



## **TERMS AND CONDITIONS OF THE TRADING AGREEMENT**

### **CONCLUDED WITH RIVER NORTH CARRIERS**

#### **1. Definition**

In this agreement:

- 1.1 “**Debtor**” means the debtor described in the application for a Trading Account with River North Carriers;
- 1.2 “**River North Carriers**” means River North Trading 18 CC; and
- 1.3 “**Transporting Services**” means all transporting and related services rendered by River North Carriers to the Debtor, as agreed from time to time.

#### **2. Transporting Services**

- 2.1 The parties shall from time to time agree on the particulars of transporting and related services to be rendered by River North Carriers to the Debtor, including the goods, route, tariff and payment terms.
- 2.2 The Debtor undertakes to in this regard furnish all particulars and sign all documents required by River North Carriers in respect of the Transporting Services.
- 2.3 River North Carriers shall issue and invoice to the Debtor, in respect of the Transporting Services.

#### **3. Payment**

- 3.1 The Debtor shall make payment on the agreed due date in terms of the Trading Account, and should there be no payment term in the Trading Account, payment shall be effected as reflected on the invoice and should such invoice not reflect a payment date, payment shall be made within 14 days after date of invoice.
- 3.2 All payments to River North Carriers must be made directly into the bank account of River North Carriers, as specified on the invoice, and be without any deduction or set off and free of bank charges or commission.
- 3.3 All payments or credits on any account of the Debtor will be allocated by River North Carriers in their sole discretion, to any account of the Debtor held with River North Carriers, unless a specific allocation is agreed to in writing.

#### 4. **Rendering of Statements**

- 4.1 Goods and/or services which River North Carriers provide to a Debtor, as well as any credits that are due to the Debtor will be set out in a statement that River North Carriers will send to the Debtor.
- 4.2 Unless the Debtor within 30 (thirty) days from receipt of such statement from River North Carriers lodges a written objection against any debit or entry reflected therein, all debits and entries thereto shall be deemed to be correct and constitute conclusive proof of any such entries.
- 4.3 Should the Debtor not receive a statement for a particular month a duplicate must be requested by way of email or fax. The Debtor shall therefore irrevocably be deemed to have received such statement and agreed to the contents thereof.

#### 5. **Default**

Should the Debtor fail to comply with any term or condition of the Trading Agreement, River North Carriers shall, without prejudice to any other remedies they might have, be entitled to one or more of the following:

- 5.1 Accelerate and claim payment of all outstanding amounts and claim damages;
- 5.2 Terminate the Trading Agreement and claim damages;
- 5.3 Perfect and liquidate all securities furnished by the Debtor;
- 5.4 Demand full disclosure of the Debtor's financial affairs, supported by such documentary proof as required by River North Carriers;
- 5.5 Notification by the Debtor of all legal action instituted against the Debtor; and
- 5.6 The registration of a notarial bond over the moveable assets of the Debtor, upon terms commonly used and to the amount of the Debtor's indebtedness to River North Carriers.

#### 6. **Waiver of special defences**

The Debtor hereby irrevocably waives all his/her rights to the following special defences:

- 6.1 No valid cause;
- 6.2 Excussion;
- 6.3 Division;
- 6.4 The amount claimed is incorrectly calculated;

6.5 Debating of the account; and

6.6 No value received.

**7. Liability for loss or damage**

7.1 River North Carriers shall only be liable for loss or damage to transported goods caused by their negligence.

7.2 Such liability shall be limited to direct damages and River North Carriers shall under no circumstances whatsoever be liable for special and/or consequential damages.

7.3 Claims shall be submitted in writing within 60 days after the damages have been suffered, failing which River North Carriers shall not be liable at all.

7.4 River North Carriers shall not be liable for any damages caused by circumstances beyond their control, such as war, changes in fiscal policy, strikes, lockouts, interruptions due to fire, load shedding, water shedding, or any Act of God.

7.5 River North Carriers shall not be liable for any loss of mass of transported cargo unless such mass was determined by a certified calibrated weighbridge, upon loading and discharge.

7.6 The debtor acknowledges that should River North Carriers be held liable for damages caused by the circumstances excluded above, River North Carriers shall need to incur additional expenses and costs which shall result in higher transporting tariffs. The Debtor therefore prefers and accepts the limitations to the liability of River North Carriers set out above as reasonable.

**8. Cession**

8.1 River North Carriers shall be entitled to cede all claims against the Debtor, without consent of or notice to the Debtor.

8.2 The Debtor may not without the prior written consent of River North Carriers cede any rights that the Debtor may have against River North Carriers.

**9. Legal action**

9.1 Notwithstanding the amount of any indebtedness, the Debtor consents to the jurisdiction of the Magistrates' Court that would otherwise have jurisdiction, in respect of all claims and disputes arising from this Trading Agreement, without prejudice to the right of River North Carriers to institute proceedings in any competent court.

9.2 Should River North Carriers institute any legal proceedings against the Debtor in respect of this Trading Agreement, the Debtor shall be liable to pay the costs of River North Carriers on an attorney and own client scale.

**10. Domicilium address**

- 10.1 The Debtor appoints the physical address reflected in the application for a Trading Account as his chosen domicilium citandi et executandi for the service of all notices and process.
- 10.2 River North Carriers appoints Plot 130, Wessel Street, Klerksdorp as its chosen domicilium citandi et executandi for the service of all notices and process.
- 10.3 Any document or notice shall be deemed to have been received by the Debtor:
- 10.3.1 If hand delivered, on the date of delivery;
- 10.3.2 If by prepaid registered or certified mail, on the tenth day after dispatch;
- 10.3.3 If by telex or e-mail, the first business day following transmission; and
- 10.3.4 The parties may utilize an alternative communication medium, in which event such party bears the onus of establishing receipt by the counter party.

**11. Entire agreement**

- 11.1 The Debtor confirms that all the terms and conditions applicable to the agreement concluded with River North Carriers are contained in this Trading Agreement and in the application for a Trading Account.
- 11.2 No other terms, conditions, warranties, representations, negotiations and/or promises, shall be valid and binding unless contained in this Trading Agreement.
- 11.3 No representative of River North Carriers has the authority to agree to any further terms and/or amendments of the Trading Agreement.

**12. Amendment**

No amendment or consensual cancellation of this Trading Agreement shall be valid and binding unless reduced to writing and signed by or on behalf of the parties.

**13. Indulgence**

No indulgence and/or extension and/or failure to strictly enforce this Trading Agreement shall be regarded as a waiver of the rights of River North Carriers unless reduced to writing and signed by the parties and River North Carriers shall remain entitled to strictly enforce the same.

**14. Warranty of Authority**

Each signatory to this Trading Agreement warrants that he is duly authorised to do so on behalf of his principal.