



Kirvic Trading (Pty) Ltd [Email: angie@kirvictrading.co.za/](mailto:angie@kirvictrading.co.za) Tel 031 920 1064/ 064 541 5712/ 083 570 8205

Reg no: 2017/147751/07 - VAT number 4680285287

Suite 9A & 9B The Castle - 19 Lavender Gate Crescent, Southgate Business Park, Umbogintwini, 4126

TRANSPORTER AGREEMENT

Entered into by and between

Kirvic Trading Pty Ltd

Reg no: 2017/147751/07 VAT no:4680285287

And

Company/ Close Corporation incorporated in terms of the laws of South Africa and having its registration CK No _____ (hereinafter referred to as "the Carrier").

RECORDAL

WHEREAS KIRVIC requires certain Goods to be transported from certain loading points to certain delivery sites in accordance with its instruction;

AND WHEREAS THE CARRIER has agreed to transport the said Goods in accordance with KIRVIC's instruction;

NOW THEREFORE it is recorded that the parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

In this agreement, unless the context otherwise requires a contrary interpretation:

1.1. any reference to:

1.1.1. the singular shall include the plural, and vice versa;

1.1.2. the masculine gender shall include the feminine and neuter genders, and vice versa;

1.1.3. a natural person shall include a juristic person, and vice versa;

1.2. The following words and expressions shall have the meanings herein assigned to them:

1.2.1 the/this agreement” shall mean the agreement contained in this memorandum;

1.2.2 “business days” shall mean every day except Saturdays, Sundays and public holidays in South Africa;

1.2.3 “calendar month” shall mean one of the twelve portions into which the conventional year is divided;

1.2.4 “consignment delivery documentation” shall mean the relevant documents which are to be prepared prior to the dispatch of the Goods which include, inter alia, the following information: the physical address of the addressee; the responsible person appointed by the addressee to accept the delivery; and the manifesto;

1.2.5 “THE CARRIER” shall mean the party more fully described on the cover page and includes THE CARRIER, its servants and agents and any person or persons carrying any goods forming the subject matter of this contract in terms of a subcontract with THE CARRIER;

1.2.6 “the delivery sites” shall mean the sites specified in the Consignment Delivery Documentation to which THE CARRIER must deliver the Goods;

1.2.7 “KIRVIC” shall mean KIRVIC Trading PTY LTD duly incorporated in terms of the Company Laws of the Republic of South Africa with registration number 1986/001611/07 and its business address at Central Park, Centurion; 1.2.8. “the goods” shall mean all the Goods to be transported by the carrier in terms of the provisions of this agreement.

1.2.8 “the loading points” shall mean the depots and/or packhouses from where the goods shall be transported by THE CARRIER as instructed by KIRVIC;

1.2.9 “the party(ies)” shall mean KIRVIC and THE CARRIER;

1.2.10 “signature date” shall mean the date of the last party’s signature hereto;

1.2.11 “the transport service” shall mean the transport of the Goods by road from the loading points to the delivery site in accordance with the transport booking supplied by KIRVIC to THE CARRIER.

2. APPOINTMENT OF THE CARRIER

2.1. KIRVIC hereby appoints THE CARRIER, which accepts the appointment, to transport the Goods in accordance with this Agreement.

2.2. It is recorded that this Agreement and the appointment of THE CARRIER as aforesaid, does not constitute an employment agreement, and the relationship of THE CARRIER to KIRVIC is that of an independent contractor, and that no joint venture, partnership, joint enterprise of any kind or relationship of employer and employee, master and servant or principal and agent is hereby constituted. Accordingly, neither Party shall have the power to make contracts in the name of the other, to grant or pledge credit of the other, to incur liabilities on behalf of the other, or to employ any person on behalf of the other.

3. COMMENCEMENT AND DURATION

3.1 Notwithstanding date of signature hereof, this Agreement shall commence on _____ and shall continue for a period of 3 (three) years subject to provisions for earlier termination contained elsewhere in this Agreement.

3.2 This Agreement may be renewed by agreement between the Parties in writing at least two (2) months prior to expiry of the period above.

4. KIRVIC’S CLIENTS

4.1 The carrier shall not directly or indirectly solicit, or attempt to solicit business from any of KIRVIC’s clients for the duration of this Agreement and for a period of one year after its termination. All invoices issued by the THE CARRIER shall be submitted by THE CARRIER to KIRVIC directly. THE CARRIER shall therefore refrain from submitting invoices and statements to KIRVIC’s clients.

