



STANDARD TRADING TERMS AND CONDITIONS

1. DEFINITIONS & INTERPRETATION

1.1 In this document, except where the context clearly indicates the contrary:

- 1.1.1 "Abandoned Goods" means Goods in respect of which KLSSA has provided, or is providing, the Services and which Goods have not been collected at the designated time and place;
- 1.1.2 "Acceptance" means written acceptance by KLSSA of your request that KLSSA provide the Services to you as your agent, including, where applicable, a Booking Confirmation Report;
- 1.1.3 "Arrival Notification" means the notice which KLSSA sends to you setting out, amongst other things, when and where the Goods are expected to arrive;
- 1.1.4 "Bill of Lading" means any sea transport document, including a bill of lading and sea waybill, which is issued by, or on behalf of, KKK and incorporates KKK's terms and conditions of carriage, whether in hard and/or electronic form;
- 1.1.5 "Booking Confirmation Report" means the notice which KLSSA sends you confirming:
- 1.1.5.1 that your Goods are booked for carriage on board a vessel; and/or
 - 1.1.5.2 where you have asked KLSSA to provide Services to you, KLSSA's acceptance of your request and description of the Services which it will provide to you;
- 1.1.6 "Business Day" means any day other than a Saturday, Sunday or statutorily prescribed public holiday in the Republic of South Africa;
- 1.1.7 "CTO" means the documents prescribed by Transnet Port Terminals, a division of Transnet Limited or its

successor, in hard copy or electronic format, which are required for the Goods to be delivered to the Stack or collected from the Stack or a storage facility, and which contain, amongst other things, particulars of the shipping agent, the consignee, order number, reference number, the container operator, the collection date, container number, description of the Goods and the person liable for freight charges;

- 1.1.8 %Customs+ means the Customs and Excise Departments of the South African Revenue Service and/or the customs and excise authorities in any other country in which any of the Services are provided;
- 1.1.9 "the Customer" or "you" means the shipper and/or consignee and/or merchant and/or holder, as defined in the Bill of Lading, and/or any other person to whom KLSSA provides the Services and includes any agent appointed by the Customer;
- 1.1.10 %Rates+ means the rates charged by KKK and/or KLSSA for the Services;
- 1.1.11 "Goods" means the goods described, and identified, in the Bill of Lading, and/or any other goods, in respect of which KLSSA provides the Services and any Container not supplied by KKK or KLSSA;
- 1.1.12 "KKK" means Kawasaki Kisen Kaisha Limited, a company incorporated in accordance with the laws of Japan, carrying on business as a liner operator;
- 1.1.13 "KLSSA" means "K" Line Shipping (South Africa) (Pty) Limited;
- 1.1.14 "Personnel" means KLSSA's shareholders, officers, directors, employees, agents and sub-contractors;
- 1.1.15 "Shipping Instruction" means all the information which you give KLSSA in order to enable KLSSA to prepare bills of lading for you, including the packing list, hazardous goods declaration

(if applicable), written confirmation of the mass or weight of the Goods and any other documents/information required by KLSSA and listed in the Booking Confirmation Report;

- 1.1.16 "the Services" means the services provided by KKK in terms of a Bill of Lading and/or KLSSA in terms of an Acceptance;
- 1.1.17 "Stack" means the place at a port where the Containers booked for carriage on board a vessel are collected before being loaded onto, or after being discharged from, that vessel;
- 1.1.18 "STC's" means these trading terms and conditions;
- 1.1.19 "Supplier" means any third party with whom KLSSA, acting as the Customer's agent, contracts to provide any of the Services;
- 1.1.20 "Special Container" means any container which contains hazardous goods or which is over-height or out of gauge or "reefer" or which exceeds the following cargo capacities:
20' dry freight container (steel) - 21.7 tons;
40' dry freight container (steel) - 26.6 tons;
40' HC container (steel) - 26.4 tons;
20' refrigerated container (aluminium) - 21.1 tons;
40' refrigerated container (aluminium) - 26.3 tons;
40' HC refrigerated container (aluminium) - 25.9 tons;
20' open top container (steel) - 21.5 tons;
40' open top container (steel) - 26.3 tons;
20' flat rack container (steel) - 21.4 tons;
40' flat rack container (steel) - 25.3 tons;
- 1.1.21 "Containers" means anything onto, or into, which goods are consolidated or packed for transport by land, sea or air, including any containers, trailers, flats, tilts, transportable tanks, igloos, ISO-tainers and pallets.

