



## AVION EXPRESS TERMS AND CONDITIONS OF TRADE

### 1. INTRODUCTION

- 1.1. This document contains the terms and conditions of trade ("**the Terms**") between yourself ("**the Customer**") and Avion Express (Proprietary) Limited (Registration Number 2017/485650/07) ("**the Company**").
- 1.2. For the avoidance of doubt, these Terms are intended to govern:
  - 1.2.1. the service relationship between the Customer and the Company, as the case may be; and
  - 1.2.2. The deferred payment relationship between the Customer and the Company following the approval by the Company of the deferred payment application to which these Terms are attached. Should the deferred payment application be successful following an assessment of the creditworthiness of the Customer, the Company may, in their sole discretion, assign to the Customer the maximum deferred payment line applied for in the deferred payment application and shall have the right to increase, decrease, or terminate the Customer's deferred payment privileges upon prior written notice to the Customer, or as otherwise provided by law. The Company may with the prior written consent of the Customer, from time to time disclose the deferred payment information relative to the Customer to third parties for informational purposes only. The Company will require, as a condition to the extension or continuation of deferred payment privileges to the Customer, the execution of the cessions and suretyships contemplated in paragraphs 17 and 18 below (or such other instrument as the Company in its sole discretion may deem necessary), to guarantee the Customer's deferred payment obligations to the Company as governed by these Terms.
- 1.3. The Customer certifies that the information furnished in terms of the deferred payment application is true and correct and that this information is being furnished to the Company for the purpose of inducing the Company to extend credit to the Customer, and understands that the Company intends to rely upon such information as correct.



## **PART A: GENERAL TERMS**

### **2. LIMITATION ON THE COMPANY' LIABILITIES AND RESPONSIBILITIES**

- 2.1. **THE COMPANY SHALL NOT BE LIABLE** for any loss or damage to the goods carried and/or warehoused (as the case may be) with the Company ("**Consignment(s)**"). Where Customers make a claim and the Company choose to accept liability as limited herein, then, despite such acceptance, no claim shall vest against the Company unless the Customer makes a claim in writing within 7 (seven) days after delivery of the Consignment to the intended receiver. Further to the above:
- 2.1.1. the Company shall not be liable for indirect or consequential loss or damage to any Consignment, including (without limiting the generality of the foregoing) loss of profits or loss of contracts howsoever caused;
- 2.1.2. the Company shall have no responsibility or liability to the Customer for any act or omission of any other carriers, providers of warehousing facilities, sub-contractors, handlers and any other parties (each, an "**Independent Service Provider**") utilised by the Company to conduct services on behalf of the Company in order to discharge its obligations towards the Customer, despite the fact that the Company may be responsible for the payment for such Independent Service Provider's charges. The Company however reserve the right, at its sole discretion, to take action on behalf of the Customer should the Independent Service Provider fail to carry out its duties suitably; and
- 2.1.3. the Company' liability shall be limited at all times to the value of the carriage or warehoused goods.
- 2.2. Every exemption, limitation or condition contained in these Terms and every right, indemnity, exemption from liability, defense and immunity hereunder shall also be available and shall **EXTEND TO PROTECT ALL INDEPENDENT SERVICE PROVIDERS**. Without prejudice to the foregoing, the Company is or shall be deemed to be acting as agent or trustee on behalf of each Independent Service Provider and each of them shall to this extent, be or deemed to be a party of these Terms.
- 2.3. With reference to clause 7 below and subject to any applicable law, despite the fact that the Company may purport or attempt to act on any instructions, **NO LIABILITY SHALL ATTACH TO ANY**



**OF THE COMPANY** for failure, whether through its negligent and/or grossly negligent act, omission or otherwise, to perform such instructions.

- 2.4. If it is necessary for an examination to be conducted by the Company in respect of any discrepancy in the Consignment which are landed from any vessel, aircraft, vehicle or container, no responsibility shall attach to the Company for any failure, whether through its negligent and/or grossly negligent act, omission or otherwise, to make such examination or take any other action. The responsibility for the Consignment and responsibility to comply with any regulations, laws, security and/or any other obligations pertaining to the Consignment remains that of the Customer, despite the contractual relationship between the Company and the Customer.
- 2.5. Subject to clause 3.2 below, **THE COMPANY SHALL NOT BE LIABLE** for any loss, damage, deterioration, mis-delivery, failure to deliver or delay in delivery of any Consignment, whether or not such loss, damage or deterioration occurred due to the carriage or warehousing of such Consignment by the Company, the Independent Service Providers or otherwise.
- 2.6. The packaging (including the placing of the Consignment into any container supplied to the Customer by the Company) of the Consignment is the sole responsibility of the Customer.
- 2.7. It is the sole responsibility of the Customer to adequately address each Consignment to enable the effective delivery or warehousing thereof by the Company.

