the Goods.
- 7.3 In the event that JFM at any time while performing any obligation in respect of the Services becomes aware of or is of the opinion that notwithstanding, the reasonable endeavours of JFM and/or its agents, the performance of its obligation is likely to be negatively affected then, and in such an event, JFM may, on written notice to the Customer or without notice where it is not reasonably possible to give such notice, treat the performance of its obligations as discharged and place the Goods or any part thereof at the disposal of the Customer at any place which JFM

may deem safe and convenient, whereupon the responsibility of JFM in respect of the Goods shall cease and the Customer shall be responsible for any additional costs of carriage to and delivery, handling and storage at such place and for all other expenses incurred by JFM.

- 7.4 In the event that delivery of the Goods is not taken by the Customer at the time and place when and where JFM is entitled to call upon the Customer to take delivery thereof, then, and in such an event, JFM will be entitled to store the Goods at a place convenient to it in the open or under cover at the sole risk and expense of the Customer.
- 7.5 Notwithstanding clauses 7.3 and 7.4 above, JFM will be entitled, but not obliged at the risk and expense of the Customer and without liability to the Customer to dispose of any Container or other Goods which in JFM's opinion cannot be delivered as instructed or which may be reasonably expected to cause loss or damage to any person or property or to contravene any applicable law or regulation.
- 7.6 Notwithstanding anything contained herein and without prejudice to its rights and remedies in terms hereof, JFM shall be entitled at the Customer's risk and expense to open and inspect any Container or packaged Goods at any time and without notice if it believes that the contents of such container may be illegal or the proceeds of or being used in and/or evidence of any unlawful activity.

8. SUBCONTRACTING

- 8.1 Any business entrusted by the Customer to JFM may, in the absolute discretion of JFM, be fulfilled by JFM itself, by its own servants performing part of or all of the relevant Services, or by JFM employing, or entrusting the Goods or Services to third parties on such conditions as it may stipulate or negotiate with such third party for the purposes of such Services, or such part thereof as that third party may be employed to carry out.
- 8.2 The Customer acknowledges that JFM, will from time to time and at its sole

discretion make use of third party subcontractors to perform the duties and obligations of JFM to the Customer in terms of these Conditions.

- 8.3 The Customer further acknowledges that when making use of third party subcontractors as aforesaid, that JFM will act as the principal in respect of such subcontractors and that JFM will ensure that the subcontractor employed by it for any specific consignment will perform the obligations and duties of JFM as per these Conditions.

9. WAREHOUSING AND STORAGE

- 9.1 The Customer warrants that it has inspected the Warehouse and that it is satisfied, on the basis of its inspection that the Warehouse is suitable for the warehousing and or storage of the Goods and/or Containers and that JFM has made no representations that have induced the Customer to request JFM to provide the Warehouse or storage facilities.
- 9.2 Whilst JFM undertakes to take reasonable steps to properly secure the Warehouse at all times, the Containers and/or Goods remain at the sole risk of the Customer while at the Warehouse or in the custody of JFM and the Customer shall take all reasonable steps to adequately insure the Goods and/or Containers for its own account.
- 9.3 The Customer acknowledges that its Containers and/or Goods may be stored in the open or in open- sided warehouses.
- 9.4 In the event that the Customer contracts with JFM to warehouse and/or to store the Goods, then, in addition to these Conditions recorded herein, the following terms shall specifically apply to the warehousing and/or storage Services that JFM renders to the Customer:
- 9.4.1 before presenting the Goods for warehousing and/or storage, the Customer shall inform JFM in writing of any special precautions necessitated by the nature, weight, value or condition of the Goods or of any statutory provisions

specific to the Goods with which JFM needs to comply and any other information with regards to the Goods which may affect JFM's insurance cover and other risk such Goods pose to JFM's staff.

