

PROFFSOL
STANDARD TERMS AND
CONDITIONS OF
HANDLING OF GOODS

1. INTRODUCTION

These terms and conditions shall apply to all or any business or contracts undertaken by PROFFSOL, including any advice, information or service rendered, whether gratuitously or not.

2. DEFINITIONS

2.1 "PROFFSOL" means PROFFSOL;

2.2 "Customer" means the Party with whom PROFFSOL has contracted and shall, unless otherwise indicated, include the owner of the goods.

2.3 "Goods" shall include, but shall not be limited to any movable goods carried subject to the terms of this agreement, including containers, receptacles or packaging of such goods;

2.4 "handling of the Goods" shall include all actions pertaining to the goods, including but not limited to the packaging, removal, loading, offloading, rigging, transportation and/or warehousing thereof.

3. GENERAL TERMS

3.1 PROFFSOL is not the owner of a public permit as provided for in section 31(1) (c) of the

Road Transportation Act No.74 of 1977, and may refuse for carriage any goods or class of goods without assigning any reason therefore.

3.2 The Customer hereby appoints PROFFSOL irrevocably and in rem suam to act as its agent and in its name, place and stead, to contract on its behalf and enter into contracts of carriage or storage of the Goods or any such contracts as may be necessary with any third party into whose possession or custody the Goods may pass, or need to pass, or subject to whose authority the

Goods may be at any time during the currency agreement, upon such terms and conditions as

PROFFSOL may, in its sole discretion decide, without any liability whatsoever or howsoever arising attaching to PROFFSOL.

3.3 Goods are accepted subject to the terms and conditions of contract stipulated by all other carriers and parties into whose possession or custody they may pass in terms of this agreement.

3.4 PROFFSOL reserves the right to appoint subcontractors and/or agents to act in its stead in the fulfilment of its obligations herein PROFFSOL shall incur no liability whatsoever for any acts or omissions of such third parties.

3.5 PROFFSOL reserves the right to amend the terms and conditions of this agreement at any time the currency thereof, provided that any such change shall become effective 7 (seven) days from the date on which PROFFSOL provides the Customer with such revised terms and conditions.

4. CHARGES

4.1 PROFFSOL will be entitled to increase its charges in accordance with any increase in its costs of providing the goods or services, including but not limited to any charges applicable to the Goods or the carriage thereof, or if PROFFSOL is obliged to deviate from the intended route, including increases in freight charges or insurance premiums payable by it.

4.2 The Customer shall be liable for:

4.2.1 any duty, tax, imports, fine, expense or outlay of whatsoever nature levied by any authority at any port or place in connection with the Goods and any payments, expenses, losses or damages incurred or sustained by PROFFSOL as a result;

4.2.2 the cost of any additional licenses or permits and/or any extra cost incurred by PROFFSOL as a result of compliance with any instructions issued by any competent authority;

and/or

4.2.3 Any demurrage charges of any nature whatsoever and however arising; and shall, on demand by PROFFSOL reimburse such amount disbursed, or any losses sustained by it in this regard.

4.3 Without limitation of any right which PROFFSOL may have against the Customer or any other person in law, the Customer shall be liable for the full charge of hire, as well as any resultant consequential losses in respect of any period for which PROFFSOL's vehicles, containers, equipment or the like is detained by the Customer.

5. CUSTOMER WARRANTIES

5.1 The Customer warrants in favor of PROFFSOL that:

5.1.1 The Goods are the Customer's sole property, alternatively, the customer is authorized by the owner of the Goods to enter into this contract subject to the terms and conditions contained herein;

5.1.2 All information, including any descriptions, values and other particulars furnished to PROFFSOL for customs, railage and other purposes is accurate;

5.1.3 The carriage of the Goods will not violate or infringe any Act, regulation, law, by-law or ordinance;

5.1.4 the goods are fit and suitable for handling in the ordinary courses and are not dangerous, corrosive, noxious, hazardous, inflammable or explosive or in any way likely to cause damage;

5.1.5 the name and address of the consignee as appears on the face thereof is complete and correct; and all documentation that are require to accompany the Goods or which PROFFSOL SOLUTIONS PTY LTD may reasonably require to fulfil its obligations in terms hereof shall be properly and accurately furnished to PROFFSOL prior to loading.