### 3. **LOSS OR DAMAGE TO CONSIGNMENTS**

- 3.1. For the specific limitations on the on the loss or damage to Consignments (including insurance obligations) for each of the Company, please refer to Parts B to E of these Terms.
- 3.2. **NO RESPONSIBILITY OR LIABILITY WHATSOEVER SHALL ATTACH TO THE COMPANY** and/or any Independent Service Providers and/or its employees for any loss or damage to a Consignment unless such loss or damage:
  - 3.2.1. occurs whilst the Consignment is in actual care of the Company; and
  - 3.2.2. is due to the intentional and willful act or omission of the Company and/or its employees.



3.3. **THE COMPANY SHALL UNDER NO CIRCUMSTANCES BE LIABLE** for any loss or damage whatsoever incurred or caused:

3.3.1. through the Consignment being tendered for carriage of warehousing with inadequate packaging; or

3.3.2. by the perishable, fragile or brittle nature of the Consignment; or

3.3.3. subject to any applicable law, due to the negligent and/or grossly negligent acts or omissions of the Company and/or its employees.

3.4. Despite anything to the contrary contained or implied in this clause 3 (and with specific reference to clause 14 below), **THE COMPANY SHALL NOT ACCEPT LIABILITY** for the handling or warehousing of any bullion, coins, precious stones, jewellery, valuables, antiques, pictures or paintings, bank notes, securities and other valuable documents or articles unless the Company agree thereto in writing prior to the Consignment being tendered, to accept liability for the handling of the items listed in this clause 3.4.

3.5. If the Company are for any reason unable to affect delivery or secure warehousing of the Consignment, reasonable steps would be taken to return the Consignment to the Customer. The Customer shall be responsible for the costs of carriage and warehousing, attempted delivery and return of the Consignment.

#### 4. **NO PARTNERSHIP**

Save as otherwise expressly provided in these Terms, the Company shall at all times act as independent contractors, and nothing in these Terms shall constitute a partnership, joint venture or agency agreement between the Company and the Customers in any way, shape or form.



## **5. CONDITIONS OF CARRIAGE AND WAREHOUSING**

- 5.1. The Company shall not be public or common carriers or providers of warehousing facilities in relation to any Consignment forming the subject of these Terms, and any Consignment carried or warehoused by the Company is accepted subject to these Terms.
- 5.2. The Company reserve the right to refuse the carriage or warehousing of a Consignment for any Customer at its discretion, whether before or after carriage has commenced, and upon such refusal the Customer shall have no right or recourse against the Company.
- 5.3. No amendment or consensual cancellation and/or variation of any of these Terms and no extension of time or waiver or relaxation of any provisions of these Terms shall be binding unless recorded in a written document signed by a duly authorized representative of the relevant Company and a duly authorized representative of the Customer.
- 5.4. All business undertaken, including advice, information or services provided by the Company to the Customer shall be subject to these Terms. These Terms cannot be changed by any employee of the Company, whether by oral or written undertaking or promise, before or after receipt and acceptance of these Terms. Consignments are accepted, carried and warehoused subject to the conditions stipulated by Independent Service Providers into whose possession or custody the Consignment may pass to finalize and deliver such Consignment.

## **6. OPERATIONAL PROCEDURES**

- 6.1. The Company reserve the right to carry and warehouse the Consignment received from any Customer by any means at its disposal and may use any Independent Service Provider to perform these duties.
- 6.2. All Consignments which require forwarding to facilitate delivery may be held at the Company's discretion and at the Customer's cost until suitable delivery arrangements can be arranged. The costs associated with taking such action would be for the account of the Customer and are payable on demand.



## **7. TIMEOUS INSTRUCTIONS**

- 7.1. The Customer shall be obliged to give timeous instructions to the Company in writing in order to afford the Company a reasonable opportunity to comply with such instructions, and the Company shall be entitled, but not obliged, to act on oral instructions alone. If there is a conflict between any oral or written instructions or between the various written instructions themselves, or in the absence of instructions, the Company shall determine the best course of action to be adopted, in its sole discretion, having regard to the Consumer's known requirements, if any.
- 7.2. The Company shall be entitled to recover such charges and/or expense incurred whilst acting in accordance with this clause 7.