- 1.2 **ALL SERVICES WHICH KLSSA PROVIDES ARE SUBJECT TO THE BILL OF LADING AND/OR THESE STC'S, READ WITH ANY APPLICABLE ARRIVAL NOTIFICATION AND/OR BOOKING CONFIRMATION REPORT. YOUR STANDARD TRADING TERMS AND CONDITIONS DO NOT APPLY.**
- 1.3 Where the Bill of Lading and these STC's both apply and their provisions conflict or differ, the Bill of Lading prevails. Where the provisions of these STC's and an Arrival Notification or Booking Confirmation Report both apply and their provisions conflict or differ, these STC's apply.
- 1.4 No agreement varying, adding to, deleting from or cancelling these STC's (including this clause), and no waiver of any right under these STC's, is effective unless it is recorded in writing and signed by a director of KLSSA.
- 1.5 These STC's shall be governed by, and interpreted according to, the law of the Republic of South Africa.
- 1.6 If any provision is followed by the word "including" and specific examples, those examples must not be interpreted as limiting the general meaning of that provision.
- 1.7 Unless inconsistent with the context, words signifying any gender include the other gender and the neutral, words signifying the singular include the plural and vice versa and words signifying natural persons include juristic persons and vice versa.
- 1.8 A party which relaxes any of its rights in terms of these STC's at any time does not prejudice or waive those rights (unless it is a signed written waiver) and that party may exercise its rights thereafter as if it had not relaxed them.
2. **AGENCY**
- 2.1 KLSSA provides the Services covered by the Bill of Lading in its capacity as KKK's agent.
- 2.2 If KLSSA agrees to provide any Services to you which are not covered by KKK's Bill of Lading, KLSSA does so as your agent.
- 2.3 If you wish to mandate KLSSA to provide Services as your agent, you must submit a written request for those Services to KLSSA at least 3 Business Days before you require them. If KLSSA agrees to provide those Services to you, it will

send you an Acceptance setting out the basis on which it is prepared to provide those Services to you.

2.4 KLSSA may perform the Services itself or it may appoint a Supplier to perform all or some of the Services.

2.5 When KLSSA provides the Services as your agent:

2.5.1 it also acts as your agent when it appoints Suppliers to perform all or any of those Services; and

2.5.2 it may contract with Suppliers on any terms and conditions agreed by KLSSA and the Supplier, including the Supplier's standard trading terms and conditions.

2.6 KLSSA is not liable to you or anyone else for any act of, or omission by, any Supplier who performs any of the Services in terms of a contract concluded with that Supplier by KLSSA, acting as your agent.

2.7 When KLSSA provides the Services as your agent, KLSSA may recover from you, or, where you act as agent, from you or your principal, any amounts due to it in respect of those Services.

3. **AUTHORITY TO CONTRACT**

3.1 When you act as agent for someone else, you warrant that you are authorised to appoint KLSSA to provide the Services in accordance with these STC's.

3.2 You warrant that you are either the owner, or the authorised agent of the owner, of any Goods in respect of which you instruct KLSSA to provide the Services.

4. **CONTAINERS**

4.1 You are responsible for collecting any Containers required to transport the Goods, packing the Goods into those Containers, carrying out all export requirements relating to those Goods and/or Containers and sealing and delivering the Containers to the Stack.

4.2 You warrant that:

4.2.1 all containerised Goods will be properly, adequately and safely packed and stowed in the Containers;

4.2.2 the Goods and/or each Container will be clearly labelled and marked as required by law;

4.2.3 you will use a Container which is suitable for safely transporting the Goods.