4.2 For the avoidance of any doubt, THE CARRIER acknowledges that KIRVIC shall not be responsible for fines or penalties for traffic offences, permits and overloading as a result of incorrect distribution, or delays in loading and offloading. KIRVIC will not be held responsible for any dead freight, standing time or delays at the ports or depots.

4.3 KIRVIC's transport planner will provide THE CARRIER with a booking reference before arriving at the port. The CARRIER must ensure that, when loading export fruit, that it arrives at the destination within 24 hours. In the event of a breakdown, then THE CARRIER must inform the transport planner immediately.

5. **TRANSPORT BOOKINGS**

5.1. KIRVIC shall supply THE CARRIER with a transport order prior to the commencement of the load (24hrs), which order shall be strictly adhered to in terms of timing and quantities by The CARRIER.

5.2. Thereafter THE CARRIER shall take instructions from KIRVIC only in respect of updates and/ or adjustments to the loads as and when circumstances require such an update or adjustment.

6. **OBLIGATIONS OF THE CARRIER (BULK LOADS AND/OR FRUIT UNDER COOLING)**

6.1. THE CARRIER shall transport the Goods in accordance with the transport order and the terms and conditions of this Agreement.

6.2. THE CARRIER shall, at its own cost, ensure that all vehicles utilized for the performance of Transport Services shall be:

6.2.1. maintained in a sound and roadworthy condition;

6.2.2. constructed and maintained in compliance with relevant laws having regard to the purpose for which they are used;

6.2.3. suitable to transport pallets as requested;

6.2.4 able to carry the weight of pallets as per bookings made, or find trucks suitable for this purpose: and

6.2.5 the CARRIER shall further ensure that it has 24 hour satellite trucking available on its fleet.

6.2.6 in the case of Chep pallets, the carrier consents to collect the equivalent pallets and return same to Chep SA as soon as possible failing which all hiring charges including replacement costs will be for the sole account of THE CARRIER.

6.2.7 vehicles arriving at the ports without a booking will have to wait for the next available slot before being serviced; and

- 6.2.8 all trucks being offloaded at KIRVIC Terminals must be in possession of a valid port permit, which can be obtained from Transnet National Ports Authority (“TNPA”) security permit office at Bay Terrace.
- 6.3. In addition to THE CARRIER’s obligations in terms of 6.1 and 6.2, THE CARRIER shall ensure that:
- 6.3.1 all cooling units in its vehicles have control instruments which measure the air delivery temperature;
 - 6.3.2 all cooling units in its vehicles have a maximum temperature fluctuation of 2°C;
 - 6.3.3 no cooling unit is set on cyclical cooling. No cyclical cooling of goods in transit is allowed;
 - 6.3.4 thermocouples are installed at both the air delivery and return ends of the cooling units;
 - 6.3.5 record is kept of the temperature of the cooling units during the transport of the goods; and to be provided if required within 14 days of occurrence and
 - 6.3.6 the cooling units are pre-cooled to 0°C two hours before loading of the goods.
- 6.4 In the event of the use of flat beds, tautliners and dropsides, the provisions of 6.3 shall not apply.
- 6.4.1 Tarpaulin must be clean and hygienic
 - 6.4.2 Corner pieces placed on top of loads to prevent belts cutting into cartons;
 - 6.4.3 Flat deck trailers must be free from any objects, wide enough to carry two pallets next to each other – minimum width 2.40m, pallet friendly with a headboard;
 - 6.4.4 Vehicles utilized by THE CARRIER for the performance of Transport Service may be subjected to pre-loading inspections and the quality of all Goods may be checked after loading and before discharge at the delivery sites by KIRVIC or its representative.
 - 6.4.5 THE CARRIER shall complete and sign a “Carriers Copy” consignment note on collection of the Goods at the loading point, which Consignment Note shall reflect the amount of pallets to be transported, the delivery site and the date of delivery of the Goods to the delivery site.