## **8. FEES AND QUOTATIONS**

- 8.1. All quotations are subject to withdrawal or revision by the Company. The Company shall be at liberty to revise fees or quotations (for example due to an increase in fuel surcharges and with or without noticing cases where the Company's costs are affected by any of its Independent Service Providers), and may do so without notice to the Customer.
- 8.2. All the prices quoted by the Company will increase annually on the anniversary date of each Customer's agreement with the Company, with such percentage as the Company may, in its entire discretion, determine. The Customer shall be notified, in writing, of such annual increase and the stated increase shall apply automatically.

## **9. COLLECTION OF CONSIGNMENT**

- 9.1. If any Consignments have not been accepted or collected by the intended receiver (or its nominee) within one calendar month after the Company have tendered collection thereof, the Company shall notify the Customer via email of such non-collection. For the purposes hereof, notification to the intended receiver of the fact that the Consignments are available for collection, or that the Company are willing to deliver the Consignments, shall be deemed to be a good and sufficient tender for collection.
- 9.2. After the expiration of (10) ten days from the date of emailing such written notice to its last known email address and unless the Customer has provided the Company with specific instructions to redeliver the Consignment to the intended receiver (at the Customer's expense), the Company are



entitled and authorized irrevocably and at its sole discretion, to sell or dispose of the Consignment and retain from the proceeds the charges, expenses and costs incurred in the carriage thereof.

The surplus balance of such proceeds shall be repaid to the Customer, without interest, within 60 (sixty) days after such sale whereupon the **COMPANY SHALL BE RELEASED OF ANY AND ALL LIABILITY** whatsoever in respect of the Consignment carried or warehoused, as the case may be.

## 10. CONDITIONS OF PAYMENT

10.1. If any amounts owing by the Customer to any of the Company remains unpaid on due date:

10.1.1. all other amounts owing by the Customer to the Company, whether due and payable or not, shall become due and payable immediately; and

10.1.2. the Company shall be entitled, but not obliged (without prejudice to any other rights it may have against the Customer) to:

10.1.2.1. rescind or suspend performance of any of its obligations to deliver or further warehouse the Consignment;

10.1.2.2. forfeit all discounts granted to the Customer; and

to charge interest on all overdue amounts at an interest rate of 2% (two percent) above the *mora* interest rate prescribed in terms of the Prescribed Rate of Interest Act 55 of 1975, calculated from the date of default until such time as the final payment in relation to the outstanding amount (including interest thereon, calculated daily and compounded monthly in arrears) has been fully paid.

10.2. The Company shall be entitled to payment of any charges, disbursements or any amounts due to it, despite any dispute between the parties in relation to previous invoices or debit notes (whether including or partly including the amounts now sought to be charged), and whether or not any notice was given that further debits were to follow.

10.3. A certificate signed by a director of the creditor Company shall be deemed to be sufficient proof of any indebtedness to that Company, and if the Customer does not query an invoice sent to it by that



Company in writing within 15 (fifteen) days from the date of the invoice, such invoice will be deemed to be correct in all circumstances.

## **11. INSURANCE**

- 11.1. **THE CUSTOMER ACKNOWLEDGES** and agrees that, insofar as the Company agree to arrange insurance for and on behalf of the Customer, the Company will act solely as agent for and on behalf of the Customer, and the Customer shall have no claim of whatsoever nature against the Company, its employees, officers, agents and/or sub-contractors in respect of such insurance, including but not limited to any claim in relation to loss suffered by the Customer as a result of the insurer concerned disputing its liability under the relevant insurance policy.
- 11.2. **THE CUSTOMER ACKNOWLEDGES** and agrees that it is responsible for acquainting itself with the terms and conditions upon which the Company undertake the carriage of the goods, the terms and conditions of the standard insurance cover offered by the Company, and any other terms and conditions stipulated by the Company and/or its insurers in this regard.