5. INFORMATION AND INSTRUCTIONS

5.1 You must provide KLSSA with all the information which KLSSA requires to enable it to provide the Services. You warrant that all information which you provide to KLSSA in respect of the Goods and/or the Services, including that contained in your Shipping Instruction, is complete, accurate and true. If any of the information which you provided to KLSSA changes at any time, you must immediately notify KLSSA and you are responsible for all the consequences of that change.

5.2 You must include in any Shipping Instruction which you give to KLSSA, written notice of any specific or special packing, delivery or other instructions relating to the Goods and/or the Services.

5.3 Your instructions to KLSSA must be clear, accurate and comprehensive. You are responsible for, and indemnify KLSSA against, any claims made against KLSSA because it carries out your instructions. KLSSA is not bound by any oral instructions, general instructions or instructions which it receives late, but KLSSA may act on those instructions if it chooses to do so.

5.4 Without limiting your obligations in any way, your Shipping Instruction must include the details of any Special Containers, each Container's number, marks and the nett weight of the Goods packed in it, excluding the mass or weight of the Container.

5.5 If you do not provide KLSSA with the instructions which it needs to provide the Services:

5.5.1 KLSSA may decide when and how to perform the Services or any part thereof; and

5.5.2 KLSSA is not obliged to:

5.5.2.1 declare the nature or value of any Goods to any Supplier or other third party; or

5.5.2.2 request any special protection or cover from, or give special delivery instructions to, any Supplier in respect of any Goods considered to be dangerous and/or hazardous and/or which require special handling and/or storage.

5.6 Despite the other provisions of this clause 5, KLSSA may depart from your instructions at any time if it decides, in its sole discretion, that it is necessary to do so and KLSSA is not liable to you or anyone else, for any claims arising from or in connection with that departure.

6. DELIVERY OF CONTAINERS TO STACK

Before the Stack closes you must:

6.1 deliver the Containers containing your Goods to the Stack; and

6.2 deliver to KLSSA your CTO's in respect of those Containers, together with your Customs cleared bill of entry, a copy of the packing list for each Container and any other documents which KKK and/or KLSSA require to provide the Services.

7. BILLS OF LADING

7.1 All Goods are shipped subject to KKK's standard trading terms and conditions which are contained in the Bill of Lading.

7.2 KLSSA will prepare a Bill of Lading for your Goods, based on the information contained in your Shipping Instruction. KLSSA is not responsible for any errors in the Bill of Lading.

7.3 KLSSA will issue the Bill of Lading as soon as possible after the later of completion of loading of the vessel carrying your Goods or the vessel's departure.

8. ARRIVAL, COLLECTION AND RELEASE OF GOODS

8.1 When a vessel carrying your Goods arrives at a port in South Africa, your Goods will be unloaded from the vessel and stored at that port.

8.2 You must provide KLSSA with customs clearance documents, pay all amounts due to KLSSA and collect your Goods from the port of discharge before 14:30 on the last day of free storage granted by the port of discharge, failing which KLSSA

will move the goods into a bonded warehouse and all associated charges will be for your account.

8.3 If you do not collect your Goods within 28 days from, and including, the date when they are discharged from the vessel:

8.3.1 KLSSA may continue to store the Goods, at your cost; or

8.3.2 at your cost, KLSSA may move your Goods to a State warehouse and store them there; or

8.3.3 KLSSA may decide that your Goods are Abandoned Goods and deal with them in accordance with clause 14.

8.4 KLSSA will only release your Goods to you when it receives in respect of those Goods the original Bill of Lading, the duly Customs processed bill of entry, proof of payment of all cargo dues, any other documentation required by law or which KLSSA notifies you that it requires. In addition, KLSSA will not release the Goods to you unless and until it receives, as freely available funds, free of any set off, withholding and bank charges, all amounts owing in respect of the Services.

8.5 KLSSA may charge you a late payment penalty equal to 5% of the fees payable for the Services if you do not pay all amounts payable for the Services within 1 Business Day after the earlier of the date of the Arrival Notification or the date of KLSSA's invoice.