7. OBLIGATIONS OF THE CARRIER (CONTAINERISED LOADS)

- 7.1. THE CARRIER shall transport the Goods in accordance with the transport order and the terms and conditions of this Agreement.
- 7.2. THE CARRIER shall at its own cost, ensure that all vehicles utilized for the performance of transport of export fruit by road shall be:
- 7.2.1. maintained in a sound and roadworthy condition;
 - 7.2.2. constructed and maintained in compliance with relevant laws, having regard to the purpose for which they are used;
 - 7.2.3. abide by the law applicable to standard container carrying trucks as referred to in NATIONAL ROAD TRAFFIC ACT 93 OF 1996 REGULATION 234 TO 244, and all other applicable road laws; and
 - 7.2.4. shall use Gensets if and when required, and in terms of 6.2.1 and 6.2.2.
- 7.3. In addition to THE CARRIER's obligations in terms of 7.1 and 7.2, THE CARRIER shall ensure that:
- 7.3.1. The correct trailers and equipment (as required in terms of the applicable law) are used to handle the weight of the container plus pallets. KIRVIC shall provide THE CARRIER the weight of the pallets when the booking is made;
- 7.4. THE CARRIER shall provide transportation from a nominated load depot to a nominated container stack.
- 7.5. THE CARRIER shall complete a Container Terminal Order ("CTO") in respect of every container transported.
- 7.6. The Container Terminal Order ("CTO") must accompany THE CARRIER to the loading point, and be completed in full and correct.
- 7.7. KIRVIC shall endeavor to give THE CARRIER at least 24 hours prior written notice to the service being required.
- 7.8. THE CARRIER will take full responsibility of the following:
- 7.8.1 all risk pertaining to transporting of container to the correct container terminal;
 - 7.8.2 ensuring a CTO for the specific container is completed;
 - 7.8.3 ensuring that loading times/slots at pack houses and depots are strictly adhered to per KIRVIC booking requirements;
 - 7.8.4 ensuring that container reaches Port terminal facilities before stack cutoff time;

7.8.5 in the event of late arrival of container due to CARRIER delays, THE CARRIER will bear onus of all additional charges; and

8 COMPLIANCE WITH LEGISLATION

- 8.1 THE CARRIER warrants that it shall perform the Transport Services envisaged herein in full compliance with all laws, by-laws and regulations of whatever description, and without limiting the generality hereof, shall ensure that all drivers employed by it and that all vehicles used by it are properly and fully licensed and that all relevant licenses and permits are obtained and remain in force. Where required by law, licenses and permits shall be displayed on the vehicles to which they relate.
- 8.2 THE CARRIER hereby indemnifies and holds KIRVIC harmless against all claims or cost, including legal costs on an attorney-and-own-client scale, which may be made against or incurred by KIRVIC as a result of a breach of the warranty contained in 8.1 by THE CARRIER.

9 GENERAL INDEMNITY BY THE CARRIER

THE CARRIER hereby indemnifies and holds KIRVIC harmless against all claims, liabilities, losses or proceedings, including all costs involved therein, which may arise in any way as a result of the performance by THE CARRIER of the Transport Services in terms of this Agreement, irrespective whether such claim, liability, loss or proceeds has arisen from the negligence of THE CARRIER or any of its employees or agents or not.

10 REMUNERATION OF THE CARRIER

- 10.1 KIRVIC shall remunerate THE CARRIER for the Transport Services rendered in terms of this Agreement at the rate agreed between the parties in writing from time to time (“the remuneration”). Such rates shall apply irrespective of whether THE CARRIER’S employees are required to work overtime in respect of the performance of the transport service.
- 10.2 THE CARRIER shall provide KIRVIC within 30 (thirty) days from the date of transport of any specific consignment with a statement of account for each Calendar Month recording details of all Transport Services rendered in that month. Such details shall include (but not limited to) references to each delivery site, the number printed on the Consignment Documentation, the original consignment note and the quantity of Goods delivered.

- 10.3 Payment shall be made by KIRVIC to THE CARRIER within a maximum of 30 (thirty) days from receipt of the statement of account referred to in 10.2.
- 10.4 The CARRIER shall send all the original invoices together with KIRVIC's transport instruction via courier to KIRVIC to the address as stipulated in clause 16 below.