## **12. THE COMPANY' RIGHTS IN TERMS OF CONSIGNMENTS IN ITS POSSESSION**

- 12.1. The Company (or any of its nominees) reserve the right to open and examine any Consignment tendered for carriage or warehousing by the Company, in order to fulfil such security and/or regulatory obligations and requirements as may be applicable at any time.
- 12.2. Should the Customer fail to settle its payment obligations to the Company (as set out in clause 10 above, and without prejudice to any common law rights which those Company may have in respect of non-payment by the Customer), the provisions of clause 9.2 above shall apply, subject to the necessary amendments.
- 12.3. Any charges that may be incurred by the Company in respect of the storage, sale or disposal of the Consignment and the compilation of any documents relating thereto, shall be incurred on an attorney and own client scale.

## **13. DELIVERY OF CONSIGNMENTS**

- 13.1. The onus of establishing the condition of the Consignment at the time of delivery thereof by the Company shall rest with the Customer. Without limiting the generality of the foregoing, the





Company shall be entitled to delay or expedite the date of dispatch of any Consignment if, in its sole discretion, it:

- 13.1.1. considers it necessary for the safety of the Consignment; or
  - 13.1.2. determines that there is a backlog of Consignments with higher priority; or;
  - 13.1.3. deems it necessary for any other reasons (including but not limited to complying with health or similar regulations, or any other commercially valid reason).
- 13.2. The Company will only deliver Consignments which are the property of the Customer. **THE CUSTOMER WARRANTS AND UNDERTAKES THAT:**
- 13.2.1. it is authorized to accept (and accepts) these Terms on behalf of itself and as agent for and on behalf of all other persons who are (or may become) interested in the Consignment; and
  - 13.2.2. **IT INDEMNIFIES THE COMPANY AGAINST ANY DAMAGES, COSTS AND EXPENSES RESULTING FROM ANY BREACH OF THE WARRANTY STIPULATED IN CLAUSE 13.2.1 ABOVE.**

#### 14. **DANGEROUS AND PROHIBITED CONSIGNMENTS**

For purposes of this clause 14, and only to the extent applicable to each of the business practices of the Company, **“Prohibited Consignments”** means any dangerous, hazardous or combustible materials which are or may become (by their nature) liable to cause injury or damage to persons, goods or property, including but not limited to fluids, paints, acids, chemicals, explosives or radioactive material, fire-arms or parts thereof, drugs, live or dead plants or animals, perishable foods, cosmetics and liquor, fine arts and antiques, literature or materials that may be pornographic, offensive, or politically sensitive, precious stone or jewellery including commercial carbons or industrial diamonds, precious metals, gold or silver in the form of bullion, coin, dust, cyanides, precipitates or any other form, currency (paper or coin) of any nationality, negotiable securities, stock, bonds, certificates, coupons or stamps, negotiable cashier’s cheques, money



orders or traveler's cheques and any other carriage of goods which is prohibited by any laws, rules and/or regulations.

14.1. No Prohibited Consignments will be received or accepted by the Company without the prior written consent from a duly authorised director of the relevant Company. Should the Company consent to the carriage or warehousing of any Prohibited Consignments, the containers or packaging in which the Prohibited Consignments are stored must be marked in accordance with any applicable legislation, regulations or other requirements of any relevant authorities.

14.2. Should the necessary consent from the Company not be timeously obtained, the Company:

14.2.1. may notify the Customer in writing to collect the Prohibited Consignment; and/or

14.2.2. may notify the relevant public authorities; and/or

14.2.3. reserve the right to destroy any Prohibited Consignments

14.3. Whether or not the Customer was aware of the nature of the Prohibited Consignments and whether or not the written consent was obtained, **THE CUSTOMER SHALL BE DEEMED TO HAVE INDEMNIFIED THE COMPANY AGAINST ALL LOSS, DAMAGE OR LIABILITY ARISING AS A DIRECT OR INDIRECT RESULT OF THE TENDER OF THE PROHIBITED CONSIGNMENTS TO THE COMPANY.**

14.4. In the event that the Customer sends for carriage or warehousing any Prohibited Consignments to the Company, the Company shall have the right to deal with Prohibited Consignments as it shall see fit, including the right to abandon the carriage and/or warehousing of the Prohibited Consignments immediately after obtaining knowledge that the Prohibited Consignments infringe on these Terms. **THE CUSTOMER SHALL BE RESPONSIBLE AND LIABLE, WITHOUT LIMITATION, FOR ALL COSTS, FINES, DAMAGES, LOSS OF INCOME AND/OR LEGAL COSTS WHICH THE COMPANY MAY INCUR AS A RESULT OF THE CUSTOMER'S BREACH OF THIS CLAUSE 14.4.**

## 15. WARSAW CONVENTION

When carriage is tendered for international destinations, the provisions of and law relating to the Warsaw Convention [may/shall] apply.