- 9.4.2 when presenting Goods for warehousing or storage, the Customer undertakes that the Goods shall be securely and properly packed in compliance with any statutory regulations, official or recognised standards or in a manner compatible with the nature of the Goods and in such a manner to not to cause damage or injury, or the likelihood or possibility of damage or injury to property or to any other goods or to any Person whether by the spreading of damp, infestation, leakage, the emission of fumes or substances or in any other whatsoever.
- 9.4.3 on delivery, the Customer shall supply JFM with a comprehensive and accurate description of the Goods to be stored and the Customers shall notify JFM of any change in the description of the Goods during the course of the storage.
- 9.4.4 the Customer will not, without the prior written consent of JFM present for warehousing any Goods which consist of or contain substances which require the obtaining of consent or a license to store or which might, if they escape from their packaging cause pollution of the environment or cause harm or hazard to persons or to property.
- 9.4.5 the Customer undertakes that it, its servants, agents or subcontractor shall at all times observe and comply with the security, health, safety and other site rules and regulations applicable to any Warehouse where the Goods are delivered or warehoused or removed and with all relevant laws regulations and the like.
- 9.4.6 all Goods are dealt with and warehoused at the sole risk of the Customer who shall be obliged to make the appropriate arrangement to insure the Goods against all risks to the full insurable value thereof.

- 9.4.7 the Customer may, at any time, give written authority for the Goods or any part thereof, to be transferred to, and for the account of a third party, subject to the Customer procuring that, prior to such transfer, such other party binds itself in writing to these Conditions and in favour of JFM and that JFM agrees thereto in writing and the Customer settles JFM's charges in full.
- 9.4.8 JFM reserves the right, at any time, to refuse to warehouse and/or to store any Goods or to refuse to continue to warehouse or to continue to store any Goods or to insist on the immediate removal of Goods by the Customer.
- 9.4.9 the Customer shall afford JFM reasonable written notice of its intention or instructions to have the Goods released.
- 9.4.10 JFM shall release the Goods in accordance with the Customer's written instructions save where it has a valid entitlement in law or in terms of these Conditions to retain the Goods and provided that the Customer has settled in full all amounts owed to JFM or owed to third parties in respect of such Goods.
- 9.4.11 if the Customer fails to remove the Goods upon termination of the Services or upon JFM's instruction to remove the same, then JFM may, without prejudice to its rights, give the Customer notice in writing requiring such Goods to be removed within 21 (twenty-one) Days. In the event of Goods being perishables, a 3 (three) Day notice period shall suffice. If the Customer still fails to remove the Goods, the provisions of clause 15.21 shall apply
- 9.4.12 JFM may increase its charges from time to time on 21 (twenty -one) Days written notice to the Customer.
- 9.4.13 any warehouse Services shall endure indefinitely unless terminated by either Party on 30 (thirty) Days' notice in writing to the other Party.

9.4.14 no failure by JFM to perform in accordance with the provisions of these Conditions shall constitute a breach thereof if such failure results from force majeure, including Acts of God, war, strike or labor action, sanctions changes in law or regulations and the like or from any other circumstances on the reasonable and foreseeable control of JFM.

9.4.15 A in the event of the Customer breaching any of the provisions of this clause, or in the event of any damages being caused by the Goods, the Customer hereby indemnifies JFM against any loss of damage or cost or expenses of whatsoever nature that JFM may suffer or incur in relation thereto or in consequence thereof, including all legal and professional fees.

10. CONTAINERS

10.1 The Customer hereby agrees and acknowledges that where JFM is required to pack or stuff goods into Containers for transport whether on a Full Container Load (FCL) or Less Container Load (LCL) basis, such Goods shall in the absence of an express written instruction from the Customer be stuffed into ordinary Containers and shall be deemed to be suitable for carriage in such Containers without any specific ventilation or temperature requirements. In addition, JFM shall have no obligation to inspect the Containers for the suitability for loading of any Goods and JFM will not be liable for any loss of or damage to the Goods resulting from any failure to provide special Containers or conditions within those Containers or from the Containers being unsuitable for the carriage of the Goods.

10.2 The Customer agrees that unless otherwise agreed to in writing between it and JFM, the cost of all pallets, packing materials, equipment, dunnage, lashing materials or the like shall be borne by the Customer.

