

## CONDITIONS OF TRANSPORT

1. The receipt and transportation by the contractor or its duly appointed subcontractor of all the goods described in and referred to on the waybill is subject to the conditions set out hereunder unless the transportation thereof is undertaken by the contractor in terms of an existing written agreement between it and the consignor or consignee in which event these conditions shall be supplementary to the terms and conditions of such existing written agreement and insofar as the undermentioned conditions may be inconsistent with any of the terms and conditions of the existing written agreement, the terms and conditions embodied in such existing insofar written agreement shall prevail.
2. No variation of the conditions hereunder shall be binding on the contractor unless recorded in writing and signed by the contractor or its duly authorised employee or agent expressly authorised in writing to do so.
3. Notwithstanding the date of receipt of the goods the contractor shall not be responsible for any loss, damage to the goods whatsoever nature and howsoever arising unless the waybill in respect thereof has been signed as accepted by the contractor, omits duly authorised employee or agent, where after the liability of the contractor shall be limited to the number of boxes or packing cases as stipulated on the consignor's waybill.
4. (a) The consignor shall ensure that only packaging systems of rigid and stackable nature are employed by it and the contractor shall, notwithstanding the acceptance of the goods for delivery and the transportation thereof, not be liable for any loss or damage to the goods for delivery and the transportation thereof, not be liable for any loss or damage to the goods arising out of or associated with the inadequate packaging or protective material applied thereto and the consignor further warrants that the consignments are fit to be transported by the contractor in the ordinary manner, the onus of proving the condition of any goods in the consignment at the time the consignment is delivered to its destination shall at all times rest with the consignor.  
  
(b) The consignor acknowledge that in the event of any damage whatsoever nature which may occur to the property of the contractor and/or the property of any third party/ ies which has resulted from the terms of clause 4 (a) not having been complied with, then the consignor shall except all liability associated with such loss or damage.
5. Any agreed delivery time shall be approximate and the contractor will incur no liability arising from any delay in delivery nor shall the contractor be liable in any circumstances for any direct or consequential damages or any special damages sustained whether on grounds of breach of contract or negligence, in respect of any type of loss or damage howsoever arising and whether in respect of or in connection with any goods or any instruction, business advice, information or services or otherwise unless it be proved that the loss or damage was caused by the gross negligence of the contractor.
6. Notwithstanding anything to the contrary herein contained the contractor shall not in any circumstances be liable for:
  - 6.1 damages arising from a delay in the forwarding or in-transit or failure to carry out instructions given to it; or
  - 6.2 loss / damages or non-delivery of any separate package forming part of a consignment or for loss from a package or unpacked consignment or for damage or misdelivery howsoever caused, unless notice be received by the contractor from the consignor in writing of any defect in carriage or damage to goods within 24 hours after the end of the transit: or
  - 6.3 loss / damage or no delivery of the whole consignment, howsoever caused unless notice be received within 24 hours of the date when the goods should have been delivered: or
  - 6.4 no loss or damage of contents in sealed packages, not visual or duly accepted by owner will be entertained: or
  - 6.5 all loss or damages is subject to approval, acceptance and charges raised and necessary requests have been made: or
  - 6.6 all cargo received by CBM accordingly endorsed with any notes of damages, shortages or further compromised packaging will NOT be accepted as a claim or insurance risk to CBM whatsoever: or
  - 6.7 No loading or offloading practices or relevant equipment used for these purposes, which result in any damages, will be accepted as a claim or insurance risk to CBM whatsoever.
7. Signature on delivery of goods will constitute a full discharge of the contractors responsibility in respect of the transportation thereof where upon the amount due to the contractor in respect of such transportation shall become due and payable and notwithstanding the fact that the consignor or consignee might have negotiated with any of the local representatives of the contractor, the consignor undertakes to pay the contractor on receipt of the P.O.D.
8. Credit facilities granted by the contractor to the consignor or consignee as the case may be shall be at the sole discretion of the contractor who may at any time terminate, curtail or vary such facilities in respect of any services not yet rendered.
9. Notwithstanding any arrangement between the consignor and consignee the costs of the transportation of the goods is to be paid for by the consignee and the consignor shall remain liable to the contractor for all amounts owing notwithstanding that the business of the consignor or consignee might have been sold as a going concern and any debts incurred by the consignor or consignee shall be binding on its successors in title or assigns and all amounts due to the contractor shall be paid without set-out or deduction for any reason whatsoever and shall be due to the contractor upon the credit terms notified by the contractor from time to time.