## 16. ADDRESS FOR NOTICES

The Customer chooses the address set out in the deferred payment application to which these Terms are attached as its address for purposes of receiving any notices from the Company.

## 17. CESSION

**17.1. THE CUSTOMER IRREVOCABLY CEDES AND ASSIGNS AND TRANSFERS, MAKES OVER UNTO AND IN FAVOUR OF EACH OF THE COMPANY, ALL THE CUSTOMER'S RIGHTS, TITLES AND INTEREST IN AND ITS CLAIMS AGAINST ITS DEBTORS, BOTH PRESENT AND FUTURE AND FROM WHATSOEVER CAUSE ARISING, AS SECURITY FOR ALL OR ANY OF THE AMOUNTS WHICH THE CUSTOMER MAY NOW OR AT ANY TIME IN THE FUTURE OWE TO THE COMPANY.**

17.2. The Customer irrevocably authorizes the Company, in their sole and absolute discretion, to:

17.2.1. claim from all or any of the Customers debtors, the whole or any portion of the indebtedness of any one or more of them;

17.2.2. give a valid receipt or discharge for such indebtedness;

17.2.3. take any action in the Customer's name in any court of competent jurisdiction and to proceed in execution thereunder against all or any of the said debtors to cede, transfer, negotiate, pledge or otherwise deal with all or any of the said debtors; and

17.2.4. exchange promissory notes, cheques, agreements, documents or title or any other security held by the Customer.

17.3. This security created by the cession shall be a continuing one, despite any fluctuation in the amount of indebtedness of the Customer to any of the Company. The Customer undertakes to:

17.3.1. furnish the Company, on demand, with such information concerning its debtors as may be reasonably required to enable the Company to give effect to the provisions of this clause 17; and



- 17.3.2. pay the cost of the cession contained herein and agrees that such costs can be debited to its account.

## 18. SURETYSHIP

- 18.1. Each of the members or shareholders of the Customer, as the case may be, undertakes to sign personal suretyship as security for all or any of the amounts which the Customer may now or at any time in the future owe to the Company, in the form of the draft suretyship annexed hereto as Annexure A.
- 18.2. **BY ADDING ITS SIGNATURE TO THESE TERMS AND TO THE SURETYSHIP ATTACHED HERETO, THE CUSTOMER ACKNOWLEDGE THAT IT IS AWARE OF AND UNDERSTANDS THE CONTENT OF THE SURETYSHIP.**

## 19. LIEN

- 19.1. In addition to the cession and security granted in terms of paragraphs 17 and 18 above, **THE CUSTOMER ACKNOWLEDGES** and agrees that the Company shall have both a special and a general lien over any item or sum consigned to it by, or collected by it on behalf of, the Customer, including but not limited to all goods, documentation (including bills of lading and import permits), and monies recovered on behalf of the Customer ("**the Lien Items**"), for the due and proper fulfilment of the Customer's obligations in terms of these Terms, whether present or future.
- 19.2. The sub-contracting by the Company of any portion of the services, as contemplated in paragraph 2.1.2 above, shall not affect the validity of the lien, as contemplated in clause 19.1 above.
- 19.3. The Customer shall not, once any goods have been consigned to the Company, effect or permit to be affected any security or encumbrance of whatsoever nature over, or in respect of, the Lien Items, without the prior written consent of the Company, which consent the Company shall be entitled to withhold in its sole discretion.
- 19.4. The Customer agrees and undertakes that, insofar as may be legally possible, the lien in favour of the Company shall operate as a first-ranking claim in respect of the Lien Items, and no other security shall rank prior to the Company' lien.



- 19.5. In the event that any amounts due to the Company remain outstanding 14 (fourteen) days after demand, the Company shall be entitled, but not obliged, to exercise its lien in terms of this clause 19 and arrange for the sale of any Goods forming part of the Lien Items, at the expense of the Customer, and the net proceeds of the sale shall be applied firstly toward defraying the costs of such sale, and thereafter towards satisfaction of such indebtedness.
- 19.6. The Customer agrees to execute, deliver to the Company, and permit the Company to file any financing statements necessary in the Company' sole determination to perfect the Company' lien.

