

TERMS OF USE FOR TRANSPORT OF GOODS

1. INTRODUCTION

- 1.1. The terms and conditions as contained in this document detail the engagement between the CUSTOMER and WOLFF LOGISTICS for the transport of Goods.
- 1.2. The CUSTOMER has completed the schedule detailing its information and its acceptance of the terms and conditions as contained herein.
- 1.3. By instructing WOLFF LOGISTICS to transport the Goods, the CUSTOMER accepts the terms and conditions as contained herein.
- 1.4. Should there be any discrepancy between the terms and conditions as contained in this document and the Customer's relevant schedule or a quotation, the provisions of the schedule or quotation will prevail, unless WOLFF LOGISTICS elects otherwise.

2. DEFINITIONS

- In this agreement, unless the context indicates otherwise, the following expressions will bear the following meanings:
- 2.1. "AGREEMENT" means every page of this document, quotations, all annexures and schedules hereto, receipt and POD, Vehicle check sheets and any other written and signed document between the CUSTOMER and WOLFF LOGISTICS;
 - 2.2. "CUSTOMER" means the natural or legal person detailed herein and in the relevant schedule;
 - 2.3. "DANGEROUS GOODS" includes those goods classified as such by Spoornet, the Marine Division of the Department of Transport, or goods which are considered by WOLFF LOGISTICS to be dangerous;
 - 2.4. "GOODS" means the goods transported by the Vehicle;
 - 2.5. "POD" means Proof of Delivery Documentation;
 - 2.6. "RATES" means the rates agreed to between the parties to transport the Goods, failing which, WOLFF LOGISTICS usual rates charged from time to time for the Vehicle/s rented in terms hereof and will be subject to increase on the anniversary of the Agreement by a rate of 10%;
 - 2.7. "THE HANDLING OF THE GOODS" includes the goods being handled, warehoused, held, controlled, loaded or off-loaded, carried or otherwise possessed by WOLFF LOGISTICS or the CUSTOMER for any purpose whatsoever;
 - 2.8. "VEHICLE" means any one or more Vehicle/s supplied by WOLFF LOGISTICS for the transport of the Goods;
 - 2.9. "WOLFF LOGISTICS" means WOLFF LOGISTICS (PTY) LTD Reg. no: 2010/014961/07 which definition includes any and all holding, subsidiary, sister or associated companies, successors in title and assigns.

3. INSURANCE BY THE CUSTOMER

- 3.1. WOLFF LOGISTICS will insure the Goods with its nominated insurer at its sole discretion.
- 3.2. WOLFF LOGISTICS reserves the right to instruct the Customer to obtain additional insurance / new insurance at its sole discretion. Should the Customer fail to obtain the additional insurance / new insurance within 24 hours, Wolff Logistics may elect to obtain the additional insurance / new insurance and claim any expenses, installments, excess and/or charges directly from the Customer.
- 3.3. The CUSTOMER hereby cedes its right, title and interest in all insurance policies it may have in place in respect of the use of the Goods to WOLFF LOGISTICS as security for its obligations under this Agreement.
- 3.4. The CUSTOMER will ensure that its Goods strictly comply with all terms of any insurance policy procured by it and with the provisions of WOLFF LOGISTICS' insurance policies.