11 OWNERSHIP OF GOODS AND RISK OF TRANSPORT SERVICES

- 11.1 All Goods shall remain the property of the consignor or KIRVIC (as the case may be) while in the custody or under the control of THE CARRIER.
- 11.2 THE CARRIER shall bear all risks of loss of or damage to the Goods or any equipment while in its custody or under its control.
- 11.3 All losses of or damage to or shortages of the Goods resulting directly from the performance by THE CARRIER of the Transport Services in terms of this Agreement shall be for the account of THE CARRIER irrespective whether such losses or damage or shortages have been caused by the negligent or willful conduct of THE CARRIER or any of its agents or employees or not, or where a sealed container is breached whilst in Carriers custody.
- 11.4 No remuneration shall be payable by KIRVIC to THE CARRIER in respect of any Transport Services rendered abortive by virtue of the loss, shortage or damage of all the goods in the circumstances contemplated in 11.3.

If only a portion of the Goods are lost or damaged, KIRVIC shall pay THE CARRIER remuneration in proportion to the Goods not so lost or damaged, such remuneration to be determined by KIRVIC in its sole discretion.

- 11.5 The signature of the driver of the vehicle on the consignment note will be taken as THE CARRIER'S agreement with the total quantity of pallets of Goods transported.
- 11.6 THE CARRIER shall reimburse KIRVIC in respect of all losses of or damage to or shortage of Goods contemplated in 11.3 above within 30 (thirty) days after the end of the Calendar Month during which a claim was instituted by KIRVIC.
- 11.7 KIRVIC shall notify THE CARRIER of any potential claim relating to the losses, shortages or damage suffered as contemplated in 11.3 within 14 (fourteen) business days of detection of such losses or damage or shortages, but shall endeavor to inform THE CARRIER of such potential claim as soon as it becomes aware thereof. All such claims shall be supported by an endorsed "Proof of Delivery" document / "Out Consignment" Note where possible.

12 **INSURANCE**

THE CARRIER shall effect and maintain insurance on all Goods transported and all equipment used in terms of this Agreement.

13 **CESSION**

By accepting and agreeing to transport the load, THE CARRIER also agrees to cede all rights in and to any insurance claim in respect of the Goods carried on behalf of KIRVIC, to and in favour of KIRVIC and grants authority to KIRVIC that for any claim, payment must be paid by THE CARRIERS's insurance company directly to KIRVIC. The cession of rights is irrevocable and THE CARRIER hereby authorizes its insurer to recognize this cession as lawful and to give effect to this cession and instruction.

14 **FORCE MAJEURE**

Should either Party be substantially unable to perform any obligation in terms of this Agreement for reasons beyond its control and without fault on its part, it shall be excused from such performance and shall advise the other Party thereof immediately, provided that a Party so affected shall use its best endeavours to avoid or remove the relevant circumstances within a reasonable period and any reciprocal payment in respect of such services shall likewise be excused until performance takes place.

15 **BREACH**

15.1 Should either Party ("the defaulting Party") breach any term of this Agreement and fail to remedy such breach within a period of 7 (seven) business days after receipt of a written notice to remedy such breach, the other Party shall be entitled, without prejudice to its right to claim damages as a result of the breach:

15.1.1 to cancel this Agreement forthwith by written notice to THE CARRIER, or

15.1.2 claim specific performance of the defaulting party's obligations in terms of this Agreement.

15.2 The written notice referred to in clause 16.1 above shall:

15.2.1 specify the alleged breach with sufficient particularity to enable the defaulting party reasonably to understand the complaint; and

15.2.2 state that it is given 7 (seven) days in terms of 16.1 to remedy the breach and that unless the alleged breach is remedied within 7 (seven) days after receipt thereof, the innocent party shall have the right to cancel the Agreement.

16 NOTICES & DOMICILIA

16.1 The Parties choose as their domicilium citandi et executandi for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature, the following addresses:

16.1.1 KIRVIC Trading (PTY) LTD:

Suite 9A & 9B The Castle
19 Lavender Gate Crescent
Southgate Business Park
Umbogintwini
4126
South Africa

THE CARRIER:

16.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing and it shall be competent to give notice by electronic mail.

16.3 Any Party may by notice to any other Party change the physical address chosen as its domicilium citandi et executandi to another physical address or its telefax number, provided that the change shall become effective vis-à-vis that addressee on the 6th business day from the receipt of the notice by the addressee.

16.4 Any notice to a Party –

16.4.1 Sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at the address chosen as its domicilium citandi et executandi shall be deemed to have been received on the 6th business day after posting (unless the contrary is proved);

16.4.2 Delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its domicilium citandi et executandi shall be deemed to have been received on the day of delivery; or

16.4.3 Sent by electronic mail to its chosen email, shall be deemed to have been received on the date of dispatch (unless the contrary is proved).