9. RETURNING CONTAINERS

9.1 Unless otherwise agreed in writing by KKK or KLSSA, you must return all KKK's Containers to the collection depot designated by KLSSA before expiry of a period of 7 days beginning on, and including, the date on which your Goods are collected.

9.2 If you appoint KLSSA to transport your Goods in accordance with clause 10, then unless otherwise agreed in writing with KKK or KLSSA, you must return KKK's Containers to the collection depot designated by KLSSA before expiry of a period of 3 days beginning on, and including, the date on which the Goods are delivered by KLSSA to the place of delivery stipulated in your CTO.

- 9.3 If you fail to comply with the provisions of clause 9.1 or 9.2, whichever applies, you will be liable for demurrage and/or damages in respect of the delayed return, loss and/or damage of, the Container/s at the rate prescribed in KKK's tariff from time to time.

10. **BOOKING AND EARLY CANCELLATION**

- 10.1 Even if they purport to be binding for a period or are recorded in writing, Rates indications provided by KLSSA do not bind KKK and/or KLSSA and KKK and/or KLSSA may change Rates at any time.
- 10.2 If KKK terminates or cancels any contract with you for any reason, KLSSA may also terminate or cancel any contract which it has concluded with you and which relates to the Goods that are subject to the contract cancelled by KKK and you will not have any claim against KLSSA arising from, or in connection with, that cancellation.

11. **INSURANCE**

- 11.1 KLSSA is not obliged to insure the Goods in respect of which it provides any of the Services unless you request it to do so, in writing and it agrees to that request.
- 11.2 In insuring Goods for you, KLSSA does not sell or recommend any such insurance cover. When it has agreed to do so, KLSSA will insure the Goods with a Supplier of your choice and on that Supplier's terms and conditions.
- 11.3 In procuring insurance cover at your request, KLSSA acts as your agent in relation to the Supplier and KLSSA does not, in any way, advise or recommend the Supplier or the cover obtained.
- 11.4 If a Supplier disputes its liability in terms of any insurance policy procured by KLSSA in respect of any Goods, you will only have recourse against that Supplier.

12. **PAYMENT FOR THE SERVICES**

- 12.1 You must pay all amounts due to KLSSA for the Services, plus Value Added Tax at the applicable rate:
- 12.1.1 immediately on presentation of KLSSA's invoice;

- 12.1.2 in the currency specified by KLSSA;
- 12.1.3 without deduction or set-off or withholding and free of all bank charges;
- 12.1.4 by electronic funds transfer or cheque or cash deposit into the bank account nominated by KLSSA on the invoice.
- 12.2 Within 1 Business Day of being asked to do so by KLSSA, you must pay by electronic funds transfer into KLSSA's nominated bank account, the amount which KLSSA estimates is necessary to cover any cost which may be incurred in providing the Services to you. If you do not pay the amount which KLSSA estimates is required to cover the cost within 1 Business Day of the date of KLSSA's request that you do so, KLSSA may stop providing the Services.
- 12.3 Your obligation to pay for the Services is only discharged when KLSSA receives the whole amount payable as freely available funds in its nominated bank account.
- 12.4 KLSSA may allocate any payment which you make to reduce or settle any amount which you owe to KLSSA in terms of any contract.
- 12.5 If KLSSA agrees to allow you to pay for the Services in instalments and you fail to pay any instalment when due, the full amount outstanding will immediately become due, owing and payable.
- 12.6 You are liable for the full cost of the Services provided by KLSSA in respect of:
 - 12.6.1 dead freight, if you cancel your booking; or
 - 12.6.2 Goods which are loaded on board a vessel irrespective of whether or not the vessel sails and even if the vessel is diverted or if the Goods are, or have to be, transhipped.
- 12.7 KLSSA may deduct from any amounts which KLSSA owes you, any amounts which you owe to KLSSA, whether or not they are liquidated. Where the amounts which you owe KLSSA are unliquidated, within 10 Business Days of any dispute relating to that amount being finally resolved, the parties must make any payment required as a consequence.