10. In the event of failure to make any payment on due date the remaining balance outstanding shall immediately become due and payable notwithstanding that the time for payment thereof has not yet arrived and in the event of arrear obligations the contractor shall be entitled to withhold delivery and/or cancel any one unfilled consignment if at any time the consignor or consignee shall be in arrears with any of its obligations to pay any indebtedness owing at any time to the contractor, irrespective of the cause of such indebtedness.

In the event of it having been agreed that the relevant goods to be transported by the contractor for and on behalf of the consignor shall be delivered in more than one consignment each consignment shall be deemed to be a separate consignment divisible from the others and the consignor shall be liable to pay the costs in respect of each such consignment on due date. The validity of the costs incurred for each consignment shall in no way be affected in the event of the validity of any other consignment being disputed.

11. Unless otherwise agreed in writing the ruling prices at the date of despatch of the consignment shall determine the amount to be paid to the contractor in respect of any one consignment.
12. For the purpose of any action to be instituted for any breach of the terms and conditions hereof or for any other reason arising out of the services rendered by the contractor to and on behalf of the consignor or consignee such action shall be instituted by the contractor or its duly authorised local representative nominated thereto in writing which nomination shall constitute a cession of all rights of the contractor in relation to such action and the parties hereby consent in terms of Section 45 of the Magistrate's Court Act to the jurisdiction in respect of their persons notwithstanding the fact the subject matter in dispute or Quantum of any claim is otherwise beyond such jurisdiction provided that the contractor shall be entitled to institute any proceedings against the consignor in any competent division of the Supreme Court of South Africa.
13. In the event of the contractor being obliged to or electing to institute legal proceedings for recovery of any amount due and payable in terms of the contract the contractor will be entitled to recover all costs incurred pursuant to such proceedings, including collection commission and interest at the maximum rate allowed by law, on the scale as between attorney and own client.
14. No act, omission, delay or indulgence by the contractor in enforcing any of these conditions or any of its rights in terms or any granting of time by the contractor will prejudice or affect the rights and remedies of the contractor under these conditions and no such matter shall be treated as any evidence of waiver of the rights of the contractor thereunder nor shall any waiver of breach by consignor or consignee of any one or more of these conditions operate as a waiver of any subsequent breach thereof. The contractor shall at all times and without notice be entitled to insist on strict enforcement.
15. The representative who contracts on behalf of the consignor or consignee warrants that he is authorised to enter into the contract,
16. The consignor and consignee undertake to inform the contractor in writing, by prepaid registered post, within seven days of any change of address.
17. In the event that the contractor's vehicle is delayed by either the consignor or the consignee during the loading / off-loading for any period extending beyond 45 minutes, then the contractor may, in its sole discretion, raise a demurrage fee.
18. In the event of non-delivery by the contractor due to circumstances beyond its control the owner of the goods will be responsible for it as soon as the consignor and nominated consignee are advised of the particular circumstances by the contractor.
19. In the event of the contractor's vehicle being cancelled en-route to, or at the collection point, then the contractor may, in its sole discretion, raise a "No Show" fee.
20. NOTWITHSTANDING ANYTHING TO THE CONTRARY STATED ABOVE THE CONTRACTOR SHALL NOT BE RESPONSIBLE FOR QUANTITIES LOSS OR DAMAGE OF ANY NATURE EXCEPT ACCIDENT DAMAGE UP TO R100 000 PER LOAD PRO-RATA TO THE TOTAL MASS CARRIED.