16.5 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen domicilium citandi et executandi.

17 **PROPER LAW AND JURISDICTION**

17.1 This Agreement shall be governed by and construed in all respects in accordance with the laws of the Republic of South Africa.

17.2 The Parties hereby irrevocably consent to the jurisdiction of the Magistrate's Court in respect of any action, which may be brought against it by the other Party, notwithstanding the quantum of the claim.

17.3 Notwithstanding 17.2, it shall nevertheless be entirely within the discretion of KIRVIC to bring proceedings against the supplier in any other appropriate court having jurisdiction.

18 **ANTI-BRIBERY AND ANTI CORRUPTION**

The Parties shall each do all that is necessary and within their respective power and control to ensure that it will not at any time offer, promise, give or receive any improper financial payment and/or other improper advantage to or from any person, customer or supplier (whether a public official or otherwise) with the intention of influencing them and obtaining an advantage in the conduct of its business.

19 **CONFIDENTIALITY**

During the course of performing its obligations, THE CARRIER shall, either directly or indirectly, have access to confidential information relating to KIRVIC and/or its principal/s or other third parties.

THE CARRIER therefore undertakes to keep confidential all information relating to KIRVIC or any of its agents, principals or third parties. The CARRIER undertakes to use all such information strictly for the purpose of performing its obligations in terms of this Agreement and agrees not to make any other use of such information and further not make the information available to any other third parties.

20. **FINAL PROVISIONS**

20.1 This Agreement contains all the express provisions agreed on by the Parties with regard to the subject matter hereof and the Parties waive the right to rely on any alleged express provision not contained herein.

20.2 No agreement varying, adding to, deleting from, or cancelling this Agreement and no waiver of any right under this Agreement shall be effective unless reduced to writing and signed by or on behalf of the Parties.

20.3 No relaxation by a Party of any of its rights in terms of this Agreement at any time shall prejudice or be deemed to be a waiver of its rights, unless it is a written waiver, and the party shall be entitled to exercise its rights thereafter as if such relaxation has not taken place.

20.4 THE CARRIER may not cede any of its rights or delegate or assign any of its obligations in terms of this Agreement without the prior consent of the KIRVIC.

20.5 Headings of clauses are inserted for the purpose of convenience only and shall be ignored in the interpretation of this agreement.

20.6 THE CARRIER warrants that it does not make use of child labour.

(KIRVIC) SIGNED AT _____ ON THIS ... DAY OF 2021.

Sign

For and on behalf of KIRVIC Trading (PTY) LTD

(CARRIER) SIGNED AT _____ ON THIS ... DAY OF 2021.

Sign

For and behalf of THE CARRIER Who warrants that he/she is authorized thereto

Name and physical address of the CARRIER

Postal Address:

VAT No.		Company Reg number. _	
Telephone: Code		Number	
Fax number: Code		Number	
Bank		Branch	
Account No.		Branch no _	
Contact Person Operational		Accounts	
Cell No			
Email address Operational:		Email address Accounts: _	

Details of insurance cover per load - kindly send a photocopy of the policy (Should any of these details change notify KIRVIC immediately as these will be checked periodically throughout the year)

Name of Insurance Company	
Tel no and Contact Person	
Broker Email Address	
Policy Number	
Date of expiry	

Amount per load: _____

By our signature hereon I / we accept the Terms and Conditions of Service as set out in the Transport Conditions & Requirements contract as being the terms of Contract between ourselves and KIRVIC Trading (Pty) Ltd in respect of the services to be rendered herein.

We also confirm that we have read and accepted the **Kirvic General Terms & Conditions of Contract** which is a part of this document and is also available on the Kirvic Website - www.kirviclogistics.co.za

Signed at _____ on this _____ day of _____ 20____.