13. COUNTING, INSPECTING AND EXAMINING THE GOODS

- 13.1 KLSSA is not obliged to count, inspect or examine any Goods in respect of which it provides the Services.
- 13.2 If KLSSA agrees to count, inspect or examine any Goods, it will not be liable for any error in such counting, even if that error results from KLSSA's negligence. KLSSA may charge you a fee for counting, inspecting and/or examining your Goods.

14. ABANDONED GOODS

- 14.1 KLSSA may store any Abandoned Goods or any part thereof, at your risk and expense.
- 14.2 You hereby consent to KLSSA selling, or abandoning to Customs (and in that event, recovering from you all related costs), all or any of, the Abandoned Goods and recovering all amounts which you owe to KLSSA for the Services in accordance with the provisions of clause 16, read with the necessary changes to the context, if:
- 14.2.1 you fail to timeously pay any amounts which you owe to KLSSA for the Services provided in respect of the Abandoned Goods; or
- 14.2.2 you fail to collect or accept delivery of the Abandoned Goods at the place designated by KLSSA and within 21 days from, and including, the date when they are discharged from the vessel.

15. PERISHABLE GOODS

At your expense and without prior notice to you, KLSSA may sell or dispose of any perishable Goods in accordance with clause 16, read with the necessary changes to the context, if:

- 15.1 you fail to pay any amounts which you owe to KLSSA for the Services provided in respect of those Goods; or
- 15.2 those Goods are deteriorating or are likely to deteriorate; or
- 15.3 those Goods are insufficiently addressed or marked and the person to whom they belong, or are to be delivered, cannot be identified;

15.4 you fail to collect or accept delivery of the perishable Goods at the place designated by KLSSA and within 7 days from, and including, the date when they are discharged from the vessel.

16. LIEN AND SALE OF GOODS TO DEFRAY EXPENSES

16.1 You hereby agree that KLSSA has a general and special lien over all Goods in respect of which it provides Services and any documents, refunds, repayments, claims and other items or amounts relating to those Goods, for all amounts which you owe to KKK and/or KLSSA in respect of Services provided in relation to those Goods and any past debt.

16.2 In addition to the other provisions of these STC's, you hereby consent to KLSSA selling such Goods and other items or amounts by public auction or private treaty, without a court order authorising KLSSA to do so, if any amounts which you owe to KLSSA are not paid within 14 days from and including the date when KLSSA sends you written notice that it is detaining the Goods and other items referred to in clause 16.1.

16.3 The proceeds of the sale referred to in clause 16.2, less the costs which KLSSA incurs in respect of such sale, will be applied to reduce or settle any amounts which you owe to KLSSA for the Services provided in respect of those Goods.

16.4 If, after the Goods have been sold:

16.4.1 there is any amount still owing to KLSSA, KLSSA may recover such amount from you; or

16.4.2 KLSSA recovers more than the amount required to settle the amount which you owe to KLSSA for the Services, KLSSA will refund to you such excess.

17. RISK AND INDEMNITY

17.1 KLSSA does not bear any risk in and to the Goods while it provides the Services in respect thereof.

17.2 You waive any claim of any nature against KLSSA which you may have, or in future acquire against KLSSA and/or any of its Personnel and/or KKK, arising out of, or in connection with, the loss, damage or destruction of the Goods.

17.3 You indemnify KLSSA against any claims of any nature made by any third party against KLSSA and/or any of its Personnel and/or KKK, arising from, or in connection with, the provision of the Services and which is caused in any way, including by the negligence of KLSSA or its Personnel or KKK.

18. EXCLUSION AND LIMITATION OF LIABILITY

18.1 Despite any other provision of these STC's, KLSSA is not liable to you for any claim of any nature or arising from any cause, whether for direct, indirect, special or consequential damages arising from any cause or for specific performance and whether the claim arises in contract, delict, or arising from, or in connection with, strict or statutory liability.