5.2 The Customer indemnifies and holds

PROFFSOL harmless against any and all expenses, claims, losses, and/or damages of any nature or howsoever caused, which PROFFSOL might incur, irrespective of whether there was any negligence on the part of PROFFSOL or its agent.

6. DESCRIPTION OF GOODS

6.1 The Customer shall provide a full and accurate description of the Goods to PROFFSOL prior to loading;

6.2 The onus of providing the quantity, type, physical properties, composition and condition of the Goods and/or the condition of the container at the time of receipt thereof by PROFFSOL will at all times remain on the Customer and any delivery note, receipt or other document furnished or signed by or on behalf of PROFFSOL at the time of such a delivery will constitute proof thereof.

7. LOADING & OFFLOADING

It shall be the express responsibility of the

Customer to ensure at his own cost that:

7.1 The Goods are ready for loading on the date specified

7.2 there is safe, suitable and adequate access to loading and off-loading facilities available to PROFFSOL to allow it to carry out its obligations. Without limitation the

Customer shall be obliged to provide lifts, free passageways, suitable access and on and offloading facilities, as well as adequate parking space for vehicles at the point(s) of loading and off-loading;

7.3 The Goods will be adequately packaged and prepared for carriage, in a manner that facilitates loading and off-loading;

7.4 It is specifically recorded that whilst handling the Goods the employees of PROFFSOL shall be under the sole and direct control and supervision of the Customer who hereby warrants that it will assume full responsibility for the actions of PROFFSOL's employees and that it will competently and adequately supervise, instruct and direct such employees with regard to all aspects of the handling of the Goods, including but not limited to the loading and off-loading of the Goods.

8. TRANSIT AND STORAGE

8.1 In the event of PROFFSOL being unable to effect delivery for any reason whatsoever, PROFFSOL will be entitled in its sole discretion and at the Customer's risk and expense to:

8.1.1 Warehouse or otherwise hold the Goods at any place(s), or arrange for the Goods to be so warehoused or held at the expense of the

Customer;

8.1.2 Return the Goods to the Customer or sender; or

8.1.2.1 Dispose of the Goods in terms of clauses 8.2 or 13.5.

8.2 PROFFSOL may, without notice to the Customer, dispose of or destroy or take such other steps, as it is in its sole discretion deems prudent to avert hazard, danger or damage, and recover the costs so incurred from the Customer. Without limitation, PROFFSOL shall be entitled to dispose of, destroy or otherwise deal at its sole discretion with:

8.2.1 Goods which PROFFSOL is compelled to destroy by reason of their perishable nature;

8.2.2 Perishable goods which are not taken up immediately upon arrival at their destination;

8.2.3 Perishable goods which are insufficiently marked or otherwise not identifiable;

8.2.4 Goods or any part thereof which, in the opinion of PROFFSOL, are or become a danger to any person or property; or for whatsoever reason.

8.3 Where PROFFSOL receives payment for the disposed goods, PROFFSOL will tender payment to the Customer of the net proceeds thereof after deduction of costs incurred by PROFFSOL.

8.4 Any action by PROFFSOL in terms of clauses 8.1 and 8.2 above shall constitute due and proper fulfilment of PROFFSOL's obligation in terms of this agreement, and will not detract from any of PROFFSOL's rights under this contract.

9. PERFORMANCE OF PROFFSOL'S OBLIGATIONS

9.1 Notwithstanding the provision of paragraph

7.4 Hereof, PROFFSOL will at all times have sole discretion to decide the time and route to follow in performing its obligations hereunder.