_____ WITNESS SIGNATURE

BUSINESS TRADE REFERENCES (Please list at least 3 names)

COMPANY NAME	TEL	CONTACT PERSON

FLEET INFORMATION

(Please state quantity on each type of vehicle in fleet for correct allocation of loads)

TYPE OF VEHICLES	QUANTITY
TAUTLINERS	
FLATDECK	
TRI-AXLE	
TIPPERS (Side/ Back)	
DROPSIDE / DROPSIDE TIPPERS	
TANKERS (Dry / Liquid)	

KIRVIC TRADING 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 **Kirvic** shall mean **Kirvic Trading PTY LTD**

1.2 The customer shall mean:

1.2.1. The person who instructed **KIRVIC** to perform the services reflected in terms of this contract;

1.2.2. The person who accepts **KIRVIC**'s quotation;

1.2.3. The person who contracts with **KIRVIC**.

1.3. "Contract" means the terms and conditions hereof whether agreed to in writing or orally concluded between **KIRVIC** and the customer;

1.4. "Dangerous goods" includes hazardous goods and good which, in the opinion of **KIRVIC** 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 **KIRVIC** 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 **KIRVIC** 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/ies and the like;

2. CAPACITY OF BROKER

2.1. Notwithstanding anything herein contained to the contrary, **KIRVIC** herein contracts with the customer in its capacity as agent and nothing herein contained is to be construed as **KIRVIC** acting as principal with the customer;

2.2. Notwithstanding anything herein contained, **KIRVIC** shall accept liability for loss or damage to the customer's goods only , subject to the provisions stipulated in clause 5 hereunder;

2.3. **KIRVIC** shall, if and when suitably indemnified by its customer against all costs claimed, including attorney and client costs, and security is furnished to **KIRVIC'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 **KIRVIC** 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 **KIRVIC'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 **KIRVIC** 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 **KIRVIC** unless the same is contained in writing and signed for and on behalf of **KIRVIC**;

2.7. No amendment, variation or consensual cancellation of any contract shall be of any force and unless such amendment, variation and/or consensual cancellation is reduced to writing and signed by **KIRVIC**.

3. WHOLE CONTRACT

No course of conduct other than agreement in writing signed by **KIRVIC** shall constitute a variation or novation of a contract or a waiver or estoppel of **KIRVIC's** rights there under.

4. CONDITIONS

KIRVIC shall be only obliged to perform provided:

4.1. **KIRVIC** in its sole opinion has received sufficient notice of the customer's requirements

4.2. The customer's notice to **KIRVIC** 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 **KIRVIC**.

5. LIABILITY

5.1. **KIRVIC** 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 **KIRVIC**

5.2. The loss to the customer shall be ascertained by reference to the cost price of the customer, provide that **KIRVIC** shall have the option of replacing or repairing any article lost or damaged for which **KIRVIC** 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 **KIRVIC**.

5.3. **KIRVIC** 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 **KIRVIC** being limited to the actual loss of or damage to goods, as set out above;

5.4. A claim (counterclaim) by the customer against **KIRVIC** shall not be made reason for deferring or withholding payment;

5.5. **KIRVIC** 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, **KIRVIC** shall not handle articles of a hazardous or dangerous nature and the customer shall indemnify **KIRVIC** against claims arising out of the presence of any articles of a hazardous or dangerous nature;

5.7. **KIRVIC** will not accept any responsibility for demurrage 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 **KIRVIC**;

5.8. **KIRVIC** 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 / offloading of vehicles are performed by the Customer or Consignor or their respective agents.

6. CUSTOMER'S WARRANTIES AND INDEMNITIES

The customer warrants and represents that:

6.1. 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 **KIRVIC**;

6.2. The carriage of the goods as contracted for with **KIRVIC** does not contravene any law;

6.3. A document giving a full description of the goods to be transported will be given to **KIRVIC**'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;

6.4. That any legal action arising between **KIRVIC** 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

Without limiting and without prejudicing the provisions of these conditions, the customer shall notify **KIRVIC** 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 **KIRVIC** the full amount stated on **KIRVIC**'s invoice on due date without any deduction or set-off and without prejudice to the customer's rights contended for against **KIRVIC** in respect of any such claim, the customer shall not be entitled to deduct or set-off any monies which it owes **KIRVIC**, against any monies which it contends are due to it by either **KIRVIC** and/or the principal.

8.2. The customer shall pay **KIRVIC** in full free of any commission, brokerage, exchange, deduction or set-off, within 30 (thirty) days from date of **KIRVIC**'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 **KIRVIC**, arising from any cause whatsoever;

8.4. The customer agrees to pay **KIRVIC** interest at a rate of 2 (two) percent per month on all amounts which are unpaid and outstanding on the due date;

8.5. **KIRVIC** 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 **KIRVIC** exercising these rights, all amounts owing by the customer shall immediately become due and payable on demand;

8.6. **KIRVIC** reserves the right to telefax to the customer, all documents pertaining to any contract entered into with **KIRVIC**, and the customer shall effect payment to **KIRVIC** on receipt of such telefaxed documents. Under no circumstances will the customer withhold payment to **KIRVIC** for not having received "original" documents pertaining to any contract entered into with **KIRVIC**.