## 20. **FORCE MAJEURE**

The Company shall not be responsible for delays in deliveries due to events of force majeure, including, but not limited to, fire, flood, tornado, earthquake, war, riot, insurrection, strike, lockout, slowdown, epidemic, quarantine restriction, delay in transportation, labour shortage or strikes, materials or manufacturing facility shortage, accidents, boycott, embargo or any act or regulation of government or governmental authority and other contingencies beyond the Company' control resulting in impossibility or delay of performance of the Company.

## 21. **SEVERABILITY**

- 21.1. Each of the undertakings set out in these Terms shall be deemed to be a separate and independent undertaking severable from each of the other undertakings and shall be separately enforceable, notwithstanding that it may appear with any other undertaking or is expressed conjunctively with or disjunctively from or alternatively to any other undertaking.
- 21.2. If the whole or any part of an undertaking in this Agreement is invalid or unenforceable for any reason, the validity of the rest of the undertakings shall not be affected.

## 22. **GENERAL**

- 22.1. No relaxation or indulgence of these Terms shall in any way prejudice the Company' rights, nor shall they be deemed to be a waiver of any of the Company' rights in terms of these Terms and no variation, waiver, indulgence and/or relaxation of these Terms shall be binding upon the Company.
- 22.2. These Terms do not alter your statutory rights.

## **23. DISPUTE RESOLUTION: NEGOTIATION, MEDIATION AND THEN ARBITRATION**

- 23.1. Should any dispute, disagreement or claim arise between the parties (“the dispute”) concerning these Terms the parties shall endeavour to resolve the dispute by negotiation.
- 23.2. This entails one of the parties inviting the other in writing to meet and to attempt to resolve the dispute within 14 (fourteen) days from date of written invitation.
- 23.3. If the dispute has not been resolved by such negotiation within 14 (fourteen) days of the commencement thereof by agreement between the parties, then the parties shall:
  - 23.3.1. submit the dispute to mediation to be administered by the Arbitration Foundation of Southern Africa (“**AFSA**”), upon such terms as agreed between the parties and the secretariat of AFSA; and
  - 23.3.2. failing agreement as aforesaid within 14 (fourteen) days of the dispute being submitted to mediation, the parties shall refer the dispute to arbitration as provided in clause 23.5 below.
- 23.4. The decision of the mediator shall become final and binding within 14 (fourteen) days of delivery thereof to the parties, unless one or either of the parties disputes the mediator’s decision by written notice to the other party within the aforesaid 14 (fourteen) day period, in which event the dispute shall be referred to arbitration in accordance with the provisions of clause 23.5 below.
- 23.5. Failing agreement as referred to in clause 23.3.1 above or in the event of either of the parties furnishing its notice of dispute within 14 (fourteen) days of the mediator’s decision as envisaged in terms of clause 23.4 above, the dispute shall be submitted to arbitration for final resolution in accordance with the rules of AFSA by an arbitrator or arbitrators appointed by it.
- 23.6. Unless otherwise agreed in writing by the parties, any such negotiation, mediation or arbitration shall be held in Cape Town.

## **24. LAW AND JURISDICTION**

- 24.1. These Terms shall be governed by and construed in accordance with the laws of the Republic of South Africa and the parties submit to the non-exclusive jurisdiction of courts of South Africa.



- 24.2. Despite the provisions contained in clause 23 above, the Company shall be entitled, in their sole discretion, to institute any proceedings against the Customer (who consents to this entire clause 24) in any Magistrates court with relevant jurisdiction, even though the cause of action arose, or the amount claimed, is beyond the jurisdiction of such court.
- 24.3. This clause does not preclude the Company, in their sole discretion, from instituting action in the High Court with relevant jurisdiction and the Customer consents to the jurisdiction of the High Court in the jurisdiction elected by the Company.

## 25. COSTS

- 25.1. **THE CUSTOMER SHALL BE LIABLE** for all costs incurred by the Company in the recovery of any amount or the enforcements of any rights which it has hereunder, including collection charges and costs on an attorney and own client scale and cost of counsels as on brief (whether incurred prior to or during the institution of legal proceedings), or if judgement has been granted in connection with the satisfaction or enforcement of such judgements.
- 25.2. **THE CUSTOMER UNDERTAKES TO PAY THE COST OF THE SURETYSHIP AND CESSION CONTAINED HEREIN AND AGREES THAT SUCH COSTS CAN BE DEBITED TO ITS ACCOUNT.**