10.3 The Customer undertakes, in the event that of sealed or packaged items being given to JFM for consolidation, to clearly mark such items and, where required to do so by JFM, to declare the content of such sealed or packaged items in writing and, to warrant that they have been properly packed and that Customer acknowledges that JFM will not be liable for any loss of or damage to such items due to the insufficient packaging, or for non-delivery due to inadequate markings.

11. CONTAINER DEPOT SERVICES

- 11.1 The Customer shall provide JFM with a request for the Container Depot Services and detail what Services JFM is required to provide.
- 11.2 JFM shall provide the Customer with its quotation for the requested Services at JFM's then prevailing prices.
- 11.3 In the event of JFM inspecting the Container and finding any damages JFM shall advise the Customer thereof and request the Customer to provide instructions as to whether JFM is required to attend to repairs and thereafter JFM shall provide a cost for such additional Services.
- 11.4 JFM undertakes to effect repairs in accordance with the Customer's applicable Container repair manuals, provided same have been provided to JFM.
- 11.5 Save for the foregoing, the provisions of these terms and conditions applicable to Storage shall be of equal application to Container Services.

12. PACKAGING

- 12.1 In the event that Customer requires from JFM to pack the Goods, then and in such an event, the Customer undertakes, prior to accepting JFM's quotation, to afford JFM a reasonable opportunity to inspect the equipment, methods and /or materials required and/or to be employed in the packing of the Goods and shall when accepting the quotation be deemed to have afforded JFM the opportunity to so inspect the equipment, methods and /or materials required and/or to be employed and to have expressly approved the use of such equipment, methods and materials, and JFM will not be liable for any loss of or damage to the Goods or for any other consequences of whatsoever nature in the event that these are found to have been inadequate or inappropriate for the purposes concerned.
- 12.2 The Customer hereby acknowledges and confirms that in the event that the materials to be used by JFM in the packaging or bagging of Goods have not been provided by the Customer, that these materials may be provided by JFM at the Customer's expense.

- 12.3 The Customer hereby acknowledges that in the absence of its express written instruction to JFM, JFM will be entitled to pack or bag Goods into whatever individual quantities it deems appropriate.
- 12.4 The Customer undertakes to provide clear written instructions as to the marking of packages, bags or other units and JFM will not be liable for any losses of whatsoever nature resulting from the Customer's failure to do so or for the inadequacy or inaccuracy of markings placed on Goods in accordance with or in the absence of such instructions.
- 12.5 JFM will not be liable to the Customer for the loss in quantity or weight through handling of Goods delivered to it for packaging or bagging unless such loss is proven by the Customer and represents more than 5% in weight of the total consignment concerned, subject always to all other terms and conditions herein.
- 12.6 Where JFM is obliged to store Goods delivered to it for packing or bagging either before or after that process, it shall be entitled to charge the Customer for such storage at its usual rates, such storage being otherwise in all respects subject to JFM's standard terms and conditions relative to warehousing.
13. JFM'S LIEN
- 13.1 JFM will have lien over all Containers, Goods and/or documents relating thereto, for any amount which may be due, owing and/or payable to it by the Customer whether in relation to such Containers, Goods and/or documents or otherwise.
- 13.2 The Customer hereby acknowledges that in the event that any amount which may be due, owing and/or payable by it to JFM remains unpaid for a period of 14 (fourteen) Days after JFM has served a written notice on the Customer advising that it is exercising JFM shall be entitled to enforce its lien.
- 13.3 Where JFM has, in accordance with the provisions of clause 13.2 herein above,

enforced its lien the Customer will remain liable for payment to JFM of the costs required to store the Goods pending payment of the total amount owing by the Customer.

13.4 The exercise by JFM of any of the rights accorded to it by this clause will be without prejudice to any other rights which it may have under these Conditions or at law in respect of non-payment by the Customer of the remuneration due to it by the Customer and it will be entitled to recover any difference and/or shortfall from the Customer.

14. DANGEROUS GOODS

14.1 The Customer hereby undertakes not to deliver for handling or storage any Goods which are dangerous or likely to encourage vermin or other pests or to cause infection or contamination. In the event of any such Goods being so delivered, without the knowledge and express written consent of JFM, the Customer hereby and in addition to any other indemnity by the Customer as set out in this agreement, indemnifies JFM and holds it harmless against any and all liability and/or loss and/or claim for damages by any third party directly or indirectly caused by such Goods.