18.2 Without limiting the general meaning of clause 18.1, and despite any other provision of these STC's, KLSSA is not liable to you for any claim for loss or damages of any nature which you suffer as a direct or indirect consequence of the Services and/or the provision thereof, including those caused by:

18.2.1 any negligent act, omission or statement by KKK and/or KLSSA and/or any of the Personnel;

18.2.2 any act or omission, including any negligent act or omission, of any Supplier;

18.2.3 the marking, labelling, numbering, non-delivery or mis-delivery of any Goods;

18.2.4 the incorrect weight, measurements, contents, quality, inherent vice, defects or description of any Goods;

18.2.5 any circumstances beyond KKK's and/or KLSSA's reasonable control and which temporarily or permanently delay, or partly or totally prevent, the performance by KKK and/or KLSSA of any or all of its obligations; and/or

18.2.6 any delay in performing any of the Services;

18.2.7 KLSSA's failure to carry out any instructions.

18.3 If, for any reason, despite clauses 18.1 and 18.2 and any other provision of these STC's excluding KLSSA's liability for claims, KLSSA is held to be liable for a claim, that claim is limited to the lesser of:

18.3.1 the insured value of the Goods to which the claim relates; or

- 18.3.2 twice the fee which you have paid to KLSSA for the Services provided in respect of the Goods to which the claim relates, but excluding any costs and charges necessarily incurred by KLSSA in providing the Services.

19. **ACCEPTANCE OF BENEFITS**

- 19.1 KLSSA accepts all benefits and all defences contained in the Bill of Lading and in any agreements with, or terms and conditions of, any Suppliers with whom KLSSA contracts to provide the Services, to the extent that the Bill of Lading and agreements confer any benefit on KLSSA.
- 19.2 KLSSA, on behalf of KKK, accepts all benefits and all defences contained in these STC's and any agreements with, or terms and conditions of, any Suppliers with whom KLSSA contracts to provide the Services, to the extent that they directly or indirectly apply to KKK.

20. **SEVERABILITY**

If any provision of these STC's is unenforceable, such provision must be disregarded and full effect must be given to the remaining provisions of these STC's.

21. **DISPUTES**

If any dispute regarding these STC's and/or the Services arises, including a dispute about the interpretation thereof and the termination of any contract in terms thereof:

- 21.1 you may not withhold payment of any amount which you owe to KLSSA in terms of these STC's; and
- 21.2 KLSSA will be deemed to have performed its obligations in accordance with these STC's until you prove the contrary.

22. **BREACH**

IF KLSSA BREACHES ANY OF THESE STC'S AND FAILS TO REMEDY SUCH BREACH WITHIN 30 DAYS AFTER THE DATE ON WHICH IT RECEIVES WRITTEN NOTICE FROM YOU REQUIRING IT TO DO SO, YOU MAY COMPEL KLSSA TO PERFORM ITS OBLIGATIONS BUT YOU MAY NOT CANCEL THE AGREEMENT IN TERMS OF WHICH THE SERVICES ARE PROVIDED.

23. **JURISDICTION**

The parties agree that any legal proceedings arising out of, or in connection with, these STC's shall be instituted in a division of the High Court of South Africa having jurisdiction. The Customer irrevocably submits to the jurisdiction of the High Court of South Africa in respect of all such proceedings.

24. **NOTICES AND ADDRESSES FOR SERVICE**

Any notice or communication in terms of these STC's must be in writing to be effective and must be sent by hand, telefax or e-mail to the parties' respective head offices, which physical addresses the parties select as their respective domicilium citandi et executandi and in the case of KLSSA, its head office address is that set out on its letterhead.

25. **SPECIAL PROVISIONS**

KKK has to obtain authority from the Chinese Customs before loading any containers destined for China on board a vessel. If you are sending a Container to China, in order to enable KKK to obtain authority from Chinese Customs, you must give KLSSA all the information which is, or will be, reflected in the Bill of Lading for each such Container by 16:30 on the first day the Stack opens at the port of loading. **IF THE CHINESE CUSTOMS REFUSES TO ALLOW YOUR CONTAINER TO BE LOADED, FOR ANY REASON, YOU ARE LIABLE TO KKK AND/OR KLSSA FOR ALL COSTS INCURRED BY KKK AND/OR KLSSA IN RESPECT OF THAT CONTAINER.**