4. INSURANCE, ACCIDENTS AND CLAIMS

- 4.1. To the extent that WOLFF LOGISTICS' insurer is not liable for, refuses or fails to compensate WOLFF LOGISTICS for any loss caused by the Goods, WOLFF LOGISTICS will be entitled to pursue the claim without any prejudice to any claim it may have against the CUSTOMER.
- 4.2. The CUSTOMER hereby irrevocably empowers WOLFF LOGISTICS and its insurers to claim, sue for and receive any amounts and benefits arising out of the loss of or damage to any Vehicle or part thereof and authorizes WOLFF LOGISTICS in its sole and absolute discretion to settle, compromise or withdraw any claim and to give discharges in respect thereof without prejudice to its rights to claim any remainder from the CUSTOMER.
- 4.3. The CUSTOMER will be obliged to assist WOLFF LOGISTICS and its insurers to properly and completely investigate any claim relating to a claim to the extent necessary to complete and submit any claim forms and documents required by the insurer.
- 4.4. The CUSTOMER will not have any claim against WOLFF LOGISTICS if any claim should not be recovered in full or at all and the fact that a claim is still pending will not excuse the CUSTOMER from paying any amount claimed to WOLFF LOGISTICS.
- 4.5. The CUSTOMER agrees and acknowledges that:
 - 4.5.1. WOLFF LOGISTICS will not be liable for the loss or damage to any property left or transported in or upon the Vehicle irrespective of whether the loss or damage resulted from the negligence of WOLFF LOGISTICS or its agents or employees. The CUSTOMER hereby waives any claim which it may have or obtain against WOLFF LOGISTICS arising out of the said circumstances and, furthermore, indemnifies WOLFF LOGISTICS against any claim by any third party arising out of the said circumstances;
 - 4.5.2. WOLFF LOGISTICS will have no liability whatsoever in respect of any Goods transported on, in or behind a Vehicle.
- 4.6. It is reiterated that in the event of WOLFF LOGISTICS claiming any amount from the CUSTOMER arising out of damage to or destruction of the Vehicle, any crane or other equipment forming part of the Vehicle, WOLFF LOGISTICS will be entitled to pursue and enforce such claim in spite of the fact that it may not have lodged any claim against its insurers or that any claim which it may have lodged has not yet been acknowledged or rejected by the insurer or settled.

5. WOLFF LOGISTICS INDEMNITY SCHEDULE

- WOLFF LOGISTICS will insure the Vehicle and the following further provisions and exclusions apply to the Agreement, all of which are obligations of the CUSTOMER:
- 5.1. In the event of any claim caused by the Goods, the Customer will be liable for the usual or reasonable excess, non-refundable claim administration fee, assessors' fees, towing and storage charges for each incident, which are not included in any of the waiver charges and is payable irrespective of liability for the loss or damage. The Customer remains liable for payment in terms of the Rates and other amounts due in terms of the Agreement.
 - 5.2. If the Vehicle suffers any damage or loss whatsoever, the CUSTOMER must cooperate and assist in the investigation.
 - 5.3. The CUSTOMER will comply with all the requests and requirements of WOLFF LOGISTICS's insurer.

6. LOADING, OFF-LOADING AND PROCESS DOCUMENTATION

- 6.1. The Customer will ensure that no Dangerous Goods are loaded, transported or off-loaded.

- 6.2. The party responsible for loading and off-loading the Goods (as set out in the schedule) will be responsible for the supervision and movements of the loading and delivery of the Goods on to and off of the Vehicle(s) on the locations as indicated on the accepted quotation.
- 6.3. WOLFF LOGISTICS will provide a POD to the CUSTOMER which will serve as prima facie proof that the Goods were delivered. The CUSTOMER agrees that the signature of any agent, contractor, sub-contractor or employee of the CUSTOMER on the POD will constitute delivery of the Goods.
- 6.4. The CUSTOMER will ensure that the locations where the Goods will be loaded and delivered are easily accessible by normal transport vehicles.
- 6.5. If WOLFF LOGISTICS is unable to deliver the Goods, WOLFF LOGISTICS will be entitled to charge the CUSTOMER for the storage of the Goods, and any other additional costs that WOLFF LOGISTICS may incur, and the CUSTOMER shall pay such charges on demand.
- 6.6. Any loading date and delivery date stated on the accepted quotation or the relevant schedule confirmation is approximate only. WOLFF LOGISTICS shall not be bound by those dates, but will make all reasonable efforts to load and deliver by those dates.
- 6.7. Whilst WOLFF LOGISTICS will endeavour to ensure that the Goods are delivered timeously, it shall not be responsible for any delays in the delivery of the Goods, and the CUSTOMER and/or a third party shall not be entitled to refuse acceptance of such late deliveries.
- 6.8. WOLFF LOGISTICS will in any event not be liable to the CUSTOMER, or to any third party, for any loss of whatsoever nature as a result of the Goods not being delivered timeously.
- 6.9. In the event of WOLFF LOGISTICS acceding to any request by the CUSTOMER to postpone delivery of the Goods, or in the event of the CUSTOMER failing to give WOLFF LOGISTICS sufficient information to enable it to process any accepted quotation or as stated in the schedule, the CUSTOMER will pay any costs and expenses thereby incurred by WOLFF LOGISTICS.
- 6.10. The CUSTOMER agrees that Goods will be offloaded at the nearest accessible point on the location indicated on the accepted quotation. WOLFF LOGISTICS will not be held responsible for any damage to the Goods delivered during the delivery process, arising from any cause whatsoever.
- 6.11. The CUSTOMER will ensure that the Goods will be sufficiently packed and prepared for carriage.

7. ROUTE MANAGEMENT

- 7.1. When carrying goods, WOLFF LOGISTICS will in its sole discretion decide what route to follow. WOLFF LOGISTICS will strive to ensure that vehicle utilisation is maintained on the specific routes however it must be noted that routes are not guaranteed.

8. FINANCIAL

- 8.1. The CUSTOMER is liable to WOLFF LOGISTICS for payment of the Rates without deduction or set-off whatsoever.
- 8.2. All amounts are payable within agreed payment terms, failing which on presentation of an invoice therefore and interest is payable on all arrears at the maximum permissible rate of interest from time to time, being the incidental credit rate of 2% per month, which begins to accrue 20 business days after payment of the capital amount becomes due. CUSTOMERS are therefore required to raise any and all queries prior to expiry of the said 20 business days, failing which no queries whatsoever will be entertained, and interest will be charged without exception on the full capital amount due.
- 8.3. Where the Rates are based on the kilometers travelled while the Vehicle is in use the distances will include delivery from and return to WOLFF LOGISTICS' depot.
- 8.4. WOLFF LOGISTICS is entitled to appropriate amounts received from or on behalf of the CUSTOMER to any debt due by the CUSTOMER. The CUSTOMER hereby waives the right to nominate which debt must be redeemed by any particular payment.
- 8.5. A certificate under the signature of any director, manager or accountant of WOLFF LOGISTICS as to any amount owed by the CUSTOMER in terms of this agreement will be prima facie evidence of the correctness thereof.
- 8.6. WOLFF LOGISTICS may set-off and deduct any amount due and owing by it to CUSTOMER for settlement of damages and/or any other liability as detailed herein, at its sole discretion.
- 8.7. The CUSTOMER instructs WOLFF LOGISTICS to sell any Goods in order to settle any liabilities as contained herein. WOLFF LOGISTICS has a lien over all Goods and in the event of non-payment of any amount due by the CUSTOMER, WOLFF LOGISTICS may sell such Goods in order to settle any amounts due.

9. QUOTATIONS

- 9.1. The CUSTOMER may request transport services from WOLFF LOGISTICS. WOLFF LOGISTICS will in return provide the CUSTOMER with a quotation.
- 9.2. Any quotation given is not an offer by WOLFF LOGISTICS to provide services but constitutes an invitation by WOLFF LOGISTICS to the CUSTOMER to conduct business with WOLFF LOGISTICS.
- 9.3. A quotation may be revoked by WOLFF LOGISTICS at any time.
- 9.4. The CUSTOMER may accept or reject the quotation.
- 9.5. Once a quotation has been accepted by the CUSTOMER, it will form part of this Agreement.
- 9.6. The quotations are based on rates of exchange, freight charges, insurance, labour, materials and other charges and are subject to change if any charges increase (before or after acceptance of the quotation). The quotation amount will increase at the same rate as the relevant increase.

10. WARRANTIES & INDEMNITY

- 10.1. WOLFF LOGISTICS does not warrant that the Vehicle is suitable for the CUSTOMER'S intended use.
- 10.2. WOLFF LOGISTICS will not be liable for any loss or damage to the Vehicle, Goods and/or property conveyed therewith, nor will WOLFF LOGISTICS be liable for any death or injury to persons conveyed therein and arising out of the use or misuse of the Vehicle or arising from any patent or latent defect, breakdown or mechanical failure of the Vehicle and the CUSTOMER indemnifies WOLFF LOGISTICS in respect of any claims arising therefrom.
- 10.3. WOLFF LOGISTICS does not warrant the availability of any Vehicle and will not be liable to the CUSTOMER for the late or non-delivery of any Vehicle.
- 10.4. WOLFF LOGISTICS does not warrant that the Goods will be delivered on time and/or at the location it was intended.
- 10.5. The Goods will be carried at the sole risk of the CUSTOMER. The CUSTOMER hereby exempts WOLFF LOGISTICS from and indemnifies WOLFF LOGISTICS against all liability of whatsoever nature, arising directly or indirectly from the handling of the goods and/or Dangerous Goods. This exemption and indemnity includes, but is not restricted to, any liability for direct and/or consequential loss or damages arising from loss of the Goods, damage to the Goods, the failure to collect or deliver the goods timeously, adequately or at all, or from or to the correct address, or from any other cause arising, whether any such liability, loss or damage is caused by or arises from breach of contract, negligence or gross negligence, on the part of WOLFF LOGISTICS, its servants, agents or employees, or otherwise.

- 11. BREACH**
- 11.1. If the CUSTOMER fails to pay any amount due in terms hereof or otherwise breaches any term of this agreement, WOLFF LOGISTICS will be entitled to immediately cancel this Agreement, in which event all arrears will immediately and without further notice become due and payable and the CUSTOMER will be obliged forthwith to return all Vehicles in its possession to WOLFF LOGISTICS at such place as WOLFF LOGISTICS may prescribe. Despite cancellation of the Agreement, the CUSTOMER remains liable to WOLFF LOGISTICS to return the Vehicle and/or for payment of all amounts due in terms hereof, including any damages suffered by WOLFF LOGISTICS, and all attorney-own client legal costs incurred by WOLFF LOGISTICS.
- 11.2. Should it be necessary to trace the CUSTOMER or the Vehicle, the CUSTOMER will be liable for all costs in connection therewith and also the costs of tracing and the costs of repossession of the Vehicle and transporting the Vehicle to WOLFF LOGISTICS' premises, at a reasonable cost.
- 12. GENERAL**
- 12.1. The parties hereto choose as their respective *domicilium citandi et executandi* the physical and electronic addresses as detailed herein. All notices will be in writing and transmitted only by physical delivery or electronically and will be deemed to have been received on the first business day following the date of delivery or transmission thereof, as the case may be.
- 12.2. WOLFF LOGISTICS reserve the right to inspect the Goods to ensure that same is not Dangerous Goods during The Handling of The Goods. WOLFF LOGISTICS will not be held liable for damages caused to Goods as a result of such an inspecting.
- 12.3. No addition, alteration or cancellation of this agreement will be of any force or effect unless reduced to writing and signed by authorized persons for the parties hereto.
- 12.4. This Agreement is the only agreement between the parties concerning the transport of the Goods. No other undertakings, representations or warranties will be of any force or effect whatsoever, unless agreed upon in writing.
- 12.5. WOLFF LOGISTICS reserves the right to halt any and all services, including transporting the Goods, with immediate effect and without notice, should it become aware that the Vehicle and/or Goods are not properly insured and/or payment is not made as agreed between the parties.
- 12.6. In the event that any terms hereof are found to be unenforceable for any reason, same will be capable of severability, the remaining terms to remain unaffected thereby and of full force and effect.
- 12.7. The CUSTOMER may not, cede, assign or delegate any of its rights or obligations in terms hereof. WOLFF LOGISTICS may unilaterally cede and assign any of its rights and/or delegate any of its obligations under this Agreement.
- 12.8. Any provision as stated in the quotation as provided by WOLFF LOGISTICS will form part of this agreement and will be enforceable by the parties