14.2 The Customer hereby agrees and concedes that if, notwithstanding its undertaking given in 13.1 above, it, without the knowledge and express written consent of JFM, delivers to JFM Goods which are dangerous or likely to encourage vermin or other pests or to cause infection or contamination that JFM will be entitled to remove, sell, destroy, or otherwise dispose of any such goods without notice or liability to the Customer.

14.3 The Customer hereby agrees and acknowledges that it will be liable unto JFM for any and all damages which it may suffer as a result of the Customer's failure to comply with its undertaking given in clause 14.1 herein above.

15. INDEMNITY BY THE CUSTOMER

- 15.1 Without prejudice to any of JFM'S rights as per the provisions of these Conditions, the Customer indemnifies JFM in respect of and holds it harmless against any liability, claims, costs (including legal costs on the attorney and own client scale), expenses, losses and/or damages whatsoever arising directly or indirectly from or relating to:
- 15.1.1 the mis-delivery of Goods.
 - 15.1.2 duties, fines, penalties, taxes (including customs duty and VAT), imposts, detention charges, levies by or paid to any Authority including but not limited to the South African Revenue Service and any liability which JFM may incur to Transnet National Port Authority or as a consignee as defined in the National Road Traffic Act 93 of 1996 or the regulations of that Act.
 - 15.1.3 any breach of warranty or obligation by the Customer.
 - 15.1.4 any act or omission by the Customer or any Person acting on its behalf.
 - 15.1.5 JFM's compliance with instructions given by or on behalf of the Customer, whether express, tacit, or implied.
 - 15.1.6 JFM's compliance with the instructions of an Authority or with any law or legislative enactment or regulation or other lawfully imposed obligations of any nature whatever in respect of the Goods.
 - 15.1.7 the defective condition or excess weight of Containers and/or Goods.
 - 15.1.8 any duty, Value Added Tax, penalty, amount raised in forfeiture, or any other fines, levies or charges raised by the South African Revenue Services in respect of Goods stored in JFM'S Warehouse, Container depot or otherwise.
 - 15.1.9 loss of or damage to property or injury to Persons arising directly or

indirectly from infestation or contamination of any Goods.

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- 15.1.10 claims arising from or in connection with the loading, unloading, securing and/or lashing of Goods, save, where such claims arose as a result of the proven gross negligence on the part of JFM and then, only to the extent of such proven gross negligence.
 - 15.1.11 any demurrage or other charges arising from the delay of any Goods, Container, or vehicle at the Warehouse or Container Depot.
 - 15.1.12 general average; unless arising solely from JFM's gross negligence.
- 15.2 the Customer undertakes, save for claims the cause of which is proven to be the gross negligence and/or breach of any servant or agent of JFM, the Customer undertakes that no claim shall be made against any servant or agent of JFM which imposes or attempts to impose upon any of them any liability whatsoever in connection with the Goods, and if any such claim should nevertheless be made, to indemnify JFM against all consequences thereof.
- 15.3 Without prejudice to the foregoing, every such servant or agent of JFM will have the benefit of all immunities, indemnities, defenses, exceptions and/or limitations of liability contained in these Conditions, as if such provisions were expressly agreed for their benefit. JFM agrees to such provisions in these Conditions not only on its own behalf but also as agent and trustee for such servants and agents.
- 15.4 In this clause, "agent" includes direct and indirect sub-contractors and their respective servants and agents.
- 15.5 Advice and information in whatever form it may be given is provided by JFM for the Customer only and the Customer shall defend, indemnify, and hold harmless JFM for all liability, loss, damage, costs and expenses arising out of any other Person relying on such advice or information. The Customer shall not pass such advice or information to any third party without JFM's written agreement and consent and the Customer shall indemnify JFM against any loss suffered as a

result of a breach of this condition.