9.2 If any permit, consent, or approval is required to handle goods under any law, by-law or regulation, none of PROFFSOL's obligation or duties will take effect unless and until it is provided with or obtained the relevant permit, consent or approval. Whilst PROFFSOL may, should the Customer request, apply for such a permit on the Customer's behalf, the ultimate duty to obtain such permit shall rest solely on the Customer and the Customer shall to the fullest extent provide PROFFSOL with all the assistance and information required by it for the purpose of applying for or obtaining any such permit, consent or approval. The

Customer shall be liable for any costs incurred by PROFFSOL in this regard.

10. INSURANCE

10.1 It is the sole responsibility of the Customer to maintain adequate insurance to cover the Goods against all insurable risks for at least their replacement value at destination, during the currency of this agreement, including but not limited to periods of removal and/or storage.

10.2 PROFFSOL will, if requested to do so in writing by the Customer, arrange insurance on any

Goods being handled, transported or stored by it on the Customer's behalf, on such terms and conditions as maybe set out in the policy document. Such cover shall always be limited to the amounts covered by such policy and shall be subjected to any exclusions contained therein. The Customer, by instructing PROFFSOL to procure such insurance on its behalf, acknowledges that it is familiar with the content of the policy document, and in particular the limits of cover and exclusions therein contained, and accordingly indemnifies and holds PROFFSOL harmless against loss that any party may suffer as a result of any uninsured amount or portion thereof. The Customer warrants, in particular, that PROFFSOL shall not be required to insure against any indirect or consequential losses, including but not limited to loss of profits.

11. LIMITATION OF LIABILITY

11.1 All and/or any risk in and to the Goods shall at all times vest in the Customer;

11.2 The Customer hereby indemnifies PROFFSOL against all liability or claims by any third party, of whatsoever nature or howsoever incurred, arising or contributed to, whether directly or indirectly by PROFFSOL's handling of the Goods, the acts or omissions of PROFFSOL's agents, assigns and employees, including any legal costs which it may incur in defending such a claim.

11.3 PROFFSOL shall under no circumstances assume, and the Customer accordingly indemnifies PROFFSOL against, any liability for any direct or indirect loss to the Customer, the owner or any third party in respect to any risk or damage to the Goods whatsoever or howsoever arising, including, without limitations, any consequential loss whatsoever or howsoever arising, including loss arising from or contributed to by its carriage or custody of the Goods in terms of this agreement, whether or not such liability, loss or damage is caused or contributed to by breach of contract, negligence or gross negligence, on the part of PROFFSOL, its agents, assigns or employees.

11.4 This indemnity includes, but is not restricted to liability for loss or damages arising without limitation from Vis major, any negligent or willful act of any employee or agent of PROFFSOL in their handling of the Goods, disposal or destruction of the Goods in terms of clause 8.2 failure to collect or deliver the Goods timorously, adequately or at all, delivery of the Goods to the incorrect address, delays in collecting or delivering the Goods or any other damage or loss whatsoever and howsoever occasioned,

11.5 For purposes of this clause 11, 'PROFFSOL' shall include the employees and/or agents of PROFFSOL's subcontractors and their employees and/or agents.

12. TERMS OF PAYMENT

12.1 Payment in full, without deduction or setoff, must be made in cash or by bank guaranteed cheque on collection of the Goods, unless PROFFSOL agrees otherwise in writing;

12.2 Notwithstanding anything to the contrary contained in such further agreement, payment will be made within 30 days of delivery of the Goods or rendering of an invoice by PROFFSOL; interest will be charged on all overdue accounts at the prevailing prime overdraft rate charged by commercial banks plus 2% (two percent), calculated monthly in arrears from due date of payment to date of receipt of payment. 12.3 Payment must be made in full and without any deduction or setoff and the Customer may not raise any claim, dispute or counter-claim as a reason for deferring or, withholding payment, or setting off any claim or counter-claim which it may wish to raise against the amount due to PROFFSOL.