9. CONDITIONS OF GOODS

The onus of establishing the conditions of the goods at the time of delivery to **KIRVIC** and/ or principal shall at all times remain on the customer, and no delivery note, receipt or other document given at such time by **KIRVIC** 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 **KIRVIC** and/or principal.

10. LOADING AND OFF-LOADING OF VEHICLES

The customer shall deliver the goods onto the vehicle nominated by **KIRVIC** and shall take delivery of the goods there from , and shall be fully responsible for the loading and off-loading thereof. **KIRVIC**'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 **KIRVIC**.

11. LOADING AND OFF-LOADING FACILITIES

The customer undertakes:

11.1. 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;

11.2. To ensure that loading and off-loading will be possible at the agreed points during such hours and days as the parties have agreed

11.3. 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

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 **KIRVIC**'s driver.

14. FAILURE BY THE CUSTOMER TO TAKE DELIVERY

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 **KIRVIC**) 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, **KIRVIC** 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 **KIRVIC** 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 **KIRVIC** written notice of such cancellation not less than 12 (twelve) hours prior to the scheduled time of arrival of **KIRVIC**'s vehicle at the agreed point of loading failing which the customer shall be liable to pay **KIRVIC**'s usual, alternatively reasonable charges up to a maximum period of 48 (forty eight) hours.

16. QUOTATIONS AND QUOTATION DATA

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 **KIRVIC** in good faith under representation by the customer. Any variance there from shall entitle **KIRVIC** 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 **KIRVIC** may have suffered.

Quotations are subject to:

16.1. All part loads being conveyed and delivered at **KIRVIC** and principal's convenience

16.2. Where the volumes, quantities or scope of work have increased over what **KIRVIC** have quoted for or there be a change of route due to reasons beyond **KIRVIC** and/or principals control the customer will be charged for any additions on a pro-rata basis;

16.3. Any postponement or cancellation by the customer entitles **KIRVIC** to debit the customer's account for expenses incurred and/or losses to **KIRVIC** arising there from;

16.4. **KIRVIC** 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 **KIRVIC** or are such that **KIRVIC** could not reasonably foresee or prevent the cause of such stoppages or delays arising.

17. FREIGHT AND ADDITIONAL CHARGES

The Freight payable to **KIRVIC** by the Customer for the Transportation of Goods by **KIRVIC** or Principal, shall be the freight agreed between **KIRVIC** 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. Subject to the foregoing and in addition to the freight, **KIRVIC** shall be entitled to levy an additional charge at its usual rate, alternatively reasonable rate in the event of:

17.1. The customer re-routing **KIRVIC's** vehicle to additional loading and/or off-loading places other than as stated on the customer's official order to **KIRVIC** as described in paragraph 4.2 above;

17.2. Fines, penalties, demurrage charges and any consequential losses, claims or expenses resulting from the unsafe loading and/or overloading of **KIRVIC's** vehicle by the customer;

17.3. The circumstances envisaged in terms of paragraphs 12; 14; 15 and 16 above.

18. GENERAL

18.1. **KIRVIC** may cede, delegate or assign any or all of its rights and/or obligations under a contract. **KIRVIC** 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 **KIRVIC** in its sole ad unfettered discretion elect to institute any action arising out of a contract against the customer in such court, notwithstanding that **KIRVIC**’s claim may exceed the ordinary jurisdiction of the court.

18.3. The customer selects as its domicilium citandi et executandi for all purposes hereunder its principal place of business as reflected on its letterheads.

SIGNED: _____ DATE: _____

NAME _____ CAPACITY: _____

PLEASE ATTACH THE FOLLOWING TO THE CONTRACT

DESCRIPTION	TICK
CK DOCUMENTS	
COMPANY PROFILE	
DIRECTORS ID DOCUMENTS	
PROOF OF ADDRESS	
VAT CERTIFICATE	
BEE DOCUMENT IF AVAILABLE	
BANK CONFIRMATION LETTER	
COPY OF CURRENT GIT	