- 15.6 In the event of a claim being made by any Person against JFM and arising out of the performance or non-performance of its obligations to the Customer in terms of these Conditions, the Customer hereby agrees save, where such claims arose as a result of the proven breach and/or gross negligence on the part of JFM, to indemnify JFM for all and any claims and/or amounts for which JFM may be held liable in excess of the liability provided for in these Conditions. The Customer agrees further to reimburse JFM for any and all legal costs (on the attorney and own client scale) which JFM may have incurred in defending such a claim.
- 15.7 The Customer's bill of lading, waybill or other contract of carriage, handling and/or storage shall include a provision prohibiting the making of a claim against JFM its servants or agents and a provision that JFM its servants and agents shall have the benefit of all defenses, exclusions and limitations of liability contained in any such contracts.

16. LIMITATION OF JFM'S LIABILITY

- 16.1 JFM will not be liable for any claim of whatsoever nature (including in contract or in delict) and whether for damages or otherwise howsoever arising including but without limiting the generality of the aforesaid for:
- 16.1.1 any negligent act or omission or statement by JFM or its servants, agents or nominees in dealing with the Goods in any manner including the warehousing and storage; and/or.
- 16.1.2 any act or omission of the Customer or agent of the Customer with whom JFM deals; and/or
- 16.1.3 any loss, damage or expense arising from or in any way connected with the marking, labeling, numbering, non-delivery or miss-delivery of any Goods; and/or

- 16.1.4 any loss, damage or expense arising from or in any way connected with the weight, measurements, contents, quality, inherent vice, defect or description of any Goods; and/or
- 16.1.5 any loss, damage or expense arising from or in any way connected with any circumstance, cause or event beyond the reasonable control of JFM including but without limiting the generality of the aforesaid, strike, lockout, stoppage or restraint of labour; and/or
- 16.1.6 damages arising from loss of market or attributable to delay in forwarding or in transit or failure to carry out any instructions given to JFM; and/or
- 16.1.7 loss or non-delivery of any separate package forming part of a consignment or of loss from a package or any unpackaged consignment or for damage or mis-delivery; and/or
- 16.1.8 damage or injury suffered by the Customer or any Person whatsoever rising out of any cause whatsoever as a result of JFM's execution or attempted execution of its obligations to the Customer and/or the Customer's requirements or mandate;

unless:

- 16.1.8.1 such claim arises solely from the grossly negligent act or omission on the part of JFM or its servants;
- 16.1.8.2 such a claim arises at a time when the goods in question are in the actual custody of JFM and under its actual control the instances provided in clause 16.1.8 above, JFM receives a written notice within 5 (five) Days after the end of transit where transit ends in the Republic of South Africa or within 14 (fourteen) Days after the end of transit where the transit ends at a place outside the Republic of South Africa and within 5 (five) Days of the claim arising in all other circumstances.

16.2 Notwithstanding anything to the contrary contained in these conditions JFM shall not be liable for any indirect or consequential loss arising from any act or omission or statement by JFM, its agents servants or nominees whether

17. PERIOD OF JFM'S LIABILITY

The Goods shall be regarded as in the custody of JFM and under its control from the time the Goods are received by JFM to the time that they are delivered to the Customer or its nominee.

18. MONETARY LIMITATION OF LIABILITY OF THE COMPANY

18.1 The Customer hereby agrees and acknowledges that in the event that JFM has become liable to it for whatever reason, the liability of JFM to the Customer howsoever arising will not exceed whichever is the lesser of the following respective amounts:

18.1.1 the value of the Goods evidenced by the relevant documentation or declared by the Customer for customs purposes or for any purpose connected with their transportation;

18.1.2 the value of the Goods declared for insurance purposes;

18.1.3 double the amount of the fees raised by JFM for its Services in connection with the Goods, but excluding any amount payable to sub-contractors, agents and third parties.