## PART B: SPECIFIC TERMS – AVION EXPRESS

## 26. CONDITIONS OF PAYMENT

- 26.1. The provisions of clauses 10.1 to 10.3 above shall be applicable, together with the necessary amendments thereto, to this clause 26.
- 26.2. Avion Express's terms of payment are 30 (thirty) days from date of the invoice and may be tendered either by cash, electronic transfer or by cheque, made payable to Avion Express.
- 26.3. Should a Customer default on any of its payment obligations and should the Consignment still be in Avion Express's possession, Avion Express shall be entitled to charge the Customer warehousing charges in respect of any period during which the Consignment is stored after tender of delivery, up to and including the time of payment of all monies owing to Avion Express by the Customer.
- 26.4. For the avoidance of doubt, payment received by Avion Express more than thirty (30) days after the date of the invoice shall bear interest as determined in accordance with paragraph 0 above.



## 27. **LIMITATION ON THE COMPANY' LIABILITIES AND RESPONSIBILITIES**

- 27.1. Under **NO CIRCUMSTANCES** shall any strict liability attach to Avion Express.
- 27.2. Avion Express's **LIABILITY SHALL NOT EXCEED** 50 (fifty) Rand per order received from a Customer.

## 28. **INSURANCE**

- 28.1. Avion Express shall insure the Consignment for an amount not exceeding R1,000.00 (one thousand rand), where insurance is requested by the Customer, but no value is declared on the Consignment which would give rise to a minimum premium. Avion Express is not obliged to insure Consignments exceeding R20,000.00 (twenty thousand rand), unless specifically notified to Avion Express in writing.
- 28.2. Where insurance is requested by the Customer and the value declared exceeds R1,000.00 (one thousand rand), a premium representing a percentage of the declared value will be levied.
- 28.3. In the event of:
  - 28.3.1. a standard claim, a minimum of 2% (two percent) excess of the declared value applies;
  - 28.3.2. a claim following a hi-jacking, a minimum of 20% (twenty percent) excess of the declared value applies.
- 28.4. Should a dispute arise in relation to the insurance arranged by Avion Express at the request of the Customer, the Customer shall have recourse against the insurer only and Avion Express **SHALL NOT INCUR ANY LIABILITY** in relation to such dispute, despite the fact that the premium on the policy may not be at the same rate as that charged by Avion Express.
- 28.5. All charges owing to Avion Express (including the premium) in respect of the services rendered will be payable to Avion Express as per the conditions of payment laid out in these Terms.





- 28.6. The Customer shall lodge all claims in terms of insurance to Avion Express in writing (via registered post or email), within 7 (seven) days of the Consignment being delivered to:

The Claims Manager

P.O. Box 171

Kyalami

1684

[info@avionexpress.co.za](mailto:info@avionexpress.co.za).

**Annexure A****SURETYSHIP**

I, the undersigned, \_\_\_\_\_

(Identification Number \_\_\_\_\_) do bind myself to \_\_\_\_\_ (Registration Number \_\_\_\_\_) ("**the Company**") as surety for and co-principal debtor *in solidum* with \_\_\_\_\_ (Registration Number \_\_\_\_\_), t/a \_\_\_\_\_ ("**the Debtor**"), for the repayment of all amounts which may become due to the Company by the Debtor arising out of or in connection with the services rendered by the Company to the Debtor and the deferred payment arrangement concluded in respect thereof on \_\_\_\_\_ ("**the Arrangement**"), subject to the following conditions:

1. I renounce all benefits arising from the legal exceptions "*non numeratae pecuniae*", "*non causa debiti*", "*errore calculi*" and "*beneficia excussionis et divisionis*", with the force and effect of which I declare myself to be fully acquainted and I agree and declare that this suretyship is to be in addition and without prejudice to any other suretyship/s and security/ies now or hereafter to be held by the Company and shall remain in force despite my death or legal disability;
2. no indulgence, latitude, or extension of time which may be granted or allowed to the Debtor shall in any way affect my liability hereunder;
3. all acknowledgements of debt, admissions of liability and judgments by or against the Debtor shall be binding on me;
4. in the event of:
  - 4.1. any liquidation, judicial management or sequestration of the Debtor or any other surety for the Debtor;
  - 4.2. the Debtor or any of its subsidiary or associated Company commences "business rescue" proceedings as contemplated in Chapter 6 of the Company Act 71 of 2008; or
  - 4.3. any composition or compromise by the Debtor or any such other surety, whether in terms of the company law or insolvency law or under common law,