12.4 PROFFSOL may in its absolute discretion appropriate any payments made by the Customer, towards the payment of any debt or obligation of whatsoever nature owing by the Customer to PROFFSOL, irrespective of when such dept. or obligation arose.

13. CARRIER'S LIEN OVER GOODS

13.1 As security for all moneys owing (whether past or present) for the handling of goods PROFFSOL will have a lien over all goods, documents, bills of lading import permits as well as all repayments, refunds, claims or recoveries in its possession or under its control, whether the subject matter of this agreement or otherwise.

13.2 In addition PROFFSOL will be entitled to hold all Goods as security for any other monies whatsoever or howsoever arising which may be or become owed to it by the Customer, without prejudice to any other rights which PROFFSOL might have against the Customer.

13.3 Notwithstanding that credit may have been originally granted by PROFFSOL to the Customer, PROFFSOL may at any time in its sole discretion retain possession of any Goods pending the discharge of the Customer's entire indebtedness to PROFFSOL whether or not such indebtedness is related to handling of the Goods in question.

13.4 In the event of PROFFSOL retaining possession of the Goods in terms of clauses 13.1 to 13.3, PROFFSOL will be entitled to charge the Customer storage charges from the date on which PROFFSOL first tenders delivery of the Goods, up to and including the date of final payment of all monies owing to PROFFSOL by the Customer.

13.5 If any moneys owing to PROFFSOL are not paid by the Customer within 30 days (thirty) days after they become due, PROFFSOL will be entitled without further notice: 13.5.1 to open and examine the Goods;

13.5.2 to sell the whole or any part of the Goods in such a manner and on such terms and conditions as it deems fit;

13.5.3 to apply the proceeds of any sale after deducting all expenses (including that of the sale and storage charges) in payment or reduction of any amounts due by the Customer to PROFFSOL, and pay any surplus to the Customer without interest and upon demand by the Customer.

13.6 PROFFSOL's rights under the clause are not exhaustive and do not detract from any other rights it may have against the Customer.

14. GENERAL

14.1 The handling of the Goods shall be subject to the conditions stated herein, and these conditions shall at all time take precedence over any terms, conditions or stipulations contained in any of the Customers documentation.

14.2 This agreement, as amended or substituted by PROFFSOL from time to time as provided for in clause (insert clause), shall form the entire agreement between the Customer and PROFFSOL and no party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.

14.3 The Customer may not cede or delegate any of its rights or obligations hereunder without prior written consent of PROFFSOL. PROFFSOL will at all times be entitled to cede or delegate any of its rights or obligations hereunder without the prior consent of the Customer.

14.4 No relaxation or indulgence which PROFFSOL might grant the Customer shall constitute a waiver of its rights and shall not preclude PROFFSOL from exercising any of its rights.

14.5 This agreement, including any dispute about its validity, existence, interpretations, rectifications, breach or termination or any dispute about any matter arising out of this agreement, shall be governed and construed according to the laws of the Republic of South Africa and shall be subject to the exclusive jurisdiction of the South African courts.

14.6 The Customer hereby consents to the jurisdiction of the Magistrate's Court, subject to PROFFSOL's right to proceed in its discretion in a High Court having jurisdiction.

14.7 The Customer appoints its street address as reflected on the face of this document as its domicile citandi et executandi all purposes under this agreement including the serving of court process or documents, giving notice, or any other communications of whatsoever nature, and may change its domicile by giving PROFFSOL 7 (seven) days written notice.

14.8 Should PROFFSOL take any legal steps against the Customer, the Customer shall be liable for all PROFFSOL's legal costs on attorney-and-own-client scale, as well as collection commission.

14.9 All documents, notices and/or correspondence sent via ordinary mail to PROFFSOL will be deemed to have been received by PROFFSOL on actual delivery thereof to PROFFSOL's physical address; and to the Customer will be deemed to have been received by the

Customer on the 7th (seventh) day after the date on which it was posted.

14.10 All documents, notices and/or correspondence sent via telefax or e-mail will be deemed to have been received on the day following that on which it was faxed or email.