18.2 If it is desired that the liability of JFM in those cases where it is liable to the Customer should not be governed by the limits referred to in clause 18.1, written notice thereof must be received by JFM prior to any Services being undertaken (or that of its agents or sub- contractors), together with a statement of the value of the Goods and JFM may, upon receipt of such notice, exercise its discretion and agree in writing that its liability being increased to a maximum amount equivalent to the amount stated in the notice, in which case it will be entitled to effect special

insurance to cover its maximum liability and the Customer having given such notice shall be deemed, by so doing, to have agreed and undertaken to pay JFM the amount of the premium payable by it for such insurance. In the event that JFM having received such notice and exercising its absolute discretion, does not agree to the limit being increased as aforesaid, the provisions of clause 18.1 herein above shall apply.

19. DISPUTES

- 19.1 In the event of a dispute of any nature whatsoever arising between the Parties in regard to any aspect, matter or thing relating to these Conditions or any Services rendered thereunder then, and in such event, the Customer shall nevertheless be obliged to perform its obligations in terms of these Conditions as though JFM had performed properly and to the Customer's satisfaction.
- 19.2 In the event that the Customer alleges that it has made any overpayment or will, if an invoice by JFM is paid, make an overpayment, the Customer's remedy, having performed its obligations, shall be limited to an action against JFM for repayment of either the whole or portion of the amount which the Customer alleges constitutes an overpayment.
- 19.3 Without affecting the generality of clauses 19.1 and 19.2 the Customer shall not be entitled to withhold payment of any amounts by reason of any dispute with JFM, whether in relation to JFM's performance in terms of any Services, or lack of performance or otherwise, after which payment the Customer's rights of action against JFM in terms of this clause may be enforced. Until such payment is made, any rights that the Customer may have, shall be deemed not yet to have arisen and it is only the payment to the JFM which releases such rights and makes them available to the Customer in respect of any claim that it may have against JFM
- 19.4 In any dispute between JFM and the Customer JFM shall be deemed to have performed its obligations in a proper and workmanlike manner and strictly in accordance with these Conditions between it and the Customer, until such time as the Customer proves the contrary.

20. GOVERNING LAW

These Conditions and all Services rendered thereunder shall be governed by and construed in accordance with the laws of the Republic of South Africa.

21. ONE YEAR TIME BAR FOR CLAIMS

21.1 The Customer hereby agrees and undertakes to give written notice to JFM of all claims against JFM within the time limits prescribed in clause 16.1.8.2, failing which JFM's liability in respect of such claims shall be extinguished.

21.2 In any event, JFM will be discharged of all liability whatsoever and all right of action shall be extinguished, unless summons is served on JFM by no later than one year after the date on which the incident giving rise to such cause of action occurred.

22. COSTS

In the event of the Customer breaching any of its obligations and/or failing to timeously make payment of any amount to JFM the Customer agrees to pay, and shall be liable to pay, all legal costs on the attorney/own client scale including collection charges and tracing agent's fee incurred by JFM in recovering any such amount from the Customer.

23. SEVERABILITY

If any provision of these Conditions is held to be unenforceable by any Court of Law, such provision shall be severable from the remainder of the Conditions and shall not affect the remaining provisions of these Conditions which shall remain in full force and/or effect.

23 NON WAIVER

No extension of time or waiver or relaxation of any of these Conditions shall operate as an estoppel against any Party in respect of its rights under these Conditions,

nor shall it operate so as to preclude such party thereafter from exercising its rights strictly in accordance with these Conditions.

24 BENEFIT OF DISCOUNTS

JFM is entitled to the benefits of any discounts obtained and to retain and be paid all brokerages, commissions, allowances and other remunerations of whatsoever nature and kind and shall not be obliged to disclose or account to the Customer, or principal for any such amounts received or receivable by it.

25 SPECIAL CONDITIONS RELATED TO ELECTRONIC DATA

25.1 Notwithstanding the provisions of the Electronic Communications and Transactions Act 25 of 2002, as amended from time to time ("the ECT Act"), JFM will only be deemed to have received electronic data and/or messages when such electronic data and/or messages have been retrieved, processed and read by the addressee;

25.2 JFM will no circumstances howsoever arising (including negligence and gross negligence on the part of JFM or its employees) be liable for any loss or damage arising from or consequent upon the provision by JFM to the Customer in whatever manner and/or form, of incorrect information, including data as defined in the ECT Act, where such incorrect information has been generated by and provided to JFM by any third party;