I bind myself not to file any claim against the Debtor or other surety until the indebtedness has been paid in full;

5. as security for my obligations in terms hereof, I cede to the Company all the claims which I now have or may in future have against the Debtor from any cause of indebtedness whatsoever (including those arising from payments made by me hereunder), undertaking on demand by the Company to deliver to the Company all documents (duly endorsed where appropriate) evidencing or embodying or relating to any such claims;
6. despite any part payment by me or on my behalf, I shall have no right to any cession of action in respect of such part payment and shall not be entitled to take any action against the Debtor or against any other surety for the Debtor in respect thereof unless and until the indebtedness of the Debtor to the Company arising out of and/or in connection with the Arrangement shall have been discharged in full;
7. if any payment which reduced or discharged my liability hereunder, is set aside under the insolvency laws or by order of court for any reason whatsoever, or if such payment is refunded to the Debtor or the Debtor's trustee, liquidator or judicial manager or should any security be set aside by a court or released by agreement, I shall be liable to the Company as surety and co-principal debtor and indemnitor for the Debtor in the amount of the Debtor's indebtedness to the Company arising from or revived by the setting aside and/or refund of such payment or the setting aside or release of such security, despite the fact that the same may take place after the termination of my liability hereunder in other respects;
8. for the purposes of any action against me hereunder, for provisional sentence or otherwise, a certificate by the Company or its auditor as to the amount owing by the Debtor and to the effect that the due date for payment of such amount has arrived shall be sufficient and satisfactory proof of the facts therein stated until the contrary shall have been proved;
9. I consent to the jurisdiction of the magistrate's court having jurisdiction in terms of section 28 of the Magistrates' Courts Act No. 32 of 1944, as amended, in respect of any action or application arising out of or in connection with my obligation under this suretyship, despite the fact that the amount in issue may exceed the jurisdiction of such court;



10. I acknowledge that all amounts due and payable by the Debtor to the Company shall be recoverable from and paid by me despite the fact that the Debtor may have any claim or counter-claim of whatsoever nature and howsoever arising against the Company;
11. the Company shall be at liberty, without in any way affecting its rights against me or diminishing or otherwise affecting my obligations to it hereunder, to do any act or omit to do any act, whether pursuant to the provisions of any contract concluded with the Debtor or otherwise, as it in its sole discretion may deem fit, despite the fact that in doing or omitting to do any such acts, the Company may have acted negligently (whether grossly or otherwise) or in a manner calculated to cause, or in fact causing prejudice to me and, in particular, but without limiting the generality of the foregoing, the Company shall without in any way affecting its rights against me or diminishing or otherwise affecting my obligations to it hereunder be entitled to:
  - 11.1. release securities and other sureties;
  - 11.2. give time to or compound or make any other arrangements with the Debtor or other parties aforesaid; and
  - 11.3. allow or grant to the Debtor or any other surety any latitude or indulgence, without reference to or approval by me;
12. the Company shall be entitled to appropriate any moneys received by it from me hereunder towards the payment of such cause of debt or amount owing by the Debtor to the Company as it may determine in its absolute discretion;
13. I warrant that:
  - 13.1. the Arrangement is and will at all times be and remain valid and legally enforceable;
  - 13.2. I have material interests in securing obligations of the Debtor to the Company;
14. no consensual cancellation, variation or modification of the terms of this deed of suretyship shall be binding on the Company unless reduced to writing and signed by or on behalf of the Company and me;
15. I shall be responsible for all costs charges and expenses of whatsoever nature which may be incurred by the Company in enforcing its rights in terms hereof including, without limitation, legal costs on the scale as between attorney and own client and collection commission irrespective whether any action has been instituted against me or not;

16. the costs of the preparation of this deed of suretyship shall be paid by me; and
17. *(to be completed, only if applicable)* \_\_\_\_\_, by virtue of being married in community of property to \_\_\_\_\_, consents to the granting of the suretyship by such person.

For: \_\_\_\_\_

Signature: \_\_\_\_\_

\_\_\_\_\_ who warrants that he / she is duly authorised thereto

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Place: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

For: \_\_\_\_\_

Signature: \_\_\_\_\_

\_\_\_\_\_ who warrants that he / she is duly authorised thereto

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Place: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

I confirm that the content of this deed of suretyship has been fully explained to me.

\_\_\_\_\_  
Name: