

CEE VEE TRANSPORT CONSULTANTS SA (PTY) LTD

GENERAL TERMS AND CONDITIONS OF CONTRACT

1. DEFINITIONS
For the purposes of the terms and conditions of this agreement unless inconsistent with the context the following words shall carry the following meaning:
 - 1.1. "CV" shall mean Cee Vee Transport Consultants SA (Pty) Ltd
 - 1.2. The customer shall mean:
 - 1.2.1. The person who instructed CV to perform the services reflected in terms of this contract;
 - 1.2.2. The person who accepts CV's quotation;
 - 1.2.3. The person who contracts with CV.
 - 1.3. "Contract" means the terms and conditions hereof whether agreed to in writing or orally concluded between CV and the customer;
 - 1.4. "Dangerous goods" includes hazardous goods and good which, in the opinion of CV are dangerous and includes anything likely to cause any damage whatsoever to persons or property (including vehicle of the principals);
 - 1.5. "Freight" will mean the amount or price payable by the customer to CV as consideration for the carriage of goods in terms of a contract;
 - 1.6. "Goods" shall mean any goods which are transported in terms hereof;
 - 1.7. "Person" shall have its ordinary meaning and includes the words "body corporate";
 - 1.8. "Law" includes the common law, any statute, ordinance, by law or regulation;
 - 1.9. "Principals" shall mean any person with whom CV contracts to carry out transportation in terms of the contract for and on behalf of the customer;
 - 1.10. "Transportation" shall mean, without restricting the generality of this term, loading, unloading, off-loading, conveyance, packing (where necessary) storing, and/or safe keeping of any goods and the acquiring of permits, authority/iss and the like;
2. CAPACITY OF BROKER
 - 2.1. Notwithstanding anything herein contained to the contrary, CV herein contracts with the customer in its capacity as agent and nothing herein contained is to be construed as CV acting as principal with the customer;
 - 2.2. Notwithstanding anything herein contained, CV shall accept liability for loss or damage to the customer's goods only, subject to the provisions stipulated in clause 5 hereunder;
 - 2.3. CV shall, if and when suitably indemnified by its customer against all costs claimed, including attorney and client costs, and security is furnished to CV's attorney's satisfaction, take action against the principals on its customer's behalf as its customer may direct
 - 2.4. The terms and conditions of this agreement together with any addendum thereto shall govern the relationship between CV and the customer in each and every contract between them, including contracts entered into subsequently to the contract formed by the customer's acceptance of CV's quotation and whether or not the customer's attention has been specifically drawn to these conditions as being applicable to the contract governing their relationship;
 - 2.5. This contract shall solely govern the relationship between CV and the customer and expressly excludes the terms and conditions of trading of the customer's delivery notes, orders and / or invoices and the like;
 - 2.6. No warranty or representation other than as is herein expressly contained shall be of any force and effect against CV unless the same is contained in writing and signed for and on behalf of CV;
 - 2.7. No amendment, variation or consensual cancellation of any contract shall be of any force and effect unless such amendment, variation and/or consensual cancellation is reduced to writing and signed by CV.
3. WHOLE CONTRACT
No course of conduct other than agreement in writing signed by CV shall constitute a variation or novation of a contract or a waiver or estoppel of CV's rights there under.
4. CONDITIONS
 - 4.1. CV shall be only obliged to perform provided:
 - 4.1.1. CV in its sole opinion has received sufficient notice of the customer's requirements
 - 4.2. The customer's notice to CV shall contain the following minimum information on the customer's official company letterhead:
 - a. Customer's official order number.
 - b. Description of goods, quantity and mass
 - c. Release numbers of containers and/or goods
 - d. Address where goods are to be collected
 - e. Address where goods have to be delivered to
 - f. Value of goods for insurance purposes
 - g. Freight quoted or rate as agreed by the parties
 - 4.3. The necessary consents and statutory permits have been granted and remain in force. In the event of such consents or permits being refused or withdrawn for any reason whatsoever, such that no carriage may be performed, the contract shall terminate and no liability shall attach to CV.
 5. LIABILITY
 - 5.1. CV shall not be liable for any loss or damage unless the customer can establish that such loss or damage was caused by the gross negligence of CV
 - 5.2. The loss to the customer shall be ascertained by reference to the cost price of the customer, provide that CV shall have the option of replacing or repairing any article lost or damaged for which CV might be liable. In the case of secondhand goods, compensation for loss or damage shall be limited to the valuation established by the assessors acting on behalf of CV;
 - 5.3. CV shall not be liable for any consequential loss resulting from loss or damage to or delay in making delivery of any goods, the liability to CV being limited to the actual loss of or damage to goods, as set out above;
 - 5.4. A claim (counterclaim) by the customer against CV shall not be made reason for deferring or withholding payment;
 - 5.5. CV shall not be bound by receipt given in good faith to a customer relating to the number of packages or the condition of the goods if it should subsequently be shown that such number or conditions was wrongly described in the receipt;
 - 5.6. Unless specifically agreed in writing, CV shall not handle articles of a hazardous or dangerous nature and the customer shall indemnify CV against claims arising out of the presence of any articles of a hazardous or dangerous nature;
 - 5.7. CV will not accept any responsibility for damage charges however incurred on cranes, containers, railway wagons or trucks of any description, aircraft, ships, or customers vehicles, or any vehicle not under the direct control of CV;
 - 5.8. CV will not be responsible for any loss or damage arising from the loading or unloading of the vehicle, or from the overloading or unsafe loading of the vehicle. Loading and unloading / off loading of vehicles are performed by the Customer or Consignor or their respective agents.
 6. CUSTOMER'S WARRANTIES AND INDEMNITIES
 - 6.1. The customer warrants and represents that:
 - 6.1.1. The goods are the customer's sole and exclusive property and / or that the customer has the full and absolute authority of the person's owning or interested in the goods to enter into a contract with CV;
 - 6.1.2. The carriage of the goods as contracted for with CV does not contravene any law;
 - 6.1.3. A document giving a full description of the goods to be transported will be given to CV's driver at or before the time of loading. It is incumbent upon the customer to see that nothing required to be moved is left behind and to verify the correctness of all the details contained in the customer's delivery documents;
 - 6.1.4. That any legal action arising between CV and the customer, may be instituted in the magistrate's court, even though the cause of the action may exceed the jurisdiction of that court.
 7. PRESCRIPTION OF CLAIMS
 - 7.1. Without limiting and without prejudicing the provisions of these conditions, the customer shall notify CV in writing of any loss, damage, complaint or claim within 12 (twelve) hours from the time of off-loading, or in the case of non-delivery of the goods within 12 (twelve) hours from the scheduled time of off-loading as the case may be. Failing which, any claim arising there from shall ipso facto lapse and be unenforceable.
 8. CREDIT TERMS AND PAYMENT
 - 8.1. Notwithstanding any notification of claim as set forth in terms of paragraph 7 above, the customer shall pay to CV the full amount stated on CV's invoice on due date without any deduction or set-off and without prejudice to the customer's rights contended for against CV in respect of any such claim, the customer shall not be entitled to deduct or set-off any monies which it owes CV, against any monies which it contends are due to it by either CV and/or the principal.
 - 8.2. The customer shall pay CV in full free of any commission, brokerage, exchange, deduction or set-off, within 30 (thirty) days from date of CV's statement;
 - 8.3. The customer shall not be entitled to deduct from or set-off against such payments any claims which the customer may have against CV, arising from any cause whatsoever;
 - 8.4. The customer agrees to pay CV interest at a rate of 2 (two) percent per month on all amounts which are unpaid and outstanding on the due date;
 - 8.5. CV reserves the right to discontinue any account, and to summarily cancel any agreement in respect of which payments have fallen in arrear; and in the event of CV exercising these rights, all amounts owing by the customer shall immediately become due and payable on demand;
 - 8.6. CV reserves the right to telefax to the customer, all documents pertaining to any contract entered into with CV, and the customer shall effect payment to CV on receipt of such telefaxed documents. Under no circumstances will the customer withhold payment to CV for not having received "original" documents pertaining to any contract entered into with CV.
 9. CONDITIONS OF GOODS
The onus of establishing the conditions of the goods at the time of delivery to CV and/or principal shall at all times remain on the customer, and no delivery note, receipt or other document given at such time by CV and/or principal to the consigner shall constitute proof of such condition, save to the extent that any specific record in relation thereto may have been made thereon by CV and/or principal.
 10. LOADING AND OFF-LOADING OF VEHICLES
The customer shall deliver the goods onto the vehicle nominated by CV and shall take delivery of the goods there from, and shall be fully responsible for the loading and off-loading thereof. CV's servants may assist therewith where assistance is customary and practical, but such assistance shall be rendered at the sole risk of the customer without any liability for any loss or damage arising there from attaching to CV.
 11. LOADING AND OFF-LOADING FACILITIES
 - 11.1. The customer undertakes:
 - 11.1.1. To provide or procure the provision of safe and adequate labour and equipment for loading and off-loading, and safe, convenient and adequate loading and off-loading points and access to and from such loading / off-loading points;
 - 11.1.2. To ensure that loading and off-loading will be possible at the agreed points during such hours and days as the parties have agreed;
 - 11.1.3. The customer warrants that if any goods require special appliances for loading upon or unloading from the vehicle, those appliances will be available at the point of collection or the place of delivery of the consignment.
 12. LOADING AND OFF-LOADING TIME ALLOWED
 - 12.1. The maximum time allowed to the customer to load or off-load the vehicle will be 3 (three) hours. Loading time or off-loading time shall be deemed to commence at the time when the vehicle arrives at the loading point or off-loading point as agreed by the parties.
 13. LOADING AND OFF-LOADING INSTRUCTIONS
The customer shall ensure that prior to the goods being loaded or off-loaded, that the goods in question are in fact the goods which are contracted to be loaded or off-loaded, and that clear and precise loading, off-loading and delivery instructions will be given to CV's driver.
 14. FAILURE BY THE CUSTOMER TO TAKE DELIVERY
 - 14.1. Should the customer fail or neglect or be unable or refuse to take delivery of the whole or any part of the goods at the agreed off-loading point or at the agreed off-loading time, or should (through no fault of CV) it not be possible or practicable to off-load the goods within 12 (twelve) hours after arrival at such off-loading point and should no acceptable alternative delivery instruction be received from the customer, CV shall be entitled to store or abandon the goods at its discretion. In the event the customer shall be liable to pay any additional charges thereby incurred and shall have no claim whatsoever against CV for any act or omission arising there from.
 15. CANCELLATION OF REQUEST FOR VEHICLE
The customer shall be entitled to cancel a request for a vehicle to carry out a particular service in terms of a contract, provided that the customer gives CV written notice of such cancellation not less than 12 (twelve) hours prior to the scheduled time of arrival of CV's vehicle at the agreed point of loading failing which the customer shall be liable to pay CV's usual, alternatively reasonable charges up to a maximum period of 48 (forty eight) hours.
 16. QUOTATIONS AND QUOTATION DATA
 - 16.1. Quotations are based inter alia on quantities, densities, dimensions, mass, properties, other technical data available loading and off-loading hours and other information supplied by the customer and are accepted by CV in good faith under representation by the customer. Any variance there from shall entitle CV to require freight quoted to be adjusted to take into account such variance, or to suspend performance, or cancel the contract, without thereby incurring any liability whatsoever and in the event of any such cancellation, reserving to itself to claim from the customer such damages as CV may have suffered. Quotations are subject to:
 - 16.2. All part loads being conveyed and delivered at CV and principal's convenience;
 - 16.3. Where the volumes, quantities or scope of work have increased over what CV have quoted for or there be a change of route due to reasons beyond CV and/or principals control the customer will be charged for any additions on a pro-rata basis;
 - 16.4. Any postponement or cancellation by the customer entitles CV to debit the customer's account for expenses incurred and/or losses to CV arising there from;
 - 16.5. CV shall have the right to increase the freight quoted in the event of stoppages or delays in the carrying out of work to which the contract relates, provided that such stoppages and delays are caused by circumstances beyond the control of CV or are such that CV could not reasonably foresee or prevent the cause of such stoppages or delays arising.
 17. FREIGHT AND ADDITIONAL CHARGES
 - 17.1. The Freight payable to CV by the Customer for the Transportation of Goods by CV or Principal, shall be the freight agreed between CV and Customer or shall be calculated on the rate agreed between them, as the rate may be. The freight shall be subject to variation as provided for in this document.
 - 17.2. Subject to the foregoing and in addition to the freight, CV shall be entitled to levy an additional charge at its usual rate, alternatively reasonable rate in the event of:
 - 17.2.1. The customer re-routing CV's vehicle to additional loading and/or off-loading places other than as stated on the customer's official order to CV as described in paragraph 4.2 above;
 - 17.2.2. Fines, penalties, demurrage charges and any consequential losses, claims or expenses resulting from the unsafe loading and/or overloading of CV's vehicle by the customer;
 - 17.2.3. The circumstances envisaged in terms of paragraphs 12, 14, 15 and 16 above.
 18. GENERAL
 - 18.1. CV may cede, delegate or assign any or all of its rights and/or obligations under a contract. CV may sub-contract without notice, but shall continue to remain liable for the due performance of its obligations under the contract, and these conditions shall apply equally to any service rendered by the sub-contractor;
 - 18.2. The parties hereby consent to the jurisdiction of the magistrate's court in Umzinto having jurisdiction over the customer should CV in its sole and unfeathered discretion elect to institute any action arising out of a contract against the customer in such court, notwithstanding that CV's claim may exceed the ordinary jurisdiction of the court.
 - 18.3. The customer selects as its *dominium citandi et executandi* for all purposes hereunder its principal place of business as reflected on its letterheads.